ISSN: 2321-4716

Peer- reviewed

JOURNAL OF THE CAMPUS LAW CENTRE
VOLUME XII : 2025

[Advanced Online Issue]

Editorial Advisory Board

ISSN: 2321-4716

Peer- reviewed

JOURNAL OF THE CAMPUS LAW CENTRE VOLUME XII: 2025

[Advanced Online Issue]

Mode of Citation: XII JCLC (2025) [Advanced Online Issue]

ISSN: 2321-4716

Peer- reviewed

Published by

Campus Law Centre

Chhatra Marg, North Campus, Maurice Nagar

University of Delhi, Delhi- 110007 (INDIA)

Website: https://clc.du.ac.in

Email: pic@clc.du.ac.in

JOURNAL OF THE CAMPUS LAW CENTRE

VOLUME XII: 2025

CONTENTS

NOTES AND COMMENTS

From the Desk of Professor-In-Charge

On behalf of the Campus Law Centre, it is my proud privilege to present the Twelfth volume of Journal of the Campus Law Centre (JCLC) to its esteemed readers. Being the Flagship Journal of the Campus Law Centre, University of Delhi, the Journal is poised to contribute to the world of legal literature, receiving contributions from doyens of law to young inquisitive students, legal researchers spearheading and espousing the cause of legal research in India and abroad. With support from the legal academia, judges, advocates, and research scholars on the matters of contemporary legal issues the journal aims to raise questions paving the way for future legal research and discussion.

In preparation of this issue, we have strived to keep up the tradition of maintaining high academic standards that the JCLC has been known for. This volume, as earlier volumes, contains thought provoking and scholarly papers on various contemporary and topical legal issues. We are pleased to present eleven Research Articles, and five Notes and Comments which are intended to not only contribute to a better understanding of a range of issues traversing artificial intelligence, intellectual property, data protection, cybercrimes, forensic sciences, gender justice, corporate restructuring, property law, and consumer rights but also initiate a dialogue on these burning topics which require attention, discourse and discussion. The topics we cover transcend jurisdictional boundaries, making it possible not just to deepen and internationalise Indian public law debates, but also to present distinctive Indian viewpoints.

I take this opportunity to express my sincere thanks not only to the contributors of this issue but also to Dr. Ajay Kumar Sharma, the editor, and the members of the editorial committee who serve as the associate editors. I would like to thank our readers and request their valuable feedback, which will help the editorial committee to improve the quality of the journal.

Professor (Dr.) Gunjan Gupta
Professor-in-Charge

Editor's Note

Welcome to the Twelfth volume of the Journal of the Campus Law Centre (JCLC), a collaborative effort between academicians, researchers, professionals and other scholars. Our journal aims to provide a platform for projecting the results of legal scholarship by espousing research and reflection on the legal issues of the day.

JCLC is and has always been faculty reviewed, following a double-blind peer review process. The speciality of this volume lies not only in the factum of creative contents of this compilation but more so for the reason of such contributions being made by thorough scholars and researchers. JCLC's wide horizon covers a range of legal issues, and provides our readers an engrossing engagement with various contemporary law and policy issues.

In this volume we are publishing eleven Articles, and five Notes and Comments. In the articles, Dr. Raveena Bhargava examines equity and bias in AI systems, followed by Dr. Mehpara who revisits daughters' property rights under classical Hindu law. Anil Sain and Abhimanshi Singh analyse the legal response to the non-consensual dissemination of intimate images, while Dr. Daisy Changmai and Chayanika Sarma explore discrimination against men. Dr. Neha Susan Varghese offers an intersectional critique of caste atrocity legislation, after which Ayush Dubey advocates for a 'new social contract' in the gig economy. Next, Parul Kangniwal and Lalita Devi assess the ethical and legal challenges of telemedicine, Pawan Kumar and Suriya Kannan V S multi-dimensionally analyse India's cadastral governance architecture, followed by an examination of forensic science under the new criminal laws by Abishieke R. and Aayush Tripathi. Then, Amanpriya Singh and Parveen Kumar analyse consumer protection in the real estate sector, and Siddharth Srikanth concludes the articles with an analysis of the 2018 amendment to the Specific Relief Act.

In the notes and comments, Oluwagbenga Atere explores intellectual property protection for sports brands and athlete endorsements, while Mayank Shrivastava analyses investor protection in mergers and acquisitions. Next, Tulika Singh and Sakkcham Singh Parmaar comment on the 2023 case of Supriyo @ Supriya Chakraborty v Union of India. The next note is by Koomar Bihangam Choudhury who analyses Zoom data practices under the GDPR, followed by the concluding note in this volume by I Madhav Ganesh and Aiswaraya S who discuss certain early emerging legislative developments of 2025.

On behalf of the Editorial committee, I would also like to express my gratitude to the aforementioned authors of the submissions published, and acknowledge the generous help that both the authors and editors obtained from the learned peer-reviewers. I also feel irresistible to acknowledge the contributions made by all the members of our editorial committee who spent long and tedious hours in editing the Journal.

Lastly, I would like to express my heartfelt gratitude towards the Editor-in Chief, Professor (Dr.) Gunjan Gupta, Professor-In-Charge, CLC for her tremendous support and cooperation throughout the publication and giving me the opportunity to serve as the Editor of this Journal.

Dr. Ajay Kumar Sharma
Editor

PROMOTING EQUITY THROUGH AI SYSTEMS: A SPECIAL FOCUS ON THE ISSUES OF GENDER, DIVERSITY AND INCLUSION

Dr. Raveena Bhargava*

Abstract

This paper seeks to critically analyse the building blocks and pertinent questions around the interface of AI intelligence with human decision-making processes emphasizing upon its unfavorable outcomes for citizens or people at large. These building blocks comprise 'data' or 'data sets' that are the life and breath of an AI system. The data sets however are insulated in terms of coding and curated towards delivering objective results for individuals. Herein enters the question of equity in AI system's application for participants of different gender, race, color and hosts of other social factors. The theoretical understanding to establish the normative principles includes- 'holistic representation of data' and 'legal accountability' of possible outcomes. This paper highlights the interface between AI and human decision making through an intersectional lens putting special focus on complex human social issues. The paper explores the technical nature of the legal challenge of regulation and ensuring preemptive measures exist before data is deployed and misused. In this study, the techno-legal nature of the usage and management of large data sets and their implications have been discussed with the help of relevant case studies and examples. The interdisciplinary nature of the topic has been researched through a socio-legal lens by understanding the nuances of AI and its impact on society, with a special focus on the themes of gender, diversity and inclusion. Further, the author discusses the ethical considerations and recommendations that can help bridge the social and legal gaps in understanding.

Keywords: AI systems; algorithm; gender discrimination; intersectionality; diversity.

I.
Introduction

The 21st century is built upon the quest for technological revolution leading to automation of tasks and enhancing human decision making processes. The presence and reach of Artificial Intelligence are

* Associate Professor, DME Law School, Delhi Metropolitan Education, Noida, Uttar Pradesh.

taking a dynamic turn in the history of mankind revolutionizing the way humans think, write, learn and adapt to the interaction between AI and human intelligence. Both AI and the latter have the capability to reason out, weigh circumstances and process information for the fulfilment of daily tasks and mechanisation or automation of decisions. But the "algorithms output and the resulting decision"[1] may not represent populations fully because of various factors involved in a particular decision making process. For instance, six years ago ,the Amazon recruiting system was found to gender discriminate between men and women by selection of top five resumes (from the side of men) that it picked from a ten year old data showcasing less women applying in the technology sectors over the years and getting automatically eliminated by the mechanisation/automation of the recruitment process based on AI's decision.[2] This kind of an instance could be observed to understand its various implications for diverse communities and interaction with ethical considerations. These considerations could covertly impact gender and marginalised groups that require a closer look. AI isn't a monolithic field, it lives at the crossroads of multiple disciplines, technologies, and social domains. The overlapping nature of AI can be seen in the domain of philosophy and ethics, law and public policy and human-AI interactions.

Understanding AI's overlapping nature helps organizations and practitioners to build better solutions by borrowing proven methods from adjacent fields. It also provides an opportunity to mitigate risks through collaborative governance that spans legal, technical, and social perspectives. And finally, to accelerate innovation by recognizing its intersectional nature and personality. The question of diversity The intersectional and overlapping nature of AI with society can create potential discrimination in areas of gender, diversity and inclusion. AI and gender issues intersect at multiple points across the AI lifecycle from the data we feed models to the ways we evaluate and deploy them. The key issues involve under-representation and stereotypes in data sets for especially women and women of color, non-binary people, and trans individuals who are often under-sampled in datasets. Language datasets may encode gender stereotypes (e.g. nurse associated with women, engineer with men). The user impact of this intersectional problem can be observed in recruitment tools, gendered voice assistants and chatbots choosing default to female voices, in the healthcare sector and diagnostics, models trained primarily on male physiology data (e.g., heart-attack symptoms) which lead to underdiagnosis or misdiagnosis of the patient (women). At the same time, AI and diversity intersect across multiple dimensions of the AI lifecycle, from who builds these systems to what data they're trained on, to how

[1] European Network of National Human Rights Institutions, "Artificial Intelligence and gender equality: how can we make AI a force for inclusion, instead of division?" *available at*: https://ennhri.org/news-and-blog/artificial-intelligence-and-gender-equality-how-can-we-make-ai-a-force-for-inclusion-instead-of-division/ (last visited on May 15, 2025).

[2] Jeffrey Dastin, "Insight- Amazon scraps secret AI recruiting tool that showed bias against women" *Reuters available at*: https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G/ (last visited on March 15, 2025)

they're evaluated and deployed. All these pertinent questions provide a platform for holistic solutions to the problem of discriminatory outcomes for different gender and people from different racial backgrounds, people at the margins and to devise technological methods based on inclusivity. The different aspects of this equation include the following important factors to be taken into account:

- Diversity in teams and perspectives with respect to broader problem-solving skills for the creation and deployment of AI systems that are representative.
- Teams with varied backgrounds and shared lived experiences (gender, ethnicity, socioeconomic status and culture) can better understand the subtle forms of stereotyping which cannot be completely caught through quantitative methods.
- Ensuring datasets include sufficient examples of all genders, ethnicities, ages, abilities, etc., prevents models from learning or re-learning to ignore or misclassify minority groups.
- Intersectional Sampling can help in the collection of data not just by single axes (e.g., gender) but by intersections (e.g. women of color, non-binary older adults), so that models are not blind to combined attributes.
- Continuous impact analysis and gap analysis is imperative as societies evolve and therefore should include the evolution of data by tracking demographic shifts and regularly filling gaps to avoid disproportionate harm to certain groups.

Finally, the theory of inclusivity stresses upon the need to embrace and acknowledge societal differences with rationality. It calls for the promotion of equity through applying ethical considerations to avoid unfair results. By embedding diversity into every phase that is from team composition to data curation to governance, AI systems can be transformed from a potential amplifier of bias into a powerful tool for fairer, more inclusive outcomes.

II.
AI and Gender Discrimination

AI mirrors the existing biases in society as it is basically a technology system that is functional on feeding data or data sets into a machine or application-based model. The most common inference of understanding can be drawn from a plain observation of social media platforms and regulation of online content as per consumer biases. For instance, studies have found that AI can prioritise data in favor of men over women that could lead to biased results in areas like hiring or recruitment, evaluation for loan and finance applications and even healthcare services and their allied assessment of

running diagnoses.[3] The reason behind the same is the inclusion of data or machine learning processes being run mostly by men in the technology sector which leads to a certain understanding for the AI in terms of color, gender, language and with AI focusing more on male symptoms in a given scenario of female diagnoses. AI-powered voice recognition systems can sometimes struggle with accurately understanding or processing female voices, particularly if the systems were primarily trained on male voice samples. In financial services, algorithms used for credit scoring or risk assessment may incorporate historical data that reflect gender disparities. For instance, if past lending practices were biased against women, an AI system trained on that data might inadvertently continue to discriminate, affecting women's access to loans or credit. These instances lead to a common understanding that there is a need to assess the root cause behind disparity that could be misread by AI.

The development and implementation of AI requires learning from data. AI systems are computer programs which require human intelligence and interaction. It is about the understanding of natural languages, image recognition, speech or voice recognition and decision making by AI technology based on data. AI-driven systems can perpetuate, amplify, or even introduce new forms of gender discrimination at multiple stages of their lifecycle. The reasons and factors include data level bias in the form of under-represented data sets, stereotypical correlation, for instance, speech-recognition systems struggle with female and non-standard accents (e.g., African-American Vernacular English), leading to higher error rates and poorer user experiences for women speakers. By recognizing how gender intersects with every stage, from data collection through deployment and by embedding technical, organizational and regulatory safeguards, practitioners and policymakers can steer AI toward more equitable outcomes rather than exacerbating existing gender inequalities.

III.
Algorithm, AI and its impact on the society

The computer scientist Harold Stone tries to explain algorithms in his book, *Introduction to Computer Organisation and Data Structures* published in 1971, "An algorithm is a set of rules that precisely define a sequence of operations."[4] That is the simplest explanation of algorithms that define the creation, updation and regulation of AI since its inception. Now this sequence could consist of simple data or very large sets of complex data. For a legal or social scientist, it becomes imperative to learn

[3] Ngozi Ben Osaro, and Sabastine Tagbo, "Gender and AI: Exploring the intersection of Technology and Social Change." 1(2) *International Journal of Educational Management, Rivers State University* 106 (2025).
[4] Harold Stone, *Introduction to Computer Organisation and Data Structures* (McGraw-Hill, Inc, United States New York, 1972).

the fundamental technical aspects of AI creation to reflect better on the interdisciplinary nature of AI and its interaction with socio-legal factors like gender, diversity and inclusion. An important example was highlighted during the COVID-19 period when Stanford Medical Centre's distribution of vaccines was misallocated towards higher ranking administrators than frontline doctors. It was known to be created after close discussions between ethicists and the hospital committee. This was interpreted to be a complex algorithm designed to be based on a representative data set but it was not. Rather it was a simple decision tree designed by humans. There was in fact no machine learning involved in this case. It was a medical algorithm which does not function on a predictive model per se. Hence it becomes important for the policy makers to first understand and analyse the class of algorithms or "decision support tools"[5] through which they want to implement and execute AI in their human decision making processes.

This points towards a concrete understanding of how AI impacts gender in areas of employee hiring, healthcare services, loan and financial lending processes through banks and institutions as described in the above section. To understand it simply tapping into the AI's intelligence is not seen here. Rather these are examples of human intelligence because they are mostly based on a series of operations that the algorithm is made to go through based on inputs such as age, department, marital status, etc. In the case study of Stanford misallocation of vaccines [6] , a set of normative data based on human decision making which was found to be biased in terms of how vaccines should be prioritized. It still qualified to be an AI without having any optimized characteristic of generating a quantitative number in a global health crisis. But the only intelligence involved was that of human beings and not AI's generative nature.

This understanding can surely lead to the usage and regulation of data in the most fair and judicious form which does not hurt people and society. This could lead to AI's decision making outcomes as essentially being human oriented with a possibility of collaboration between both the entities for holistic growth of the society.

IV.
The intersection of AI systems and the issues of diversity and inclusivity

The entire discussion revolving around the implications of AI technological systems upon society often lacks the point of involving those who are at the margins. AI and its execution and processes

[5] Kristian Lum and Ruman Chowdhury, "What is an "algorithm"? It depends whom you ask: For better accountability, we should shift the focus from the design of these systems to their Impact" MIT Technology Review *available at*: https://www.technologyreview.com/2021/02/26/1020007/what-is-an-algorithm/ (last visited on April 19, 2025).
[6] *Ibid*.

require ‘resources’ which are not equally distributed in society. There is an intersection wherein AI systems can help marginalised societies through its technological advancements. There exists specific AI generative models and algorithmic intervention in terms of optimization and using the generative intelligence of AI.[7] There is a common understanding that governments and other stakeholders have to adopt relevant strategies which are akin to their populations, poverty reduction programmes, introduction of research and educational tools and other health care related spheres of social milieu.

This requires the selection of algorithms and computations which maximize this goal through application-oriented contributions and innovating technical solutions towards implementation of AI and handling of community issues or needs. This could be better analyzed through understanding the AI lifecycle. That is how we train, build and deploy AI models to achieve parity in outcomes. For instance, COMPAS- Correctional Offender Management Profiling for Alternative sanctions, a widely used algorithmic risk assessment tool in U.S. courts, predicts the likelihood of recidivism to inform bail and sentencing decisions. It takes into account variables such as, employment history, drug use, criminal history to assess the risk of reoffense and quantify it into a decision. Independent audits have shown that COMPAS tends to assign higher risk scores to people of color.[8] Potential racial bias has been found in using algorithmic assessment to determine criminal risk abilities of an offender. For instance, in a 2016 case study of the southern county of Florida, United States of America, the popular risk assessment tool COMPAS was investigated to discriminate by representing a higher rate of re-offending by people of color. The same tool has been found to generate over predictability of risk associated with women to re-offend. Therefore, leading to biased consequences in the form of unfair sentencing for female offenders. The actuarial scales are not enough to deal with matters of unpredictable human behavior, such as the case of using an AI to profile or recourse a full proof chart of every person of color or gender committing a re-offense than their non color or opposite gender counterparts. This raises the serious question of how to train algorithms on data that are gender, race and ethnicity sensitive. This serves as an important tool to highlight the bottom lining principle in using AI systems to integrate with human knowledge and to produce nondiscriminatory outcomes. We must not ignore the “algorithmic assessment’s capacity to discriminate”.[9] Transparency and Trainability become essential in launching AI systems within popular usage. With a need to understand that analysis based on big data may not always be non-discriminatory, well informed and

[7] Bryan Wilder, “AI at the margins: Data, Decisions and Inclusive Social Impact” *Proceedings of the Twenty Eighth International Joint Conference on Artificial Intelligence and Doctoral Consortium* 6474-6475 (2019). https://doi.org/10.24963/ijcai.2019/926.

[8] Justice served? Discrimination in algorithmic risk assessment, *available at*: https://researchoutreach.org/articles/justice-served-discrimination-in-algorithmic-risk-assessment/?utm_source=chatgpt.com (last visited on May 13, 2025).

[9] *Id.* at 8.

equitable for the stakeholders involved.

V.
Ethical considerations at the intersection of Law, Technology and Society

AI systems, tools and processes are not just technical. They are "socio-technical systems"[10]. It means that the deployment of these techniques has a real-life impact on human choices. For instance, the marketing tools that many corporations use for generating social media trends and targeting opinions. This is where government legal sanctions have a greater role to play alongside adopting technically holistic approaches for AI usage. The timely measurement and regulation of these processes could reduce possible risks and harms. Such as in providing healthcare services, hiring individuals without social biases of color or gender and using it for representing populations fairly. According to the researchers in the field of AI ethics and philosophy, the "incorrect classification of variables"[11] can be understood by bifurcating the areas where maximum harm has been observed impacting people and situations.

These ethical considerations include:

- Collection of Data
- Sharing of Data
- Deployment of AI in socio-legal nature of cases
- Criminalisation and prevalence of discriminatory practices

The design and creation of the AI algorithms need to be legally scrutinized for maintaining ethical considerations and to avoid any kind of biased mechanisms to perpetuate through the human decision making processes leading to AI creation and its deployment activities. These kinds of challenges impact all areas of civil rights of the citizens including freedom from inequality and discrimination, interference in privacy rights and human rights framework. Nation-States have adopted different bills, enactments and legislative drafts to initiate building upon AI jurisprudence and philosophy which creates positive boundaries between human decisions and AI intelligence for common use. There is a

[10] Abeba Birhane, Elayne Ruane, Thomas Laurent, Matthew S. Brown, Johnathan Flowers, Anthony Ventresque, and Christopher L. Dancy, "The Forgotten Margins of AI Ethics" *2022 ACM Conference on Fairness, Accountability, and Transparency (FAccT '22), June 21–24, 2022,* https://doi.org/10.1145/3531146.3533157 (2022).

[11] Petra Molnar, "Technology on the Margins: AI and Global Migration Management From a Human Rights Perspective" 8(2) *Cambridge International Law Journal* 305-330 (2019).

specific term known as 'AI divide' which talks about the knowledge of who is involved in designing and activation of AI technology and algorithms to create a safe, equal and far more open space for AI systems to align with human actions and data managing skills. This means that the objective functions and evaluation metrics (accuracy vs. fairness) may optimize outcomes for the majority at the expense of minorities. And that the 'Black-box' architectures hinder understanding of how different groups are treated, making discrimination harder to detect. This intersectional knowledge of law, technology and society is of utmost importance to bring parity in the AI deployment process and journey.

This knowledge base can in turn create a fair eco-system wherein data curation and augmentation is balanced through proper collection of data relying on intersectional samples. Participatory and inclusive design are paramount in creating equitable AI structures for the training and deployability for all users. This could be catalysed through mandating bias impact assessments and public reporting mechanisms as adopted by the European Union. The next section sheds light on how to achieve and build future ready legal regulations based on the ethical and philosophical canons of fairness, equity and accountability by both private and public stakeholders.

VI.
Building future ready legal regulatory framework

The first recorded instances of AI functioning through computer programmes have been explored since the 1950s and the 1960s when they could only perform tasks like playing chess and translation.[12] The historical significance of the birth of AI is associated with the 'Turing Test'. It has been named after Alan Turing, the computer scientist who first attempted to distinguish human intelligence from the intelligence of the machine.[13] However these first few steps were constantly revised by the scientific community to decipher alternative AI computer programming softwares which better respond to human complexity and social nature of ambiguous events. The alternative approaches tried to explore

[12] Interaction Design Foundation, "Human-AI interaction (HAX)" Interaction Design Foundation *available at*: https://www.interaction-design.org/literature/topics/human-ai-interaction#:~:text=Human%2DAI%20interaction%20studies%20and,decisions%2C%20and%20learning%20from%20data (last visited on March 11, 2025).

[13] *Ibid*.

and research about more intuitive human AI interactions based on speech recognition, neural networks, genetic algorithms. These steps were taken to identify AI's potential and learning curve through data and experience, emulating human thought processes. But it had to constantly face major challenges to keep abreast with the growing power of computer systems over human decision making skills. It created a kind of AI divide which impacted both the individual and the society. These processes have been critically analysed by researchers and are called 'black boxes. It faces the twin challenges of reliability and explanation for the common understanding of the citizen and society. By the 1990s and 2000s, computer scientists had started to test 'deep learning' or 'machine learning' algorithms for AI to integrate with large and complex data structures. This came in with a plethora of opportunities and downsides to having created a magnanimous computer neural system to overcast or overshadow human learning and decision making processes. It facilitated fresh ways of looking at human-AI interaction but at the cost of security, ethical foundations and biasness.

The foundational challenge that the deployment of AI algorithms require is based on managing and structuring data. The socio-technical nature of AI has to adopt the solutions to complex human social problems. It is difficult to be adopted through machines. Yet, the advancement of AI algorithmic knowledge has brought us closer to advance our research models through technological software's. This is only possible when data is curated in a manner which is high quality and thoroughly representative in nature. It should comprise of methods including stratified sampling to ensure proper and full representation of all groups (race, gender, age, disability, socioeconomic status) inclusive of the minority groups.

The international legal principles emphasize upon the canons of individual consent, fairness, integrity and data minimization. There are different perspectives that exist in understanding and using 'Big Data' for AI functioning across the world. The first few explanations to big data were based on the popular "three V model".[14] Volume, velocity and variety. 'Volume' stands for the size and scale of data sets and data curation. 'Velocity' relates with the speed at which data is generated and processed and the 'variety' comprises the kinds and range of data. Research has found that the primary step in understanding data and putting it in public order and administrative functioning is to keep a steady focus on ethical considerations. There exists a theoretical gap in having to ensure total inclusivity that eradicates the possibility of an unjustified consequence for an individual. For instance, cases of breach of data privacy, the legal issues of anonymity and data protection. These natures of socio-legal

[14] Doug Laney, '3D Data Management: Controlling Data Volume, Velocity and Variety' (Metra Group Research Note, 2001).

problems require an in-depth analysis of the technological association of AI with human social complexities. It can be said that AI intelligence requires the support of human intelligence to process variables and data structures in a manner which is non-discriminatory and takes into account all socio-legal nature of data into consideration. There are numerous cases of inconclusive evidence generated by AI management systems in the field of recruitment and health services leading to unjustified outcomes/results for an individual party. This should not be seen as an undermining association between AI and humans but a more calculated and well curated opportunity to put it to human usage without its negative consequences for communities at large. The problems stemming from using machine models and generating information is one of a kind that cannot be contained at any given point of time. The data is being generated every second and requires a rigorous continuous management and processing system. The most important question is that of having the acceptance and readiness of replacing human decision-making processes with automation or algorithms. There are normative challenges in the equation of maintaining moral responsibility and not knowing the complete consequences of AI and big data usage. The statistical approach behind using big data has to be driven in a purposive manner. But it is far from difficult to not face a situation of 'blurred lines' between AI and human decision making. The technological revolution in terms of AI has changed how humans behave in a social setting from their older counterparts with no or less technology to fulfil routine tasks. That is to say, being technology driven also comes at a cost of statistical errors and data problems.

In current times, there is a severe lack of public and private partnership to bring more representative and less subjective patterns of judgement when trying to adopt AI systems for public usage or functionality. Lesser income groups, rural population and migrant workers are a few to name who find themselves on the margin of this divide. The systematic inequalities should not be reflected through AI or machine learning models which further create issues of discrimination against gender, race, color or educational and economic status of an individual. The way forward is to bring regulatory governance and compliance in matters of intersectionality between technology and other facets of human life. But that is easier said than done. Because laying down one unified regulatory system may not suffice the interplay of various factors at work- market, social norms, business interests and managing loopholes. That one regulatory system will possibly have to govern other regulatory systems and could either lead to its success or failure. There are multiple examples of regulatory systems not able to regulate or control technological innovations and their consequences for society. Nonetheless, it becomes imperative to protect all legal rights of the individuals and to still carry out judicious technological research based on big data or data analytics. The association of law making or legislations with

technological revolution and management of AI systems can be seen from the following three main perspectives:

a) To create a legislation to achieve particular effects
b) Balancing future interests by creating laws that do not hinder with technological progress and at the same time do not require constant revisioning
c) Implementation neutrality in terms of leaving space for modification in laws whenever the situation arises

The legal backing or protection should exist in a pre-emptive manner so that technological systems can be regulated at the onset of data collection and not only in the form of sanction after the breach has been caused. Further, the collective rights of the citizens should now include judicial remedies which directly take into cognizance problems related with AI and its functioning.

The next section talks about the recent legislations drafted and undertaken for curbing systematic biases caused through negative consequential effects of AI functioning.

VII.
Brief analysis of the International and national legal initiatives

The international landscape sets a normative ethical framework, emphasizing fairness, transparency, and human rights. The national regulations vary significantly. Regions like the EU lead with comprehensive legislative frameworks, whereas countries like the US and China adopt more varied or sector-specific approaches.

The UNESCO-led 'Recommendations on the Ethics of Artificial Intelligence' and International Telecommunications Union (ITU) endorsed 'AI for Good' focus upon the three cornerstones of transparency, fairness and accountability. The European Union's Artificial Intelligence (AI) Act is the very first legislative stand upon AI governance in the world. It has been drafted keeping in mind four relevant factors, namely, creation of responsible AI based deployment and activity, risk analysis for users, laying down trustworthy mechanisms to create fairness and remove biases and last but not the least, measures that focus on human centric AI building and mechanism with safety. Countries such as China, Japan and Canada have laid down more specific legal policies, legal enactment proposals and strategies looking at harmonising community interest with AI development. India has reinforced similar principles through its 'National Data Governance Framework Policy'(NDGFP), 2022 and

National Artificial Intelligence Strategy, 2018. These policies plan to better guide the government on data collection and management systems so that focus could be laid down on AI innovation as well as protection of individual rights. 'IndiaAI mission' (2024) and 'AI Governance Guidelines Report' developed by the Ministry of Electronics and Information Technology are new benchmarks for the safer creation and management of AI at the national level. Also to curb the menacing issues of deep fakes, cyber threats and privacy infringement. Laws are a critical pillar in AI governance, but on their own they're not sufficient to ensure that AI systems are developed and deployed responsibly. The following points shed light on the whys of it:

- Laws, whether broad statutes (e.g., the EU's AI Act) or sectoral rules (e.g., HIPAA for health data in the U.S.) tend to lag behind both technological innovation and novel use cases. By the time a law is drafted, negotiated, and enacted, the AI landscape may have shifted.
- Drafting rights-based or principle-driven laws is one thing; enforcing them across thousands of tools, platforms, and organizations is another. Regulators often lack resources, expertise, or clear jurisdictional reach especially over cross-border cloud services.
- Without technical standards or testing protocols, compliance can become a box-checking exercise rather than a substantive guarantee of fairness, safety, or transparency.

Therefore, what is required by governments and society alike is to understand the intersectionality and overlapping nature of AI and technologically driven systems. It requires a robust system of checks and balances inclusive of ethical codes, normative order and organisational governance. A more detailed analysis of recommendations is given under the next section.

VIII.

Conclusion and Recommendations

The multi-dimensional nature of AI where a confluence of the issues of legality and governance, technology and its wider socio-legal impact is observed has to be steered in the direction of laying down a just and sustainable society. When we bring in the idea of sustainability in this discussion, we as a human race can better envision a future based on cohesive and collaborative technical systems aligned with the purpose of creating long lasting AI driven models that work alongside human needs and not against them. The way to look forward would be to focus on the impact and not just the input when talking about algorithmic operations and AI development. Legislatures across the world are trying to understand the concept of algorithm and its operation but with a lot of technical complexity at hand. What matters is the threat created by automation of systems or societies which lack a clear understanding of the 'impact analysis'. Hence, it is not relevant to discuss the technical inputs but the socio-techno nature of impacts that are created by AI's functioning. This 'impact assessment 'has been used since the early 2000s by many large corporations such as Microsoft. The research community has also delved into the nuances of AI consequences and built upon certain conceptual understanding to evade negative effects. Although, it is still in the process to come out with a holistic solution. Following recommendations can be optimised to deliver practical solutions:

1. Technical standards and certifications can be created to ensure proper bench marking for data quality evaluation.
2. Industry self-regulation and best practices can create an ecosystem of fairness and accountability faster than legislation cycles.
3. Internal audits and organizational governance can lead to better decision making over data and design choices. And also create alerts with respect to bias generation before deployment.
4. Civil society and public engagement is required to report harms, contest automated decisions, and co-design improvements.
5. Market players and corporations should be put under scrutiny such as through procurement policies run by governments demanding fairness audits or ethical AI certifications to push suppliers to comply, regardless of local legal requirements. The above recommendations have been enlisted in a tabular form to offer a holistic explanation to curate a functioning regulatory model for compliance.

Element	Role

Law and Regulation	Sets minimum, enforceable standards; creates liability
Standards and Certifications	technical benchmarks for compliance
Self - Regulation	Fosters rapid iteration of best practices; peer accountability
Organisational governance	Embeds ethics into everyday decisions and risk management
Civil Society	Provides external oversight, lived-experience insights, and redress mechanisms
Market Forces	Aligns business incentives with social responsibility

Laws create the backbone of accountability but to operationalize fairness, safety, and inclusivity in AI, we need a living ecosystem of technical tooling, organizational culture, community oversight, and economic incentives. Together, they form a resilient framework that can adapt as AI technologies evolve and new social challenges emerge. Therefore, 'algorithmic accountability' is the cornerstone for creating safe, equal, diverse and inclusive techno-social space for human beings to thrive and work along with machines in the times to come. The development or implementation of AI will not work if the ethical considerations of transparency, reliability and impact assessment are not met for different groups trying to meet that demand. An approach to ethics that ignores historical, societal, and structural issues omits factors of critical importance.[15] Hence a critical evaluation of structural systems of power and hierarchy cannot be ignored when trying to balance AI's impact on issues of gender and diverse groups on the margins which can be seen to be easily neglected. Perpetuating the existing biases in the society. That has to be avoided at all costs. Through critical evaluation models and understanding the confluence of law, technology and society at large.

Conclusively, the promotion of equity in social life can be addressed through legal regulation and theoretical understanding. A sample legislative tool-kit in this regard would possibly combine the following valuables:

1. To enact a comprehensive privacy law to set broad rights and obligations.

2. To incorporate sectoral rules for sensitive domains like, health, finance and telecom.

[15] *Id* at 10.

3. To mandate open data policies for public-interest datasets, with clear licensing.

4. Introduction of data portability & interoperability mandates to promote competition.

5. Through establishing a Central Data Governance Body with oversight, standard-setting, and enforcement powers.

6. The enforcing the requirements of regular impact assessments and empowering an autonomous regulator to monitor compliance and impose sanctions.

By combining horizontal (privacy-centric) statutes with vertical (sector-specific) rules and strong governance and competition measures, countries can harness the power of big data to drive economic growth and social innovation while safeguarding individual rights and societal values. The ambit of research in understanding AI systems and their interaction with human decision-making processes shall require constant revisioning and dynamic methods to maintain equilibrium and enjoy equitable outcomes for all individuals.

GIFT BY KARTA TO DAUGHTERS: REVISITING MITAKSHARA PRINCIPLES IN LIGHT OF THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

Dr. Mehpara[*]

Abstract

It is believed popularly and wrongly even by the legal fraternity that the Hindu daughters were given rights in the ancestral property only after the Hindu Succession (Amendment) Act, 2005. It is true that Hindu daughters were made coparceners after the 2005 Amendment, however, they have right in the Joint Hindu family (JHF) property even under the classical Hindu Law. The objective behind this article is to cast light on the property rights of daughters in the joint family by citing the Hindu law as well as the judicial pronouncements. A Hindu daughter is entitled not only to residence and maintenance from the family property but also to a fair share in it. By law, she has a rightful claim to an equitable portion of the property during partition among the coparceners. This right has been diluted over the ages and transformed into a moral obligation to be complied by her father (Karta) at the time of marriage in the form of dowry. The author also aims to highlight the Indian knowledge system to debunk the myth that the right of the daughters in the family property is a relatively new development. This article would help the readers realise that Hindu daughters have a right in ancestral property since ancient times and is rooted in Indian culture, so that they are inspired to respect, uphold, and further strengthen the empowerment of Hindu daughters.

Keywords: Mitākṣarā, Daughter' Right, Joint Hindu Family Property, the Hindu Succession (Amendment) Act 2005, Daughters as Coparceners.

[*] Sr. Assistant Professor, Campus Law Centre, Faculty of Law, University of Delhi.

I.

Joint Hindu Family and Hindu Coparcenary

To understand the status and property rights of a daughter in a JHF regulated by *Mitākṣarā* school, it is essential to first comprehend the concepts such as joint Hindu family and coparcenary under Hindu Law. "A joint Hindu family consists of male members descended lineally from a common male ancestor, together with their mothers, wives or widows, and unmarried daughters bound together by the fundamental principle of *Sapinda*".[1] A Hindu coparcenary is a narrower institution within the joint Hindu family which consists of the propositus and three male lineal descendants. As per Mulla, a joint Hindu family consists of "all persons lineally descended from a common ancestor and include their wives and unmarried daughters".[2] The joint Hindu family property is collectively owned by the coparceners. Rangnekar J. in the case of '*Commissioner of Income Tax, Bombay* v. *Gomedalli Lakshminarayan*'[3] explained the term in the following words,

> "Under the Hindu law, an undivided Hindu family is composed of (a) males and (b) females. The males are (1) those that are lineally connected in the male line; (2) collaterals; (3) relations by adoption; and (4) poor dependants. The female members are (1) the wife or the "widowed wife" of a male member and (2) maiden daughters."

A Hindu coparcenary consists of lineal male descendants having interest in the JHF property by birth.[4] A coparcener, together with other coparceners, holds an interest in the ancestral property. A coparcener's share is not fixed and fluctuates with births and deaths within the coparcenary. Upon the birth of a male child, he acquires by operation of law the status and rights of a coparcener, which in turn reduces the shares of the existing coparceners. Upon the death of a coparcener, the principle of survivorship applies, transferring his interest to the surviving coparceners and thereby excluding his heirs. The status of a coparcener is conferred by law, commencing at birth and ceasing either upon death, through partition, or by operation of a statutory provision.

The Supreme Court in the case of '*Bhagwan Dayal* v. *Mst. Reoti Devi*'[5], explained Hindu coparcenary as under:

> "*Coparcenary is a creature of Hindu law and cannot be created by agreement of*

[1] *Commissioner of Income Tax* v. *Gomedalli Lakshminarayan*, AIR 1935 Bom. 412.
[2] Sir Dinshah Mulla, Principles of Hindu Law (23 edn, LexisNexis 2020) 230.
[3] AIR 1935 Bom. 412.
[4] *Supra* note 1.
[5] AIR 1962 SC 287.

parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corporate body. The coparcenary consists of only those persons who have taken by birth an interest in the property of the holder and who can enforce a partition whenever they like. It is a narrower body than joint family. It commences with a common ancestor and includes a holder of joint property and only those males in his male line who are not removed from him by more than three degrees. The reason why coparcenership is so limited is to be found in the tenet of the Hindu religion that only male descendants up to three degree can offer spiritual ministration to an ancestor. Only males can be co-parceners."

Mayne explains the functional distinction between a joint Hindu family and a Hindu coparcenary as follows:

> "The whole body of such a family, consisting of males and females… some of the members of which are coparceners, that is, persons who on partition would be entitled to demand a share while others are only entitled to maintenance."

A joint Hindu family consists of both male and female members, whereas a coparcenary is restricted to male descendants in the direct male lineage. The key distinction is that coparceners are male members of the JHF who acquire a right by birth in the family property, whereas female members are entitled solely to maintenance and residence from the family property. However, following the 2005 Amendment, the daughter of a coparcener has also become a coparcener, enjoying the same rights and responsibilities as a son. Even prior to this amendment, daughters were entitled to a reasonable share of the family property upon partition, alongside their entitlement to maintenance. The right to maintenance and residence extended to all family members, including wives and widows. A daughter's entitlement to a reasonable share in the joint family property was supplementary to her maintenance right.

Daughters have had a right to a fair portion of JHF property since ancient times. The duty to bestow on her this right is upon the father or any other member representing the family. There is no difference in terms of the nature of the property. Both movable as well as immovable property can be gifted to the daughter originally as a part of legal duty of the father.

II.

Alienation of Joint Family Property

Since joint Hindu family property is owned collectively by all the coparceners, no individual has the

absolute right to alienate the property unless all co-owners expressly authorize him to do so.[6] In a JHF, the authority responsible for management of the family property rests with the Karta. The Karta holds a position of greater responsibility compared to other coparceners when it comes to managing joint Hindu family property. However, *Karta* is not the absolute owner of the property; he holds only a share in it, just like the other coparceners. Hon'ble Supreme Court in of '*Tribhovan Das Haribhai tamboli* v. *Gujrat Revenue Tribunal and others'*[7] held,

> "The managership of the joint family property goes to a person by birth and is regulated by seniority and the *Karta* or the manager occupies a position superior to that of the other members."

The Supreme Court in the case of '*Sunil Kumar* v. *Ram Prakash*'[8] explaining the status of the *Karta* held,

> "In a Hindu family, the *Karta* or Manager occupies a unique position. It is not as if anybody could become Manager of a joint Hindu family. As a general rule, the father of a family, if alive, and in his absence the senior member of the family, is alone entitled to manage the joint family property."

Karta is empowered to alienate the JHF property in harmony of other coparceners in situations of financial distress within the family. Such alienation refers to transfer of property between living persons. Such transfer or alienation may take place through mortgage, sale, gift, license[9] or lease,[10] including perpetual lease.[11] The *Dharmashastras* have warned against the arbitrary or reckless transfer of JHF property by the Karta.[12] Vijanaeshwar in *Mitākṣarā*[13] has listed three situations where The Karta of a Hindu Joint Family is authorized to alienate joint family property *viz* '*Apatkale'* (ii) '*Kutumbarthe' and* (iii) '*Dharmarthe*'.

'*Apatkale*' means a pressing situation affecting the JHF or its member, in which the failure to alienate the property due to a lack of funds could result in harm or loss to the family or the concerned member. It has been aptly explained in *Mitākṣarā* as 'times of distress'. Thus, in times of distress *Karta* may alienate joint Hindu family property for saving family or its members from irrevocable loss without the consent of other coparceners. *Kutumbarthe* as explained in *Mitākṣarā* means 'for the benefit of *Kutumb*' (family members). In this case family property is alienated for the benefit of the family or its

[6] *Muthoora* v. *Bootan*, (1869) 13 WR 30.
[7] AIR 1991 SC 1538.
[8] (1988) 2 SCC 77.
[9] *Pheku* v. *Harish Chandra*, AIR 1953 All 406.
[10] *Haribhan* v. *Hakim*, AIR 1951 Nag 249.
[11] *Basdeo* v. *Mohammad*, AIR 1928 All 617.
[12] Poonam Pradhan Saxena, Family Law Lectures II (3rd edn, Lexis Nexis, New Delhi, 2011) 161.
[13] Mitakshara I, i, 28, 29, Mit I, 1, 30.

members. The sale proceeds are utilized for providing basic necessities to the members such as 'food, clothing, shelter, education, medical expenses' etc. '*Dharmarthe*' on the other hand means, 'for pious purposes'. There are certain indispensable religious duties which need to be performed by every Hindu for attaining spiritual benefits, hence *Karta* can alienate the joint Hindu family property for the performance of such duties.

Dharmashastras have therefore identified three broad categories— '*Apatkale*', '*Kutumbarthe*', and '*Dharmarthe*'—under which the *Karta*, acting as the head of the JHF, may alienate family property without obtaining consent of other coparceners, or even in the event of their refusal to consent. *Mitākṣarā* says[14],

> "Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family and especially for pious purposes."

In the case of '*Ragho* v. *Zaga*'[15], the Bombay High Court ruled that instances cited in '*Dharmashastras*' are not '*exhaustive*' but only '*illustrative*', and should be assumed to include the necessities of modern life as well. Over time, British Indian courts rephrased and adapted these concepts to align with the needs of Indian society at that time. The categories now recognized by modern courts include: (i) Legal Necessity, (ii) Benefit of the Estate, and (iii) Performance of religious and indispensable duties. Additionally, pious or religious purposes included gifting of a share of JHF property to daughters.

The conception of *'legal necessity'* is not derived from scriptures; instead, it is a judicial construct formulated by the British Indian courts, expanding beyond the terms '*Apatkale*' and '*Kutumbarthe*' found in the '*Dharamshashtras*'. 'Legal necessity' refers to any requirement that is recognized or justified by law. For an alienation to be considered valid on the grounds of *legal necessity*, it must satisfy all four of the following conditions:

(i) Existence of need or purpose.
(ii) Purpose must be lawful.
(iii) Family does not have money or resources.

[14] Mitakshara, Chapter 1, Section 1, v 28.
[15] (1929) 53 Bom 419, *Baijnath Prasad* v. *Binda Prasad Singh*, (1938) 17 Pat 549, 561; *Nagindas* v. *Mahomed* (1922). 46 Bom 312; *Babulal* v. *Babulal* (1941) ILR All 349-350.

(iv) The decision by the *Karta* (to alienate the property) should be like that of an 'reasonable man'.

Moreover, the phrase 'Benefit of Estate' is not clearly defined in '*Dharamshastra*'. 'Benefit' refers to an advantage, while 'Estate' denotes landed property. Therefore, an alienation that provides an advantage to the landed property may fall within the scope of this term. 'Religious and indispensable duty' is the contemporary interpretation of *Vijyananeshwar's Dharmarthe*. The Dharamshashtras outline detailed rites, rituals and ceremonies for various stages of an individual's life, which are integral to a Hindu's existence. The Karta can alienate joint Hindu family property to carry out these religious ceremonies and for charitable or pious purposes. Gift of a reasonable share of Joint Hindu Family property by the father Karta to her daughter during partition or on her marriage or even after marriage was considered for pious purpose and allowed under the classical law.

III.
Gift of Joint Hindu Family Property to a Daughter

Before the 2005 Amendment, although a daughter was born into a family, she was not considered a member of the Hindu coparcenary like a son. However, like other women of the joint Hindu family, she had a 'Right to Residence' and 'Right to Maintenance' out of the JHF property, which lasted until her marriage, and in some cases, even after marriage. Even though a daughter was not coparcener under the Hindu personal law until the 2005 Amendment,[16] she was entitled to a share in JHF property in certain circumstances. There are express provisions in the *Dharamshahtras* which empower a father to make a gift of 'immovable property' to his daughter. *Katyana* authorises father to gift immovable property to daughter in addition to the gift of movables, upto 2000 *Phanams* a year.[17] *Devala* says,[18] "To maidens should be given a nuptial portion of the father's estate". *Madhaviya* cites the law from *Brihaspati*,[19] "Let him give adequate wealth and a share of land also if he desires".

Mulla has summarized the authority of father or managing member of a coparcenary concerning coparcenary property, in paragraph 225 of Mulla's Hindu Law as follows:

> "225. Although sons acquire by birth rights equal to those of a father in ancestral property both movable and immovable, the father has the power of making within reasonable limits gifts of ancestral movable property without the consent of his sons for

[16] The Hindu Succession (Amendment) Act 2005 has made daughters as coparceners in the same manner as son.
[17] Madhaviya, pp. 41-42.
[18] Colebrook's Digest, Vol. 1, p. 185.
[19] Vyavahara Mayukhya, p. 93.

> the purpose of performing 'indispensable acts of duty, and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress and so forth."

Thus, there is a clear indication in the ancient Hindu texts to give a reasonable share of joint Hindu family property to the daughters at the time of partition or marriage or even after marriage if the obligation stands undischarged. There is also a clear condemnation in these texts that those who refuse to follow it shall be tarnished. If the duty remains undischarged by the father, the brothers should make it good.

Vignaneswara often considers the allotment of shares to daughters in a joint Hindu family as obligatory. His work, *Mitākṣarā*, specifically mentions that when the father has passed away and the brothers divide the property among themselves, they must provide a share for their sister. *Vignaneswara* says,[20]

> "The allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin."

Manu says,[21]

> "To the unmarried daughters by the same mother let their brothers give portions out of their allotments respectively, according to the class of their several mothers. Let each give one-fourth part of his own distinct share and those who refuse to give it shall be degraded."

The above scriptures may be summarised as follows:

1. It is the father's responsibility to provide a reasonable share of the joint Hindu family property to his daughter at the time of partition, marriage, or even afterwards.
2. If the father during his lifetime could not discharge this duty, the obligation passes on to the brothers.
3. The determination of a reasonable portion of the family property depends on the facts and circumstances of each case, and it could amount to one-fourth of the brothers' shares.[22]
4. Refusal to discharge the obligation is considered a sin under the Hindu law.

IV.

Conversion of Daughter's Right into Moral Obligation: Practice of Dowry

The Hindu law discussed above sanctioned distribution of joint Hindu family property to daughters

[20] Mitakshara, Chapter 1, section 7, page 10 and 11.
[21] Manu, Chapter IX, Section 118.
[22] *Supra* note 12.

upon partition amongst the coparceners or at the time of their marriage. This duty to give a share to the daughters was primarily on the shoulders of the father but if he could not fulfil his duty during his lifetime then it passed down to brothers or other members of the family who represented the family. The Hindu law not only endorses giving share in the JHF property to the daughters but also condemns the neglect of the said duty in explicit terms as Manu says "those who refuse to give it shall be degraded".

Over time, the daughter's right to fair and reasonable share of the JHF property during partition has weakened. This right gradually transformed into a moral duty for the father to support her marriage, which eventually gave rise to the practice of dowry. Courts have also acknowledged that after the death of a father, an accredited representative of the family may fulfil this obligation. Therefore, this duty is not limited to the father alone but also extends to other representative members of the joint Hindu family in case the father fails to discharge it. In '*Guramma Chanbasappa Deshmukh* v. *Mallappa Chanbasappa'*[23] the court observed,

> "18. The legal position may be summarized thus: The Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard-and-fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances."

V.

Judicial Pronouncements confirming the Daughter's Right

In the case '*Kudutamma* v. *Narasimhacharyalu'*,[24] Hon,ble court ruled that the father is permitted to

[23] (1964) 4 SCR 497.
[24] (1897) 17 MJL 528.

give (by way of gift) a reasonable portion of the joint Hindu family property to his daughter. If the family is unable to provide such gifts at the time of daughter's marriage, the obligation persists even after the marriage.

> "Although the joint family and its representative, the father or other managing member, may no longer be legally bound to provide an endowment for the bride on the occasion of her marriage, they are still morally bound to do so, at any rate when the circumstances of the case make it reasonably necessary."

Hon'ble court held that if such provision was not made during marriage, moral obligation could still be fulfilled later by the family's representative. To quote the observation of the learned judge,

> "Mere neglect on the part of the joint family to fulfil a moral obligation at the time of the marriage cannot, in my opinion, be regarded as putting an end to it, and I think it continued until it was discharged by the deed of gift now sued on and executed after the father's death by his son, the 1st defendant, who succeeded him as managing member of the joint family."

In '*Sundaramya* v. *Seethamm*'[25] the Court validated a gift of 8 acres made by joint Hindu family having 200 acres of land in favor of the daughter after 40 years of the marriage. This case has clarified the position under Hindu law, stating that the obligation to provide daughters with a reasonable portion of the family property remains in effect until it stands discharged. *Munro* and *Sankran Nair*, JJ held,

> "It is also true that in the case before us the father did not make any gift and discharge that moral obligation at the time of the marriage. But it is difficult to see why the moral obligation does not sustain a gift because it was not made to the daughter at the time of marriage but only some time later. The moral obligation of the plaintiff's father continued in force till it was discharged by the gift in 1899"

A gift made by Hindu father to his daughter, a reasonable portion of 'ancestral immovable property', without reference to his son, is valid and binding on the son. J Venkatarao in the case '*Sithamahalakshmamma* v. *Kotayya*'[26] held,

> "There can be no doubt that the father is under a moral obligation to make a gift of a reasonable portion of the family property as a marriage portion to his daughters on the occasion of their marriages It has also been held that it is a continuing obligation till it is discharged by fulfilment thereof. It is on this principle a gift of a small portion of immovable property by a father has been held to be binding on the members of the joint

[25] (1911) 21 MLJ 695, 699.
[26] (1936) 71 MJL 259.

family."

Sundara Aiyer and Spencer JJ in the case '*Vettorammal* v. *Poochammal',*[27] held that a gift made by father from joint family property to his daughters, or by *Karta* of the family to the daughter of any of his coparceners, is valid against donor's son, as long as gift constitutes reasonable portion of family property. The relevant portion of the judgment is as follows:

> "No doubt a daughter can no longer claim as of right a share of the property belonging to her father, but the moral obligation to provide for her wherever possible is fully recognised by the Hindu community and will support in law any disposition for the purpose made by the father."

The Judicial Committee, in the case '*Bachoo* v. *Mankorebai'*[28] held that gift of Rs. 20,000 to his daughter by father who possessed substantial ancestral property was valid. In this case the father made a gift of immovable property to his daughter, whereas in the case of '*Ramalinga Annavi* v. *Narayana Annavi'*[29] the court held that there are no adjustments in the applicability of the above rule to gift of 'immovable property'. Hon'ble court observed,

> "The father has undoubtedly the power under the Hindu law of making within reasonable limits, gifts of movable property to a daughter. In one case the Board upheld the gift of a small share of immovable property on the ground that it was not shown to be unreasonable."

In '*R. Kuppayee* v. *Raja Gounder'*[30] the father acting as *Karta* of a JHF made settlement deed in favor of his daughters but later set aside settlement on the ground that the property belonged to the family and he has no authority to make a gift of such property in favour of his daughters without the consent of other coparceners. The court held that the father has the authority to gift immovable property to his daughters, provided it is to a reasonable extent. The court further said that such gifts could only be made in favor of the daughter and not for other female members. The relevant portion of the judgement is as follows:

> "Extended meaning given to the words 'pious purposes' enabling the father to make a gift of ancestral immovable property within reasonable limits to a daughter has not been

[27] (1912) 22 MJL 321.
[28] (1907) ILR 31 Bom 373.
[29] (1922) 49 IA 168, 173.
[30] AIR 2004 SC 1284.

extended to the gifts made in favour of other female members of the family".

Thus, from the Hindu law texts as well as from the judicial precedents discussed above it becomes clear that daughters under Hindu law have a right to a reasonable portion of joint Hindu family property since ancient times. The duty to bestow on her this right is upon the father or any other member representing the family. There is no difference in terms of the nature of the property. Both movable as well as immovable property can be gifted to the daughter originally as a part of legal duty of the father, but it transformed into a moral obligation over the ages which if not discharged by the father continues to be in existence. The only condition is that a gift made by father or any family member should be to a reasonable extent. The reasonability of the gift depends upon the facts and circumstances of surrounding each and every case. What may be reasonable in one case may be unreasonable in another. There are various factors on which the gift depends. These factors have been summarized in the case of '*Guramma Chanbasappa Deshmukh* v. *Mallappa Chanbasappa*'[31] as follows:

> "The question whether a particular gift is reasonable or not will have to be judged according to the State of the family at the time of the gift, the extent of the family immovable property, the indebtedness of the family, and the paramount charges which the family was under an obligation to provide for, and after having regard to these circumstances if the gift can be held to be reasonable, such a gift will be binding on the joint family members irrespective of the consent of the members of the family."

VI.

Daughters Right in the Coparcenary Property under Hindu Succession Act, 1956

By the time the Hindu Code Bill was drafted, the daughter's right to joint Hindu family property had gradually disappeared over time, evolving into a moral obligation on the father's part to provide her with gifts in the form of dowry. During this period, women's organizations such as Women's Indian Association in 1917, National Council of Women in India in 1925, and All India Women's Conference in 1927 were established. These organisations advocated for social reform laws, particularly focusing on women's rights concerning divorce, inheritance, and property ownership and control.[32] There was a demand by the liberal members of the Constituent Assembly as well as by these women organisations to make daughters coparcener by birth as a son. On the other hand, the conservatives were against the idea of daughters getting equal share of the ancestral property as a coparcener.[33] To balance the two

[31] (1964) 4 SCR 497.

[32] Gail Minault (ed.), The Extended Family: Women and Political Participation in India and Pakistan (Chanakya Publications, 1981) 71.

[33] Archana Parashar, Women and Family Law Reforms in India: Uniform Civil Code and Gender Equality (Sage, New Delhi, 1994).

conflicting opinions, the Hindu Succession Act, 1956 (HSA) was enacted. Daughters were made class I heir and given equal share in the father's separate property if he dies intestate along with the sons.[34]

However, daughters were not made coparcener until the 2005 Amendment.[35] Nonetheless one noticeable change was brought to secure the rights of class I female heirs (including daughter) of the deceased coparcener is that survivorship was limited in the presence of these female. If a coparcener dies leaving behind such females (daughter) then the concept of notional partition comes into play and his share instead of going by survivorship to the surviving coparcener would go by succession as per the 1956 Act.[36] Thus, the right of daughter along with other female class I heirs of the deceased coparcener was protected and she would get a share from father's coparcenary share after the death of her father.

VII.

Rights of Daughters under the 2005 Amendment

India became party to various international conventions ensuring equality to the women in terms of property rights, the most important being the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW). The Law Commission of India on the basis of these international conventions suggested amendments to the Hindu Succession Act, 1956 in the year 2000.[37] Thus, the 2005 Amendment amended the 1956 Act to incorporate the suggestions by the Commission. The Law Commission Report on amending the 1956 Act observed:[38]

> "It is apparent from the study of the previous chapter that discrimination against a woman is writ large in relation to property rights. Social justice demands that a woman should be treated equally both in the economic and the social sphere. The exclusion of daughters from participating in coparcenary property ownership merely by reason of their sex is unjust. Improving their economic condition and social status by giving equal rights by birth is a long felt social need. Undoubtedly a radical reform of the *Mitākṣarā* law of coparcenary is needed to provide equal distribution of property not only with respect to the separate or self-acquired property of the deceased male but also in respect of his undivided interest in the coparcenary property."

Section 6 of HSA was replaced by a new provision ensuring equal rights to daughters and sons in

[34] Hindu Succession Act 1956 s 8 read with Schedule.
[35] Hindu Succession (Amendment) Act 2005, s 6.
[36] Hindu Succession Act 1956 s 6.
[37] The Law Commission of India, 174th Report on Property Rights of Women: Proposed Reforms under the Hindu Law (New Delhi, 2000).
[38] The Rajya Sabha Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, Seventh Report on The Hindu Succession (Amendment) Bill 2004, (2004) Para 3.1.

ancestral property after the 2005 Amendment. Daughters were made coparceners for the first time with all the rights and liabilities as that given to a son in a joint Hindu family. Consequently, she now possesses the right to demand partition or her share in ancestral property and has the authority to dispose of her share through a will. Now there exists no discrimination between married and unmarried daughters as both of them were made coparceners by the 2005 Amendment. According to new section 6:

> "In a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,
>
> (a) by birth become a coparcener in her own right in the same manner as the son;
> (b) have the same rights in the coparcenary property as she would have had if she had been a son;
>
> (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son; and
>
> (d) any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener."

The impact of this fundamental change is significant. A daughter now holds the same status as a son in the coparcenary and is entitled to all associated rights, including the right to demand partition of coparcenary property.[39] The right of coparcener is much wider as compared to the rights of a class I heir. As the coparcener has a right to ask for partition of the joint Hindu family property, or whenever there is a partition of the property a share is allotted to the daughter coparcener. On the other hand, the right of a Class I heir to inherit the self-acquired property of her male relative is not absolute but restricted. As a Class I heir, she cannot claim partition of the property. Her right to succeed to the property of her male relative (father) is subject to the testamentary powers conferred under HSA.[40] There can be a case where a father having self-acquired property dies after making a will of this entire property. In such cases the daughter will not get any property whereas the son will still get a share in the JHF property of his father as he is a coparcener.

In the case '*Sujata Sharma* v. *Manu Gupta*'[41], daughter was allowed to become the *Karta* of her natal family, being the eldest coparcener even after her marriage. It was held that legally there are no restrictions on a daughter to become a *Karta* after the 2005 Amendment. She has been granted the status of a coparcener, along with all the associated rights of coparcenary ownership. HSA imposed no restriction on her serving as a Karta. In other words, all the privileges and exclusive rights traditionally held by a son within the family are equally available to a daughter also. Finally, in 2020 the Supreme

[39] Sir Dinshah Mulla, Principles of Hindu Law (23 edn, LexisNexis 2020) 702.
[40] The Hindu Succession Act 1956, s 30.
[41] *Ibid*.

Court in '*Vineeta Sharma* v. *Rakesh Sharma*'[42] has removed all the legal barriers coming in the way of making daughters as coparceners. It overruled the case of '*Prakash and Ors.* v. *Phulawati and Ors*'.[43] which held that for a daughter becoming a coparcener after the 2005 Amendment, her father should be alive on date of enforcement of the amendment.

VIII.
Conclusion

The Hindu law since ancient times conferred right upon the daughters or sisters to have a share in joint Hindu family property. This right as discussed above has its source from the ancient Indian text on Hindu law. The rights of daughter or sister have been lost over the ages. Under the Hindu law it was a legal duty of the father or the *Karta* to give a share of the property to his daughter or to daughter of other coparceners during partition of the JHF property. The father or his representative are permitted to make a valid gift of a reasonable portion of joint Hindu family property to the daughter for maintenance, considering financial condition and other relevant circumstances of the family. With the passage of time, this right was lost and it became customary for the father to give gifts to her daughter during marriage (dowry) in lieu of her rights. However, this right was not confined to her marriage and it continued even after her marriage till it was discharged. Marriage is a customary occasion for making gifts in favour of daughters. This obligation may be discharged even after the marriage by the father in his lifetime or thereafter by his representative.

It is often misunderstood that daughters got rights in coparcenary property only after the 2005 Amendment. Undoubtedly, the amendment for the first time made daughters coparceners in the natal family property but her right in this essence has always existed under Hindu law. She is now given rights by birth to demand partition in coparcenary property and is entitled to an equal share as given under the law to her brother. But her right in the ancestral property has always been there. Under the classical Hindu texts, she was entitled to a reasonable share at the time of partition of the property. Although she could not initiate a demand for partition of the coparcenary property before the 2005 Amendment, she was nevertheless entitled to a reasonable share whenever the property was partitioned by the father or the brothers. This reasonable share could extend utpo one-fourth of the share of her brother. She not only has the statutory right in the coparcenary property but spiritual sanctions are also attached in case the brother disregard her share.

[42] 2020 9 SCC 1.
[43] 2015 SCC Online SC 1114, (2016) 2 SCC 36.

There are many instances where daughters are either unaware of their legal rights or, even when they are aware, they hesitate to assert them. In numerous cases, daughters voluntarily relinquish their rightful share of property in favour of their brothers, often due to fear of social stigma or to maintain family harmony. They are placed in a difficult position where they must choose between claiming their legal entitlement and preserving family relationships. This reflects a deeper societal issue—while the law has evolved to grant equal rights to daughters, societal attitudes have not kept pace. True empowerment of daughters requires not just legal reforms, but also a fundamental shift in social mindset and cultural norms.

ANALYSING LEGAL FRAMEWORKS FOR NON-CONSENSUAL DISSEMINATION OF INTIMATE IMAGES IN INDIA

Anil Sain*
Abhimanshi Singh**

Abstract

In the digital age, the non-consensual dissemination of intimate photos or films, or revenge pornography, has become a major problem, leading to severe emotional, psychological, and social harm for victims. The National Crime Record Bureau released numbers showing cyber offences have increased by sixty percent between 2018-19. This article explores the nature and scope of revenge pornography, highlighting its increasing prevalence due to the misuse of technology and social media. It looks at the legal systems of the United States, United Kingdom and India, describing how each country has dealt with the crime. This article focuses on certain provisions of the Indian Penal Code/Bhartiya Nyaya Sanhita and the Information Technology Act that work together to prevent cybercrime involving non-consensual dissemination of intimate images and how the courts have used relevant sections of the above-mentioned act(s) to punish the offender. This article will try to look into whether the present criminal justice system is adequate to deal with the offence. This topic has become relevant again as on February 3, Melania Trump, the first lady of the United States, addressed lawmakers and victims of deepfakes and revenge porn in a roundtable on Capitol Hill.

Key Words: Online Shaming, Gender-Based offence, Victim blaming, Revenge Pornography, Non-consensual intimate image.

I.
The Nature and Scope of Revenge Pornography

The act of publicly displaying someone's intimate photos or video that has been released without the consent of the person displayed is referred to as revenge pornography or non-consensual sharing of intimate photos[1]. A 2017 study by the "Cyber Civil Rights Initiative (CCRI)" found that women are 1.7 times more likely to become victims and that men are primarily in charge of the majority of the photos and videos that are shared online.[2]

Revenge pornography is not a recent phenomenon. USA's Hustler magazine began running

* Assistant Professor, Faculty of Law, University of Delhi.
** Research Scholar, SIS, JNU.
[1] Danielle Keats Citron, "Sexual Privacy," *128 Yale Law Journal* 1870 at 1919-20 (2019).
[2] Mary Anne Franks, "Revenge Porn Reform: A View from the Front Lines," *69 Florida Law Review* 1251 at 1262 (2017).

nude photos of women in the 1980s that had been obtained or supplied without the permission of the women depicted[3]. Some of the images were handed to the magazine by ex-partners as retaliation, while others were taken from the women by random people[4]. A few of the ladies filed lawsuits against Hustler alleging that the magazine violated their privacy. The court ruled that Hustler must pay the women's emotional damages and compensate the women for emotional damages[5].

Due to the extensive usage of the Internet, the phenomenon's breadth drastically increased starting in the early 1990s[6]. Previously, the dissemination of offensive content was scarce, hard to track down, and typically resulted in temporary harm in a specific area. The development of the Internet gave rise to an image's limitless and irreversible circulation potential (frequently, the content cannot be removed from all sources)[7].

Sexually inappropriate photos can now be shared easily and conveniently owing to the ease of use of social media, messaging applications, and the Internet. In addition, the anonymity of the process and the simplicity with which secondary disseminators can redistribute the videos and photographs have made it challenging to identify the perpetrators of the crimes committed through the diffusion of these materials on multiple virtual platforms. Simultaneously, women's vulnerability has increased due to the technological advancement of small, inexpensive cameras that can be readily hidden anywhere in restrooms, dressing rooms, and houses, because it is easy to obtain photos without the consent of women depicted in picture[8]. The effect is exacerbated when a victim's name is typed into a search engine and the images appear at the top of the results[9]. However, no police enquiries were made and the people who distributed the recordings were not held accountable for their activities because there was no criminal regulation of the phenomenon in the early years of the internet[10].

Following Hunter Moore's establishment of the website isanyoneup.com, 2010 saw an increase in interest in the revenge porn phenomenon, this website invited males to post intimate images or videos of women along with their personal information[11]. Although this website was

---

[3] Emily Poole, "Comment, Fighting Back Against Non-Consensual Pornography," *49 U.S.F. Law Review* 181 at 191 (2015).
[4] *Supra* note 2 at 1.
[5] Wood v. Hustler Magazine, Inc., 736 F.2d 1084, 1085 (5th Cir. 1984); Gallon v. Hustler Magazine, Inc., 732 F. Supp. 322, 325-26 (N.D.N.Y. 1990).
[6] Rachel Budde Patton, "Note, Taking the Sting Out of Revenge Porn: Using Criminal Statutes to Safeguard Sexual Autonomy in the Digital Age," *16 Georgetown Journal of Gender & Law* 407 at 431 (2015).
[7] *Ibid.*
[8] Taylor Linkous, "It's Time for Revenge Porn to Get a Taste of Its Own Medicine: An Argument for the Federal Criminalization of Revenge Porn," *20 Richmond Journal of Law & Technology* 14, 10 (2014).
[9] State v. VanBuren, 214 A.3d 791, 810 (Vt. 2019).
[10] *Supra* note 2 at 1.
[11] *Ibid*.

ultimately shut down, it had 350,000 daily views before shutting down[12]. After entering a guilty plea to one count each of federal hacking and federal aggravated identity theft in 2015, Moore was found guilty and given a 30-month imprisonment. That is to say, his conviction was not based on "revenge porn," but rather on how the photographs that were displayed were obtained[13]. Numerous websites that were similar to it were made as a result of the site's popularity, and some of them even had extortion mechanisms. The operators of the website made a great deal of money by charging women whose pictures appeared on the site to have their pictures removed[14].

The phenomenon of revenge pornography extended beyond its dissemination on certain websites. Videos have been shared on various online forums, social networks, messaging apps, emails, and blogs, which has expanded the phenomenon's reach and exacerbated the victim's suffering. Studies demonstrating the extent and severity of the phenomenon include the following: over 5% of adult social network users have distributed revenge porn,[18][15] and 12.8% of adult users have either been the target of revenge porn or have been exposed to a threat of it[19]. Professor Mary Anne Franks explains that the demand for these pictures and videos is not the same as the regular consumption of pornography: "Revenge porn" consumers are not aroused by graphic sexual depictions per se; rather, they are aroused by the fact that the individuals in them, who were typically women, refused to be examined[16].

The only content on MyEx.com was revenge porn; it featured images, videos, and details on user's names, addresses, jobs, and social media profiles. Users were also urged to "Add Your Ex" and "Submit Pics and Stories of Your Ex" on the website[17]. Users of the website could rank the participants and leave comments on the images and videos. As per the complaint, the defendants recommended including titles and narratives with the posts and offered users a range of categorisation sections, including "Cheater," "Slut," and "Bad in Bed." The site has about 12,620 entries as of December 2017, according to the regulators. The defendants demanded payments ranging from $499 to $2,800 to have photographs or material erased. The Federal Trade Commission (hereinafter referred

[12] Alex Morris, "Hunter Moore: The Most Hated Man on the Internet," *Rolling Stone* (Nov. 13, 2012), *available at:* http://www.rollingstone.com/culture/news/the-most-hated-man-on-the-internet-20121113 (last visited on September 13, 2024).
[13] Tracy Clark-Flory, "Revenge Porn King Going to Prison for Something Besides Revenge Porn," *Vocativ* (Dec. 3, 2015), *available at*:https://www.vocativ.com/257638/revenge-porn-king-going-to-prison-for-something-besides-revenge-porn/index.html (last visited on September 13, 2024).
[14] Online Reputation Management, Change My Reputation (Sept. 8, 2013), *available at*: http://web.archive.org/web/20130908082556/http://changemyreputation.com/services (showing an older version of this website accessed by searching for ChangeMyReputation.com in the Internet Archive).
[15] *Supra* note 2 at 1.
[16] *Supra* note 2 at 1.
[17] *Ibid.*

as FTC) and Attorney General informed the court that people who were highlighted on the website experienced actual injuries, such as losing their employment, receiving threats and harassment, and having to pay to have the material taken down[18]. The defendants were forced to pay over $2 million in damages, the site was to be permanently closed, and all photographs and personal information were to be erased by the federal court. It is also forbidden for the defendants to publish private photos and details about other people on a website without the subject's knowledge or approval[19].

The proliferation of digital platforms has significantly altered the landscape of revenge pornography. Social media and content-sharing websites act as both enablers and regulators in this context. While they facilitate the rapid dissemination of intimate images without consent, they also bear a growing responsibility in addressing such digital harms.

In India, under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, intermediaries are required to exercise due diligence, including the obligation to remove unlawful content upon receiving actual knowledge or a court order. However, enforcement remains problematic due to platform immunity under Section 79 of the Information Technology Act, 2000, which protects intermediaries unless they are actively involved in content creation or fail to comply with takedown notices.

Globally, platforms like Facebook and Instagram have introduced initiatives such as "Not Without My Consent", which use hash-matching technology to prevent the re-uploading of flagged intimate images[20]. Despite such mechanisms, critics argue that reactive measures are insufficient to counter the harm already inflicted, particularly when content is shared via encrypted or anonymous platforms such as Telegram or Reddit, where content moderation is either weak or non-existent[21].

There is an increasing call for platform accountability through stronger legislative frameworks, including mandatory content moderation, transparency reports, and proactive detection using AI-based tools. Scholars have also raised concerns regarding the chilling effect on freedom of expression and

[18] Asia A. Eaton et al., *Cyber Civil Rights Initiative, 2017 Nationwide Online Study of Nonconsensual Porn Victimisation and Perpetration: A Summary Report* (June 12, 2017), *available at*: https://www.cybercivilrights.org/wp-content/uploads/2017/06/CCRI-2017-Research-Report.pdf. (last visited on September 15, 2024).

[19] Complaint for Permanent Injection & other Equitable Relief at 15, Fed. Trade Comm'n V EMP Media, Inc 2018 WL 3025942 (D. Nev. 2018) (No. 18-CV-00035), 2018 WL 372707.

[20] Facebook Safety Team, "Not Without my Consent: A pilot program to stop the spread of Non-consensual Intimate Images", *available at*: https://about.fb.com/wp-content/uploads/2017/03/not-without-my-consent.pdf (last visited on May, 10, 2025).

[21] Sarah Lageson, "Platform Criminality: How Internet Intermediaries Use privacy to avoid Responsibility", *Law and social inquiry,* Vol. 47, 2, 2022, pp. 456-482.

privacy when surveillance tools are overly aggressive. Balancing user autonomy and protection against digital sexual violence thus remains a critical challenge in the regulation of intermediary platforms.

Revenge porn has far-reaching consequences for the victims because of the particularities of the virtual world. The victim's injuries have an impact on every facet of their lives, including their psychological, mental, emotional, physical, social, professional, and financial well-being[22]. Thus, it became imperative to reconsider the issue from a legal and social perspective. One of the main questions posed is whether criminal legislation is necessary to outlaw the phenomenon or if civil remedies would suffice. Another concern is whether revenge porn is already covered by existing criminal offences, even if criminalising the practice makes sense.

II.
How USA and UK Deal with Revenge Pornography

2.1 Introduction to the legal landscape in USA

Until 2003, there was no law in the United States that made it illegal to distribute an image that was obviously sexual. Without authorisation, despite the fact that this is a grave invasion of privacy. In 2004, New Jersey became the very first state to effectively outlaw revenge pornography[23].

- **State level laws**

The non-consensual observation, recording, disclosure of intimate images is prohibited by law, and it has never been seriously challenged. As of 2013, revenge pornography was illegal in just three states. Since then, more legislation were attempted to address the problem, and by October 2023, specific laws against it had been passed by 49 states including Washington DC. Massachusetts and South Carolina were the two states lacking legislation that forbade the dissemination or creation of non-consensual pornographic material.

- **Growing recognition of Criminalisation**

Many other countries have a similar pattern. A growing awareness that criminal law is necessary to forcefully combat the activity and that the choice of civil action to rectify invasion of privacy is insufficient has led to the criminalisation of the phenomenon[24]. The federal legislation on the subject

[22] *Supra* note 1 at 1.
[23] Erica Goode, "Once Scorned, but on Revenge Sites, Twice Hurt," *New York Times*, Sept. 24, 2013, at All.
[24] *People* v. *Austin*, 2019 IL 123910.

was first created by the United States Congress in March 2022 as part of the "Violence Against Women Act," which allows a person to sue a person in federal court for disclosing personal images without that person's consent.

- **Classification of offences**

States now have different laws regarding revenge porn. Many states have classified the offence as a privacy violation[25], while some have classified it as an obscenity offence[26], and still others have classified it as harassment or other miscellaneous offences[27]. It appears that neither the legislature nor the courts in any of these states have fully debated the reasoning behind these various classifications.

- **Judicial scrutiny**

Even in the rare instances where courts have discussed the matter, they have mostly concentrated on whether the offence is constitutional in light of the possible infringement of free expression. For example, the Illinois Supreme Court upheld the legality of the state's laws against revenge pornography in October 2019.[28]. In a similar vein, the Minnesota Supreme Court maintained a state statute that forbade revenge porn in December 2020 after concluding that it passed muster and complied with the First Amendment[29].

- **Recent legislative Developments**

The Take It Down measure was just presented to the US Senate. The purpose of the bill is to criminalise the publication or threat of publication of nonconsensual intimate pictures, including artificial intelligence (AI) digital forgeries. The Senate passed the bill overwhelmingly earlier this year. According to this law, distributing nonconsensual intimate photos of children can result in up to three years in prison, while sharing photos of adults can result in two years[30]. It would also punish offences involving threats made by minors with up to two and a half years imprisonment and offences involving threats made by adults with up to one and a half years imprisonment.

2.2 Legal Framework of the UK

The legal framework of the UK depending on the circumstances transmitting such explicit or nude

[25] Delaware Code Annotated, tit. 11, § 1335 (2017); South Dakota Codified Laws, § 22-21-4 (2020); Kansas Statutes Annotated, § 21-6101(a)(8) (2016); Connecticut General Statutes, § 53a-189c (2015);

[26] Delaware Code Annotated, tit. 11, § 1335 (2017); South Dakota Codified Laws, § 22-21-4 (2020); Kansas[25] Minnesota Statutes, § 617.261 (2016).; Virginia Code Annotated, § 18.2-386.2 (2019).; Colorado Revised Statutes, §§ 18-7-107 to -108 (2019).

[27] Alaska Statutes, § 11.61.120 (2019).; California Penal Code, § 647(j)(4)(A) (West, Westlaw through ch. 372 of the 2020 Reg. Sess.).

[28] *Id* at 24.

[29] *State* v. *Casillas*, No. A19-0576, 2020 WL 7759952, at *8, *10, *12 (Minn. Dec. 30, 2020).

[30] Sumanti Sen, "What is Take It Down Act? Melania Trump pushes for anti-revenge porn bill on Capitol Hill" *Hindustan Times*, March 4, 2025.

images may be prohibited by the Malicious Communication Act, 1988 or the Communications Act 1988. The Protection from Harassment Act, 1997 may potentially consider this type of action to be harassment if it persists. The police and prosecutors were empowered to handle similar offences under the "Communication Act, 2003, the Malicious Communication Act 1988, or The Protection from Harassment Act 1997"; however, the 2015 law, which applied to all social media platforms and electronic communications, made the distribution of images or videos a distinct crime in and of itself. Section 33 of the Criminal Justice and Court Act, 2015 imposes imprisonment up to two years for this offence.

- **The Role of GDPR**

The *"General Data Protection Regulation (GDPR)"*, which sets rules for protecting personal data and privacy, and the laws of the individual member states of the European Union address nonconsensual pornography. The processing of revenge porn is obviously unjust, illegal, and disproportionate in this instance. According to Article 5 of the GDPR, this violates fundamental data protection principles, creating the foundation for legal action and the entitlement to compensation.

In the meantime, laws against non-consensual pornography have been passed in nations including Australia, Canada, and Japan.

III.
Legislative Framework in India

Although there is no particular legislation prohibiting revenge porn or online blackmail in India. In this part the author shall discuss what legal measures there are against these crimes, such as laws under the Bhartiya Nyaya Sanhita, 2023/Indian Penal Code, 1860 and the Information Technology Act, 2000 which impose penalties on offenders. In this part of the article the author shall discuss existing provisions under various statutes.

- **Bhartiya Nyaya Sanhita, 2023/Indian Penal Code, 1860**

Section 294[31] of Bharatiya Nyaya Sanhita (henceforth referred to as BNS)/Section 292[32] of the Indian Penal Code (hereinafter referred as IPC) regulates the distribution and circulation of pornographic content. A person facing a first-time conviction for this offence will be punished with a maximum imprisonment of two years and a fine of two thousand rupees (five hundred rupees in BNS). If they are found guilty more than once, they could be punished for a five year of imprisonment and a fine up

[31] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.294.
[32] The Indian Penal Code 1860, (Act 45 of 1860), s.292.

to five thousand rupees (Ten Thousand Rupees in BNS).

Section 354 of the IPC[33]/Section 74 of the BNS[34] address using unlawful force or assault on a lady with the intention of outraging her modesty. The offender will be punishable by a maximum of five years of imprisonment as well as a fine.

In Section 354A of IPC[35]/Section 75 of BNS[36], sexual harassment is defined. If a male initiates unwanted and sexual physical contact, requests sexual favours, displays pornography against a woman's consent, or makes sexually suggestive remarks, he will be found guilty of sexual harassment. He will face three years imprisonment, a fine, or both.

Section 354C of IPC/Section 77 of BNS defines voyeurism. If a man sees or records a woman performing a private act without realising he is being watched or videotaped, and he does not anticipate that the person distributing the image or video will see it, he will be guilty under the law and will be punished for three years of imprisonment and a fine. A second conviction might result in a seven years jail sentence and a fine[37.]

Defamation is defined in Section 499 of IPC[38]/Section 356 of BNS[39] as the act of intentionally harming someone's reputation or character or having reasonable suspicion that doing so would do so. The same shall be penalised by a fine, simple imprisonment up to two years, or both.

According to Section 506 of IPC[40]/Section 351 of BNS[41] criminal intimidation carries a maximum punishment of two years imprisonment, a fine, or both. Threatening death or serious injury to the victim, or presuming a woman is unchaste, carries a maximum sentence of seven years imprisonment, a fine, or both.

As per Section 509, anybody who utters words, makes noises, gestures, or displays an object with the intention of offending a woman's modesty, knowing that the woman will hear or see the word, sound, gesture, or object, or who intrudes into the Such a woman's privacy may be violated by up to a year in jail, a fine, or both.[42]

- **Information Technology Act, 2000**

Penalty under Section 66E for Privacy Violation: If an individual knowingly or intentionally takes a

[33] The Indian Penal Code 1860, (Act 45 of 1860), s.354.
[34] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.74.
[35] The Indian Penal Code 1860, (Act 45 of 1860), s.354A.
[36] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.75.

[37] The Indian Penal Code 1860, (Act 45 of 1860), s.354 C.
[38] The Indian Penal Code 1860, (Act 45 of 1860), s.499.
[39] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.356.
[40] The Indian Penal Code 1860, (Act 45 of 1860), s.506.
[41] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.351.
[42] The Indian Penal Code 1860, (Act 45 of 1860), s.509.

picture of another person's private area and transmits or publishes it without the person's consent will be penalised by up to three years of imprisonment, a fine of two lakh rupees, or both[43].

Online publication and transmission of pornographic or sexual content are prohibited by Section 67. If convicted, the accused faces a maximum sentence of three years in prison and a fine of five lakh rupees. If the offence is proven guilty a second time, the penalty could be raised to five years and a fine of 10 lakh rupees[44].

Furthermore, Section 67A prohibits the transmission or publication of obscene or pornographic material using electronic media. If the accused is found guilty a second time, they would be punished with seven years imprisonment and a fine up to ten lakh rupees[45].

Anyone found to be publishing pornographic or sexually suggestive content with children faces penalties under Section 67B. The accused would be punished with a maximum sentence of five years imprisonment and a fine of ten lakhs[46].

Additionally, Section 72 defines a breach of confidentiality and privacy as carrying a maximum imprisonment of two years and a fine of one lakh, or both[47].

- **The Indecent Representation of Women (Prohibition) Act, 1986**

Sections 4 and 6 of The Indecent Representation of Women (Prohibition) Act, 1986 provide that a victim may lodge complaint for the act of publishing, printing, distribution or circulation, etc. in the form of paper, film, writing, or photographs involving indecent representation of women. The code stipulates that the offender may be fined or sentenced to a long term of imprisonment[48].

IV.
Stand of Judiciary in India

India received its first revenge porn conviction in the year 2018, in ***State of West Bengal v. Animesh Boxi***.[49] In this case courts briefly utilised Section 66E. In this typical revenge porn case, the accused allegedly demanded private photos from his lover and then broke into her phone to get them. By threatening to post intimate photos on social media, the accused, Animesh Boxi, intimidated the victim into going on dates. When she refused, he followed through on his promise and posted his

[43] The Information Technology Act, 2000 (Act 21 of 2000), s. 66 E.
[44] The Information Technology Act, 2000 (Act 21 of 2000), s.67.
[45] The Information Technology Act, 2000 (Act 21 of 2000), s. 67A.
[46] The Information Technology Act, 2000 (Act 21 of 2000), s. 67B.
[47] The Information Technology Act, 2000 (Act 21 of 2000), s. 72.
[48] The Indecent Representation of Women Act, 1986 (Act 60 of 1986).
[49] State of West Bengal v. Animesh Boxi, CRM No. 11806/2017.

girlfriend's private photos to PornHub without getting her consent[50]. He was found guilty by the court and given a five-year imprisonment along with a nine thousand rupee fine. The victim's reputation and mental health were harmed by the unconsented photo sharing; the court upheld that this act qualifies as an "injury" under section 44 of the IPC. This made it possible for the court to apply the aforementioned IPC sections and fit the incident into the chapter on "Of Criminal Force and Assault" of the IPC. The court made an interesting statement stating that *"the woman will be metaphorically raped every time someone views the video online and that the rape will continue until she dies because these photos are never really removed from online sources".* The court prioritised deterrence in its punishment of the victim, considering the substantial influence that crimes against women have on public interest and social order.

The court's endeavour to recognise the invasion of privacy and the significance of consent is clear with the addition of Section 66E. It further states that because the victim was raped, they are entitled to compensation under the victim compensation plan, which they were supposed to receive from the District Legal Services Authority. One of the key clauses in the 1973 Code of Criminal Procedure (Section 357-A) is that rape victims who ask for compensation[51] or are instructed to do so are still subject to harsh punishments under Sections 67 and 67A[52].

It should be noted that even though Animesh Boxi's case is one of the rare ones in which Section 66E was applied, the entire penalty under Sections 67 and 67A was three years and four months, whereas the sentence under Section 66E was only four months. Because of this, the courts are essentially left with a complex network of rules to handle cases involving non-consensual dissemination; and, these laws overlap, posing new problems. Although the three clauses Sections 66E, 67, and 67A have similar goals, the way they are worded and put together has a significant impact on how the judiciary views pornography and, implicitly, its non-consensual distribution. It is interesting to note that despite that these three sections together provide an option because any of these statutes might be applied in court to deal with non-consensual distribution, this option is useless due to their overlap.

[50] *Ibid.*

[51] Sonali Verma, "Route 67: How the IT Act's Section on Obscenity is Being Misused to Violate Digital Freedom," *The Wire*, November 29, 2017, *available at*: https://thewire.in/gender/victorian-censorship-research-finds-section-67-act-grossly-misused (last visited September 13, 2024).

[52] *Ibid.*

Section 66E becomes ineffective when Sections 67 and 67A are in force. Section 67 (obscenity) and Section 67A (sexually explicit) offer a method that can be interpreted in a conjunctive or disjunctive manner, making Section 66E meaningless. Most of the scenarios examined in Section 66E can be covered by Sections 67 and 67A due to their broad dragnet character and ambiguity. This is seen in circumstances when the courts may place less weight on privacy and consent issues, even in cases that fall under the category of revenge porn. Partially at fault is the fact that Section 66E is not regarded as a revenge porn clause while possessing all the essential elements. This can compel the courts to investigate other laws that might be relevant in certain situations.

In the ***Jaykumar Bhagwanrao v. State of Maharashtra***[53], the Bombay High Court outlined Section 67A parameters, ruling that sexually explicit content must be lascivious or of a repulsive nature to be covered. A similar observation was made by the Delhi High Court in ***X v. Union of India***[54] that the term 'obscene material' is further defined by Section 67A, which designates anything that includes sexually explicit acts. Transmitting and publishing such content is now considered a more serious violation, with a harsher penalty. These decisions basically establish a two-part standard that the media must meet: it must be sexually explicit and obscene or pleasing to the senses[55] If sexually explicit content does not meet the definition of obscenity under Section 67, its legality in other contexts remains a question. If the media that features explicit sexual content manages to avoid being associated with obscenity and passes the conjunctive twin test, then that could be a plausible conclusion.

Recently the Supreme Court in ***Just Right for Children Alliance and Anr* V. *Harish and Ors.***[56] decided that merely viewing and keeping child-related pornography on digital devices may be illegal under section 15 of the "Protection of Children from Sexual Offences Act, 2012 (POCSO Act)" if the individual in question intended to distribute or transmit the content or use it for profit. After the 2019 modification to the section on child pornography added the word "possession" in addition to "storage," the Supreme Court referenced the idea of "constructive possession" to emphasise the seriousness of the violation. One "inchoate" offence a crime committed in advance of another offence was defined as the possession or storage of materials related to child sexual abuse[57]. It clarified that

[53] 2017 SCC OnLine Bom 7283.
[54] 2021 SCC OnLine Del 1788.
[55] Arti Gupta**,** "The Uttarakhand High Court and Pornography," *Indian Constitutional Law and Philosophy*, September 19, 2019, *available at:* https://indconlawphil.wordpress.com/2019/09/19/the-uttarakhand-high-court-and-pornography/ (last visited September 14, 2024).
[56] 2024 INSC 716.
[57] K. Venkataramanan, "Why has the SC clarified POCSO provisions?" *The Hindu,* Sept. 29, 2024.

"constructive possession" expanded the definition of possession beyond actual control to include circumstances in which a person has the ability and desire to exert control over the illegal item, even if they are not in direct physical possession of it.

V.

Challenges in Implementation of Law

5.1 Absence of specific legislation in certain jurisdictions

Even with the proliferation of non-consensual pornography laws, it is still quite difficult to police them. Since nonconsensual pornography frequently happens online, it can be challenging to enforce the law because the offenders and victims may reside in separate states. It is also possible that certain content hosting websites are located in nations with lax or nonexistent laws against nonconsensual pornography, which makes it challenging to enforce the removal of explicit content. Through the use of encrypted messaging apps or public Wi-Fi networks, offenders can share non-consensual pornography online in a variety of ways while staying anonymous. Because of this, it could be challenging for law enforcement to find and capture the guilty parties.

5.2 Issues with enforcement and prosecution.

The majority of legal and criminal remedies put out to address the issue of revenge porn consider the Internet to be a distinct medium that calls for attention specific to cases involving revenge porn. The "internet exceptionalist" perspective promotes the growth of internet law by treating the internet as a separate legal entity outside the purview of the current legal system. Internet exceptionalism is not intrinsically unacceptable because it is a special kind of communication with the potential to magnify negative social effects. The Communications Decency Act, Section 230[58] shields site hosts from being held accountable for the behaviour of their users; plaintiffs in civil cases involving revenge porn must instead file a down and bring legal action against the original uploader. But in the Texxxan.com Case, the court rejected GoDaddy's move for the case to be dismissed despite §230 immunity, ruling that revenge porn can be considered obscenity that is not shielded by immunity[59].

India employs the "Safe Harbour model," which exempts the intermediaries from

[58] Communication Decency Act, § 230

[59] Jenna K. Stokes, "The Indecent Internet: Resisting Unwarranted Internet Exceptionalism in Combating Revenge Porn," *29 Berkeley Technology Law Journal* (Annual Review of Law and Technology) 929-952 (2014), published by University of California, Berkeley, School of Law.

responsibility for the actions of foreigners who utilise the infrastructure to engage in illicit activity. Intermediaries such as Facebook, WhatsApp, Instagram, and others are not liable under Section 79 of the IT Act. The central government passed the *"Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021"*, which include a guideline that stipulates what rules intermediaries must follow. If these regulations are broken, the intermediary will not be eligible for Section 79(1) of the IT Act's exemption from liability and will be penalised under both the IPC and IT Act.

VI.
Consequences of Revenge Pornography

When non-consensual pornography happens, there can be a variety of subjective effects. The degree of subjectivity is contingent upon the victim (character traits, familial or friend solidarity, etc.) as well as the outcomes that follow the publication of the information. We shall discuss three different kinds of repercussions. These include the psychological, social, and financial facets of an individual's existence.

6.1 Psychological Consequences

Similar to instances of sexual abuse, victims of non-consensual pornography can experience severe physical and psychological suffering. In actuality, it was shown that non-consensual pornography is increasingly recognised as a type of sexual abuse. It is fascinating to observe how the victims do not identify as such, given that the abuse is virtual rather than physical, unless other types of violence, including offline hate speech and stalking, take over. Even if they initially do not acknowledge that they are victims, the nonconsensual distribution of their sexually explicit images and/or movies has a negative psychological and physical impact on them. The majority of the victims experienced suicide ideation, despair, anxiety, and posttraumatic stress disorder (PTSD). The victims were helpless to stop the spread of material online and felt guilty, angry, and ashamed. The emotional and psychological aftermath of a sexual assault, including feelings of guilt, self-blame, and increased nervous system activity, frequently accompanies the production of non-consensual pornography[60].

Advocate Annamarie Chiarini said in the following words that after her ex-boyfriend put naked photos of her up for auction on eBay, she lost control of her life.

"I didn't sleep for months ... when this happened in 2010, I would pop awake, and I would have to

[60] Beckman E. M. & Flora M. G. P., "Non-Consensual Pornography: A New Form of Technology Facilitated Sexual Violence," *Rassegna Italiana di Criminologia*, XV, 4, 317-328 (2021).

check my e-mail address, my work e-mail address, my Facebook page ... I would have to perform this ritual. I'd check eBay, I'd Google my name, you know, the same thing. One, two, three, four, five, six, seven... I had to do these things. I'd do them three or four times, and be able to go back to sleep. But then I'd wake up. Or like in the middle of the day, I'd stop dead and I'd have to do this ritual, I'd have to do it three or four times, and then l'd be okay for a little while. I'd feel like I had to do that, for months ... Someone else had defined my destiny[61]*."*

6.2 Social Consequences

Sexting, or the spread of sexually explicit photographs, messages, or videos via computers or mobile devices, is a common cause of non-consensual pornography. Both adults and minors engage in this risky conduct, oftentimes without realising the potential implications. In addition, a victim of non-consensual pornography interacts with millions of people who see the pictures or films, which have the potential to go viral extremely fast. Rather than being acknowledged as a victim, the person represented is typically ridiculed and judged; ridiculed because people typically believe that they will never be in a situation like this and because people like to find strength in the faults of others. They are criticised, particularly if the victim is a woman because it is assumed that she could have stopped the incident and that the victim has no other choice but to take responsibility for it[62].

VII.
Conclusion

The phenomenon of revenge pornography encapsulates the darker side of digital empowerment where the very tools that promise autonomy and expression are weaponised to inflict humiliation and exert control. In the internet era, revenge pornography is becoming a bigger threat, deeply affecting victims emotionally, psychologically, and socially. While India has made strides through existing laws like the IT Act and BNS, these legal provisions are still inadequate to fully address the complexities of this crime. Victims often face stigma, inadequate legal support, and delayed justice, making it imperative for India to evolve its legal framework. Drawing from international examples like the UK's explicit legislation and the USA's state-driven laws, India can benefit from implementing specific laws targeting revenge porn, offering stronger victim protection, and ensuring faster resolution through dedicated cybercrime units. Public awareness initiatives are also essential for educating individuals about legal rights, privacy, and permission, enabling victims to come forward without worrying about

[61] Samantha Bates, "Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors" *12 Feminist Criminology 22, 39* (2017).
[62] *Ibid.*

social rejection or retaliation. In the end, combating revenge pornography necessitates a multifaceted strategy that strikes a balance between victim rehabilitation, public awareness, and legal deterrence. We can only establish a safer digital environment that respects people's rights and dignity by combining strict legislation, technological protections, and social reform. Punitive sanctions alone will not work in a digital world based on virality and anonymity. There is an urgent need to combine legal safeguards with broad digital literacy, societal sensitisation, and platform accountability. As society grapples with the limits of privacy, permission, and agency in the digital age, combating revenge pornography must be more than a reactive exercise; it must be a proactive commitment to digital justice and gender equality.

SHIFT IN STATUS FROM A PERPETRATOR TO A VICTIM: A STUDY ON DISCRIMINATION AGAINST MEN IN INDIA

Dr. Daisy Changmai[*]

Chayanika Sarma[**]

Abstract

From ages harassment against men has been considered to be a myth. With the enormous emphasis and efforts in addressing issues of discrimination against women, conventional role that has been assigned to men in the society is often of a wrongdoer. Here most commonly arising question is – can the culprit also be a victim? Regardless of fact that women are the primary victims in most of the cases, does not mean that men are immune from oppression and discrimination. Their interest and wellbeing cannot be undermined in the process of promoting female safety and security-oriented laws. Men Rights Movement had also found footing in Indian society during 1990s advocating for the same. The legal system's empathetic stance toward women who are long-term victim, have fuelled the opportunists to bring false claims against the male counterparts inflicting misery on them. Adding in to it, discriminatory criminal laws against man, alimony and maintenance disputes have played a significant role in realizing necessity of protecting security and rights of men against the undue expansion of privileges for women. This paper focuses on how more and more man are falling victim to abuse and discrimination and why it is important to focus on getting rid of biased legislative provisions towards men, along with balancing it with protective regime for women. It discusses certain real examples happening in day-to-day society highlighting necessity of this study. A significant element in this piece of work is an analysis of the Constitutional perspective on the issue of gender discrimination. Last but not least, this study makes an effort to offer some pertinent and useful recommendations to address the problem and create a mutually beneficial relationship between the rights of men and the protection of women.

Key Words: Men's right; Harassment; Gender discrimination; Domestic violence; Victim.

I.
Introduction

Very often when we get to read news like, harassment, exploitation, rape, abuse, etc., the sympathy lies with the fate of poor woman. We acknowledge woman as victim of these offences because there

[*] Assistant Professor, B.R.M. Govt. Law College, Panjabari, Guwahati, Assam

[**] LL.M. Student, B.R.M. Govt. Law College, Panjabari, Guwahati, Assam.

is a preconceived assumption that women are always the victim of harassment or abuse in male-dominated society, never a man. That is why, we used to give gender-based interpretation to notions like, harassment, exploitation, abuses, etc. The harsh reality is that not only women even men have been equally suffering mental and physical abuses, silently from ages. Only difference between is that cases of harassment of women are given focus while male harassment cases mostly go unreported.

Statistics show that one in six men is a victim for various reason in their lifetime. A man may be victim under various situations, like, physical abuse, emotional torture, sexual harassment and even domestic violence. The real number of cases is yet to unveil because many cases are still unreported in fear of being mocked by patriarchal society. A recent Economic Times-Synovate survey into seven cities of India discovers that almost 38% of the men experiences sexual harassment in work places.[1] In 2009, 16% sexual harassment complaint on behalf of men filed in US and even in UK 8% similar cases came into light.[2] Numerous survey studies about the rising prevalence of male abuse have recently made media headlines, attracting the considerable attention of the public. This itself shows that males may experience harassment and may have gone through as much suffering as women is no longer a fiction.

There may be manifold reasons for the emerging cases of men abuse and cruelty suffered in the hands of his wife and her relatives as well as gender discrimination. Harassment of man by woman is unprecedented and unacceptable phenomenon under traditional mind set up of society. But men are not only suppressed by gender biased attitude of the society but even discriminated vividly under complex legal processes and justice delivery system among other reasons. Moreover, social legislations for women empowerment, stereotype laws relating to domestic violence, dowry death, divorce, maintenance are garnishing on the issue. Some points out about too much emphasis on feminism by the presents day society, uprising tendencies of the so-called protective society that legal system is hostile towards women only and it is the women who are fighting for their rights against the whole world and thus men cannot be victims. This unacknowledging mentality of our society and disbelief towards men's abuse somehow dominates the voice of men race. Societal shame as well as reluctance to report about abuses for the sake of family image may be other reasons for preferring silence by man over agitation.

A study of the National Commission for Women reveals that in the year 2022 approximate 3000 cases of domestic violence on men were reported in India.[3] Cases of male sufferings have been surfacing

[1] Kritika Kapoor "Men too are victims of sexual harassment," *The Times of India*, 21 December 2012, *available at* https://timesofindia.indiatimes.com/life-style/relationships/love-sex/men-too-are-victims-of-sexual-harassment/articleshow/16336627.cms (last visited on March 03, 2025).

[2] *Ibid.*

[3] Aastha Arora & Agrima Vrishni, "It is time to talk about harassment and the male victim" *The Hindu*, April 5, 2025, *available at:* https://www.thehindu.com/opinion/op-ed/it-is-time-to-talk-about-harassment-and-the-male-

now-a-days and suicidal tendencies among them have been navigated due to social ridicule. Recent tragic cases of suicide have seriously threatened the sanctity of marriage which shows us the dark side of this sacramental union and growing societal pressure on men. Just like woman, man may be harassed from the day of wedding or may be from the next day by his wife. Historically our society has witnessed marital abuse of woman, but current times reflect the plight of man suffering from torment, mental and financial abuse by spouse and in laws.

II.

Impact of Harassment on Men

Man or woman when victim of abusive behaviour, undergoes severe physical, emotional pain and sufferings. A victim of harassment be sexual or otherwise endures psychological trauma in fear of societal shame, lack of support from the family, besides sexual assault. However, the factors leading to social shame might differ in case of a male from a female victim. When a woman is sexually harassed, question is raised as to her character, background, overall personality; but if the victim is a man, he may be asked not to disclose about his victimization, even discouraged to seek help for healing his pain. Social custom taught a man not to show his weakness because if he expresses, it may be compared to femininity.

When a man becomes victim of domestic violence or intimate partner abuses, he cannot express his feeling in front of the toxic masculinity of our society. Patriarchy and masculinity are so deep rooted in our society that it does not allow placing the sufferings of man in the same footing of a woman. They are compelled to supress their feelings which seriously affect their mental health and physical well-being. Under severe mental pressure and social indignation, suicidal tendency among men has been increasing day by day.

The perception of sufferings of man and woman always differ because of variance in socially accepted norms and emotions for both genders. Hence, the difference of support and assistance received by a female victim compared to the male victim raise concern for the later. Consequently, men prefer to suppress his emotions and experience faced.

III.

Incidents that have conferred Man a Victim status

Gender equality is vital for ensuring equal status among man and woman as well as to warrant absence of discrimination in a democratic society. In fact, concept of welfare state laid on the affirmation of

victim/article69416110.ece# (last visited on March 3, 2025).

equal status and opportunity of its citizen without any discrimination. Nevertheless, there has been developing a slow pace of cases of gender discrimination especially against man. National Statistics show a serious picture of male discrimination almost every day. In recent time we have been witnessed some very serious situations which compel us analyse the issues of alleged male harassment by wife and others. Some of such incidences are:

3.1 Atul Subhash's case

The incidence of Bangalore-based techie Atul Subhash was an eye-opener for every citizen to rethink or reconceptualise the notions like, harassments, abuses, cruelty, etc. It was alleged by Atul Subhash that he has been harassed by his wife and her family by filing multiple cases relating to divorce and custody of their four-year-old son. Subhash was not the first and only male victim who was pissed off under complex legal procedure and forced to take an ultimate step of life. He may be among the countless male who have been suffering atrocities silently under social stigma because male voices against harassment are often ignored and considered as a matter of laughing stock for the society.[4]

3.2 Manav Sharma's case

Manav Sharma, a 30year old man worked as a manager of TCS in Mumbai took a similar path like Atul Subhash to end his life. Manav made allegation of harassment by his wife by making false accusation and threatened by her family which compel him take the drastic step. Before taking his life, the techie recorded a 1mins 57sec video where he explains the harassment faced by him from the day of his wedding and also urged the society to acknowledge the pain suffered by man under the situation.[5]

3.3 Puneet Khurana's case

In this case, a Delhi-based bakery owner committed suicide who was in verse of divorce alleging mental torture by wife and in-laws. The case came just after one week of the incidence of Atul Subhash. The family of the victim alleged that the dispute started between the couple due to bakery business and a house registered in his wife's name. In the suicide notes, the victim explains how his wife and her father mentally harassed him even threatened to through his family out of their house. Khurana could not cope with the situation and ended his life.[6]

---

[4]"Atul Subhash suicide case: How one phone call to a relative led to Nikita Singhania's arrest? - BusinessToday," *Business Today*, Dec. 17, 2024, *available at*: https://www.businesstoday.in/india/story/atul-subhash-suicide-case-how-one-phone-call-to-a-relative-led-to-nikita-singhanias-arrest-457539-2024-12-17 (last visited May 15, 2025).

[5]Sudeep Lavania, "TCS manager Manav Sharma dies by suicide after wifes alleged harassment ,similar to Bengaluru techie Atul Subhash case", *The Times of India*, March 6, 2025, *available at* https://timesofindia.indiatimes.com/city/mumbai/like-bengaluru-techie-atul-subhash-mumbai-firm-manager-manav-sharma-dies-by-suicide-after-harassment-by-wife/articleshow/118620781.cms (last visited on April 10, 2025)

[6]"Puneet Khurana Suicide: 'Unable to pay Rs 10L more, beyond my capacity': What Delhi bakery owner said in 59-minute video before death by suicide", *Delhi News- Times of India*, *available at*: https://timesofindia.indiatimes.com/city/delhi/bakery-owner-in-video-before-death-by-suicide-tortured-unable-to-pay-10-lakh-more/articleshow/116893197.cms (last visited May 15, 2025).

3.4 Nitin Padiyar's case

Nitin Padiyar, an Indore-based man died by committing suicide accusing wife and in-laws for persistent harassment. Problem arises in the family when the wife filed a case against husband and his family for domestic violence and dowry demand. The deceased complained in his suicide note that the authority took biased action against them on the basis of wife's complaint. Padiyar also claimed that his in-laws often threatened him and demand money to withdraw the case against him. According to family, the deceased was undergoing severe mental distress which led to take his life.[7]

3.5 Suresh Sathadiya's case

This is a story of Gujrat-based man who is abetted to commit suicide by his wife as claimed by the victim's family. Suresh Sathadiya alleged in his video which was recorded before he hanged himself that his wife has been mentally tortured him and often quarrelled with him and used to go her paternal home. The day prior to the incidence, Suresh visited his in-laws place to take her back home to which she refused. Distressed and upset Suresh finally decided to end his life under severe mental harassment.[8]

Similar is the fate of Mohit Yadav from Uttar Pradesh who took his life out of mental torture by wife and her relative blamed lack of legal protection to men's right. Mohit Tyagi – a media person is another name in this list.[9] After Atul Subhash case, increasing number of male harassment cases under the banner of domestic violence come into light. However, men are not only victimized in domestic violence case, he may be pissed off under lengthy legal procedure. Such an instance is emerged in an alimony case of a banker who is entangled in a bitter legal battle for 20years. Originally a petition was filed by the husband for cruelty and his wife filed a petition in the court for payment of alimony. The legal battle took such long period as the wife claim higher alimony for her maintenance and education of son.[10] The victim was so upset with the gender-based laws and also got exhausted appearing in all courts.

IV.

Men's Right Movement: It's Relevance in Contemporary Period

[7] "Indore Suicide: Man dies by suicide; wife, in-laws booked for abetment", *The Times of India*, Jan. 31, 2025 *available at*: https://timesofindia.indiatimes.com/city/indore/indore-man-dies-by-suicide-wife-in-laws-booked-for-abetment/articleshow/117780105.cms (last visited April 5, 2025).

[8] "Teach her a lesson': Another husband dies by suicide, uploads video accusing wife of 'mental torture", *The Times of India*, Jan. 5, 2025, *available at*: https://timesofindia.indiatimes.com/city/rajkot/teach-her-a-lesson-she-will-remember-for-life-husband-dies-by-suicide-uploads-video-accusing-wife-of-mental-torture/articleshow/116957904.cms (last visited April 5, 2025).

[9] "Throw my ashes in drain': In Atul Subhash-like video, UP techie accuses wife of harassment, dies by suicide", *The Times of India*, 20 April, 2025, *available at*: https://timesofindia.indiatimes.com/india/throw-my-*shes*-in-drain-in-atul-subhash-like-video-up-techie-accuses-wife-of-harassment-dies-by-suicide/articleshow/120453024.cms (last visited May 8, 2025).

[10] Neelanjit Das, "Atul Subhash suicide: After asking man to pay Rs 5 crore in an old divorce case, SC lists 8 factors to decide alimony" *The Economic Times*, Dec. 13, 2024, *available at* https://economictimes.indiatimes.com/wealth/save/atul-subhash-suicide-after-asking-man-to-pay-rs-5-crore-in-an-old-divorce-case-sc-lists-8-factors-to-decide-alimony/articleshow/116287155.cms?from=mdr.(last visited on May 8, 2025).

Where the practice of subjugation of women and hostility towards them has been centuries old rituals, this oppressed group sought for paths of relief from the prevailing unequal treatment. Like a strong gust of relief feminist movement spread through remotest corners of the world, bringing a new dawn of progressive era where women are to be empowered with equal rights, opportunities and destinies breaking barriers of traditional gender roles. It helped break the stigma surrounding women's free participation in education, profession and politics through legal activism, legal reforms and social awareness. Though like most of the monumental movements in history, feminism too suffered from dual legacy – one of transformative progress and noble intent and the other of unpleasant extremism. Men's Right Movement and Men's Right Activists group emerged as a reaction to women's liberation movement. Men's Right Movement highlights necessity of gender equality for men reiterating societal pressure on men and calling for legal and cultural reforms to address male specific challenges and discrimination. According to one of the largest advocacy groups within this sector, Men's Group[11]"Activists (in this movement) argue that society has become biased and sexist against men. They also argue that men face discrimination from the media, government and Supreme Court for being male. Men's Rights groups fight against custody laws that favour mothers over fathers, violence against men, false rape allegations, disproportionate male prison sentencing, and conscription. These are some of the inequalities men's rights groups strive to address."

However, it is not true that Man's Right Movement does not have its own agendas to address and only stands on the ground of shared hostility against women's liberation groups, acting as anti-thesis to feminism. In fact, programs like Women's Liberation gatherings of March 8 during 1970s hosted Men's Liberation Workshops on a side-by-side manner. According to some pro-men's liberation intellectuals' writings, men's liberation developed alongside feminist liberation. Their ideas were mostly based on "sex role theory" (theory addressing traditional ideas associated with masculinity) which was seen to be the cause of both men's and women's long-term suffering. Initially many Men's Right Activists did support the notion that sexism had been a problem for women and feminism is a necessary movement to address gender inequality. Nevertheless, they also maintained the high cost of male sex role to men's health, emotional wellbeing and relationships. As M. Messner in his work has claimed "The ideas that socially created symmetrical (but unequal) sex roles trapped men into alienating, unhealthy and unfulfilling lives and that the devaluation of "the feminine" was the main way through which boys and men learned to discipline themselves to stay within the confines of this narrow sex role became a foundation in men's liberation discourse and practice[12]" and in the same

[11] Hannah Cox, "A Woman's Take On the Men's Rights Movement", Foundation for Economic Education, April 5, 2022, *available at* https://fee.org/articles/a-womans-take-on-the-mens-rights-movement/ (last visited on March 5, 2025).

[12] Michael A Messner, "The Limits of The 'Male Sex Role' An Analysis of the Men's Liberation and Men's Right Movement Discourse" 12 *Gender & Society* 260 (1998).

work he has also explained Robert Brannon's viewpoint on how male sex roles were both oppressive to women and harmful to men. Due to change in the trends by mid to end of 1970s man's liberation movement bifurcated and an overtly anti-feminist Men's Right Movement began[13]. Again, pro-feminist men favoured the idea of joining with women to confront patriarchy with the goal of doing away with men's institutionalised privilege.[14]

In the 1990s, the Men's Right Movement in India developed into a cohesive social movement in response to legal reforms brought during 1980s securing Indian women's interest by legislating domestic violence laws and refinement of dowry laws.[15] It represented a range of socioeconomic classes, several important female leaders, and several ethnic and religious groups. The Indian Men's Right Movement is primarily predicated on the opportunistic abuse of the criminal and civil laws concerning marriage and domestic abuse. However, the discouraging problem is that Men's Right activists, using the catchphrase "Men go through this too!" concentrate more on criticizing feminism. They reject the idea that the challenges faced by men and women are not exclusive.[16]

Men do suffer from discrimination. In such a situation both the gender groups shall work to address their issues rather than criticising and downplaying the other. Just because women are suffering from ages does not imply men did not have their own fare share. But the increasing tendency among the men liberation activist to counter feminist developments further pushes back the victims by leaving male victims' issues unaddressed.

This discussion clarifies that modern times require rising above gender clashes and adopting a progressive outlook on changing gender roles and thereby decide on reformed legal structure. There is no doubt that with a changing and evolving society, individuals need to break free from the traditional dogmatic bounds of legal structure formed on old school societal setup. Where the Gender norms are changing, liabilities and privileges among the gender are to be distributed accordingly by law. All in all, we cannot totally reject the necessity to relook on the existing legal structure we follow, especially from the perspective of gender justice.

V.

Offences Against Men: Men are Victims Too

Given their historical vulnerability, society has often emphasized grossly toward women and children whenever the subject matter is about crime and victimhood. However, this dominant perception can sometimes cover the truth that man can be victims too. From offences like sexual harassment,

---

[13] Bethany M Coston & Michael Kimmel, "White Men as the New Victims: Reverse Discrimination Cases and the Men's Right Movement" 13 *Nevada Law Journal* 372 (2013).

[14] *Supra* note 12, at 255.

[15] Srimati Basu, "Looking Through Misogyny: Indian Men's Right Activists, Law and Challenges for Feminism" 28(1) *Canadian Journal of Women and the Law* 52 (2016).

[16] *Id*. at 51

domestic violence to false accusations in fact for the reason of societal gender role expectation men face several offences which often goes unnoticed or unreported. Even if such problems come to the forefronts, they go unaddressed because of lack of legal provisions. Acknowledging these realities are important and it will be wrong to anticipate that such an initiative will anyway diminish struggles of women but will rather ensure all victims, regardless of their gender are supported and protected equally.

Some offences recently highlighted to be continuously growing against men are to be discussed here-

5.1 Cruelty towards Men

There is no single, all-encompassing definition for cruelty against men. It can comprise of physical abuse, such as hitting, pushing, or punching, as well as emotional abuse, which may manifest as verbal assault, belittlement, and isolation. It may include sexually abusive acts such as rape, coercion and forceful sexual intercourse along with financial abuse[17]. Mostly it will depend on circumstances. However, we can look at certain instances where Courts have recognised cruelty to men. In *Satya v. Siri Ram*[18], when wife terminated her pregnancy several times without husbands' consent, which had ill effects on her husband's mental health, court declared it to be cruelty against men. In other instances, cruelty to men is declared to be inclusive of threat of suicide, harassing husband for sending money to parental home, spreading false harassment stories about husband and thereby defaming him, filing false complaints and much more[19]. These shows the extent of harassment caused to male in society.

Cruelty against men can be attributed to various sources like societal norms, gender roles and power dynamics. Perpetuation of gender stereotypes also contributes to normalization of violence against men, with male victims seen as weak beings. Also, many times male victim may feel like having fewer resources and support system compared to females. They keep quiet out of the fear of their masculinity being questioned. These things further instigate abuse against them.[20]

5.2 Sexual Harassment of Men

Research focusing on male sexual harassment started in the last part of 1990s. One clear difference between the male and female sexual harassment is that men are much more likely to face sexual harassment from male rather than female unlike female for whom same sex sexual harassment ratio is quite low. As per a report on same sex sexual harassment cases, in US 21% of male have fallen victim

[17] Abhijeet Ghosh & Ambika Kumar, "Cruelty Against Men: Neglected Narrative from a Male's Perspective" 6(2) *Journal of Psychosexual Health* 118 (2004).

[18] AIR 1983P&H252.

[19] Harleen Kaur, Meenakshi Rani Agrawal, Surbhi Agrawal, "Men's Rights in India: Gender Biased Laws" 12(4) *International Journal of Science and Research* 1008 (2023).

[20] *Supra* note 17, at 120.

to this offensive act in compared to 1%-3% of female[21]. This same sex sexual harassment is more alarming for men as men who experience sexual harassment from men are more likely to experience negative impact in personal and professional fields than men experiencing such harassment from women. Here harassment perpetrated by homosexual men will also be included[22]. Nevertheless, while sexual harassment in the workplace has long been a serious issue for women prompting the creation of the Vishakha Guidelines, there is no equivalent support system in place for men facing similar challenges. Men often lack avenues for redress and the issue remains largely unaddressed due to fear of being misunderstood or the discomfort and stigma associated with speaking out.

In India and many other parts of world men being sexually harassed is seen as absurd, so people find it difficult to believe. Using campaigns like #Mentoo and #timesup, male victims of sexual harassment started raising their voices. In the wake of these campaigns, filing of claims of sexual harassment of men saw an 18% hike[23].

5.3 Men as Victims of Domestic Violence

Domestic violence is not limited to simple harassment whether physical or emotional and it encompasses direct physical, mental, financial, sexual, verbal and emotional threat.[24] It is often perceived as a male-perpetrated issue, with global definitions focusing on male violence against female partners. However, research indicates that women can also be perpetrators of intimate partner violence. Studies suggest that women may be equally or more likely than men to engage in violent behaviour toward their partners, challenging traditional gender based assumptions about domestic violence[25].

Domestic violence impacts individuals physically, mentally, emotionally, physiologically and it violates fundamental human rights. When violence against men goes unreported, it can lead to family rejection, divorce, depression or even suicidal tendencies. Research shows married men have higher suicide rate than unmarried ones. WHO in 2002 notes that while women considered suicide, men are more likely to die by it. Violence also increases risks of substance abuse, mental illness and chronic diseases in men.[26]

5.4 Alimony and Maintenance: Legal Disputes and Harassment to Men

Malpractices against men may culminate in matters involving alimony and maintenance which often

[21] Margarate S. Stockdale, Cynthia berry and Others, "Perception of Sexual Harrassment of men" 5(2) *Psychology of Men & Masculinity* 159 (2004).

[22] Margaret S. Stockdale, Michelle Visio and Leena Batra, "The Sexual Harassment of Men: Evidence for a Broader Theory of Sexual Harassment and Sex Discrimination" 5(3) *Psychology Public Policy and Law* 633 (1999).

[23] *Supra* note 19, at 1006-1007.

[24] Dolly Raj Bahadur, "Misuse of Domestic Violence Act: A Critical Analysis of Indian Scenario" (2023) (Unpublished Ph.D. Thesis, MVN University, Palwal).

[25] Russell P. Dobash, R Emerson Dobash, "Women's Violence to Men in Intimate Relationships: Working on a Puzzle" 44(3) *British Journal of Criminology* 395 (2004).

[26] Sanjay Deshpande, "Socio Cultural and Legal Aspects of violence against Men" 1(3-4) *Journal of Psychosexual Health* 248 (2019).

reflects frequent misuse of legal provisions by spouses to claim undue financial benefits. Sometimes women may file false or exaggerated claims to inflict financial strain with malicious intent. In certain cases, men are even compelled to pay maintenance despite limited income, unemployment or no fault in breakdown of the marriage.

Men face some inherent biases from legal system when it comes to maintenance and alimony matters as law leans more favourably to women associating man with the status of protector and provider for the family.[27] Under Hindu Adoption and Maintenance Act[28], Indian Divorce Act[29], 'Section 125 CrPC (presently enumerated in 'Section 144 of Bharatiya Nagarik Suraksha Sanhita') lays that it is the women who can derive maintenance from men.' Due to this archaic law even an abled woman who has full potential to maintain her husband is not obliged under law to maintain her male counterpart. Same is the situation in Muslim law, 'Section 3 of Muslim Women's (Protection of Rights on Divorce) Act enables muslim women to get maintenance from her husband[30] .'

The lack of gender neutral laws in this regard is bringing the notion of delivering biased role of legal adjudicatory system among the society leaving men vulnerable to legal harassment. While the goal of legal framework was to support dependant spouses, misuse of these provisions is undermining the balance and attracts the demand for reform in maintenance and alimony provisions.

5.5 False Accusations and Complaints against Men

In recent years, incidents of false accusations by women against men particularly in the cases of harassment, assault or domestic abuse has been on a rise and have sparked concern over rights of men. While genuine claims should be taken with utmost seriousness false accusations can irreparably damage a man's reputation, career and mental health. This highlights troubling use of protective laws, often rooted in gender bias. In the case of *Rohit Bansal v. State*[31], the Apex Court has acknowledged that false rape accusations can cause equal distress and humiliation to the accused, emphasizing on the need of protection from false accusations. Some of grave consequences of false complaints have already been discussed before in this article.

VI.

Discriminatory and Gender Biased Laws that Treat Men with Partiality

In India many sexist practices are prevalent which are against men. Some of them are fundamentally against man whereas some others reflect subtle discrimination against them many are backed by the state and society. Specially, in recent times, gender bias in legal frameworks manifest in the form of

[27] Disha Shivakumar, "Maintenance laws in India and Gender Inequality" 6(6*) International journal of Law Management and Humanities* 726 (2023).
[28] Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956).
[29] Indian Divorce Act, 1869 (Act No. 4 of 1869).
[30] *Supra* note 27, at 721.
[31] *Rohit Bansal and Others* v. *State*, Cr. Appeal No. 660/199

systematic partiality against men specially in the areas like family law, criminal laws, domestic violence policies etc. India has been no exception to it. To have a better understanding of the scenario in respect of India we can hold a detail study of following legal frameworks.

6.1 Inequities under Indian Penal Code

Indian Penal code is a colonial legislation. There are several provisions under Indian Penal Code which has now been replaced by Bharatiya Nyaya Sahita, that appear to be biased and irrelevant in present times. One of such provision is 'Section 354 (Section 74 BNS) dealing with assault on women harm her modesty'. 'Section 354-A deals with sexual harassment', 'Section 354-Disrobing', 'Section 354-C with Voyeurism' and 'Section 354-D with stalking'. All these provisions are oriented towards protection of rights of women, where men are to be punished for committing such offences and not vice-versa. Although possibility is that men too can be victims of above mentioned offences, but there is no penal provision to address these issues. 'Section 375 and 376 of IPC (corresponding provisions are Section 63 and 64 of BNS) defines rape and makes the offence punishable'. However, the language of these provisions does not consider men as a victim as if men can only be rapist and only women can be victims. But there are instances of women being perpetrator of sexual exploitation of man. Under Section 498A of IPC (Section 85 of BNS), if a husband or his family mentally or physically harms a wife, especially over dowry, they can be punished up to 3 years of jail. As only wives are considered benefiters of the provision, many believes it can be misused in divorce battle or family disputes to harass husbands and their relatives including elderly parents and even children. Under Section 509 of IPC (Section 59 of BNS), any man who uses words or gestures to insult modesty of a woman can be punished. But there is no reverse protection for men. A man cannot file complaints if a woman uses vulgar or offensive language against them in a similar way. A significant advancement in eradicating gender bias laws is recently witnessed by the Supreme Court judgement in *Joseph Shine case*[32]. From this case, Court unanimously struck down Section 497 IPC decriminalizing adultery. The impugned provision treated adultery as an offence committed only by men and not women. Section 497 punished sexual intercourse of a man with a married woman without the consent of her husband. Although this section does not provide for the punishment for the unfaithful wife and only punishes the men who is indulged in sexual intercourse with married women.[33]

6.2 Discriminatory Laws under Criminal Procedure Code and Evidence

Section 125 of the Criminal Procedure Code is strongly biased towards men. It directs the husband to maintain his wife, children and aged parents. Even if the wordings of the provision seem gender

[32] *Joseph Shine* v. *Union of India*, AIR 2018 SC 4898.

[33] The Supreme Court Struck down the Adultry Law under Section 497 IPC: Is it Justifies, *available at:* https://blog.ipleaders.in/supreme-court-struck-adultery-law-section-497-ipc-justified/ (Last Visited on March 23, 2025)

neutral, it is prejudiced in terms of spousal maintenance[34]. The section does not prohibit a male from claiming maintenance, but a husband cannot claim maintenance from his wife under this section. Such arrangement does not only violate rights under Article 14 and 15 of the Constitution but also puts additional mental pressure on male spouse by putting oppressive monetary burden[35]. Example of a case may demonstrate the extent of discrimination supported by this provision where a man petitioned to the supreme court, claiming that he was required to support his wife despite of being just passed High School and being unemployed at the time. However, his wife despite being possessor of a good health as well as a degree denies making a living. In traditional conservative societies men's role were strictly associated with money-matters and providing and women were not accustomed to working. Yet, given in current times women are challenging men in every sector, maintaining them should not be a men's responsibility every time[36].

Again, in connection with Section 113 B of Indian Evidence Act (Section 118.of BSA), law while aiming to protect women, can appear one sided. Section 113 provides a presumption that death of a women caused by accused will be dowry death if it is proved that the women suffered cruel and harassing behaviour in relation to a dowry demand by that person soon before her death.[37] These kinds of loopholes make it extremely easy for vile women to send their husband and in laws to jail on bogus complaints.

6.3 Limitations of Domestic Violence Laws

The Protection of Women from Domestic Violence Act, 2005 was passed with the intent of safeguarding women from heinous consequences of domestic violence. It attempts to preserve interest of victims through passing protection order, residence order, monetary relief, compensation and custody order and by breach of such punishable by law. Nevertheless, the problem lies in the false assumption that it portrays by considering man as the sole perpetrator of domestic violence. It is altogether a wrong impression and only strengthens the gender bias in favour of women created by this enactment[38]. Mandates of this enactment is so draconian from the safety perspective of men that, according to it the woman will testify as the principal witness in the absence of eyewitnesses, and her testimony will be regarded as circumstantial evidence when determining the case's facts. This has essentially given all women a weapon to wrongfully implicate any man as culprit.[39]

6.4 Personal Laws

[34] Pooja Mehendra Jain, Amey Nandanpawar, "'Gender Discrimination'- An Analytical Study on Men Should also get Equal Rights in Comparison with Women" 6(4) *International Jounal of Law, Management and humanities* 1187(2023).
[35] *Id*. at 1190.
[36] *Ibid.*
[37] *Id.* at 1191.
[38] Sanjeev Kumar, Kalpana Devi, "Domestic Violence Against Women: Indian Perspective" 5 *South Asian Law Review Journal* 104-105 (2019).
[39] *Id.* at 108.

Under Hindu Adoption and Maintenance Act, section 18 is a provision which is favouring women, by providing maintenance to wife. Under this provision wife is not only entitled to claim maintenance from her husband after divorce or judicial separation but also in circumstances which allow the wife to live separately from husband. Here the husband has to pay maintenance as to adequately fulfil needs of spouse and as per disposable income of the husband. Whereas, if we search for any such provision for male spouse under the Act, there are no availability of any. Only section 24 and 25 of Hindu Marriage Act provides a similar right of maintenance to husbands also. Same is the condition under Muslim personal laws since Muslim Women (Protection of Rights on Divorce) Act, 1986 lays that essential life-supporting items are the wife's right, similar to Hindu laws. In contrast, the Parsi Marriage and Divorce Act grants equal rights to both spouses, ensuring no gender-based disparity in entitlements.[40]

VII.

Constitutional Perspective on Gender Discrimination

The Constitution of India is the comprehensive document which is based on the principles of equality, justice, liberty and fraternity. It laid down the vision of legislative enactments in general and Fundamental liberties for its citizens in particular. The constitutional provisions guarantee fair and equal opportunities among all without any discrimination based on gender, race, etc. The underlying idea is that there are certain basic human rights which are inevitable for human existence. Part-III of the Constitution guarantees some basic fundamental rights to all persons irrespective of their gender to ensure the ideals of gender neutrality in its applicability. Such as,

Right to equality: (Art. 14) – The equality clause under Art. 14 of the Constitution of India prohibit class legislation based on gender or otherwise to promote equal treatment of all under similar situations and it mandates the States to secure the same.

Right against discrimination: (Art.15) – To secure social justice and equal opportunity, Art. 15 impose a general prohibition against discrimination specially, gender-based discrimination and other forms of discrimination against person.

Right to life and personal liberty: (Art. 21) – To live life with dignity and enjoy the essential liberty without any unwarranted interference by others including States has been guarantees by Article 21 of the Constitution. Article 21 explains various aspects to attribute personal liberty in real sense and makes worth living of life by all. It further safeguards any person against arbitrary executive and legislative action which a very important connotation to gender equality.

The Constitution of India confers a wide amplitude to the notion gender justice and provides guidance to the legislature in enacting social legislation. However, the Constitution incorporates special

[40] *Supra* note 27, at 723-726.

provisions for the welfare of the women and children in Article 15 which often raised concern on balancing the gender equality and men's rights, because there is no mention of any specific rights or directives in favour of man. Men's rights are often left unrepresented matter which left a vacuum in this area.

VIII.

A Holistic Approach to Gender Rights: Women's Welfare and Men's Justice

Having a discussion about men's rights, to have it actually implemented one requires an in-depth study of the actual working of the society at the grassroot level. When we stand for men's rights, it means securing rights not against the other race but the atrocities inflicted upon them no matter from whatever source. However, we believe political theory of limited freedom will come into play in this situation. Moving forward for securing Men cannot revert back to old patriarchal dogmatic society. When securing Men's right some variables are to be considered. In many rural areas, women continue to face significant disadvantages. Poverty deeply influences household livelihood and investment decisions, often resulting in early marriages and limited educational opportunities for girls. Parents in poor families frequently prioritize sons' education, while daughters are withdrawn from school to help at home, perpetuating gender inequality and restricting women's long-term empowerment and development.[41] In such conditions altering existing law regime protecting wellbeing of women will not only hamper greater good of the society but simply provide ill-intentioned opportunist an edge for disrupting order of justice. Therefore, reform in favour of men's rights have to be pressed considering the requirement from both sides. Ensuring the same will call for surveys, assessments at ground level. Impact of Gender based laws in different societies, areas and communities at socio-economic as well as psychological levels needs to be studied and then only a new regime is to be advocated for.

IX.

Conclusion & Suggestions

"Feminists call it sexism to call the God as he, but they do not call it sexism to refer to the devil as he"- Warren Farrell.

This study has brought into light that men are undoubtedly in a biased position in this society whether in terms of role as a protector or provider, or being perpetrator of violence and being called culprit for deplorable condition of women in the society. Position of men, which started from the beginning of civilization on a privileged footing, day by day it is coming out as if privileges are gone and they are

[41] Dr. Bhavna Shukla, Chinmay Shukla "Tracing the Psyche of Gender Discrimination in Rural and Tribal Communities of India" 9(4) *The International Journal of Indian Psychology* 2507-2509 (2021)

only left with responsibilities to fulfil. Now that women are witnessing a new dawn in terms of their status in society, it is important that balancing of power is carried out for both the genders for securing a peaceful future. Of course, women empowerment is a crucial issue that needs persistent contribution but it is time to also focus on often overlooked gender discourse- discrimination of men. This study has highlighted numerous incidents and categories of offences against men ranging from cruelty, sexual harassment and domestic violence etc., all that has once been discussed for women. It has reiterated the echoes of men's right movement and how its relevant interpretation can benefit in understanding needs of today's men. Also diving into the topic have exposed the unintended consequences of gender-specific laws and their potential for misuse, and partiality especially when legal provisions under IPC, CrPC, and the Domestic Violence Act are applied without safeguards against false or malicious claims. Raising voice in support of men is a call for balanced justice. It does not anyway undermine hardships that women have to face. But to some extent gender-neutral laws, support groups for men in the society securing balance and institutional reforms are the need of the hour.

Vulnerability of the men urges to pay serious attention because they also deserve support and understanding from society for healing from their traumas. Men, stigmas related to them should be considered from other way around rather than traditional mind set. Sticking to the general notion "Be a man", "Only woman cry" would not serve justice to all those men who are not only victim of harassment even victim under toxic masculinity of our society. Considering the plight of men some of the suggestions are given below in order to achieve gender justice in true sense –

1. First and foremost prerequisite is the change of social psychology about the notions like, abuse, harassment, because over the time things have changed. Man should not be blamed for all cause.

2. Appropriate measure to deal with identity, vulnerability of male victim should be initiated rather than relying on some activist groups or associations.

3. Amendment should be made in Acts like, the Sexual Harassment of Women in work places and Domestic Violence Act, etc., to give it a gender neutral interpretation.

4. Proper counselling should extend to male victim to erase kind of impression that formal victim services could not help them to get justice and relieve from sufferings.

5. Court should also consider four corners of law before punishing on any allegation against man on sexual harassment, domestic violence, cruelty, etc.

6. Maintaining privacy of identity of the victim is of utmost importance. Hence, provisions should be made to secure the identity so as to protect them from humiliation.

INTERSECTING INJUSTICES: READING THE LETTER AND SPIRIT OF CASTE ATROCITY PREVENTION LEGISLATION

Dr Neha Susan Varghese*

Abstract

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is landmark legislation aimed at safeguarding members of SC and ST communities from systemic discrimination and violence. This paper offers a comprehensive, empirical, and policy-oriented analysis of intersectionality within the framework of the Act. Drawing on relevant statutory provisions and a detailed empirical study of Supreme Court and High Court judgments, it critically examines the extent to which intersectionality has been incorporated into the interpretation and implementation of the law. While the legislative intent and statutory provisions reflect a commitment to addressing multiple and overlapping forms of discrimination, low conviction rates under the Act reveal a judicial failure to adopt an intersectional lens in adjudication. This article argues that integrating intersectionality into judicial reasoning could significantly improve conviction rates, thereby furthering its protective and transformative objectives.

Key Words: Atrocities, Violence against Scheduled Caste and Scheduled Tribes Women, Rape, High Court and Supreme Court Judgments, Intersectional Feminism

I.
Introduction

The Supreme Court of India addressed intersectional feminism in a recent judgment concerning a blind girl from a Scheduled Caste community whose mother worked as a daily wage laborer. The victim was gagged and brutally raped by the accused in her house while her family was absent. In this case, the court applied the principles of intersectionality theory, examining the interconnected dimensions of disability, gender, and caste.[1] Moving beyond traditional approaches, the Court advocated for replacing the single-axis model of discrimination with an intersectional framework that recognizes multiple, interconnected forms of oppression. This ground-breaking decision represents judicial recognition of intersectional feminism and extends its application to women from Scheduled Caste and Scheduled Tribe communities.

This article examines intersectionality in the jurisprudence of caste atrocities in India.This analysis focuses on The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "SC/ST Act,1989"), one of India's most significant legislative measures protecting Scheduled Castes and Scheduled

* Assistant Professor, Amity Law School, Noida.

[1] *Patan Jamal Vali* v. *State of Andhra Pradesh*, 2021 SCC OnLine SC 343.

Tribes. The first section explores intersectional feminism, specifically in the context of Scheduled Caste and Scheduled Tribe (hereinafter SC and ST) women in India. Through a comprehensive literature review, it defines intersectional feminism and applies this framework to analyze the conditions faced by Dalit and tribal women. The second section evaluates the SC/ST Act, 1989 provisions by examining its substantive, evidentiary, and procedural provisions to determine their alignment with intersectional principles. Members of SC and ST communities, particularly women, face multiple layers of discrimination based on gender, caste, and class. The Act's provisions are identified and analysed examined through this intersectional lens. The third section analyzes judicial decisions under the Act to assess the application of intersectional theory. By reviewing conviction and acquittal rates in cases appealed to the High Courts and the Supreme Court, the study provides insights into the judiciary's approach. While the Act's language incorporates elements of intersectionality, its practical application in courts often falls short of fully embracing this perspective. The article concludes by highlighting these shortcomings and proposing strategies for improvement.

II.
Extending Intersectional Feminism to Scheduled Castes and Scheduled Tribes Communities

Traditional understanding of discrimination was from a '*single-axis*' approach which often focus on a singular characteristic like gender, race, or disability.[2] This approach can be traced to the historical development of discrimination laws, which were primarily shaped by movements like feminism, queer liberation, and anti-racism. These movements typically adopted a single-issue focus, seeking to address one dimension of discrimination at a time. The single-axis model tends to '*essentialize*' the experiences of identity groups, by assuming that all members of a particular group such as women, black individuals, or LGBTQ+ people—share a uniform and homogeneous experience.[3] It fails to recognise that individuals face discrimination which transcend a singular dimension of oppression.

The concept of intersectionality acknowledges that individuals possess multiple identities that interact with one another, shaping their experiences in unique and often complex ways.[4] These identities include gender, race, class, sexual orientation, disability, and religion, which can create a layered and intersectional experience of discrimination or privilege. For instance, a woman's identity does not solely revolve around her gender; it also intersects with her caste, class, religion, disability, and sexual orientation. These intersections can exacerbate her vulnerability to discrimination, exclusion, and violence, something that traditional single-axis frameworks fail to acknowledge. Intersectionality, therefore, serves as an analytical tool to explore how the intersection of various identities results in qualitatively different experiences than when those identities are

[2]Ben Smith, "Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective" (2016) 16 *Equal Rights Review* 74.
[3] N. Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity" (1993–1994) 19 *Queen's Law Journal* 199.
[4] Arzoo Chaudhary and Akarsh, "Recognising Intersectionality and Ability of Disabled Persons to Testify: *Patan Jamal Vali v. State of A.P.*" (Summer 2021) *ILI Law Review* 388–404.

considered independently. [5]

The term "intersectionality" was first coined by Kimberlé Crenshaw, a legal scholar and civil rights advocate, who used it to describe the unique experiences of Black women in the United States.[6] Crenshaw argued that Black women face distinct forms of discrimination due to the combined impact of both race and gender. She illustrated this through the example of legal context of sexual violence, wherein courts often held that Black women could not be presumed to be "chaste" in the same way that white women were.[7] This often resulted while perpetrators seldom being convicted for crimes against Black women enforcing a power dynamic that excluded them from justice and protection.[8] Many scholars have advocated for extending the concept of intersectionality beyond the experiences of Black women to encompass other marginalized groups.[9] These include queer women, disabled women, and other individuals at the intersection of multiple identities also face distinct forms of discrimination and violence.[10]

The intersectionality approach can help in analyzing the legislative frameworks created for protecting the SC and ST women. Dalit and Tribal women are "*thrice alienated – on the basis of caste, class and gender*."[11] The caste system proclaims Dalit women to be intrinsically '*impure*' and '*untouchable*', which sanctions more exploitation and social exclusion.[12] Dalit women face targeted violence from dominant castes, they face discrimination such as unequal wages and gender violence at the workplace and through religious custom.[13] They are also subjected to patriarchal domination within their communities despite.[14] The discrimination of tribal women is predominantly due to land where, the age-old community ownership over land and the forest rights are disregarded. Tribals are systematically being deprived of their land, livelihood, language customs and their struggles for assertion are brutally suppressed.[15] The rising rape cases against tribal women is a marker of enforced patriarchal violence. Rape or various other forms of sexual violence are used as a tool to show women their place in society; tribal women are much more prone to sexual violence as they are

[5] Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) *University of Chicago Legal Forum* 139 http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8.
[6] Id.
[7] Id.
[8] Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color" (1991) 43 *Stanford Law Review* 1241 https://www.jstor.org/stable/1229039.
[9] Ontario Human Rights Commission, "An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims" (2001).
[10] Sirma Bilge, "Developing Intersectional Solidarities: A Plea for Queer Intersectionality" in M. Smith and F. Jafer (eds), *Beyond the Queer Alphabet* (2012).
[11] National Alliance of Women (NAWO), *India: Second NGO Shadow Report on CEDAW* (November 2006).
[12] Id, at 28.
[13] Id, at 29.
[14] Ajay Kumar, "Sexual Violence Against Dalit Women: An Analytical Study of Intersectionality of Gender, Caste, and Class in India" (2021) 22 *Journal of International Women's Studies* 123 https://vc.bridgew.edu/jiws/vol22/iss10/11 accessed 6 February 2024.
[15] Supra Note 11.

considered 'less than human'.[16]

Intersectionality, as a theory, posits that individuals are affected by multiple axes of identity such as gender, caste, class, and others that interact to create unique forms of oppression. In the case of Dalit and Adivasi women, they face not only the discrimination based on their caste but also gender-based violence and marginalization. The SC/ST Act, 1989 was designed to protect these communities, but it is important to assess how it addresses the specific challenges faced by women in these groups.

III.
The Prevention of Atrocities against Scheduled Caste and Scheduled Tribes Act, 1989: An Intersectional Analysis

The SC/ST Act, 1989, represents a landmark legislation in India's journey toward social justice and equality. This Act emerged from the recognition that despite constitutional guarantees and various developmental initiatives, members of SC and ST continued to face systematic discrimination and violence. The legislation was designed with three fundamental objectives: preventing atrocities against SC and ST communities, establishing specialized judicial mechanisms, and ensuring comprehensive victim rehabilitation.[17]

In the '*Statement of Objects and Reasons*' appended to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill when it was moved in the Parliament 1989 it was observed that despite various measures to improve the socioeconomic conditions of Scheduled Castes and Scheduled Tribes, they still remained vulnerable. They are denied a number of civil rights and subjected to indignities, humiliation, and harassment. There have been several brutal instances of deprivation of life and property of SC and ST persons. With progress, the awareness that they deserved a stronger and more effective system for justice also grew.[18] This led to the enactment of the '*Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989*.'

The essential ingredients to constitute an offence under the Act are:-

a*) the victim should be a member of the Scheduled Caste or Tribe community and,*

b) the offender must be a person who is not a member of a scheduled caste or tribe community.[19]

An examination of the provisions of the SC/ST Act, 1989, identifies and analyzes the extent to which the theory of intersectionality has been successfully incorporated into the law. For ease of understanding, the

[16] Pankaj, "Why Is There a Surge of Violence Against Tribals in India?" *The Leaflet* (2022) https://theleaflet.in/why-is-there-a-surge-of-violence-against-tribals-in-india/ accessed 6 February 2024.

[17] National Human Rights Commission, *Report on Prevention of Atrocities Against Scheduled Castes: Policy and Performance: Suggested Interventions and Initiatives for NHRC* (2004) https://nhrc.nic.in/sites/default/files/reportKBSaxena_1.pdf accessed 6 February 2024.

[18] Id.

[19] *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (Act 33 of 1989) s 3(1).

provisions under the Act are classified into substantive provisions, procedural provisions, and evidentiary provisions. This demarcation enables a comprehensive overview of all aspects of the law and helps analyze the effective incorporation of intersectionality principles within all provisions of the Act.

3.1 Intersectional Analysis of the Substantive Provisions Under SC/ST Act, 1989

While the Act defines more than 29 offenses as atrocities, it includes specific provisions addressing offenses against women:

a) Section 3(1)(k) prohibits dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice.[20]
b) Section 3(1)(w) criminalizes intentionally touching a woman belonging to a Scheduled Caste or a Scheduled Tribe in a sexual nature without her consent, or using words, acts, or gestures of a sexual nature towards such women.[21]
c) Section 3(2)(v) provides for enhanced punishment of life imprisonment where a person commits an offense punishable under the IPC for ten years or more.[22]

The provisions of the SC/ST Act, 1989, reflect the legislature's acknowledgment of the intersectional nature of violence faced by SC and ST women. To ensure effective deterrence, the Act prescribes a mandatory minimum punishment of six months' imprisonment for those found guilty of committing atrocities against SC and ST women.[23] This mandatory sentencing demonstrates the legislature's resolve to impose meaningful penalties for such offenses. Additionally, the provision for enhanced sentences, including life imprisonment for grave offenses like rape against SC and ST women, further reinforces the commitment to addressing these heinous acts with the gravity they deserve.[24]

3.2 Intersectional Analysis of the Evidentiary Provisions under the SC/ST Act, 1989

Along with defining specific offenses, the Act establishes distinctive evidentiary rules that depart from standard legal procedures. The core evidentiary challenge in prosecuting cases under this Act lies in proving that the offense was committed specifically because the victim belonged to an SC and ST community. [25]This requirement often created a significant barrier in securing convictions, as demonstrating such specific *mens rea* in court proved exceptionally challenging. Traditional evidentiary procedures frequently resulted in acquittals when prosecutors could not definitively establish the accused's knowledge of the victim's caste identity.

[20]Ibid, s 3(1)(k).
[21]Ibid, s 3 (1)(w).
[22]Ibid, s 33(2)(v).
[23]Ibid, s 3 3(1).
[24]Ibid, s 3(2)(v).
[25] Supra Note 4.

To address this challenge, Section 8(2)(c) introduces a crucial presumption clause. Under this provision, when it can be shown that the accused had personal knowledge of the victim or their family, the court will legally presume awareness of the victim's caste or tribal identity.[26] This shifts the burden of proof to the accused, who must then demonstrate they were unaware of the victim's caste identity. The presumption effectively prevents accused persons from evading conviction by simply claiming ignorance of the victim's caste status. This presumption clause recognizes the realities of Indian social dynamics, where awareness of someone's caste often naturally follows from familiarity with them or their family. The provision acknowledges that in most cases, those who interact with or know a family are likely aware of their caste identity, given the pervasive nature of caste consciousness in Indian society.

These evidentiary provisions reflect a deep understanding of intersectionality in the context of caste-based violence against women. They acknowledge the unique challenges SC and ST women face in proving discrimination and adapt legal procedures to address their specific vulnerabilities. By modifying traditional evidentiary requirements, the Act creates a more equitable legal framework that recognizes how caste identity interacts with gender in patterns of discrimination.

3.3 Intersectional analysis of the procedural provisions under SC/ST Act, 1989

The Act incorporates several procedural measures that aim to adopt an intersectional approach. One of the key provisions is the establishment of Special Courts to handle offences under the Act, ensuring a swift trial process.[27] Appeals from any judgment, sentence, or order issued by a Special Court can be made directly to the High Court, ensuring a speedy trial and justice administration system.[28]

The Act dedicates a separate chapter to the protection of victims and witnesses, mandating the state to safeguard them, their dependents, and witnesses against all forms of intimidation, coercion, inducement, violence, or threats of violence.[29] Most violence stems from existing hierarchical structures, where dominant castes use violence to suppress SC and ST members. Many victims and witnesses in such atrocity cases turn hostile during trial proceedings due to threats and fear of violence.[30] Considering these social and caste dynamics, the law's provisions for protecting witnesses and victims especially women who are most vulnerable.

Other procedural provisions that depart from general laws to safeguard victims include the prohibition of anticipatory bail[31] for potential accused individuals and the removal of prior arrest approval requirements for

[26] *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (Act 33 of 1989).S 8(2)(c).
[27] Ibid, S 14.
[28] Ibid, S 14 A.
[29] Ibid, Chapter IV A.
[30] National Law School of India University, Centre for Study of Casteism, Communalism and Law, *Study on Performance of Special Courts Set Up Under the SC/ST (Prevention of Atrocities) Act, 1989* (2005) https://idsn.org accessed 7 February 2024.
[31] *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (Act 33 of 1989)., S 18.

investigating officers.[32] These provisions ensure that the accused do not have time to tamper with evidence or intimidate, coerce, or induce victims, while also reducing procedural hurdles for arrest. These provisions in the SC/ST Act, 1989, reflect the intersectional nature of these crimes, aiming to facilitate easier access to justice and ensure fair outcomes for victims.

IV.
Judicial Policy under The SC/ST Act, 1989 and Intersectionality Theory

In the previous section, we analyzed the provisions of the legislation. In this section, we focus on the conviction rates under the Act. While the legislation's intent has been to adopt an intersectional approach, its true effectiveness is tested during implementation.

The National Crime Records Bureau (hereinafter referred to as NCRB) data, released annually by the Central Government of India, have recorded an increase in the number of cases reported for offences against women belonging to SC and ST community. (Table1)

	2020	2021	2022
Offences against SC women	16,843	18,519	20,282
Offences against ST women	4,872	3741	7,064

Table: 1 Number of Cases Reported to the Police in a Year[33]

When we look at the conviction rates in the Trial Courts is about 38.1% for offences against women belonging to SC women while in cases of offence against ST women the conviction rate was 23.3%.[34] The NCRB data as well the existing literature on sentencing patterns under the SC/ST Act, 1989 has primarily focused on special courts (trial courts or courts of first instance) constituted under the SC/ST Act, 1989 and were limited to a few states.[35]

[32] Ibid, S 18 A.

[33] Subheading of offences as categorised under NCRB report include Assault on Women with Intent to Outrage her Modesty, Assault on Women, Rape of Women, Rape of Children, Attempt to Commit Rape, Sexual Harassment, Assault or use of Criminal Force on Women with Intent to Disrobe, Voyeurism, Stalking
Insult to the Modesty of Women, Kidnapping and Abduction of Women to Compel her for Marriage, Procuration of Minor Girls.

[34] Same category heads as above.

[35] National Law School of India University, Centre for Study of Casteism, Communalism and Law, *Study on Performance of Special Courts Set Up Under the SC/ST (Prevention of Atrocities) Act, 1989* (2005) https://idsn.org accessed 7 February 2024, National Coalition for Strengthening SCs & STs (PoA) Act, *20 Years of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act: A Report Card* (2010).

In this paper a study is conducted on the cases that are appealed to the High Court and Supreme Court from the Trial Court under the SC/ST Act,1989. The study uses a quantitative methodology to examine coded data from case law documents. To gather data, we utilized SCC Online, a comprehensive database containing records of all Supreme Court and High Court cases in India. Using the 'find case law by section' filter in the software, we downloaded all case laws related to Section 3 of the SC/ST Act, 1989—the section dealing with punishments under the Act. As a result, all cases related to sentencing fall under this section.

We collected case data from 1989 to December 2022, resulting in an initial dataset of 932 cases decided by the High Courts and the Supreme Court. From this dataset, we excluded cases involving bail applications, quashing or compounding of complaints, writ petitions, and other miscellaneous matters, narrowing the sample to 173 relevant cases. Out of the 173 cases that was analyzed, 58 cases were offences against women belonging to SC/ST Community. Most of the cases analyzed occurred before the 2015 Amendment Act came into effect. Although there may be differences in section numbers due to amendments, these variations do not significantly affect the study's findings or conclusions.

4.1 Convictions under the SC/ST Act,1989 in the High Court and Supreme Court

Of the 58 cases taken up for the study, 32 of these cases revolve around the crime of rape,[36] while 17 cases were charges under sexual assault[37] and 7 cases under sexual exploitation[38] as the per the provisions of the SC/ST Act,1989.[39] This nuanced section-wise analysis shows the prevalence of rape cases within the broader context of offences against women, and the SC/ST Act, 1980's sentencing structure that addresses such offences.

It is observed, a significant number of convictions at the Trial Court level end in acquittal at the High Courts. Figure.1 illustrates convictions and acquittals under Section 3(2)(v). The Trial Court had convicted in 20 cases out of total cases of 32.[40] However, at the High Court we see that this number gets reduced to 7 cases. Out of the total 7 cases that was appealed to the Supreme Court all resulted in acquittals.

[36] The SC/ST Act,1989 does not delineate a distinct sentence for the offence of rape; rather, Section 3(2)(v) of the Act stipulates an augmented sentence. According to this provision, if an offence carries a sentence exceeding 10 years under the IPC, the SC/ST Act,1989 mandates life imprisonment for the same offence if committed against a member of an SC and ST community. Given that the punishment for rape under the IPC is 10 years, the most frequently registered cases fall under Section 3(2)(v) of SC/ST Act,1989, which encompasses instances of rape perpetrated against women from the SC and ST community.

[37] *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (Act 33 of 1989), S 3(x).

[38] Ibid,S 3(xii).

[39] Two cases omitted includes one case of kidnapping and murder and one case of stripping charges under Section 3(1)(x).

[40] One case being of discharge hence the total number of cases being 32.

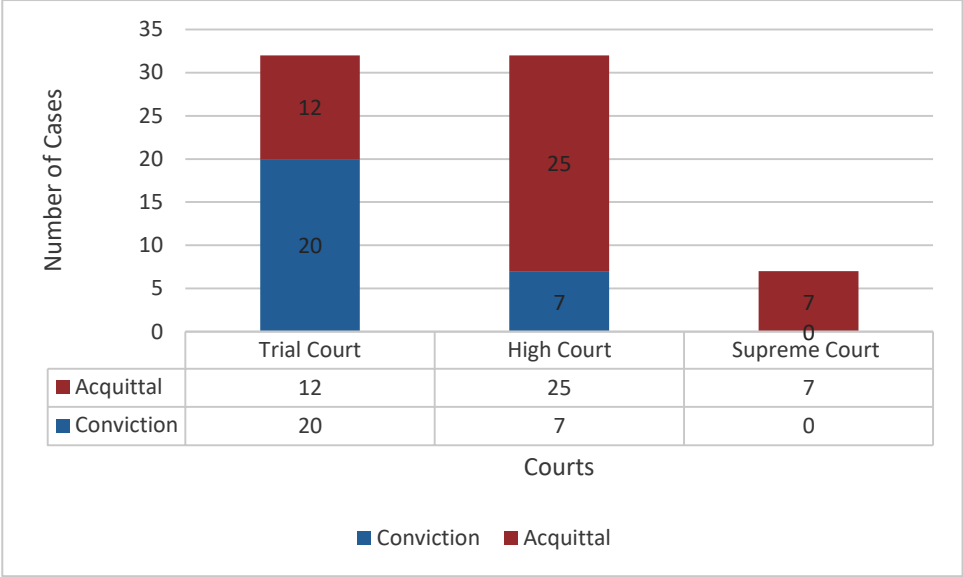


Figure 1: Conviction under Section 3(2)(v) of SC/ST Act, 1989 in Supreme Court and High Court of India

Under Section 3 of the SC/ST Act, 1989 which includes both offences of sexual assault (Section 3(1)(xi)) and sexual exploitation (Section 3(1)(xii)) a similar trend is seen as illustrated in Figure 2. Out of 24 cases, the trial court had convicted in 13 cases whereas, the High Courts convicted only in 2 cases under the SC/ ST Act, 1989. The two cases that reached Supreme Court both maintained the convictions.

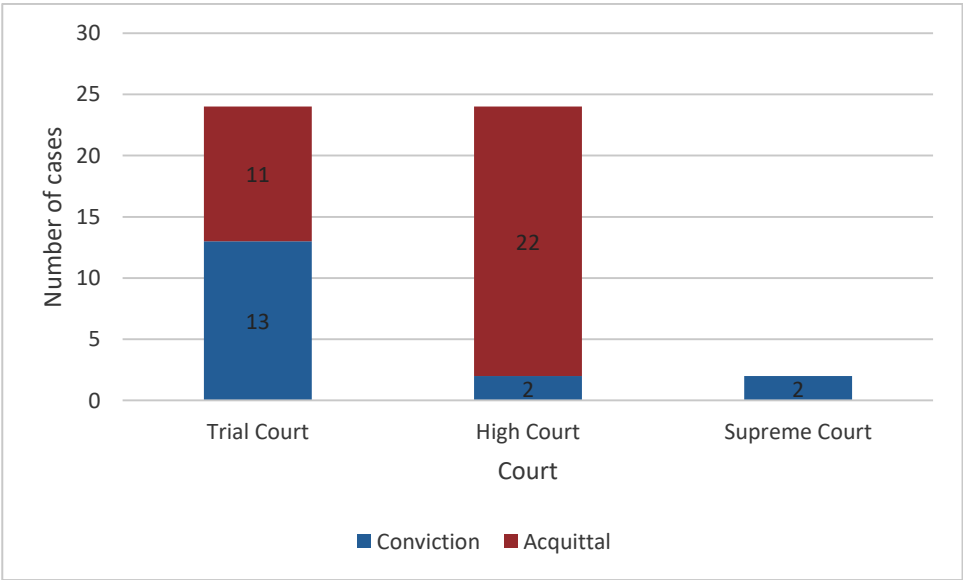


Figure 2 : Conviction under Section 3 of SC/ST Act,1989 in Supreme Court and High Court

4.2 Examining Sentencing Policy: How Courts Interpret the SC/ST Act, 1989.

This analysis examines the factors that resulted in acquittals under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act). The reasons identified are limited to those provided by the courts in their judgments. This study approaches these acquittals through the lens of intersectionality, examining whether this principle has been effectively incorporated into judicial decision-making processes..

4.2.1 Interpretation Failure by the Judiciary: Single dimension approach to Caste and Gender

In 14 out of 58 cases analyzed, the primary reason for acquittal was the prosecution's inability to prove that the crime was committed specifically due to the victim's caste identity. Under the Section 3(2)(v)[41] of the SC/ST Act,1989 the section read as "*whoever commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life*."

This section is commonly applied in cases of rape against women from SC and ST communities, as such offenses are punishable by more than ten years of imprisonment. However, the phrase 'on the grounds' in Section 3(2)(v) has been subject to restrictive judicial interpretations.

One of the earliest cases in this study where the court established this interpretation was *Hanamath v. State of Karnataka*.[42]The court attributed a specific and distinct *mens rea* requirement for offenses under this section, holding that Section 3(2)(v) clearly implies that there must be an element of intention on the part of the accused to commit the offense specifically because the victim belongs to a Scheduled Caste. Without such *mens rea*, the provisions of Section 3(2)(v) would not apply. This interpretation was further reinforced by the Supreme Court of India in th case of *Dinesh alias Buddha* v. *State of Rajasthan*[43] the Supreme Court of India had observed that

"Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes."

The court held that the victim's SC or ST identity alone is insufficient for conviction; evidence must demonstrate that the accused committed the offense specifically because of the victim's caste or tribal identity. This interpretation was progressively narrowed through subsequent judgments, leading to the interpretation that the offense should have been committed *"only on the ground that the victim*" was a member of a SC or ST community.[44]

[41] Before the Amendment of 2005. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33, Acts of Parliament, 1989 (India), S 3(2)(v).
[42] *Hanamath v. State of Karnataka*,2005 SCC OnLine Kar 626.
[43] *Dinesh Alias Buddha* v. *State of Rajasthan*, AIR 2006 SC 1267.
[44] In the case of *Patan Jamal Vali* v. *State of Andhra Pradesh*,2021 SCC OnLine SC 343), the court makes reference to cases *Asharfi* v. *The State of U.P.,* (2018) 1 SCC 742 and *Khuman Singh* v *The State Of Madhya Pradesh,* AIR 2019 SC 4030 which has given this interpretation to Section3(2)(v).

This judicial interpretation demonstrates a reliance on a single-axis model of oppression, where violence must be proven as stemming from a single social characteristic—in this case, caste. The courts' understanding of caste appears to be unduly narrow, failing to consider hidden indicators of caste-based vulnerability.

Many SC/ST women lack access to toilets, [45]forcing them to use fields at vulnerable hours, which increases their exposure to sexual violence.[46]In the cases analysed we see that many women who of the victim were accessing toilet facilities in the nearby fields and forests areas when they became victims to sexual violence.

In *Harish Chandra* v. *State of U.P.*,[47] he victim was forcefully grabbed and raped while returning from using toilet facilities in nearby fields. The court held that the accused committed the offense "merely to satisfy his lust" and found no evidence to show that the victim was targeted because of her caste, thus acquitting the accused under the SC/ST Act,1989.

In the case of *Radhey* v. *State of U.P.*,[48] the victim was raped while in the field attending to her toilet needs. The court acquitted the accused since no evidence was presented to prove that the rape occurred specifically because the victim belonged to a scheduled caste community.

In the case of *Rewa Yadav* v. *State of C.G.*[49]a young girl was assaulted while out in the evening for her toilet needs. The court acquitted the accused, stating that the prosecution failed to demonstrate that the sexual assault occurred because of the victim's tribal identity. The court noted: "*The basic ingredients of the Act are completely missing. Even the prosecutrix has not stated that she was taken by the accused/appellant as she belongs to a particular caste."*

Another hidden indicator of caste vulnerability is the age and socioeconomic conditions of the victims. Many victims are minors engaged in collecting fodder in fields or forests, reflecting the socioeconomic realities of SC/ST communities:

In the case *Jagta* v. *State of U.P.*,[50]the victim was a 14 year old girl who has gone into the jungle for collecting fodder, she was raped and murdered by the accused. The High Court held that

"*Section 3(2)(v) can be pressed into service only if it is proved that the rape and murder has been committed on the ground that deceased belonged to Scheduled Caste community."*

[45] One-third of ST and 30.3% of SC do not have access to any type of sanitation facility. Mukesh Kumar and Suman Kharb, "Caste and Class Interactions in Inequality in Access to Sanitation and Hygiene Services in India" (2024) 14 *Journal of Water, Sanitation and Hygiene for Development* 400–411 https://doi.org/10.2166/washdev.2024.020.

[46] Md Amzad Hossain, Kanika Mahajan and Sheetal Sekhri, "Access to Toilets and Violence Against Women" (2022) 114 *Journal of Environmental Economics and Management* 102695 https://doi.org/10.1016/j.jeem.2022.102695.

[47] *Harish Chandra* v. *State of U.P.*,2015 SCC OnLine All 8296.

[48] *Radhey* v. *State of U.P,* 2019 SCC OnLine All 5582.

[49] *Rewa Yadav* v. *State of C.G.,* 2016 SCC OnLine Chh 2264.

[50] *Jagta* v. *State of U.P*,2019 SCC OnLine All 4787.

The court acquitted the accused under the SC/ST Act,1989 , emphasizing the need to prove that the crime was committed specifically due to her caste.

In *S. Balaraman* v. *State*,[51] an illiterate minor girl was raped while grazing sheep. The court held that "*mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provision under Section 3(2)(v)."* In the case *Ramdas* v. *State of Maharashtra*,[52]the victim was alone at home and the accused along with two others had raped her. The Supreme Court acquitted the accused on the ground that the mere fact that the victim happened to be a girl belonging to a scheduled caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi community, there is no other evidence on record to prove any offence under the SC/ST Act,1989.

In *Asharfi* v. *The State of U.P.,*[53] the accused forcefully entered the house of the victim and raped her. The court acquitted the accused on the charges under the SC/ST Act,1989 by stating that the "*statute gives more importance to the intention of the accused in belittling persons belonging to SC and ST community*". In this case the court held that since no evidence was produced to show this crime was committed to humiliate members belonging to SC and ST community, the accused was acquitted under the Act.

In *Narayana* v. *State of Karnataka*,[54] a young girl of about 14 years belonging to SC community was kidnapped from the lawful authority of the parents and was forced to marry the accused and was raped by the accused. The court while acquitting the accused under the SC/ST Act,1989 held that, there was no evidence to show that the victim was exploited due to her scheduled caste status.

In *Nankun Naik* v. *State of Orissa*, [55]the accused who is a co-villager of the victim came to her house asked the victim to accompany him to visit the opera show with his younger daughter and further told her that he would bear the expenses of the ticket of the opera show. The simpleton victim believed the appellant and accompanied him on his cycle but on the way the accused raped her in the forest. The Trial Court acquitted the accused under the provision of the SC/ST, Act 1989 on the ground that "*neither the F.I.R nor the evidence revealed that the appellant ravished the victim because she belonged to scheduled caste*."

The caste hierarchy creates a structure of power and domination that enables men from upper-caste communities to exercise control over those belonging to lower-caste communities. Women from SC and ST communities face dual vulnerability to violence—both as women and as members of marginalized castes. The general lack of power of SC and ST women and the low status afforded to them and their families in society

[51] *S.Balaraman* v. *State,* 2009 SCC OnLine Mad 920.
[52] *Ramdas* v. *State of Maharashtra*, (2007) 2 SCC 170.
[53] *Asharfi* v. *The State of U.P.,* (2018) 1 SCC 742.
[54] *Narayana* v. *State of Karnataka,* 2014 SCC OnLine Kar 599.
[55] *Nankun Naik* v. *State of Orissa*, 2016 SCC OnLine Ori 217.

makes them particularly vulnerable to violence.

The rigid judicial interpretation demonstrated in these cases undermines the intersectional nature of the SC/ST Act, which was designed to protect those facing multiple layers of discrimination. The inherent caste hierarchy manifests in men from dominant castes feeling entitled to exercise power over marginalized women's bodies through domination. When adjudicating cases involving violence against SC and ST women, judges should consider these intersecting vulnerabilities rather than requiring explicit evidence of caste-based motivation.

4.2.2 Investigation Failure: Evidentiary failure in incorporating intersectionality**.**

The high rate of acquittals can also be attributed to the prosecution's failure to provide effective evidence in lower courts. This evidence may relate to either proving the elements of an offense or meeting procedural requirements. For example, Section 3(1)(xii) of the SC/ST Act, 1989[56]defines sexual exploitation as an atrocity when a person in a *'position to dominate'* the will of a woman from an SC or ST community uses that position for sexual exploitation. In three cases, the accused were acquitted because the prosecution failed to demonstrate this position of dominance.

In the case of *Nagaraja* v. *State of Karnataka*[57]the victim was assaulted by a group of men after she was returning from attending call of nature. The accused were charged with offences of kidnapping and sexual assault. The Trial Court convicted the accused under rape and Section 3(1)(xii) relating to sexual harassment. While acquitting the accused under all charges in the High Court. The court held that as per section 3(1)(xii), the prosecution has to prove the accused was in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually.

In *Ramnath* v. *State of Chhattisgarh*[58]the victim was a disabled lady who was daughter of laborer. The accused has multiple sexual intercourse with her and she became pregnant. Following this the trial court convicted him for rape under IPC and under SC/ST Act,1989. The High Court however, held acquitted the accused, the court held that,

" *it does not appear that the appellant was in a dominating position; rather the evidence of prosecutrix would show that she consented for commission of sexual intercourse twice. If a girl gives consent for repeated sexual intercourse upto a long duration, an offence under section 3(1)(xii) of the Act, 1989 could not be made out on the ground that the girl happened to be a member of Scheduled Caste or a Scheduled Tribe by chance because it was her own will for commission of sexual intercourse."*

[56] The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989).
[57] *Nagaraja v. State of Karnataka*,2020 SCC OnLine Kar 5066.
[58] *Ramnath v. State of Chhattisgarh*,2012 SCC OnLine Chh 297.

In *Yogesh* v. *State*[59] the accused had sexual relationship with victim on promise to marry but later due the caste of the victim refused to marry. The accused was acquitted as the sexual relationship was consensual. The court also notes that investigation by an officer empowered as per the law would be illegal and invalid. Further the court also notes that the accused was not in position to dominate as he was not financial independent or have a house and furthermore dependent on the victim for money.

While the SC/ST Act, 1989 was designed with an intersectional perspective, acknowledging that individuals can face discrimination based on multiple intersecting factors including caste and gender, the courts' interpretation of '*domination*' often applies a generic understanding applicable to all women, ignoring the specific context of SC and ST women. The domination in such cases inherently arises from caste hierarchy. Conventional understanding of domination through employment, financial relations, or other fiduciary relationships fails to address this reality. In the *Ramnath case,*[60] the court's interpretation of consent ignored the power structures within these relationships. Similarly, in the *Yogesh case*,[61] despite the victim's economic independence, she faced rejection solely due to her caste. These cases demonstrate how the caste system's inherent hierarchy creates unique power dynamics that courts often fail to recognize.

Procedural issues, particularly those related to caste certificates, have contributed significantly to acquittals. The case of *Kailas and Ors.* v. *State of Maharashtra* [62]illustrates this problem. In this case, a 25-year-old woman from the Bhil tribe (ST Community) was brutally assaulted and beaten with fists, kicked, stripped, and paraded naked through village streets while being abused. Though the trial court convicted the four accused under both the IPC and SC/ST Act, 1989, the High Court upheld only the IPC convictions. The SC/ST Act, 1989 convictions were set aside on technical grounds: the absence of a caste certificate and the fact that the investigation was not conducted by a Deputy Superintendent of Police as required. The Supreme Court strongly criticized this decision, noting that the public humiliation of a tribal woman in broad daylight was shameful, shocking, and outrageous. The Court emphasized that such dishonour warranted harsher punishment and expressed displeasure with the State Government for not appealing to enhance the punishment awarded by the Additional Sessions Judge. Another example is *Tribhuwan Kashyap* v. *State of M.P.*[63] where the accused sexually assaulted the victim while she was attending to nature's call near her house's fence . Although a caste certificate was provided showing the victim belonged to the 'Gond' community, the certificate failed to specify whether 'Gond' was classified as a Scheduled Caste or Scheduled Tribe. This technical omission led to the court's inability to establish the victim's SC/ST status.

In *Rewa Yadav v. State of C.G.*,[64] charges were framed on the premise that the victim was a minor. However, the exact age of the prosecutrix remained uncertain, and even she was unaware of her date of birth.

[59] *Yogesh v. State,* 2018 SCC OnLine Bom 21284.
[60] *Ramnath v. State of Chhattisgarh*,2012 SCC OnLine Chh 297.
[61] *Yogesh v. State*,2018 SCC OnLine Bom 21284.
[62] *Kailas and Ors.* v. *State of Maharashtra,* 2011 (1) SCC 793.
[63] *Tribhuwan Kashyap* v. *State of M.P.,* 2017 SCC OnLine Chh 986.
[64] *Rewa Yadav v. State of C.G.*, 2016 SCC OnLine Chh 2264.

Although the doctor recommended an X-ray examination for age determination, the Investigating Officer failed to conduct it, asserting that there was already sufficient evidence regarding her age. Nevertheless, no conclusive proof of minority was produced, which ultimately led to the acquittal of the accused.

Women from SC and ST communities are among India's most marginalized groups and often lack legal awareness, including knowledge of protective legislation. Courts should consider this context when analyzing evidence, rather than viewing technical requirements in isolation. Procedural issues like incomplete caste certificates should be evaluated within the broader social context of these women's backgrounds and the systemic barriers they face in accessing justice.

The procedural irregularities, both in gathering evidence to prove elements of offenses and in conducting investigations, should be examined through an intersectional lens. Courts must understand the nature of dominance and power exerted by those in higher positions of the caste hierarchy and the limited capacity of those below them to resist such dominance. Courts and investigating agencies should collect and present evidence based on this comprehensive understanding of social power dynamics.

4.2.3 Judicial Perspectives on the Alleged Misuse of the SC/ST Act, 1989

In a study conducted by the National Law School of India[65]on the performance of courts set up under the SC/ST Act, 1989, a survey of opinions of judicial officers was conducted regarding the misuse of the SC/ST Act, 1989. Many judges believed that the Act was being misused for settling personal rivalries. For instance in this study in two cases, *Sankar* v. *State,*[66] and *Mallappagari Sadasiva Reddy* v. *State of A.P*[67] the accused were convicted by the Trial Court for sexual assault. However, on appeal, the High Court observed that there were pre-existing disputes between the parties and concluded that the complaints were motivated by vengeance and ill will.

The Supreme Court also addressed concerns of misuse in *Dr. Subhash Kashinath Mahajan* v. *The State of Maharashtra &Anr.*[68] In this case, the Court held that there was widespread misuse of certain provisions of the Act, asserting that approximately one-fourth of the cases filed under it were based on false complaints. The Court further expressed apprehension that such legislation, if misapplied, could inadvertently perpetuate caste divisions rather than eliminate them.[69] The *Mahajan case* was concerning provisions relating to anticipatory bail, which was denied to individuals accused under the SC/ST Act, 1989. The court, in its judgment, allowed

[65]National Law School of India University, Centre for Study of Casteism, Communalism and Law, *Study on Performance of Special Courts Set Up Under the SC/ST (Prevention of Atrocities) Act, 1989* (2005) https://idsn.org accessed 7 February 2024.

[66] *Sankar* v. *State*,2017 SCC OnLine Mad 6852

[67] *Mallappagari Sadasiva Reddy* v. *State of A.P.,* 2021 SCC OnLine AP 112

[68]*Dr. Subhash Kashinath Mahajan* v. *The State of Maharashtra &Anr,*(2018) 6 SCC 454.

[69] S Fuchs, "The Myth of the False Case: What the New Indian Supreme Court Order on the SC/ST Act Gets Wrong About Caste-Based Violence and Legal Manipulation" (South Asia @ LSE, 10 April 2018) https://blogs.lse.ac.uk/southasia/2018/04/10/the-myth-of-the-false-case-what-the-new-indian-supreme-court-order-on-the-scst-act-gets-wrong-about-caste-based-violence-and-legal-manipulation/ accessed 15 September 2021.

anticipatory bail under certain conditions.

Subsequently, the Legislature intervened by overturning this decision through an amendment, introducing Section 18A to negate the findings in the Mahajan case. Section 18A clarified that the provisions of Section 438 of the Criminal Procedure Code 1973 (anticipatory bail) did not extend to the SC/ST Act, 1989. A further legal challenge arose in *Prathvi Raj Chauhan* v. *Union of India and Others*[70] where the amendment was contested. The Supreme Court, in this instance, upheld the amendment and clarified that anticipatory bail does not apply to the SC/ST Act,1989. Thus, concerns abou the mis-use of the SC/ST Act have led to attempts by the Apex court to introduce checks against the potential for mis-use. But these attempts have been rejected by Parliament through the passage of relevant amendments to the law due to concerns about inadvertent dilution of the provisions of SC/ST Act which would then result in the failure of the primary legislative intent of the law in safeguarding the interests of SC and ST communities in India.

4.2.4 Hope for Intersectionality: The Amendment Act of 2015

The legislature, attempting to ensure higher conviction rates under the SC/ST Act, 1989, introduced the Amendment Act, 2015, which made several key changes to the existing legislation. A significant addition was the presumption clause under Section 8, which states that if the accused is known to the victim or their family, they are presumed to be aware of the victim's caste or tribal identity. Furthermore, the phrase *'on the grounds of being SC and ST'* in Section 3(2)(v) was replaced with *'knowing the victim belongs to SC and ST community*,' shifting the focus from motive to awareness. In Section 3(1)(xii), the requirement to prove domination in sexual harassment cases was eliminated, requiring only proof that the accused knew the victim's SC and ST identity. These amendments aimed to prevent both police and judiciary from placing undue burden on complainants or prosecutors to establish that crimes were motivated by caste or tribal identity. To assess the impact of these amendments, recent judgments on offences against SC/ST women post-2016 were analysed.

In *Parvej Khan* v. *State of Maharashtra*[71], a six-year-old girl was sexually assaulted while walking home from school. The accused, posing as her father's friend, lured her with chocolate to an abandoned building. The court acquitted him under the SC/ST Act 1989, reasoning that 'there is no material to show that appellant previously knew that victim belongs to SC or ST. The victim was lured by a person, who was neither known to victim nor anybody. Therefore, the very essence of prior knowledge about category of victim was not known. Conversely, in *Rajachandrasekharan* v. *State of Kerala,*[72]where the accused assaulted his wife who belonged to the Scheduled Caste community, he was convicted under the Act because, as her husband, he had knowledge of her caste status.

[70]*Prathvi Raj Chauhan* v. *Union of India and Others,*2020 SCC Online SC 159.
[71]*Parvej Khan* v. *State of Maharashtra,* 2023 SCC OnLine Bom 2705.
[72] *Rajachandrasekharan* v. *State of Kerala,* 2024 SCC OnLine Ker 1273

While the amended provisions were applied in both cases, conviction occurred only where the accused was the victim's husband,an exceptional circumstance due to their relationship. In cases without such relationships, proving knowledge of caste identity remains challenging. Many women and young girls become vulnerable due to circumstances linked to their caste status, such as being forced to use toilets in the open at odd hours, or performing jobs and chores from a young age in unsafe work environments. For the legislation to be truly effective, judges must adopt an intersectional interpretation that recognizes these interconnected vulnerabilities. The legislation, intended to provide additional protection for SC and ST women, is not fully achieving its purpose, highlighting a significant gap between legislative intent and judicial implementation.

V.
Conclusion

In conclusion, this study reveals a significant gap in conviction rates under the SC/ST Act, 1989, particularly in cases involving women victims. The findings show that only 20% of cases - or one in five - result in convictions being upheld in the High Court. Although the SC/ST Act's language has been updated to reflect an intersectional understanding of discrimination, it remains crucial for the judiciary to apply this perspective in their interpretation of the law. The interpretation and application of the law demand discrete evidence for each ground of offence. Firstly, the prosecution must provide evidence to prove the commission of the offence. Secondly, it must provide additional evidence to show that the crime was committed on the ground that the victim belonged to the SC and ST community. This burden of proof creates significant challenges in securing convictions, as the intersectional nature of these crimes makes it difficult to separate causative factors.

In the *Patan Jamal Vali case*, the trial judge's conviction statement powerfully captured this understanding, noting that *'the accused would not have dared to commit the crime if the victim belonged to an upper-caste community, particularly in a village atmosphere*.' When adjudicating cases involving violence against SC and ST women, the judiciary should centre their analysis on a fundamental question: *'Would this atrocity have occurred if the victim had not belonged to an SC/ST community?'* The current single-dimensional approach to understanding caste violence and discrimination must be replaced with an intersectional framework that recognizes how multiple forms of vulnerability and discrimination intersect in cases of caste-based offenses.

Evidence evaluation must incorporate an intersectional perspective, encompassing both substantive laws and procedural matters. Concerns regarding the alleged mis-use of the SC/ST Act must not be used a vehicle to dilute the provisions of the law that would result in the failure of its legislative intent. Judges need to recognize that for SC and ST women, the experience of domination and practice of hegemony by upper-caste men exists independently of direct relationships such as employment, financial dependency, or familial ties. The caste system's inherent hierarchy creates built-in power dynamics and control mechanisms, making it redundant to

require explicit evidence of power imbalance. Procedural irregularities, such as improper caste certificates, further hinder the Act's effective implementation. To ensure greater accountability and avoid such technical hurdles during trials, the responsibility for verifying these documents should lie with the investigating officer. Additionally, standardized procedures must be established to maintain consistency across cases.

The judicial scrutiny of appeal cases can provide valuable insights into the reasons for acquittals. When appeals are made from the special courts, higher courts must carefully review these decisions. Particular attention should be paid to instances where convictions under the IPC are upheld but acquittals occur under the SC/ST Act, 1989. Appellate courts should thoroughly examine the reasons for such acquittals to identify potential errors or biases.

Implementing reforms in judicial interpretation and addressing procedural irregularities is crucial to enhancing the SC/ST Act, 1989's effectiveness. By adopting an intersectional framework and ensuring consistency in the legal process, the Act can better address the complex and overlapping layers of oppression faced by SC and ST individuals, particularly women. This approach will not only improve conviction rates but also strengthen the Act's capacity to deliver justice to the most vulnerable sections of society.

‘NEW SOCIAL CONTRACT’: THE NEED FOR A FAIR BARGAIN

Ayush Dubey*

Abstract

India’s digital economy has witnessed rapid growth, with gig and platform workers becoming integral to its functioning. However, these workers have remained outside the protections afforded by traditional labour laws. In this paper, I argue that, the role of ‘people’ has been central in the formation of a social contract and the idea of a welfare state, as seen in the evolution from ‘status to contract’, workers are losing the power of bargain.

With the application of the neoliberal economic model and globalisation, the nature of work has immensely transformed, which alters dynamic between state and workers, leading to a disconnect, both in terms of how the labour is ‘valued’ and the nature of protection offered by the state. Particularly, with the rise of app-based digital economy, the algorithms have become the drivers of the Newgen ‘independent’ workers who are controlled even more by the companies. They exist as liminal entities. Further, the fact that increased ‘platformisation’ has increased ‘organised informality’ isn’t much talked about. Such capitalist evolution of the economy undermines the true spirit of the social contract and welfare state.

From a general global south perspective, while critically analysing the state of the Indian legal system regarding the issue of social security of gig workers, this paper advocates for a reimagined ‘new social contract’ that ensures genuine social security benefits to build a sustainable cultural shift that accommodates resilient economy and upholds the ideals of a true welfare state.

Keywords*:* Social Contract; Gig Worker; Welfare State; Digital Economy; New Social Contract

I.

Introduction

Every morning, millions of delivery riders in our cities put on their helmets and set off on marathons to earn a living, yet they return home with no guarantee of a stable wage or basic health cover. They are expected to make instant deliveries and complete services on time but the movement of their rights remains slow.[1] This captures the paradox at the heart of India’s digital economy: rapid economic growth and convenient life style built on the backs of under-protected workers. The urge to discuss this issue struck me because of the controversial ‘Insta-maids’ services which was recently started.[2] No doubt, the digital economy and platform-based companies promise flexibility and new opportunities,

* Assistant Professor, NIMS University, Rajasthan.

[1] Yameena Zaidi, Indian gig economy in 2024: Faster delivery and slow movement of rights for ‘delivery partners’, *The Indian Express*, December 14, 2024 https://indianexpress.com/article/opinion/columns/india-gig-economy-2024-faster-delivery-slow-movement-rights-partners-9724584/ (Last accessed 12/05/2025 12:00 PM).

[2] Swastika Das Sharma, Urban Company launches 15-minute ‘Insta Maids’: Price, cities, offers; ‘expected better’, say netizens, *Mint*, 15 Mar 2025 https://www.livemint.com/companies/news/urban-company-launches-15-minute-insta-maids-price-cities-offers-expected-better-say-netizens-11742022292744.html (Last accessed 12/05/2025 1:00 PM).

but they silently create a new underclass work which is one type of non-standard work facilitated through technology and digital markets, on-demand that also lies outside the reach of the traditional welfare state.[3]

This paper critically examines the evolving relationship between labour, law, and technology, focusing on the lived realities of platform-based gig work from a Global South perspective. The broader aim of the paper is to explore how platform-based work disrupts the classical understanding of employment, and to explore the legal and normative responses it calls for. The core argument advanced here is that current regulatory frameworks, both at the domestic and international levels, are not inclusive of the evolving nature of gig work. The central idea is a call for renegotiating the social contract to reflect contemporary realities by reimagining the role of the state, market, and workers in ensuring dignity, security, and fairness in the digital age. While the paper primarily deals with legal and policy discourse in India, it uses comparative insights from some jurisdictions. Instead, it situates its contribution in proposing a rights-based, context-sensitive approach to platform labour regulation that balances operational flexibility with substantive protections.

This paper seeks to answer two pressing questions. First, how have classical social-contract and the concept of welfare state evolved with 'people' at its focus. And how, have neoliberalism and globalisation left the idea of social contract redundant. Second, how well is the Indian legal system placed to accommodate the new age challenges posed by gig economy?

While the informal economy is a broad field of study, this paper focuses only on the platform-based application, which forms an important part of the larger gig and informal economy. Further, the paper focuses on the normative aspect of social security in the era of neoliberalism and globalisation. In the conclusion, the paper proposes a reimagination of the existing social contract and development of a 'new social contract' which has human rights of labour at the heart and which allows 'multiple entry points' to secure social security for the platform-based gig workers. The purpose of such a reimagination is twofold: to change the approach in which the labour is valued and the way law accommodates new & emerging labour issues in the socio-legal discourse.

1.1 Understanding the evolution

The aim of this part of the paper is to develop a fair understanding of the idea, concept and evolution of social contract and welfare state. It would be realised as the paper progresses that the human element or the 'people' occupy a central position in the evolution talked about. Understanding the evolution of the social contract is crucial for analyzing the development of modern governance

[3] International Labour Office, '*Organising on demand: representation, voice and collective bargaining in the gig economy'* (2019).

structures, particularly the welfare state. The transition from divine authority to democratic consent underscores the growing emphasis on individual rights and the role of the state in safeguarding these rights. This historical perspective provides a foundation for examining how labor movements and socio-economic changes have influenced the formation and transformation of the welfare state, aligning with the central theme of your research.

1.2 The Evolution of the Social Contract: From Divine Authority to Democratic Consent

In our ancient societies, governance was justified in the name of tradition and divine sanction. In the medieval period, the form changed but the substance remained the same as the kings began to govern by claiming 'divine rights'. Hence, a hierarchy was maintained where the king had all the powers and the 'subjects' were expected to obey what was asked. Resultantly, the mutual agreement between ruler and the ruled was missing.

The Enlightenment era is the time that marked a significant shift in political thought and many changes followed. There were talks about legitimacy and consent. Now, various philosophers began to emphasize on individual rights and freedoms to argue that political authority should derive from the consent of the governed.

Thomas Hobbes in Leviathan[4] depicted the state of nature as a chaotic and violent condition, where life was "solitary, poor, nasty, brutish, and short" and in order to escape this, individuals collectively agree to surrender their freedoms to an absolute sovereign who would ensure peace and security for everyone. Hobbes's social contract philosophy represents a break from the ancient and medieval belief that humanity was naturally social. Further, John Locke's 'Two Treatises of Government'[5] (1689) presented that individual consented to form governments to protect their natural rights pertaining to life, liberty, and property. His theory also pointed that the authorities could be overthrown if they fail to uphold these rights. Advancing further, Jean-Jacques Rousseau in 'The Social Contract'[6] (1762), introduced the concept of the 'general will,' where 'law' was the expression of people's will. The idea of collective sovereignty was also introduced.

It was in the 19th century that British jurist Sir Henry Maine laid the seed of the idea that societies evolve "from status to contract." The underlying meaning being 'in early societies, individuals' roles and obligations were determined by their birth and people had little or no choice in shaping their destinies. However, as societies progressed, a shift was observed towards recognising individuals as autonomous agents who can make their own choices. Relationships and obligations became based on voluntary agreements or contracts. This transition marked a move towards 'personal freedom' and recognition of individual as an important entity, who belongs to the social setup but has unique

[4] Thomas Hobbes. *Leviathan* (Oxford University Press, 2008).
[5] John Locke, *Two treatises of government* (Phoenix, 1993).
[6] Jean Jacques Rousseau, The Social Contract (Paris, France, 1762).

individual existence as well. The concept of the social contract has been central to political philosophies and have evolved over time. This evolution reflects the evolving dynamics between the governed and the governing authority.

1.3 The Idea of the Welfare State

The idea of the social contract is a foundational pillar in political philosophy and our existence. As discussed earlier, the social contract offers a philosophical justification for the state's existence. The idea or the concept of welfare state gives that contract tangible form. It can be described as a promise by the state towards its people about a comprehensive array of commitments including healthcare, public education, pensions, unemployment support etc. The welfare state, in this sense, is the living social contract. It reflects not just a promise of political representation, but of social well-being and dignified existence. It can be imagined as actual shift from status to contract, guided and realised by state.

As observed across history, the concept of welfare state has been a result of the reaslisation that 'the existing state of affairs may raise questions about the legitimacy of the state itself and therefore the state needs to deliver better'. And with series of wars followed by economic crises, the idea of welfare state got consolidated. The Great Depression during 1930s led to a widespread acceptance of welfare policies. While the states were fighting for their interests, which did not relate to people directly, the collapse of markets exposed the vulnerabilities of capitalism. As a consequence, for example, in the United States, Franklin D. Roosevelt's New Deal introduced job programs, public works, and social security. Meanwhile, in Britain, the Beveridge Report of 1942[7] laid out an plan to fight "Want, Disease, Ignorance, Squalor, and Idleness," laying the groundwork for post-war welfare reforms. Now, social welfare was seen not as charity, but as a matter of right, something which the state owed to citizens as a part of the social contract and obligation. Similarly, In the Indian constitution, the idea of welfare state was enshrined not just in the text but in spirit as well, in the form of part IV of the constitution of India, which talks about principles which the state must follow for achieving welfare state ideals.

1.4 Labour as the Fulcrum of the Social Contract and the Welfare State

While the social contract and welfare state more often than not framed in terms of rights and state legitimacy, this paper focuses on the understanding of these concepts from the lens of labourers or workers. The states realised that the role of individual dignity is important and the state could function economically and as a result politically is when collective strength of the working class is given due importance. As discussed earlier, the idea of welfare state was not a result of morality of the sovereign

[7] Social Insurance and Allied Services (Beveridge Report), *UK Parliament* https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/coll-9-health1/coll-9-health/ (last accessed 13/05/2025 10:00 PM).

but a pragmatic call of recognition. The New Deal in the United States, the Beveridge Report in Britain, placed labour at the centre of state obligations, offering employment guarantees, social insurance, pensions, and protections from market volatility. It reflected a deeper political truth: a state that extracts labour must also provide care. The evolution from status to contract aimed at including the recognition of workers not merely as economic actors but as citizens entitled to security, dignity, and voice.

1.5 Impact of Neoliberal, Globalised and Digital Economy on labour

Change is the only constant and policies need to make friends with time. In the late 1970s and 1980s, economic stagnation, inflation, and growing public debts led to a change in the approach of economic policy making which had repercussions. The change talked about here is 'neoliberalism' which involves reducing the role of state via deregulation, privatisation. As a consequence, the fundamentals of the social contract itself were reshaped with change in the role of state. Coupled with globalisation and advancement of technology, a major revamp is currently experienced in terms of relationship between state and labour as the grounds upon which the social contract and the welfare state model were built, stand altered. Long-term employment, predictable careers, and industrial labour have become redundant, and the world is moving fast. The kinds of services have changed and so has the demand of delivery. The rise of gig work, platform-based jobs, and remote freelancing challenges traditional systems of labour protection. As a result, although the gig workers are fundamental to the service industry and visible in the eyes of law, fall outside the purview of social security benefits.

The workers in the present day globalised digital economy, however, suffer from a new set of challenges. The platform-based gig worker finds himself in a *liminal position*, i.e., they are neither here nor there. Their behaviour is dependent on their 'instructors' and they accept arbitrary punishments without complaint.[8] In addition to this, they are *experiencing structural degradation of labour, digitally organised informality, algorithmic exploitation and platformisation*. All this challenges the erstwhile state-worker relationship dynamic and call for a renewed social contract that has fairness and equity in operations.

Braverman takes the argument further that the means to prevent workers from gaining control of the labour process is the dissociation between conception and execution, or between intellectual and manual labour. It is this dissociation that has resulted in the *deskilling of the worker*, in a context where labour is progressively reduced to the performance of simplified and routine tasks, increasingly specialised and without content.[9] That's how degradation of workers happens.[10] When we analyse

[8] Victor Turner, "The Ritual Process: Structure and Anti-Structure" 94-113, 125-30 (Aldine Publishing, Chicago 1969).

[9] Fabiane Santana Previtali, & Cílson César Fagiani, "Deskilling and degradation of labour in contemporary capitalism: the continuing relevance of Braverman" 9(1) Work Organisation, Labour & Globalisation 76–91 (2015).

[10] Every step in the labor process is divorced, so far as possible, from special knowledge and training and reduced to simple

education workers, we can argue that they are also subject to a process of *'proletarianization'*, because their work, through the rationalisation imposed by capital, is increasingly portrayed as manual rather than intellectual. Here too, there is a deskilling of labour and a flattening of wage levels, increasingly leading to the devaluation of teaching work, both symbolically and materially.[11]

Organised informality is witnessing a renewed expression via digital means in the big market of global South due to the emergence of the app-based platforms. The platforms are algorithmically aggregating millions of individual service providers as 'independent contractors', while actively avoiding labour regulations that oblige them to accord workers with formal employee status and associated legal protections.[12] Built into gig labour are the same neoliberal entrepreneurial logics of flexibility and autonomy, where workers are encouraged by platform companies to work in their own time utilising their own private resources (for e.g. own vehicles or equipment), without the security and benefits associated with those in formal and organised occupations.[13] It has become more clear that regardless of the campaigns run by major platform companies to frame this kind of work as casual, part-time or an 'additional' income source; in reality app-based ride-sharing and food-delivery services now attract a large number of socially and economically marginalised workers who do this work full time and as their main or only source of income, especially in the global South.[14] These new services roles are instituted by organised private sector firms which hire workers on flexible contracts through third-party recruiters. This way, firms avoid taking on the 'principal employer' status and hence responsibility of providing workers with employment security and related social benefits. This model of 'hyper-outsourcing' through large scale sub-contracting of casualised workers by modern corporations has been referred to as the new regime of *'organised informality'* in India which further extends neoliberal forms of economic and labour governance in the global South.[15] In that context, Ravi Srivastava observes that informal employment is simply a route for achieving labour flexibility[16], for the employers.

---

labor. Meanwhile, the relatively few persons for whom special knowledge and training are reserved are freed so far as possible from the obligations of simple labor. In this way, a structure is given to all labor processes that at its extremes polarizes those whose time is infinitely valuable and those whose time is worth almost nothing.

[11] *Id.* at 9.

[12] Shephali Bhat, Humans of the gig economy: The cultural transformation of the delivery agent, *The economic times,* Jan 05 2020 https://economictimes.indiatimes.com/industry/services/retail/humans-of-gig-economy-the-cultural-transformation-of-the-delivery agent/articleshow/73100994.cms?from=mdr (Last accessed 13/05/2025, 11:00 AM).

[13] Aditya Ray, "Coping with crisis and precarity in the gig economy: 'Digitally organised informality', migration and socio-spatial networks among platform drivers in India" 56(4) Environment and Planning A 227-1244 (2024).

[14] *Supra* note 13 at 7.

[15] Saraswati Raju & Santosh Jatrana (eds.), Women workers in urban India 121-138, (Cambridge University Press, Delhi, First edition, 2016).

[16] Ravi Srivastava, "Emerging Dynamics of Labour Market Inequality in India: Migration, Informality, Segmentation and Social Discrimination" 62 Indian Journal of Labour Economics, 147–171 (2019).

Another alarming concern is that of *'Platformisation'*[17] and *'Algorithmic Control'*. While online platform-based application democratise access to new kinds of employment or service opportunities, the algorithmic control reinforces insecurities and vulnerabilities. The growth of online labour platforms in low- and middle-income countries has been seen as enabling a new wave of online outsourcing, entailing employment growth and poverty reduction. Yet little is known about the job quality of the new opportunities being created.[18] In the gig economy it has been argued that a particularly important form of digital control is the 'algorithmic management' entailed by platform-based rating and reputation systems. Algorithmic management is an extension of 'customer management' strategies, which entails positioning customers 'as agents in the management circuit', so that 'customers, rather than managers, are the ones who must be pleased, whose orders must be followed, whose ideas, whims and desires appear to dictate how work is performed'. [19]

Recent studies have come to scrutinise this double-edged nature of algorithmic exploitation in the gig economy that promises better incomes, autonomy and flexibility to marginalised workers, yet continues to expose them to similarly high levels of precarity common in the wider informal sector.[20]

In our daily discussions and routines, we often overlook the underlying layered complexities of platform-based gig workers. While we expect them to deliver our icecreams instantly without it melting, we don't bother the fact that they have been systemically rendered super busy with no capacity to negotiate with the state. And amid all this, the relevance of social contract and welfare state seem to be lost while the platform based gig workers experience precarity even as new livelihood pathways are opened, they continue to reinforce older informal relations and hierarchies.[21]

If the social contract and the conception of a welfare state is to remain meaningful, it must evolve. Economist Minouche Shafik emphasizes the need for a 'New Social Contract' that addresses the current set of challenges including economic inequality, job insecurity, and access to education and healthcare. She advocates for a system where everyone has opportunities and support throughout their lives, reflecting the principles of mutual obligation and shared responsibility.[22] From the point of view of workers, the 'New Social Contract' would mean fair wages, safe working conditions, and access to social protections. It casts the net wide and acknowledges that while individuals have the freedom to choose their employment, there is also a collective responsibility to ensure that all members of society

[17] Thomas Poell, David Nieborg & Jose van Dijck, "Platformisation" 8(4) Internet Policy Review, 2019.
[18] Alex J. Wood, Mark Graham, Isis Hjorth (2018). "Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy", 33 (1) Work, Employment and Society, 33(1), 56-75 (2018).
[19] Alex J. Wood, Mark Graham, Isis Hjorth (2018). "Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy", 33 (1) Work, Employment and Society, 33(1), 56-75 (2018).
[20] Mohammad Amir Anwar & Mark Graham, "Between a rock and a hard place: Freedom, flexibility, precarity and vulnerability in the gig economy in Africa" 25(2), Competition & Change 237-258 (2020).
[21] *Id.* at 13.
[22] Minouch Shafik, What we Owe each other, IMF April 2021 https://www.imf.org/external/pubs/ft/fandd/2021/04/what-we-owe-each-other-book-minouche-shafik.htm?utm_source=chatgpt.com (Accessed 13/05/2025 10:00 AM).

can work with dignity and security.[23] ***However, now the question is: Is our legal system placed well to realise the ideal of a 'New Social Contract'?***

II.

Analysis of the Indian legal system

In this section of the paper, I want to argue that if the social contract is to remain relevant and meaningful, it must evolve. Before discovering the particular legal vacuum and discussion on the state of legal system, we need to understand that law is nothing but codified common sense, rather, a reflection of the 'social', and with the change in the 'social', the legal must change as well. Earlier, the work was simpler, and so were contracts, workplaces and hierarchies were defined. However, with the modernisation of machines, interconnections of economies and technological advancement, we are experiencing a totally changed employment scenario in terms of quick commerce, instant deliveries, tough competition, changed employer employee relationships, and as a consequence, changed state-labour dynamics. Today, algorithm is the driver of the digital economy and that is unregulated, devoid of emotion quotient.

A sociological understanding of the scenario suggests that this shift is not merely technological but structural one because it is a reflection of change as to how labour is produced, valued, and controlled. In other words, we see gig workers as 'modern, task oriented and efficient' workers and as 'free agents or independent contractors', but their daily routines are controlled by algorithms, incentives, and customer reviews. Getting fired for not being able to pack a parcel in 40 seconds couldn't cross our imagination earlier, but it has become a reality. These gig workers are made so busy by this hidden force which underlies the digital economy. As a result, these workers have lost control of their autonomy, time and value. So, in short, as a result, a new underclass of labour has emerged, although essential to the economy but placed outside safety nets of the social contract and law. Therefore, the rapid pace of technological change poses challenges for regulation and policy. Governments often struggle to keep up with the innovations in the informal sector, leading to gaps in protection and oversight.

An anthropological perspective sharpens this view by asking us to consider how people make sense of their work. In India, where work is not just about income, but dignity and community standing as well, the everyday experience of platform-based gig workers in terms of the nature of duties, deadlines, penalties, unpredictable working hours and working conditions, 'expensive leaves'[24] or no leaves at all,

[23] *Ibid.*

[24] Personal experience: While I was travelling in a private app-based cab service, during a short conversation with the driver, I felt as deeply bad as much I was shocked to know that the terms of employment allowed imposing penalty on drivers if they take emergency leaves without due approval. The question came to my mind: what is then the meaning of emergency? The drivers have to pay for the emergency they experience? Forget about their social security, don't they have human rights at all?

lack of legal remedies and grievance redressal, has made them very vulnerable. They find themselves in a liminal position, i.e., neither fully employed nor truly independent and neither able to negotiate their terms of employment nor covered by the 'social contract'.

One of the questions that globalisation has thrown into sharp relief is the function of labour law and its effect on economic development. Many of those calling for reform and flexibility in the labour law have based their argument on the adverse effects that rigid labour laws have on economic development[25]

It is in this context that we need to analyse the state of the Indian legal system as to how well it is placed to deal with the evolving needs of platform-based gig workers and does it have a fair bargain for them.

2.1 India's Legal Framework for Gig Workers

2.1.1 Constitutional Protections and Labour Relations

Gig workers in India invoke broad constitutional rights, equality Art. 14[26], dignity and life Art. 21[27], and freedoms to livelihood to claim protection. Labour scholars note that under Indian law, the Supreme Court's classic test of employment focuses on who controls hiring, firing and working conditions. By that test, many gig contracts – with platforms controlling pay, routes and terms – resemble employment. Yet no statute currently treats them as workers. Excluding gig workers from labour definitions effectively denies them the "just and humane conditions of work" protected by the Constitution.

2.2 Labour Codes and Social Security Code 2020

India's four new labour codes (2019–20) reshape labour law but provide limited new rights for gig workers. The Social Security code[28] is relevant for our discussion as for the first time, an Indian legislation has defined 'gig workers' and 'platform workers'. It doesn't just define but contemplates schemes for their welfare, actually, it just touches on the welfare aspect. Under Section 2(35)[29] a 'gig worker' means one who earns by work outside a traditional employer-employee relationship; Section 2(61)[30] defines a 'platform worker' as someone performing platform work via an online intermediary.

[25] Kamala Sankaran, "Labour laws in South Asia: the need for an inclusive approach", Ill. International institute for labour studies- International Labour Organisation 2007.
[26] The Constitution of India, art. 14.
[27] The Constitution of India, art. 21.

[28] The Code on Social Security, 2020 (The Act 36 of 2020).
[29] The Code on Social Security, 2020 (The Act 36 of 2020), S 2(35).
[30] The Code on Social Security, 2020 (The Act 36 of 2020), S 2(61).

Chapter IX[31] mandates that unorganised, gig and platform workers register in a national database, e-Shram portal[32] to access benefits. Registered gig/platform workers alone are eligible for schemes framed under the Code.

However, implementation has lagged. Many Code provisions (including gig-worker schemes) await notification, and the new Industrial Relations[33], Wages Code[34] do not explicitly cover gig workers. Rajasthan has passed a state law "Platform Based Gig Workers (Registration and Welfare) Act, 2023[35]" recognizing gig couriers and requiring their registration. Absent statutory coverage, gig workers are not treated as "employees" or "workmen" under the Industrial Disputes Act, nor are they automatically covered by ESI or EPF, which apply only to formal sector employees. Thus, the law currently grants them uncertain status or keeps them as liminal entities: they are neither protected by classic labour rights (wages, collective bargaining, provident fund) nor fully outside the state's concern. The lack of clear regulatory frameworks can hinder the sector's development and contribute to market inefficiencies.[36]

2.3 Access to Social Security and Schemes

In practice, most gig workers have little social protection today. They do not receive pensions, provident fund or workers' compensation from platforms. The government has built the e-Shram portal[37] for unorganised and platform workers: this voluntary registry is meant to link workers to 12 welfare schemes including accident and life insurance, health coverage under Ayushman Bharat, housing support, etc.[38] Meanwhile, the IFAT case[39] continues: on 18 Feb 2025 the Supreme Court reprimanded the government for delay in implementing promised social security measures. What appears to be shocking is that the issues which must be resolved via debate dialogue and discussions on the floor of parliament, are being discussed via petitions. Moreover, the main claim of the applicants is that the app-based platform workers be included in the category of 'unorganised' workers under the social security Act[40]. Reason? The government is mandated to devise schemes for the social security of unorganised workers. However, as far as the new social security code is considered, gig

[31] The Code on Social Security, 2020 (The Act 36 of 2020), CH. IX.
[32] https://eshram.gov.in/indexmain (Last accessed 11/05/2025 10:00 AM).
[33] The Code on Industrial Relations, 2020 (The Act 35 of 2020).
[34] THE CODE ON WAGES, 2019 (THE ACT NO. 29 OF 2019).
[35] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (The Act 29 of 2023)
[36] Abdul Malek, "Gig Economy: Is It a Trap or Stepping Stone for the Informal Sector?". 16(3S(I)a Information Management and Business Review, 28-38 (2024).
[37] https://eshram.gov.in/indexmain (Last accessed 11/05/2025 10:00 AM).
[38] In late 2024 the Labour Ministry told the Supreme Court that platform workers can register on e-Shram to access these benefits. It even advised companies (Ola, Swiggy, etc.) to encourage their workers to sign up. But uptake has been slow and benefits remain limited; registration itself does not guarantee employer-funded coverage or enforceable entitlements.
[39] The Indian Federation of App Based Transport Workers (IFAT) v Union of India, WP (C) 1068/2021.
[40] THE UNORGANISED WORKERS' SOCIAL SECURITY ACT, 2008 ACT NO. 33 OF 2008.

workers are considered, section 114[41] of the code uses the word 'may' thereby reducing the social security of the gig workers to the wish of the government. This is what earlier discussed in the paper as structural non-recognition by the legal system. In summary, India's current framework *recognizes* gig workers in theory but has yet to translate this into concrete coverage. Gig workers remain in a legal grey zone: counted as "unorganised sector" for welfare only if they register, and with no binding guarantee of employer contribution or minimum protections. The state's inaction or regulatory neglect is not merely accidental, but it's a part of the broader neoliberal orientation where the state is giving precedence to the expansion of services over the redistribution of benefits.[42]

2.4 Comparative Perspectives: US, UK, EU (Portugal)

United States

U.S. labour law has no uniform gig-economy category. Instead, workers are classified either as "employees" (covered by minimum wage, overtime, unemployment insurance, etc.) or as independent contractors. Federal law (FLSA) uses an "economic realities" multi-factor test to decide status. In practice, major platforms like Uber, Lyft, DoorDash, etc. label drivers and couriers as independent contractors, arguing they run their own businesses. Several states have moved to tighten this. California's AB5[43] codified the state Supreme Court's "ABC" test from *Dynamex* case[44]: a worker is presumed an employee unless the company proves (A) freedom from control, (B) work outside the usual business, and (C) independent trade. AB5 briefly meant app drivers would be employees, but gig firms propelled **Proposition 22 (2020)**[45], a ballot measure exempting app-based drivers as employees. In July 2024 the California Supreme Court unanimously upheld Prop 22, allowing Uber/Lyft drivers to remain contractors. Thus, in the U.S. the balance has largely favoured contractor status. Gig workers are generally ineligible for unemployment benefits or paid leave, and must pay self-employment taxes for Social Security/Medicare (no employer contributions). In short, the U.S. approach relies on broad contractor exemptions, leaving gig workers with few mandated protections.

United Kingdom

UK law recognizes a middle "worker" category between employee and self-employed that entitles individuals to minimum wage, holidays, and other rights. In *Uber BV v. Aslam*[46], the Court held that Uber drivers were "workers" despite contracts calling them 'partners'. The drivers were thus entitled

[41] The Code on Social Security, 2020 (The Act 36 of 2020), S 2(61).
[42] Jan Breman, Footloose Labour: Working in India's Informal Economy 182, (Cambridge University Press, Cambridge, 1996).
[43] How Assembly Bill 5 (AB5) Affects Independent Contractors in 2022, hacklerflynnlaw, https://hacklerflynnlaw.com/how-assembly-bill-5-ab5-will-affect-independent-contractors/ (Last accessed 07/05/2025).
[44] Dynamex Operations West, Inc. v. Superior Court of Los Angeles County, Ct.App. 2/7 B249546.
[45] https://ballotpedia.org/California_Proposition_22,_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_(2020) (last accessed 07/05/2025 11:20 AM)
[46] Uber BV v. Aslam UKSC/2019/0029.

to national minimum wage and paid leave. The test focused on factors like *'personal service'* and *'control'* exercised by Uber. This was a landmark expansion of rights for platform drivers. However, in another key case the UK Supreme Court in Deliveroo riders case[47] ruled in Nov 2023 that Deliveroo riders were not "workers" for collective bargaining rights. The Court based this on the riders' *'right to substitute someone else if unavailable'* – an aspect absent in *Uber*. Thus, UK jurisprudence is divided where one leading case granted worker status, while the other upheld contractor status. Meanwhile, UK gig workers enjoy the UK's public health system, but gain no auto-enrolment pension or unemployment pay unless classified as employees. Its also relevant to mention the positive union culture there, open to all unions like the Independent workers' of great Britain.

European Union

The EU is moving to establish gig-economy regulations at the continental level. A new **Platform Work Directive** was agreed in Oct 2024[48] which introduces several protections for platform workers. Notably, it mandates algorithmic transparency i.e., platforms must explain and allow appeals of automated decisions and creates a *rebuttable presumption of employment* wherever significant control or direction by the platform is shown. In other words, if a platform sets workers' pay, routes or hours, member states must presume an employment relationship unless proven otherwise.

Portugal has been a frontrunner. The labour code[49] also popularly known as 'decent work agenda' creates a favourable presumption that digital platform workers would be assumed to be employees whenever there is evidence of a service relationship between worker, platform and customer. Platforms are thus compelled to offer formal contracts and benefits. The law also requires algorithmic transparency: platforms must disclose to the labour inspectorate (and to workers/unions) the AI criteria governing work allocation and performance. Also, Spain's riders' law[50] also presumes employment when working conditions are controlled and determined by the digital platform.

In sum, the EU models shift the burden onto platforms to prove genuine contractor status, and simultaneously seek to regulate platform management. Further, as ILO points out, the sectoral collective bargaining offers a sustainable way ahead, particularly in the context that these jurisdictions generally have stronger social systems: even contractors in Europe may access national health care and (in many countries) social insurance, but classification as employees typically means additional rights (unemployment benefits, collective bargaining). Portugal's approach which combines legal presumption with mandatory social contributions, stands in stark contrast to the U.S. laissez-faire model.

---

[47] Independent Workers Union of Great Britain v. Central Arbitration Committee UKSC/2021/0155.
[48] https://eur-lex.europa.eu/eli/dir/2024/2831/oj/eng (Last accessed 08/05/2025 9:00 AM).
[49] The Portuguese Labour code, (The act 13/2023).
[50] Royal Decree-Law 9/2021 (RDL 9/2021).

III.

Conclusion: Towards a New Social Contract

Rapid digitalisation has led to disruption in the labour market[51] and the rise of platform-based gig work has fundamentally restructured the world of labour and revealed the mismatch in the traditional understanding of employment, state responsibility of welfare and social security. It's a fact that platform-based work is going to further shoot up, I argue in favour of having multiple perspectives and looking at different practices to have an enabling working environment which can help ensure that the use of digital platforms is not at the expense of good jobs and decent working conditions.[52]

As they find themselves in the state of liminality[53], at least we can start with treating them humanely. Broembsen advocates that labour rights must be embraced as human rights[54] and argues for a 'rights-based approach' for the 'new working class' which would enable dignified livelihood. Kamala Sankaran echoes the same and calls for laws which provide for humane and decent working conditions for labours, which is context sensitive, inclusive and doesn't rely on one size fits all approach.[55]The interface between human rights and business is perhaps as old as the notions of 'business' and 'rights. Surya Deva strongly argues that corporations have responsibilities beyond their shareholders, and it's not about business or human rights, but 'business and human rights'[56] and implies impact beyond economic arrangements, addressing the larger issue of fairness, justice while following the social contract. It holds even greater relevance in the global south, where the stakes and vulnerabilities are higher. The current scenario calls for the accommodation of platform-based gig workers, not just by way of a new legal approach but also a social and philosophical reconstruction of the 'social contract' between the state, market, and workers at the centre of it. And

The gig economy which is praised for its flexibility, efficiency and innovation, conceals a reality which is visible but often ignored. Platform workers operate in conditions marked by *precarity and lack of social protections* from the state and the market as well. While the promise of autonomy

[51] OLA mobility institute, "Unlocking jobs in the platform economy" (2021).

[52] International Labour Office, "Organising on demand: representation, voice and collective bargaining in the gig economy" (2019).

[53] Harry Wels, Kees van der Waal, Andrew Spiegel & Frans Kamsteeg,"Victor Turner and liminality": 34(1&2) Anthropology Southern Africa (2011).

[54] Marlese Von Broembsen, "Collective Bargaining for the 'New' Working Class: Putting Personal Work Relations to Work for Street Vendors", Industrial Law Journal, 2025.

[55] Kamala Sankaran, "Labour laws in South Asia: the need for an inclusive approach" , Ill. International institute for labour studies- International Labour Organisation 2007.

[56] Surya Deva, "From "business or human rights" to "business and human rights": What next?" (March 2020). in Surya Deva and David Birchall (eds.), Research Handbook on Human Rights and Business 1-21 (Edward Elgar, Cheltenham, 2020).

appeals on the surface, many workers are left without the security of traditional employment benefits such as health insurance, pensions, or job security. This dual failure has contributed to the rise of precarious work and the expansion of informal labour, a challenge that demands urgent attention.[57] Therefore, it needs to be emphasized again that, in global south where the society is complex and diverse, the market is competitive, the call to relook at the labour regulations must be attended urgently.[58] Aditya Ray calls for pursuing a broader research agenda that transcends beyond concerns of platform regulation and labour organisation in the global gig economy to more context sensitive understanding of workers' experiences in the global south, which lies at the intersection of digitally organised informality, migration and social reproduction of the gig economy.[59]

For many, meaningful protection may include asset security, climate resilience, or skills development—forms of support often neglected in formal systems. A nuanced approach that adapts to sector-specific needs, while aiming for universality in access and dignity, is necessary. As discussed, the current legislative framework in India, the Code on Social Security 2020[60], mark a step in recognising gig workers but fall short in mandating employer, state contributions which reduces social protection to just form rather than substance.[61] Therefore, it is suggested that, while ILO adopted recommendation number 204[62], moving beyond extending the social security coverage as the key vehicle for formalisation and that there could be various entry points through which law and policy can improve condition of work and contribute towards formalization.[63] Moving beyond the 'state-centric' framework and allowing civil society organisations to occupy a more central role in regulating the behaviour of companies rather than operating from the periphery.[64] Within UK, the Independent workers union of great Britain (IWGB) provides good example of union formation for gig workers, which is open for all to join.[65]

Moreover, the traditional binary view of the state, market and labour needs to make way for a nuanced

[57] Ankita Das, "Unravelling the Socio-Economic Dynamics of the Gig Economy in India: A Multifaceted Analysis", International Journal for Multidisciplinary Research (2024).
[58] *Id.* at 55.
[59] Aditya Ray (2024). 'Coping with crisis and precarity in the gig economy: 'Digitally organised informality', migration and socio-spatial networks among platform drivers in India' Vol 56(4) Environment and Planning A, Page 1227-12 44. (2024).
[60] The code on Social Security, 2020 (Act 36 of 2020).
[61] Kamla Sankaran, "Transition from the Informal to the Formal Economy: The Need for a Multi-faceted Approach" (2022). Articles. 21.
https://repository.nls.ac.in/nls_articles/21
[62] International Labour Organisation, R204 - Transition from the Informal to the Formal Economy Recommendation, 2015.
[63] *Id.* at 61.
https://repository.nls.ac.in/nls_articles/21
[64] Surya Deva, "Business and Human Rights: Time to move beyond the 'present'", in: Business and Human Rights: Beyond the End of the Beginning, ed. (Cesar A. Rodriguez-Garavito), (Cambridge University Press, UK, 2018).
[65] https://iwgb.org.uk/en/ (last accessed 12/05/2025, 2:00 PM).

understanding how these entities actually interact. [66] In other words, she points out that state paternalism, is not the way forward but a new, fresh and an inclusive negotiation of a new social contract is. At the core of this renegotiation lies the question of *worker classification* as it determines a worker's access to legal protection.[67] The current legal discourse deals with the crisis as 'employee' v. 'independent contractor' and hence fail to capture the evolving nature of platform-based gig work. Studies show that creating an intermediate category such as 'dependent contractor'[68] can expand protections while maintaining operational flexibility.[69] Canada has tried exploring this way to bring more workers under the labour protection ambit. The International labour organisation also endorses that 'on-demand' labours be categorised as workers.[70]

Simultaneously, labour law must embrace a right to development perspective. This means recognising that all individuals have a right to improve their capabilities and that social protection must be both protective and promotional.[71] This perspective aligns with the ILO's 1998[72] and 2008[73] Declarations and affirms the role of law not merely as a tool of economic management but as an instrument of social justice.[74] The need for the social security benefits varies across sections of informal economy. Asset security, security against natural disasters and the ability to upgrade one's skills may be more meaningful aspects while designing a social security scheme for the informal economy.[75]

ILO observes that revitalisation of collective bargaining as a democratic tool will lead to achievements that are lasting and in the interest of all the parties and sectoral bargaining is an effective approach as showcased by Sweden and Austria.[76]

The platform-based work holds the future, and it needs to be realised that the new social contract discussed in this paper is not just an issue about labourers but a social reflection of how the state and

[66] *Id.* at 67.
[67] NITI AYOG, "India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work" (2022).
[68] Above a minimum threshold of hours worked or income earned, the default rule would be an employment relationship for most gig workers except those that may fit into a "safe harbor" for de minimis amateurs or volunteers.
[69] Miriam A. Cherry and Antonio Aloisi, "Dependent Contractors In the Gig Economy: A Comparative Approach," 66(3) American University Law Review. (2017).
[70] International Labour Office, "Organising on demand: representation, voice and collective bargaining in the gig economy" (2019).
[71] Kamala Sankaran, "Labour law in South Asia: A right to development perspective,"in: Shelley Marshall & Colin Fenwick (ed.), Labour Regulation and Development, chapter 7, pages 207-234, (Edward Elgar Publishing, Cheltenham, 2016).
[72] International Labour Organisation, Declaration on fundamental principles and rights at work, (June, 1998).
[73] International Labour Organisation, Declaration on social justice for a fair globalisation, (June, 2008).
[74] *Id.* at 71.
[75] Kamla Sankaran, 'Protecting the Worker in the Informal Economy: The Role of Labour Law', in Guy Davidov and Brian Langille (eds.), Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work (Hart Publishing, Oxford, 2006).
[76] International Labour Office, "Organising on demand: representation, voice and collective bargaining in the gig economy" (2019).

society value them. The laws need to make friends with time but while consolidating the labour laws in the form of codes is a step in the right direction, a conscious re-crafting of the social contract is due.

NAVIGATING THE ETHICAL AND LEGAL LANDSCAPE OF TELEMEDICINE IN INDIA: CHALLENGES, GUIDELINES, AND JUDICIAL INSIGHTS

Parul Kangniwal[*]

Lalita Devi[**]

"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." – Constitution of the World Health Organization

Abstract

The digital transformation of healthcare is being witnessed throughout the world, with the advent of electronic health records, telemedicine and accessible health information interchange. This amazing change is having an impact on patients worldwide, across all age groups and nationalities. A greater proportion of services are becoming offered online in this era of digitization, and the healthcare industry is not exempt from this trend. Telemedicine has revolutionized healthcare delivery in India, especially in the wake of the COVID-19 pandemic. While it offers a great potential in bridging geographical and infrastructural gaps in healthcare access, it simultaneously raises complex ethical and legal challenges, particularly regarding patient consent, licensing of practitioners, vicarious liability and patient data protection etc. To address these concerns, the Telemedicine Practice Guidelines, 2020, were introduced under the Indian Medical Council Act, 1956, to create a legal framework for online consultations. Building on this context, the primary objective of this study is to analyze the adequacy of the existing legal and ethical frameworks in governing telemedicine practices in India. This paper further investigates the concerns of healthcare providers and patients, especially in terms of informed consent, data privacy, and professional accountability. In addition, the research assesses the judiciary's approach in resolving disputes and clarifying ambiguities that arise in telemedicine interactions. Using doctrinal research methodology, the study analyzes guidelines, and relevant case law to assess the evolving jurisprudence. The study finds that while the Telemedicine Practice Guidelines mark a significant step forward, critical ambiguities still persist there, especially regarding consent protocols, liability attribution, and jurisdictional licensing. The paper concludes with suggestions for strengthening the regulatory framework to enhance patient safety, legal clarity, and ethical compliance in telemedicine. Judicial intervention, though still evolving in this field, it is expected to play an increasingly vital role in refining legal standards in the absence of comprehensive legislative enactments. As in Deepa Sanjeev Pawaskar & Anr. V. State of Maharashtra (2018), the Bombay High Court held a doctor liable for prescribing medication over the phone without proper assessment, leading to the patient's death. This case underscores the potential legal risks in telemedicine when

[*] Assistant Professor, Department of Laws, Guru Nanak Dev University, Amritsar.

[**] Advocate, Punjab & Haryana High Court.

doctors fail to adhere to established standards of care. Therefore, it is the need of the time that patients must be fully aware of the nature of telemedicine consultations, it's potential risks, and alternative options available for its successful implementation.

Keywords: Healthcare, Covid-19, Telemedicine, Data Protection, Telemedicine Practice Guidelines

I.
Introduction

Good health is a fundamental requirement for development of healthy and economically sound nation. The nation can only flourish and progress when its citizens are well. Thus, offering its citizens high-quality healthcare services is a shared goal of the federal and state governments. As a developing country the healthcare sector of India is also developing, various steps and innovative measures are being implemented to improve the health services and to propagate the Telehealth to fulfill the modern-day requirements in health sector. The expansion of telemedicine services, or the provision of healthcare remotely, is a result of the merging of medical research and information technology. The ethical fundamentals of medical practice in ancient India were firmly established in moral philosophy. Compassion (karuna), non-maleficence (ahimsa), and truthfulness (satya) are being highlighted as guiding principles for doctors in various texts such as the Charaka Samhita and Sushruta Samhita.[1] These principles resonate with modern bioethics' four pillars that are the autonomy, beneficence, non-maleficence, and justice. As the telemedicine is the new healthcare delivery method, it must uphold all these traditional moral principles and also to ensure that technology benefits people without sacrificing moral integrity. Also the comparative analysis with frameworks such as the World Health Organization's digital health strategy (2021) and the European Union's GDPR (2016) etc. reveals how international law emphasizes privacy-by-design and accountability in digital health. By incorporating this perspective, telemedicine in India becomes more morally and legally legitimate, satisfying Article 21 of the Constitution's guarantee of the right to life and health.

The phrase "telemedicine" comes from the Greek word "tele," which means "distance," and the Latin word "mederi," which means "to heal."[2] With the use of advanced communication, information, and technology, telemedicine services are able to provide high-quality healthcare to a large population living in remote areas where distance is a significant factor.

WHO has defined telemedicine as, "the delivery of health care services, where distance is a critical factor, by all health care professionals using information and communication technologies for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and for the continuing education of health care providers, all in the interests of advancing the health of individuals and their communities".[3] Telemedicine is the practice of providing medical care remotely by utilizing information technology and telecommunication. Although it was formerly thought of as a futuristic idea, it is now

[1] Charaka Samhita, Sutrasthana, Ch. 30, available at: https://www.carakasamhitaonline.com/index.php/Arthedashmahamooliya_Adhyaya

[2] Aparajita Dasgupta & Soumya Deb, "Telemedicine: A new horizon in public health in India" *33 Indian Journal of Community Medicine*, official publication of Indian Association of Preventive & Social Medicine 4 (2008).

[3] Clemens Scott Kruse, *et. al.* "Evaluating barriers to adopting telemedicine worldwide: A systematic review" 24 *Journal of Telemedicine and Telecare* 4 (2018).

unquestionably a requirement. There are several uses for telemedicine in the delivery of healthcare, including managing public health, conducting research, and offering instruction and training. However, the rapid growth of telemedicine also brings various critical concerns about legal accountability, ethical standards, and regulatory oversight. In countries like India, where telemedicine holds transformative potential, addressing these issues becomes essential to ensure safe, equitable, and legally sound healthcare delivery. This paper seeks to critically examine these dimensions, focusing on the adequacy of existing laws, the role of judicial intervention, and the broader implications for ethical healthcare delivery in the digital era.

II.

Telemedicine Practice Guidelines

In response to the national crisis and the need to enforce a regulatory framework for telemedicine services, the Ministry of Health and Family Welfare, Government of India, released the Telemedicine Practice Guidelines, 2020 on March 25, 2020. Many facets of telemedicine are covered by the guidelines, such as acceptable forms of communication (text, audio, and video), the requirement for patient consent, and the necessity for RMPs to use their professional judgment when deciding whether or not telemedicine consultations are appropriate in particular situations. Additionally, the document lists the precise factors to take into account before to starting any telemedicine consultation, including the following: the context, the patient's and RMP's identity, the communication method, the consent form, the type of consultation, the patient evaluation, and the patient management. It also gives clear guidance on how to maintain digital records, track telemedicine contacts, and determine the proper payment schedule for consultations via telemedicine. The guidelines seek to promote the growth of telemedicine in India by tackling these important issues and ensuring that telemedicine consultations are carried out with the greatest levels of care, patient safety, and ethical concerns. The regulations governing telemedicine in India stipulate that licensed medical professionals are required to keep digital records of all consultations. The following guidelines are provided for documentation and digital records of telemedicine consultations:

a. A log or record of all telemedicine interactions, including phone, email, chat/text, and video interaction logs, must be kept up to date by RMPs.
b. The RMP shall keep all patient records, reports, documents, photos, diagnostics, data, etc. that were used during the telemedicine consultation.
c. In particular, the RMP must save the prescription records as needed for in-person consultations in the event that a prescription is communicated with the patient.
d. RMPs are required to keep these records for the duration that is periodically specified.
e. In terms of payment, telemedicine consultations ought to be handled similarly to in-person consultations. RMPs have the right to charge a reasonable price for the telemedicine consultation.

f. In addition, RMPs are required to provide a receipt or invoice for the cost of the telemedicine-based consultation.[4]

In order to guarantee that telemedicine is suitable and sufficient for the particular circumstance and that the patient's best interests are upheld, these guidelines state that a number of important elements, including Context, Identification of Registered Medical Practitioner (RMP) & Patient, Mode of Communication, Consent, Type of Consultation, Patient Evaluation and Management, etc., are essential. While these elements provide a foundational structure for conducting teleconsultations, there are several critical challenges that remain unresolved. Even though these elements provide a foundational structure for conducting teleconsultations, there are several critical challenges that remain unresolved.

III.

Comparative Legal–Ethical Perspectives on Telemedicine

The literature which is nowadays available on telemedicine reveals that legal and ethical issues are closely intertwined with significant questions such as access, accountability, and data governance. The healthcare providers have to adhere to strict requirements regarding the management of electronic health records and patient consent under various comparable frameworks like the General Data Protection Regulation (GDPR, 2016) of the European Union and the Health Insurance Portability and Accountability Act (HIPAA, 1996) of the United States. Similarly different restrictions are currently reflected in India's Digital Personal Data Protection Act, 2023, which operationalises the fundamental right to privacy recognised in Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1. Furthermore, WHO's 2020 Global Strategy on Digital Health promotes patient-centered control over medical data and "privacy by design."[5] Together, these frameworks highlight that accountability, data minimisation, and transparency are the essential factors of ethical legitimacy of telemedicine. Digital inequality can be prevented by telemedicine integration into public health and it must strike a balance between innovation and regulation.[6] Moreover, the comparative research shows that telemedicine practitioners must follow the same professional standards as in-person consultations in countries like Singapore and Australia that guarantees the uniformity in the quality of care. These comparative insights give the current study a more rigorous foundation and bring it into line with the international conversation on medical responsibility and ethical governance. The next section critically analyses the particular legal issues that emerge in the Indian telemedicine ecosystem, building on these international and academic viewpoints.

IV.

Legal Challenges in Telemedicine

After 2001 the scope of Telemedicine services is continuously expanding, in fact, telemedicine services have shown to be invaluable in this specific COVID-19 scenario when it comes to meeting the new demands for

[4] "Telemedicine's Ubers, personal data protection and more – Telemedicine Practice Guidelines, 2020", available at: https://theleaflet.in/telemedicines-ubers-personal-data-protection-and-more-telemedicine-practice-guidelines-2020-part-2/ (last visited on April 27, 2025).

[5] World Health Organization, Global Strategy on Digital Health 2020–2025 (Geneva: WHO, 2021), available at: https://www.who.int/publications/i/item/9789240020924

[6] Arvind Kasthuri, "Telemedicine and Public Health in India" *Indian Journal of Medical Ethics* (2021).

healthcare in this particular setting.[7] During the COVID-19 pandemic, many lives have been saved by using telemedicine services, which allow patients and medical staff to avoid face-to-face interactions in hospitals and other clinical or health settings (unless absolutely necessary). They may also help to slow the spread of the virus and lower the risk of infection for both patients and healthcare workers.[8] However, even while enumerating the acknowledged benefits of telemedicine or telehealth services, a number of moral and legal concerns may surface throughout their application, and these should be taken into account. Issues related to Telemedicine services are as follows:

4.1 Informed Consent of Patient

According to the Telemedicine Guidelines of 2020, patient's consent is mandatory for initiating every telemedicine consultation and this consent can be obtained in two ways; first condition is that if the patient himself initiates this consultation, then the consent will be considered as implied consent and second condition is that if the health worker, the RMP or any caregiver initiates such consultation online then an explicit consent from the patient is to be recorded. This consent may be sent by the patient in an email, text or in form of audio/video message. The RMP is under obligation to record this consent in the patients' record. Even though the notion of informed consent is well-established, it needs to be updated due to the rapid increase in digitization. When a patient gives their agreement in the traditional way, a medical practitioner meets with them in person and provides them with pertinent information about a study, treatment, or new research medication or intervention (for clinical trials). [9] After fully comprehending the options, the patient is expected to make an informed decision and give their consent, if they so choose. Apart from modifying the clinical features of consultations, telemedicine necessitates several other considerations.

As long as a patient sees and consults a doctor, consent is currently "implied" in ordinary clinical practice. The Guidelines state that the same idea of "implied consent" can be used with the teleconsultation format. The ethical issue with implied consent in telemedicine arises from the potential ambiguity and lack of explicit agreement. Patients might not fully understand the extent of data sharing, confidentiality, or the limitations of virtual consultations, leading to concerns about privacy and informed decision-making. It emphasizes the need for transparent communication and clear consent processes in telemedicine to uphold ethical standards. Before starting a consultation, the doctor, records the oral consent of the patients who use third-party platforms for teleconsultations do so with their express consent, as indicated by their checking a checkbox indicating their acceptance of the terms and conditions of the services. But since the patient might not have fully grasped the idea of teleconsultation or, consequently, the recommended course of therapy, this might not comply with ethical standards.[10]

---

[7] Alison Curfman, S David McSwain, *et. al*., "Pediatric Telehealth in the COVID-19 Pandemic Era and Beyond" 148 *Pediatrics* (2021). Doi: 10.1542/peds.2020-047795.

[8] Bonnie Kaplan, "Revisiting Health Information Technology Ethical, Legal, and Social Issues and Evaluation: Telehealth/Telemedicine and COVID-19" 143 *International Journal of Medical Informatics* (2020). Doi: 10.1016/j.ijmedinf.2020.104239.

[9] Christine Grady, "Enduring and Emerging Challenges of Informed Consent" 372 *The New England Journal of Medicine* 856 (2015). Doi:10.1056/NEJMra1411250.

[10] Jitender Aneja and Sonam Arora, "Telemedicine and ethics: opportunities in India" 6 *Indian Journal of Medical Ethics* 316 (2021).

4.2 Informed Consent of Patient in case reference to Other Registered Medical Practitioner (RMP)

There is still some uncertainty when it comes to teleconsultations that are started by RMPs and refer patients to other RMPs or specialists. The patient might have given permission for just the principal RMP to treat them. Consequently, in the event that the primary RMP proceeds with a procedure after a referred consultation without the patient's agreement, there may be a breach of confidentiality. Moreover, the patients might not be fully informed about the reasons for the referral, potential treatments, or the qualifications of the receiving RMP. Sharing medical information with another practitioner may also raises privacy issues. Patients may not be aware of the extent of information shared or the security measures in place. Another concern is carrying out an invasive surgery remotely, particularly with regard to seafarers who occasionally require specialized services that would otherwise be unavailable. As of right now, the Guidelines prohibit RMPs from using digital technology to conduct any kind of remote surgery or invasive treatment. We believe that in some situations, a patient's life may be saved by a remote RMP, such as a psychiatrist, suggesting to a physically present RMP that they provide an injectable medication, like an antipsychotic. However, if this is carried out with the patient's implied consent, it will be regarded as professional malpractice and a violation of their privacy.[11]

The patient's Implied consent, whether electronic or digital, indicates that they have read and understood all online information, including that about maintaining electronic data and the encryption and de-identification of such records, among other things. Common ethical issues include those related to secrecy, security, privacy, and accuracy of information. Giving consent in such a situation involves also giving consent to these unseen dangers, including emotional or psychological ones. The use of new technology would imply new and hidden risks. Certain telehealth platforms and mobile health systems require informed permission, which is comparable to the fine print requested by online consumer services like banking and shopping. Patients frequently check the box without really learning all the details or being fully aware of what is entailed beforehand.[12]

4.3 Consent of Minor

One primary concern for minors accessing telemedicine is the need for parental consent, as legal and ethical considerations often require parental involvement in a minor's healthcare decisions. RMP consultations with minors require an adult to be present at all times. While this permits the necessary adult supervision, it may also cause issues for kids who wish to talk about delicate subjects like mental health or reproductive health without first approaching to their parents or guardians. Moreover, if the child wants to use the internet for even academic purposes, it requires the consent of the parents or the guardian of the minor. Additionally, privacy and security of health information become critical, ensuring that sensitive data is protected during remote consultations.[13] According to DPDP, the guardian's approval is required before any organization can process the data of a child or disabled person. Furthermore, it is forbidden to track minors, monitor their conduct, or

[11] Benedict Stanberry, "The Legal and Ethical Aspects of Telemedicine" 4 *Journal of Telemedicine and Telecare* 96 (1998). Doi:10.1258/1357633981931632.

[12] Bonnie Kaplan, Sergio Litewka, *et. al*., "Ethical challenges of Telemedicine and Telehealth" 17 *Cambridge Quarterly of Healthcare Ethics: The International Journal of Healthcare Ethics Committees* 406 (2008). Doi:10.1017/S0963180108080535.

[13] Raghav Pareek, *et. al*., "Telemedicine: A Study of Regulatory Framework in India" 1 *Symbiosis Nagpur Law Review* 70 (2021).

target them with advertisements. However, rule 9(5) gives the federal government the authority to identify the groups that will be free from the aforementioned legal requirements.

4.4 Standard of Care for the Patient

The credentiality (quality) of care, and the Standard of Care are other crucial factors dealing with the patients' rights. The lack of statutes or rules pertaining to these complex issues particularly those involving professional negligence, obligations, liabilities, and the quantum of punishments in such cases complicates matters further. Many settings of Telemedicine services, including telehealth, telecare, teleradiology, telepathology, teleconsultation, telediagnosis, telemonitoring, telepsychiatry, teledermatology, teleemergency, telesurveillance, telepharmacy, telecardiology, teledialysis, prison telemedicine, military telemedicine, telesurgery, robotic surgery, and robotic follow-up, are where telemedicine is used. High-speed broad bandwidth transmission, electronic signals, computer improvement, and standard telephone services are all necessary for all of these standard communication facilities. If it has fiber optics, satellite connections, and advanced peripheral devices and software, these services will perform better.[14]

Maintaining the standard of care in telemedicine is imperative and can be characterized by the specialists' location, specialization, and the media utilized in the practice. As diagnosis becomes faster and more precise, telemedicine will inevitably raise the bar for care. In addition to raising the level of care, if it is not used effectively, it will also raise danger. It will be necessary to find solutions for issues with treatment standards, medical credentials, misconduct, payment, obligations regarding professional negligence, fines, and legal culpability. This situation will become much more complex because there are no statutes or laws, particularly ones that deal with the concerns at hand. The Telemedicine Guidelines in India suggest for providing telemedicine clients with a level of care comparable to in-person sessions. Because the primary emphasis of standard of care litigation is whether or not the standard of care was followed, certain countries have enacted legislation to address this issue. For instance, the US state of Washington declares that when "a professional person fails to exercise that degree of skill, care, and learning possessed by other persons in the same profession" the standard of care is not satisfied.[15] As of right now, doctors are only allowed to administer a limited selection of medications, offer counseling, and recommend first aid. An RMP should recognize an emergency, suggest first assistance, and then direct the patient to a more qualified healthcare professional. The doctor is the one who determines what qualifies as an emergency. But in the past, bad decisions in these kinds of situations have resulted in severe punishment, as in the landmark case of Deepa Sanjeev Pawaskar v State of State of Maharashtra.[16] Thus the issue of standard of care in telemedicine revolves around ensuring that healthcare providers deliver services consistent with the quality and safety standards expected in traditional in-person care. The various challenges include maintaining the patient privacy, technological reliability, and establishing clear guidelines for remote diagnosis and treatment. Therefore, striking a balance between accessibility and maintaining high standards is crucial in the evolving landscape of telemedicine.

[14] Rakesh Gorea, "Legal Aspects of Telemedicine: Telemedical Jurisprudence" 5 *Journal of Punjab Academy Forensic Medicine Toxicology* 3 (2005).

[15] Peter Moffett, Gregory Moore, *et. al*., "The Standard of Care: Legal History and Definitions: The Bad and Good News" 12 *The Western Journal of Emergency Medicine* 110 (2011).

[16] AIRONLINE 2018 BOM 432.

4.5 Professional Negligence

Professional negligence in telemedicine services typically involves healthcare providers failing to meet the expected standard of care, resulting in harm or adverse outcomes for the patient. Professional negligence in medical care may also be referred as medical negligence for examples, it may include improper diagnosis, prescription errors, or insufficient monitoring during virtual consultations. If such negligence leads to criminal consequences, it could involve charges related to medical malpractice or even potential legal action due to harm caused to the patient.[17] The Indian Medical Council Act, 1956 that governs the medical profession in India and sets ethical standards for medical practitioners, and violation of these standards, may lead to disciplinary action. Here the main issue arises that the Indian Medical Council Act, 1956 is already replaced by National Commission Act, 2019 which though addresses several aspects of medical education and practice in India, but doesn't provide comprehensive guidelines or standards specifically tailored for telemedicine. It doesn't provide detailed guidelines for use of tele-radiology or remote monitoring devices, leading to uncertainties about the regulatory compliance of these practices. Rapid advancements in AI-driven diagnostic tools for telemedicine may also outpace the Act's ability to regulate them effectively, potentially leading to challenges in ensuring the safety and accuracy of these technologies.[18]

Greenbone Networks, a German security company, has disclosed many breaches and disclosures of health data in India. A study from February 2020 revealed that patient data from India had leaked, including names, diagnoses, X-ray images, and treating physicians.[19] This indicated weaknesses in the system for maintaining patient privacy and data protection. No clear guidelines on issues such as remote diagnosis, prescription practices, and handling emergencies in telemedicine scenarios to avoid legal ambiguities and ensure patient safety & data privacy are to be provided. Information Technology Act, 2000 may be applicable in cases where data breaches or unauthorized access to patient information occurs during telemedicine consultations but this Act doesn't specifically deal with medical negligence.

4.6 Vicarious Liability issues in Telemedicine

The concept of vicarious liability states that if an action is an act of a slave master (master), the master must respond. This is a legal fiction. This theory is also used to settle malpractice claims made by patients against physicians, nurses, or hospitals in the therapeutic connection between the clinician and the patient. The judges applied the vicarious liability theory in various cases. In the Puri Cinere Hospital case from 2007, the Supreme Court ruled that the patient's tonsillectomy had been performed incorrectly, causing the patient's voice to become nasal. Thus, the hospital where physicians performed stretcher work was found guilty of misconduct and ordered to compensate the patient, who suffered US $ 520 million.[20]

---

[17] "Duty of care and medical negligence in telemedicine", available at: https://www.lexology.com/library/detail.aspx?g=76a47571-18d1-4b9a-8cf1-1bcd4d9ad55f (last visited on April 27, 2025).

[18] Simon P Rowland, J Edward Fitzgerald, *et. al*., "Digital health technology-specific risks for medical malpractice liability" 5 *NPJ Digital Medicine* 3 (2022). Doi:10.1038/s41746-022-00698-3.

[19] Anandi Chandrashekhar, "German firm finds one million files of Indian patients leaked", *The Economic Times*, February 04, 2020, available at: https://economictimes.indiatimes.com/tech/internet/german-firm-finds-one-million-files-of-indian-patients_leaked/articleshow/73921423.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited on April 28, 2025).

[20] Arman Anwar, "The Principles of Liability on Telemedicine Practices" 1 *Pattimura Law Journal* 24 (2016).

In telemedicine, there is an ambiguity about the vicarious liability, if a doctor is providing services on behalf of a hospital, whether the hospital may be held vicariously liable for the doctor's actions or not. A clear contractual agreements, proper supervision, and adherence to standards of care are essential to managing vicarious liability between the doctor and the hospital in the context of telemedicine. This includes ensuring that protocols are in place for remote consultations and that both parties are aware of their respective responsibilities. In telemedicine, vicarious liability concerns are also there when a healthcare professional's actions lead to harm. If a doctor or healthcare provider is deemed an agent of a telemedicine platform, the platform might be held vicariously liable for malpractice. But till date there are no proper guidelines in this context. Establishing clear contractual relationships, ensuring proper training and framing clear guidelines can help to mitigate these issues.[21]

V.

Judicial Intervention

To obtain utmost benefits of this technology and to protect the fundamental rights of citizens of right to doctors assistance and adequate medical services (covered under Article 21 and 47) the role of judiciary becomes more evident so that patients' rights can be safeguard by interpreting the rules and regulations of telemedicine services and to provide them a healthy lifestyle. It helps to uphold the legal frameworks and adjudicate cases related to telemedicine malpractice to promote and protect the rights of patients. Following are few important case laws in this context:

5.1 Deepa Sanjeev Pawaskar & Anr. vs. The State of Maharashtra[22]

In this case a pregnant woman, Dnyanada used to consult with Dr. Deepa on a regular basis. She underwent a caesarean section to deliver a healthy female child. On February 9, she was discharged from the hospital. There were no instructions provided for recovery following surgery. But on February 10th, she started vomiting. Dr. Deepa, the spouse of Dr. Sanjiv Pawaskar, requested that Dnyanada's family contact her via a pharmacy. She then gave the pharmacist advice regarding which medications to prescribe. Dnyanada got a fever by the evening and was readmitted to the hospital, without the doctors' presence. A different physician, Dr. Ketkar, saw the patient's bad prognosis and drove her to Parkar Hospital's ICU, where she was kept on a ventilator. She died around 7 a.m. The cause of death was determined by post-mortem to be pulmonary embolism. When the deceased was being readmitted, the applicant was again not present, but she still gave the nurses instructions to admit the deceased by prescribing medication without a diagnosis. The High Court noted that after giving the case due consideration and analysing its facts and circumstances, the main issue is that the doctors' prescriptions without diagnosis, which cause the patient to die, amount to criminal negligence on their part. Therefore, the Court has rejected the bail application in current appeal. Since there was no law in India at the time this case was decided, to regulate the practice of telemedicine consultation, medical organisations were pleading to the government and the Medical Council of India to establish regulations governing telemedicine and thereafter on 25 March, 2020, the Telemedicine Practice Guidelines were enacted by Ministry of Health and Family Welfare.

[21] Debayan Bhattacharya, "Analysing the Liability of Digital Medical Platforms for Medical Negligence by Doctors" 15 *NUJS Law Review* 7 (2022).
[22] AIRONLINE 2018 BOM 432.

5.2 Priyanka Singh & Anr vs. The State of Maharashtra & Ors.[23]

This case was a high-profile case involving the death of late Bollywood actor Sushanth Singh Rajput. Based on a complaint filed by Rajput's girlfriend Rhea Chakraborty, an FIR was filed against the late actor Sushant Singh Rajput's sisters Priyanka Singh and Meetu Singh, and a physician Tarun Kumar of Delhi's Ram Manohar Lohia Hospital for suspected forgery and fabrication of a medical prescription for their brother's anxiety difficulties. The legal dispute arose from the prescription of clonazepam given to him by a physician, since it was alleged that the medication was obtained via teleconsultation. The Telemedicine Practice Guidelines were cited to support the conclusion that the purported acquisition of the medication was unlawful because clonazepam was on the list of restricted drugs. Considering all the evidences and facts of the case, the Court refused to quash the FIR lodged against Priyanka Singh for allegedly creating and forging a prescription drug for her brother. Nonetheless, the FIR against Meetu Singh, another Rajput sister, was overturned by the division bench of Justices S. S. Shinde and M. S. Karnik. Although Priyanka Singh appeared to have strong evidence, Meetu Singh's case was dismissed by the court. The court established prima facie evidence against petitioner Priyanka Singh, hence the FIR against her was not cancelled.[24]

VI.

Conclusion and Suggestions

The Telemedicine technology, which nowadays offers revolutionary possibilities for India's healthcare system, is the dynamic nexus of ethics, technology, and law. The significant Judicial precedents such as Deepa Sanjeev Pawaskar v. State of Maharashtra and Priyanka Singh v. State of Maharashtra demonstrate how courts have started to define patient rights and medical accountability in virtual consultations. Despite in limited number of these rulings, it show how jurisprudence is developing to strike a balance between innovation and responsibility. This shows that the judiciary has been a crucial player in expanding the application of Article 21, which guarantees the right to life to the people that include the rights to health, medical care, and technology access. Additionally, telemedicine regulations must support fair access to digital health services. The Policy innovation which is being supported by judicial review can ensure that telemedicine does not widen the rural–urban healthcare divide but instead it will strengthens the constitutional promise of social justice and inclusive development. Thus, embedding ancient Indian ethical values of compassion and duty within modern regulatory frameworks will ensure that technological advancement in healthcare remains humane, just, and constitutionally sound. Moreover, the policymakers, healthcare providers, and other stakeholders should take into account the following suggestions in order to address the legal obstacles related to telemedicine in India:

6.1 Promoting Ethical Practices: To preserve confidence in telemedicine services, strong data protection regulations and security protocols should be put in place. Maintaining the confidentiality and privacy of patients can be facilitated by adhering to global standards for data protection and best practices. Ethical standards for the use of telemedicine should be created and promoted by professional associations and entities.

[23] AIRONLINE 2021 BOM 938.

[24] Politics, "Bombay High Court Refuses to quash FIR against Sushant Singh Rajput's sister Priyanka Singh", *The Economic Times*, February 15, 2021, available at: https://m.economictimes.com/news/politics-and-nation/bombay-high-court-refuses-to-quash-fir-against-sushant-singh-rajputs-sister-priyanka-singh/articleshow/80925858.cms (last visited on April 29, 2025).

6.2 Create Robust Laws for Data Privacy: India ought to enact extensive data protection laws to tackle the distinct obstacles presented by telemedicine. To enable telemedicine providers, protect patient privacy and security, this Act should establish explicit criteria for the gathering, storing, transmitting, and handling of sensitive patient data.

6.3 Invest in Telemedicine Infrastructure and Capacity Building: Prioritizing telemedicine infrastructure investments should be a top priority for policymakers. This includes setting up dependable communication networks and supplying telemedicine equipment to remote locations. This include putting money into digital infrastructure, encouraging digital literacy, and putting programs in place for reasonably priced internet and device access.

6.4 Promote Advanced Technology Adoption: Along with legal, ethical, and societal challenges, problems like as insufficient bandwidth and a lack of software interoperability standards that lower this technology's efficiency must be fixed. Neurology and neurosurgery telemedicine facilities need to be set up in order to reach patients who live in remote places. The use of blockchain and artificial intelligence (AI) into telemedicine services ought to be encouraged by the government and healthcare providers.

6.5 Funding Research and Development Programs: India can capitalize the various advanced technologies to raise the caliber and effectiveness of telemedicine services by funding Research and Development (R&D) and encouraging partnerships between tech firms and healthcare providers.

6.6 Education and Training of Healthcare Professionals: Health personnel's education and training must get more priority, and initiatives to raise public knowledge of telemedicine must be launched. To increase their participation in telemedicine, government doctors should receive additional compensation for using telemedicine, and the health workforce should be encouraged to do so.

6.7 Promoting Smartphone Apps for healthcare services: A mobile app-based integration model that incorporates telecommunications services, chat rooms, patient diagnosis information, pathology, and an alerting system can be created to offer high-quality telemedicine services to every single person. In order to guarantee that patients can access and exit safely with the use of codes, digital signatures, OTPs, and provider IDs, effective laws must be in place.

6.8 Establishing Robust Dispute Redressal Mechanism: It is imperative to provide a robust grievance Redressal System, e-mediation, and ODR to resolve disputes that can emerge between RMP and patients, or between RMP and other providers. Telemedicine can supplement healthcare by increasing its availability, affordability, accessibility and the establishing proper dispute Redressal mechanism.

6.9 Provide a Simple Framework for Liability: In order to address concerns about malpractice and the division of culpability between telemedicine platforms and healthcare practitioners, policymakers should provide an explicit liability framework for telemedicine services.

6.10 Increase Public Awareness and Education: A fundamental shift in people's attitudes and behaviors toward medical professionals is required. Campaigns for public awareness should be started in order to dispel any misunderstandings and worries and to inform the public about the advantages of telemedicine.

By putting the aforementioned suggestions into practice, India can establish a legislative framework that

encourages telemedicine, fostering its growth and guaranteeing that all residents, regardless of where they live, can avail the access of high-quality healthcare services and can take the fullest advantage of these opportunities.

INTERROGATING SYSTEMIC VULNERABILITIES AND AMELIORATIVE INTERVENTIONS: A MULTIDIMENSIONAL ANALYSIS OF MALFEASANCE WITHIN INDIA'S CADASTRAL GOVERNANCE ARCHITECTURE

Pawan Kumar*
Suriya Kannan V S**

ABSTRACT

This paper provides a comprehensive analysis of systemic corruption vulnerabilities within India's cadastral governance architecture, examining the multifaceted nature of land-related malfeasance across constitutional, legislative, institutional, and procedural dimensions. The study traces the historical evolution of land corruption from colonial legacy through post-independence reforms, highlighting how the transition of property rights from fundamental to legal rights has expanded administrative discretion and created new corruption pathways. Through critical examination of key legislation—including the Transfer of Property Act, Registration Act, RERA, and LARR Act—this research reveals how fragmented regulatory frameworks and institutional disintegration create opportunities for corrupt practices. The paper evaluates reform initiatives such as the Digital India Land Records Modernization Programme and state-level innovations in Gujarat, Rajasthan, and Telangana, finding that while technological interventions have reduced certain vulnerabilities, their effectiveness remains constrained by implementation gaps, institutional resistance, and adaptation strategies by corrupt networks. Drawing on international comparisons with Singapore, Georgia, and South Korea, the research identifies common elements of successful anti-corruption reforms, including comprehensive rather than piecemeal approaches, institutional restructuring, procedural simplification, and robust enforcement mechanisms. This analysis demonstrates that addressing cadastral corruption in India requires moving beyond isolated interventions to develop a Unified Cadastral Integrity Framework that simultaneously targets legislative structures, institutional arrangements, procedural design, enforcement capacity, and technological architecture. The paper concludes that land corruption reflects deeper governance challenges that require recognizing land not merely as an economic asset, but as a fundamental governance domain that shapes institutional quality, state-citizen relationships, and rule of law.

Keywords: Land governance, Cadastral corruption, Property administration, Institutional design, Regulatory integration, Anti-corruption frameworks.

1.
Introduction

Corruption in land governance represents a particularly pernicious challenge with far-reaching implications for socio-economic development, environmental sustainability, and human rights. Unlike other forms of administrative malfeasance, land corruption carries unique significance due to the foundational role of land in economic, social, and political structures. Land functions as a critical nexus of political, economic, and social power relationships that profoundly influence governance effectiveness, civic trust, and institutional legitimacy across multiple sectors.[1]

*Pawan Kumar, Assistant Professor, Amity Law School, Amity University
**Suriya Kannan VS, Student of Law, Amity Law School, Amity University

1.1 Historical Evolution of Land Corruption in India

The historical evolution of land corruption in India is deeply intertwined with its colonial legacy, which established complex administrative structures prioritizing revenue extraction over rights protection.[2] The British administration institutionalized practices through the 'zamindari, ryotwari, and mahalwari systems' that fundamentally altered traditional land relationships and created administrative structures with extensive discretionary powers.[3] These colonial systems embedded asymmetric information access and limited accountability mechanisms that continued to shape land governance vulnerabilities into the post-independence period.

1.2 Post-Independence Reforms and Emerging Challenges

The post-independence era witnessed significant legislative and institutional reforms aimed at addressing colonial inequities, including the abolition of intermediary systems and implementation of land ceiling acts.[4] However, these reform efforts often created new corruption vulnerabilities through increased bureaucratic discretion and complex procedural requirements. The constitutional reconfiguration of property rights, culminating in the '44th Constitutional Amendment' that transitioned 'property from a fundamental to a legal right', significantly altered the jurisprudential landscape and expanded state authority over property matters.[5]

1.3 Research Objectives and Methodology

This paper employs a multi-dimensional analytical framework to examine corruption vulnerabilities within India's land governance system. The research methodology combines legal and policy analysis, institutional assessment, and comparative evaluation of reform initiatives. Primary data was gathered through structured interviews with land administration officials, legal experts, and civil society organizations, supplemented by an extensive review of legislative documents, court judgments, and evaluation reports of reform programs. The research aims to (1) identify structural vulnerabilities within the existing cadastral governance architecture; (2) evaluate the effectiveness of reform initiatives, and (3) develop an integrated framework for addressing systemic corruption.

The development of land governance in India has been marked by persistent tensions between competing imperatives: agricultural productivity versus land redistribution; private property protection versus public purpose acquisition; traditional land rights versus modern administrative systems; and regional autonomy versus national standardization. These tensions have created a fragmented regulatory landscape characterized by overlapping authorities, procedural complexities, and enforcement inconsistencies that collectively enable corrupt practices to flourish.

2. The Constitutional and Legislative Framework

2.1 Constitutional Evolution of Property Rights

---

[1] Transparency International, *Land Corruption in India: Issues and Agenda for Reform* (New Delhi: Transparency International, 2018) 12–14.
[2] R Singh, 'Colonial Origins of Property Administration in India' (2016) 51 *Economic & Political Weekly* 45–52.
[3] BH Baden-Powell, *The Land Systems of British India* (London: Oxford University Press, 1892) 230–45.
[4] D Bandyopadhyay, 'Land Reforms in India: An Analysis' (1986) 21 *Economic & Political Weekly* A50–A56.
[5] PM Bakshi, *The Constitution of India* (Delhi: Universal Law Publishing, 16th edn, 2019) 342–48.

The constitutional treatment of property rights has undergone a significant evolution since independence, reflecting changing socio-political priorities and development paradigms. Initially enshrined as a fundamental right under 'Article 19(1)(f) and 31', property rights underwent a transformative shift with the 44th Constitutional Amendment of 1978, which repositioned property as a legal right under 'Article 300A', stipulating that "no person shall be deprived of his property save by authority of law." [6] This constitutional reconfiguration significantly altered property rights jurisprudence in India. As Justice Krishna Iyer observed in 'State of Karnataka v. Ranganatha Reddy (1977)', this shift represented "a major departure from the earlier concept where the right to property could be restricted only by a law that was reasonable, non-discriminatory, and subject to judicial review for its constitutionality." [7] By reducing constitutional safeguards against state interference, this transition expanded administrative discretion in property matters, creating opportunities for corrupt practices in compulsory acquisitions, development permissions, and zoning decisions.

2.2 Key National Legislation

The central legislative framework governing land and property in India includes several key statutes that establish the fundamental parameters for property transactions, registration, and dispute resolution. 'The Transfer of Property Act, 1882' remains the cornerstone legislation defining mechanisms for property transfer, though its colonial-era provisions fail to address modern transaction complexities.[8]

'The Registration Act, 1908' establishes the procedural framework for documenting property transactions, but its implementation suffers from significant deficiencies.[9] Paper-based registration systems prevalent in many states, coupled with inadequate verification mechanisms, create opportunities for fraudulent transactions through document forgery and impersonation.

'The Indian Stamp Act, 1899' governs the fiscal aspects of property transactions, but high stamp duty rates have incentivized widespread undervaluation of property transactions, facilitating black money generation and corrupting official property valuation records.[10] More recent legislation, including the Right to Fair Compensation and Transparency in Land Acquisition, 'Rehabilitation and Resettlement Act, 2013 (LARR Act)' and the 'Real Estate (Regulation and Development) Act, 2016 (RERA)', attempts to address specific corruption vulnerabilities but faces implementation challenges that limit effectiveness.

2.3 State-Level Legislative Variations

The constitutional allocation of land as a state subject has resulted in significant legislative variations across India's states and union territories.[11] Each state has enacted specific land revenue codes, tenancy laws, ceiling acts, and urban development regulations that reflect regional historical contexts and socio-economic conditions. States like Maharashtra, Karnataka, and Tamil Nadu have established relatively modernized land administration systems with digitized records and transparent transaction procedures.[12] In contrast, states like Uttar Pradesh,

[6] *Constitution of India*, art 300A (as amended by the Constitution (Forty-Fourth Amendment) Act 1978).
[7] *State of Karnataka v Ranganatha Reddy* (1977) 4 SCC 471.
[8] ST Desai, *Mulla on the Transfer of Property Act* (Gurgaon: LexisNexis, 12th edn, 2017) 18–24.
[9] Law Commission of India, *Report No 247 on the Registration Act, 1908* (Delhi: Law Commission of India, 2014) 8–12.
[10] A Kumar, 'Stamp Duty Evasion and Black Money in Real Estate' (2016) 51 *Economic & Political Weekly* 32–38.
[11] *Constitution of India*, Sch VII, List II, entry 18.
[12] World Bank Group, *Doing Business in India 2020* (Washington DC: World Bank Group, 2020) 45–52.

Bihar, and Jharkhand continue to operate under outdated land revenue systems with minimal technological integration, creating numerous opportunities for record manipulation and administrative rent-seeking.[13]

2.4 Legal Pluralism and Customary Systems

Beyond formal statutory frameworks, India's property ecosystem is significantly influenced by customary laws and informal governance systems, particularly in tribal areas, northeastern states, and rural communities with strong traditional institutions.[14] Constitutional recognition of customary practices through provisions like 'Article 371A' and the 'Fifth and Sixth Schedules' has created parallel legal regimes that interact with formal systems in complex ways. This legal pluralism creates significant jurisdictional ambiguities that corrupt actors exploit to facilitate irregular land acquisitions and resource extraction.[15] The informal nature of property rights under customary systems, characterized by undocumented ownership claims and community-based validation mechanisms, creates additional vulnerabilities, particularly in forest areas and mineral-rich regions.[16]

3. Institutional Architecture and Governance Mechanisms

3.1 Institutional Structure and Coordination Challenges

India's land administration operates through a complex institutional architecture characterized by multiple agencies with overlapping responsibilities and inconsistent coordination mechanisms.[17] This institutional fragmentation creates corruption vulnerabilities by diffusing accountability, complicating oversight, and creating procedural redundancies.[18] At the state level, primary responsibility for land administration rests with the Revenue Department, which maintains land records, supervises registration, handles mutations, and resolves first-level disputes through revenue courts.[19] The organizational structure typically extends from the state Secretariat down to the village level through a hierarchy of officials including Commissioners, Collectors, Tehsildars, Revenue Inspectors, and Village Revenue Officers.

The Registration Department, often functioning as a separate entity from the Revenue Department, manages the documentation of property transactions. This institutional separation creates coordination challenges between record-keeping and registration functions, resulting in discrepancies between ownership records preserved by Revenue Departments and transaction records held by Registration Departments.[20]

Urban areas feature additional institutional layers, with municipal corporations, development authorities, and planning bodies exercising significant control over land use, development permissions, and building approvals.[21] This multiplicity of urban governance institutions with poorly defined jurisdictional boundaries

---

[13] Center for Science & Environment, State of Land Records Modernization in India 28-35 (Center for Science & Environment, New Delhi, 2019).

[14] N. Sunder, Tribal Customary Land Rights in Modern India, 64 *J. Rural Stud.* 134-44 (2019).

[15] Ministry of Tribal Affairs, Govt. of India, *Report of the Committee on Forest Rights Act Implementation* 72-78 (Ministry of Tribal Affairs, New Delhi, 2020).

[16] T. Dash & A. Behera, Customary Land Rights and Corruption in Mineral-Rich Tribal Areas, 53 *Econ. & Pol. Wkly.* 25-31 (2018).

[17] Department of Land Resources, Ministry of Rural Development, Govt. of India, *National Land Reforms Policy: Draft Report* 15-22 (Department of Land Resources, New Delhi, 2021).

[18] J. Ramesh & M.A. Khan, *Land Policies for Equity and Growth* 112-18 (Sage Publications, New Delhi, 2016).

[19] NITI Aayog, Govt. of India, *Strategy for New India @ 75* 143-46 (NITI Aayog, New Delhi, 2018).

[20] P. Sarkar, Coordination Failures in Land Administration, 82 *J. Dev. Econ.* 299-315 (2016).

[21] Ministry of Housing & Urban Affairs, Govt. of India, *Urban Land Management in India: Policy Framework* 34-42

creates opportunities for ***forum shopping*** by corrupt actors.[22]

3.2 Regulatory Oversight and Accountability Mechanisms

The regulatory oversight architecture for India's property ecosystem comprises multiple layers of monitoring and supervision mechanisms. Judicial oversight through 'High Courts and the Supreme Court' provides the most robust check on administrative discretion in property matters, though accessibility barriers limit its effectiveness for ordinary citizens.[23] Administrative oversight operates primarily through departmental hierarchies, with senior revenue officials supervising subordinate functionaries. However, these internal accountability systems suffer from inadequate inspection capacity, procedural formalism, and collusive relationships within bureaucratic networks that undermine effective supervision.[24]

Independent oversight bodies like State Information Commissions and Lokayuktas provide additional accountability channels, but their effectiveness varies significantly across states.[25]In states like Karnataka and Maharashtra, relatively empowered Lokayuktas have successfully investigated and prosecuted corruption in land allotments, but in many other states, these institutions lack investigative resources and political independence.[26] Regulatory oversight is further complicated by the absence of comprehensive performance monitoring systems for land administration. Most states lack standardized metrics for evaluating efficiency, transparency, and integrity, making it difficult to identify corruption patterns and implement targeted interventions.[27]

3.3 Dispute Resolution Systems

India's land dispute resolution system operates through multiple parallel mechanisms, including revenue courts, civil courts, specialized tribunals, and alternative dispute resolution forums. This institutional multiplicity has created a fragmented adjudication landscape characterized by jurisdictional confusion and procedural inconsistencies.[28] Revenue courts operate under state-specific land revenue codes, with a hierarchical structure extending from village-level revenue officers to Boards of Revenue or Revenue Tribunals at the state level. However, they suffer from inadequate legal training for adjudicating officers, minimal procedural safeguards, and extensive political interference.[29]

Civil courts with jurisdiction over property matters under the 'Code of Civil Procedure' provide more structured adjudication but face overwhelming caseloads resulting in protracted timelines that often extend for decades.[30] This temporal dimension creates opportunities for corrupt manipulation, with influential parties exploiting

---

(Ministry of Housing & Urban Affairs, New Delhi, 2019).

[22] L. Weinstein, *The Durable Slum: Dharavi and the Right to Stay Put in Globalizing Mumbai* 82-87 (University of Minnesota Press, Minneapolis, 2017).

[23] M.P. Jain, Indian Constitutional Law 1246-52 (LexisNexis, Gurgaon, 8th edn., 2018).

[24] D. Banik, Administrative Culture and Public Service Delivery in India, 52 *J. Pub. Admin.* 47-56 (2016).

[25] Asian Development Bank, *Strengthening Land Governance Institutions in India* 85-93 (ADB, Manila, 2017).

[26] Lokayukta Karnataka, Government of Karnataka, Annual Report 2018-19, at 32-38 (Lokayukta Karnataka, Bengaluru, 2019).

[27] NITI Aayog, Government of India, Land Records and Services Index 12-18 (NITI Aayog, New Delhi, 2020).

[28] Law Commission of India, *Report No. 264: Land Dispute Resolution Mechanisms* 24-31 (Law Commission of India, New Delhi, 2017).

[29] P.B. Mehta & D. Kapur, *Public Institutions in India: Performance and Design* 245-52 (Oxford University Press, New Delhi, 2017).

[30] Supreme Court of India, *Indian Judiciary Annual Report 2018-19* 73-79 (Supreme Court of India, New Delhi, 2019).

procedural mechanisms to delay unfavorable outcomes.[31]

Specialized adjudication mechanisms like 'Land Acquisition Tribunals and Real Estate Appellate Tribunals' attempt to provide more focused resolution for specific categories of property disputes, but often reproduce the same vulnerabilities seen in regular courts, including delayed proceedings and susceptibility to external influence.[32]

4. Corruption Vulnerabilities in the Legal Framework

4.1 Legislative Gaps and Ambiguities

The Indian property legal framework contains numerous legislative gaps and ambiguities that create fertile ground for corrupt practices, ranging from outdated provisions to deliberate legislative vagueness that expands administrative discretion.[33] A fundamental vulnerability stems from the incomplete integration of land records and registration systems, which results from legislative separation between record-keeping functions and transaction documentation. This disconnection enables corrupt practices through parallel transaction chains, where registered documents may not lead to automatic record updates.[34]

Significant gaps exist in the legislative framework governing land use conversion, particularly in peri-urban areas. Most state laws provide inadequate guidance on conversion criteria and valuation mechanisms, creating a discretionary space where corrupt officials can extract substantial payments for approving conversions in high-value transition zones.[35] The legal provisions governing property valuation for stamp duty, acquisition compensation, and tax assessment exhibit substantial inconsistencies that facilitate corruption. The varying methodologies prescribed under different statutes, coupled with outdated valuation guidelines, create opportunities for manipulative assessments based on bribes rather than market realities.[36]

Legislative frameworks for benami (proxy) ownership and shell company property holdings contain substantial enforcement gaps despite the enactment of the Benami Transactions (Prohibition) Amendment Act, 2016. The limited integration between property registration laws and beneficial ownership disclosure requirements enables corrupt actors to conceal illicitly acquired properties behind complex ownership structures.[37]

4.2 Procedural Complexity and Administrative Discretion

The procedural architecture governing property transactions is characterized by excessive complexity, multiple approval requirements, and substantial administrative discretion that collectively create an enabling

---

[31] N. Robinson, Judicial Architecture and Capacity, in *The Oxford Handbook of the Indian Constitution* 330-48 (S. Choudhry et al. eds., Oxford University Press, Oxford, 2016).

[32] Ministry of Law & Justice, Government of India, Evaluation Report on Specialized Land Tribunals 58-64 (Ministry of Law & Justice, New Delhi, 2018).

[33] S. Roy & P. Singh, Legislative Design and Corruption in Land Administration, 53 *J. Dev. Stud.* 1948-62 (2017).

[34] Department of Land Resources, Ministry of Rural Development, Government of India, Assessment of Land Records-Registration Integration 26-32 (Department of Land Resources, New Delhi, 2019).

[35] V. Narain & S. Nischal, "Peri-Urban Interface: The New Challenge for Land Administration" 51 Economic & Political Weekly 48-56 (2016).

[36] Central Board of Direct Taxes, Ministry of Finance, Government of India, Report on Property Valuation Standards 42-47 (Central Board of Direct Taxes, New Delhi, 2020).

[37] Ministry of Finance, Govt. of India, *Review of Benami Transactions (Prohibition) Implementation* 39-45 (Ministry of Finance, New Delhi, 2019)

environment for corruption.[38] Land record maintenance procedures across most states involve cumbersome mutation processes requiring multiple departmental approvals, field verifications, and hierarchical validations. The discretionary elements embedded in these procedures enable officials to artificially create obstacles that can only be overcome through unofficial payments.[39]

Registration in many states still requires physical presence before sub-registrars, document scrutiny with substantial discretionary elements, and complex valuation assessments for stamp duty determination. The procedural ambiguities surrounding document authentication and transaction legality validation create spaces where registration officials can exercise unstructured discretion.[40]

Urban planning and development control procedures represent another critical vulnerability, with building permissions and development approvals involving labyrinthine processes distributed across multiple departments. A typical construction project in major Indian cities requires 20-35 separate approvals, creating numerous corruption checkpoints throughout the development cycle.[41] A particularly significant procedural vulnerability exists in the interface between formal legal requirements and implementation practices, where official procedures are routinely subverted through informal workarounds facilitated by corrupt networks. For instance, while land use conversion officially requires environmental impact assessments and public consultations, these substantive requirements are frequently circumvented through procedural manipulations secured through corrupt payments.[42]

4.3 Enforcement Deficits and Capacity Constraints

Even well-designed legal provisions and procedural safeguards frequently fail at the implementation stage due to systematic enforcement deficiencies and capacity constraints.[43]These enforcement vulnerabilities transform formal legal protections into paper tigers that corrupt networks can circumvent with relative impunity. Most states operate with significant staffing deficits, inadequate technological infrastructure, and insufficient training resources. The average Land Records Inspector in many states is responsible for maintaining records for 25-40 villages, making comprehensive verification and accurate record-keeping practically impossible.[44]These capacity limitations create enforcement gaps that enable record manipulation and administrative rent-seeking with minimal detection risk.

Anti-corruption provisions specific to land administration face systemic implementation challenges. The conviction rate for corruption cases involving land officials remains extremely low, with procedural delays,

[38] S. Agarwal & V. Jain, Process Complexity and Administrative Discretion in Land Governance, 64 *Indian J. Pub. Admin.* 412-24 (2018).

[39] World Bank Group, *Ease of Doing Business in India: Sub-National Assessment of Land Administration* 62-70 (World Bank Group, Washington DC, 2018).

[40] Inspector General of Registration & Stamps, *Manual of Registration Procedures* (Inspector General of Registration & Stamps, Mumbai, 2020).

[41] McKinsey Global Institute, *India's Urban Awakening: Building Inclusive Cities, Sustaining Economic Growth* 189-94 (McKinsey & Company, Mumbai, 2018).

[42] C. Bhushan & S.S. Sambyal, *Environmental Governance: Transition from Regulatory Capture to Citizen-Centric Approach* 117-23 (Centre for Science & Environment, New Delhi, 2018).

[43] Ministry of Rural Development, Govt. of India, *Capacity Assessment for Land Administration* 52-58 (Ministry of Rural Development, New Delhi, 2020).

[44] Department of Land Resources, Ministry of Rural Development, Govt. of India, *Status Report on Land Records Computerization* 83-87 (Department of Land Resources, New Delhi, 2018).

evidence tampering, and political interference undermining accountability.[45] The Central Vigilance Commission's analysis revealed that only 2-4% of corruption complaints related to land administration result in successful prosecutions.[46]

Digital enforcement mechanisms introduced through computerized land records have addressed certain vulnerability areas but created new implementation challenges. Many digitization initiatives have focused on automating existing processes without addressing underlying corruption vulnerabilities, resulting in "***digital facades***" that mask continuing corrupt practices.[47]

5. Reform Initiatives and Their Effectiveness

5.1 Digital India Land Records Modernization Programme (DILRMP)

'The Digital India Land Records Modernization Programme' represents the most comprehensive nationwide attempt to address corruption in land administration through technological reforms.[48] The program aims to create integrated digital land records, establish dynamic record updates linked to registration, and develop an accessible land information system. States like Karnataka (Bhoomi system), Andhra Pradesh, Tamil Nadu, and Gujarat have successfully digitized land records, integrated registration with updates, and provided citizen access through online portals.[49]These advances have reduced certain corruption vulnerabilities by minimizing direct official-citizen interactions and creating digital transaction trails.

However, DILRMP's effectiveness faces several limitations. Many states have implemented partial digitization without achieving integration between spatial records (maps), textual records (ownership), and registration systems. The digitization process has often incorporated existing record inaccuracies, effectively legitimizing historical corruption outcomes rather than resolving them.[50] Implementation has frequently prioritized technology over institutional reform and capacity building, resulting in digital systems operated by inadequately trained staff within unchanged administrative structures.[51] Corrupt networks have adapted by developing new manipulation strategies, including unauthorized back-end data changes and selective system malfunctions.[52] The program has been more successful in reducing petty corruption related to record access and standard mutations, but less effective against grand corruption involving high-value land use changes that typically involve higher-level officials and political interference.[53]

---

[45] Central Bureau of Investigation, Govt. of India, *Annual Report 2019* 46-49 (CBI, New Delhi, 2020)

[46] Central Vigilance Commission, Govt. of India, *Analysis of Corruption Complaints 2014-2018* 28-32 (CVC, New Delhi, 2019).

[47] A. Prakash & P. Singla, Digital Land Records Implementation: A Critical Assessment, 55 *Econ. & Pol. Wkly.* 37-44 (2020).

[48] Department of Land Resources, Ministry of Rural Development, Govt. of India, *Digital India Land Records Modernization Programme: Guidelines* (Department of Land Resources, New Delhi, 2019)

[49] National Informatics Centre, Ministry of Electronics & IT, Govt. of India, *Best Practices in Land Records Digitization* 25-42 (NIC, New Delhi, 2021).

[50] A. Sinha, Digitization of Land Records: Issues of Data Integrity, 6 *J. Info. Tech. Governance* 124-35 (2018).

[51] S. Lahiri & P. Das, Implementation Challenges in Land Records Digitization, 55 *Econ. & Pol. Wkly.* 58-64 (2020).

[52] Research Unit for Political Economy, *Technology and Corruption: A Critical Assessment* 87-93 (R.U.P.E., Mumbai, 2019).

[53] World Bank Group, *Impact Assessment of the Digital Land Records Modernization Programme* 112-18 (World Bank Group, Washington DC, 2020).

5.2 The Real Estate (Regulation and Development) Act, 2016

'The Real Estate (Regulation and Development) Act' targets transparency and accountability deficits in the real estate sector through mandatory project registration, standardized disclosure requirements, escrow account mechanisms, and specialized dispute resolution tribunals.[54] In states like Maharashtra, Karnataka, and Gujarat, functional regulatory authorities, comprehensive registration systems, and active enforcement have introduced greater transparency and developer accountability.[55] Maharashtra's MahaRERA has achieved significant transparency improvements through detailed project databases and proactive compliance monitoring.[56]

However, RERA's effectiveness faces several constraints. Implementation remains uneven, with many states delaying regulatory authorities, diluting provisions, or creating under-resourced institutions. [57]While RERA enhances formal transparency in project approvals and consumer transactions, it inadequately addresses "upstream" corruption vulnerabilities in land acquisition and initial approvals occurring before RERA jurisdiction.[58] Enforcement mechanisms suffer from capacity constraints, procedural complexities, and political interference. Penalties, though substantial on paper, are inconsistently applied, with influential developers frequently evading sanctions.[59] RERA's impact varies across market segments, achieving greater impact in formal, high-value urban markets with large corporate developers.[60]

5.3 Right to Fair Compensation and Transparency in Land Acquisition Act, 2013

'The LARR Act' addressed corruption vulnerabilities in land acquisition processes through mandatory social impact assessment, enhanced compensation frameworks, consent requirements for private projects, and transparent public purpose definitions.[61] The Act's transparent compensation framework has reduced valuation manipulation that enabled corrupt benefit-sharing between officials and project proponents. Procedural transparency provisions, including public hearings and information disclosure, have created accountability mechanisms constraining previously opaque acquisition processes.[62]

However, effectiveness is limited by several factors. Numerous states have diluted key transparency and consent provisions through amendments, creating regulatory inconsistencies.[63] Implementation of safeguards like social impact assessment has often been reduced to formalistic compliance without substantive adherence to

---

[54] The Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016 (India).

[55] Ministry of Housing & Urban Affairs, Govt. of India, *Three Years of RERA: Progress and Challenges* 28-35 (MoHUA, New Delhi, 2020).

[56] Maharashtra Real Estate Regulatory Authority, Govt. of Maharashtra, *Annual Report 2019-20* 42-48 (MahaRERA, Mumbai, 2020).

[57] Housing & Land Rights Network, *Implementation Status of RERA: A Comparative Analysis* 24-32 (HLRN, New Delhi, 2019).

[58] K. Darshini & N. Singh, RERA and Land Governance: Gaps and Challenges, 10 *J. Indian L. & Soc'y* 152-66 (2019).

[59] National Real Estate Development Council, *RERA Implementation: Industry Perspective* 38-45 (NAREDCO, New Delhi, 2020).

[60] M. Gulati, Real Estate Regulation Across Market Segments: Differential Impact of RERA, 55 *Econ. & Pol. Wkly.* 47-53 (2020).

[61] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 30 of 2013 (India).

[62] Ministry of Rural Development, Govt. of India, *Five Years of the LARR Act: Impact Analysis* 45-52 (MoRD, New Delhi, 2019).

[63] Centre for Policy Research, *State Amendments to the LARR Act: Implications for Transparency* 28-36 (CPR, New Delhi, 2020).

transparency principles.[64] Institutional capacity for implementing complex procedural requirements remains inadequate in most states, with insufficient expertise for credible impact assessment and valuation.[65] States increasingly utilize land pooling, negotiated purchase, and infrastructure corridor provisions outside LARR's ambit, creating alternative pathways with minimal transparency.[66]

5.4 Benami Transactions (Prohibition) Amendment Act, 2016

'The Benami Transactions (Prohibition) Amendment Act' targets proxy ownership arrangements concealing beneficiaries of property acquired through corrupt means. The amended Act strengthened the 1988 legislation by clarifying definitions, creating specialized adjudication machinery, and introducing robust confiscation provisions.[67] Specialized institutional frameworks for investigating suspicious property holdings have been established, with several high-profile confiscations demonstrating the Act's potential as an anticorruption tool.[68] However, enforcement capacity remains severely constrained relative to the scale of benami holdings, with specialized units investigating only a fraction of suspicious transactions. Implementation has revealed procedural challenges in establishing benami character, particularly for transactions structured through complex corporate arrangements. Evidentiary standards for proving beneficial ownership often exceed investigative capabilities, enabling sophisticated corruption networks to continue using modified arrangements with minimal detection risk.[69]

The Act focuses on ownership concealment without addressing underlying processes generating corrupt proceeds requiring concealment. Implementation has been hampered by coordination challenges between multiple agencies, including Income Tax authorities, Enforcement Directorate, revenue officials, and registration departments.[70]

5.5 State-Level Reform Initiatives and Innovations

Beyond national programs, states have implemented innovative reforms targeting specific corruption vulnerabilities in property governance. Gujarat's land title certification system establishes conclusive titling with state guarantee, supported by survey verification and digital cadastral mapping. This reduces information asymmetries and record ambiguities that corrupt intermediaries exploit.[71]

Rajasthan's Jan Soochna Portal integrates comprehensive property information with other governance data, creating unprecedented visibility into administrative decisions affecting property rights. By publishing detailed information on land use changes and government allocations, the system increases detection risks for previously

---

[64] M. Levien, *Dispossession Without Development: Land Grabs in Neoliberal India* 215-22 (Oxford University Press, New Delhi, 2018).

[65] NITI Aayog, Govt. of India, *Evaluation of Social Impact Assessment Implementation* 45-52 (NITI Aayog, New Delhi, 2018).

[66] R. Singh, Alternative Land Acquisition Methods and Transparency Implications, 56 *J. Dev. Stud.* 1482-95 (2020).

[67] The Benami Transactions (Prohibition) Amendment Act, 2016, No. 43 of 2016 (India).

[68] Income Tax Department, Ministry of Finance, Govt. of India, *Benami Properties Attachment Report 2016-2020* 28-36 (Income Tax Department, New Delhi, 2020).

[69] Evidentiary Challenges in Benami Proceedings: Analysis of Appellate Tribunal Decisions, 6 *Bar & Bench Legal Rep.* 124-32 (2019).

[70] Enforcement Directorate, Ministry of Finance, Govt. of India, *Inter-Agency Coordination for Benami Investigations* 39-45 (ED, New Delhi, 2020).

[71] Government of Gujarat, Revenue Department, *Land Title Certification System: Process and Impact* 28-34 (Govt. of Gujarat, Gandhinagar, 2019).

opaque corrupt transactions.[72]

Telangana's Dharani platform represents advanced implementation of end-to-end property administration digitization, integrating textual records, spatial data, and registration. The system eliminates several corruption vulnerabilities by automating mutations, standardizing valuation, and creating non-discretionary service delivery.[73]

Odisha's implementation of Forest Rights Act through technology-enabled community mapping addresses corruption affecting tribal land rights. By empowering communities with GPS tools and legal support to document traditional boundaries, the initiative reduces administrative manipulation of tribal claims that facilitated corrupt appropriation.[74]

While these state innovations demonstrate promising approaches to specific corruption vulnerabilities, their effectiveness has often been limited by implementation inconsistencies, institutional resistance, and political interference. Many initiatives achieved initial success but experienced subsequent degradation as corrupt networks adapted or political priorities shifted.[75]

6. Comparative Perspectives and International Best Practices

6.1 Global Benchmarks in Property Governance

International experience offers valuable comparative perspectives on addressing corruption vulnerabilities in property governance, with several countries implementing comprehensive reforms that provide benchmarks for evaluating India's framework.

Singapore's transformation from a corruption-prone property administration system to a global benchmark for integrity combined strict anti-corruption enforcement with comprehensive procedural simplification that eliminated unnecessary bureaucratic discretion.[76] The single-window clearance system for property development, transparent electronic bidding for public land, and integrated planning-building approval framework collectively minimized corruption opportunities while improving administrative efficiency.[77]

Georgia's post-2004 property administration reforms demonstrate the potential for rapid integrity improvements through comprehensive institutional restructuring. By dismantling corrupt land administration departments and rebuilding them with new personnel, simplified procedures, and technology-driven transparency, Georgia achieved dramatic reductions in property-related corruption within a five-year period.[78]

---

[72] Government of Rajasthan, Department of Administrative Reforms, *Jan Soochna Portal: Transparency in Land Administration* 42-48 (Govt. of Rajasthan, Jaipur, 2020).

[73] Government of Telangana, Revenue Department, *Dharani Portal: Technical Framework and Implementation* 36-42 (Govt. of Telangana, Hyderabad, 2020).

[74] Ministry of Tribal Affairs, Govt. of India, *Technology-Enabled Implementation of the Forest Rights Act in Odisha* 45-52 (MoTA, New Delhi, 2019).

[75] K. Sharma & B. Joshi, Sustainability of Land Governance Reforms: A Longitudinal Analysis, 9 *J. Pub. Admin. & Governance* 348-62 (2019).

[76] Corrupt Practices Investigation Bureau (Singapore), *Corruption Control in Land Administration: The Singapore Experience* 28-36 (CPIB, Singapore, 2018).

[77] Urban Redevelopment Authority (Singapore), *Transparent Land Administration System* 42-48 (URA, Singapore, 2019).

[78] World Bank Group, *Fighting Corruption in Public Services: Chronicling Georgia's Reforms* 75-83 (World Bank Group, Washington DC, 2016).

South Korea's property transparency framework provides relevant benchmarks for addressing corruption vulnerabilities in rapidly urbanizing contexts. The country's Real Estate Transaction Price Disclosure System mandates public reporting of actual transaction values rather than declared figures, creating market transparency that constrains undervaluation and black money circulation.[79]

These international benchmarks highlight several common elements of successful anticorruption reforms: (1) comprehensive rather than piecemeal approaches that address multiple vulnerability points simultaneously; (2) institutional restructuring that disrupts entrenched corruption networks; (3) procedural simplification that eliminates unnecessary discretionary touchpoints; (4) technology deployment integrated with procedural reforms; and (5) robust enforcement mechanisms with sufficient independence to withstand political pressure.[80]

6.2 Transferable Lessons from International Organizations

International organizations including the World Bank, UN-Habitat, Transparency International, and the Food and Agriculture Organization have developed substantial expertise in property governance reforms, offering evidence-based recommendations for addressing corruption vulnerabilities.

The World Bank's Land Governance Assessment Framework provides a comprehensive diagnostic methodology for identifying specific corruption vulnerabilities across different dimensions of property administration.[81] The framework's structured approach to evaluating legal frameworks, institutional capacities, and information management systems offers a systematic tool for prioritizing reforms based on vulnerability severity and implementation feasibility.

UN-Habitat's Continuum of Land Rights approach offers valuable insights for addressing corruption vulnerabilities affecting informal property rights, particularly relevant for India's urban slums and peri-urban settlements.[82] By recognizing and incrementally formalizing the spectrum of property claims between complete informality and full legal title, this approach reduces the binary exclusion patterns that corrupt officials exploit.

Transparency International's Land Corruption Risk Mapping tool provides a specialized methodology for identifying corruption typologies, vulnerability points, and mitigation strategies specific to property governance.[83] This systematic approach to corruption risk assessment enables targeted interventions that address the highest-impact vulnerabilities rather than generic transparency initiatives.

The Open Government Partnership's experience with property transparency reforms across member countries offers important insights into the sequencing and prioritization of anticorruption initiatives.[84] The comparative implementation evaluation highlights the importance of focusing initial reforms on high-visibility, citizen-facing

---

[79] Ministry of Land, Infrastructure & Transport (South Korea), *Real Estate Transaction Price Disclosure System: Implementation and Results* 36-42 (MOLIT, Seoul, 2018).

[80] Organisation for Economic Co-operation and Development, *Anti-Corruption Reforms in Land Administration: Comparative Analysis* 95-104 (OECD Publishing, Paris, 2019).

[81] World Bank Group, *Land Governance Assessment Framework: Implementation in South Asia* 75-82 (World Bank Group, Washington DC, 2018).

[82] UN-Habitat, *Handling Land: Innovative Tools for Land Governance and Secure Tenure* 68-76 (UN-Habitat, Nairobi, 2017).

[83] Transparency International, *Land Corruption Risk Mapping: Case Studies from India* 45-52 (Transparency International, Berlin, 2020).

[84] Open Government Partnership, Land Transparency Initiatives: Implementation Lessons 38-45 (Open Government Partnership, Washington DC, 2020).

services to build reform momentum before addressing more complex, politically sensitive corruption vulnerabilities.

6.3 Technology Solutions and Their Limitations

Technological innovations including blockchain-based registries, artificial intelligence for anomaly detection, satellite monitoring for land use verification, and integrated digital platforms have emerged as promising tools for addressing corruption vulnerabilities in property governance.

Blockchain applications in property registration create tamper-resistant transaction records that eliminate the record manipulation vulnerabilities endemic in traditional registry systems. Pilot implementations in Andhra Pradesh and Telangana have demonstrated technical feasibility, with blockchain layers securing transaction integrity even when integrated with existing record systems.[85]

Geographic Information System integration with property administration addresses spatial corruption vulnerabilities, including boundary manipulation and land use violations. Advanced implementations utilizing high-resolution satellite imagery, drone surveys, and digital cadastral mapping create objective spatial records that constrain discretionary boundary interpretations.[86]

Artificial intelligence applications for identifying suspicious transaction patterns represent emerging tools for enhancing detection capabilities against sophisticated corruption networks.[87] Telangana's experimental deployment of machine learning algorithms to analyze registration data has demonstrated potential for identifying statistically improbable transaction clusters that may indicate corruption networks.[88]

However, international experience highlights important limitations to technology-centered approaches. Technological solutions interact with existing institutional dynamics, often reinforcing rather than transforming power relations when implemented without corresponding governance reforms.[89] Digital systems operated by the same officials within unchanged administrative structures frequently reproduce existing corruption patterns in new technological environments.[90]

Technology implementation itself creates new corruption vulnerabilities through system design contracts, customization decisions, and operational control arrangements. The effectiveness of technological solutions depends critically on data quality, with many implementations compromised by incorporating inaccurate historical records or deliberately manipulated ownership data.[91]

7. Towards a Unified Cadastral Integrity Framework

This research reveals that corruption within India's land governance system stems from structural deficiencies

---

[85] Government of Andhra Pradesh, Information Technology Department, *Blockchain Implementation in Land Records: Pilot Study Report* 28-35 (Govt. of Andhra Pradesh, Amaravati, 2020)

[86] National Remote Sensing Centre, Indian Space Research Organisation, *Satellite-Based Monitoring of Land Use Violations* 42-48 (NRSC-ISRO, Hyderabad, 2019).

[87] Ministry of Electronics & Information Technology, Govt. of India, *Artificial Intelligence Applications in Government Services* 65-72 (MEITY, New Delhi, 2020).

[88] Government of Telangana, Information Technology Department, *Machine Learning for Fraud Detection in Land Registration* 38-44 (Govt. of Telangana, Hyderabad, 2020).

[89] J. Ferguson & A. Ballesteros, Technology and Power in Land Administration, 122 *World Dev.* 657-69 (2019).

[90] R. Heeks, Information Technology and Public Sector Corruption, 34 *Info. Dev.* 513-26 (2018).

[91] Asian Development Bank, *Digital Solutions for Land Governance: Quality and Implementation Challenges* 88-96 (ADB, Manila, 2020).

rather than isolated incidents. The fragmented regulatory landscape, institutional disconnection, and procedural complexities collectively create an environment where corruption flourishes through systemic opportunities rather than individual moral failures.

After examining reform attempts across constitutional, legislative, institutional, and procedural dimensions, it becomes evident that a transformative approach is necessary. The proposed Unified Cadastral Integrity Framework (UCIF) reconceptualizes land administration as a cohesive public trust rather than disparate bureaucratic procedures, addressing vulnerabilities through integrated interventions across five dimensions:

1. Legislative Integration: Creation of a unified legal code governing all aspects of property administration, replacing the current fragmented framework that enables jurisdiction shopping and accountability avoidance. This National Land Governance Act would establish consistent standards while preserving necessary regional flexibility through structured delegation provisions.[92]

2. Institutional Restructuring: Establishment of an autonomous National Land Commission with constitutional authority, positioned to operate independently while maintaining democratic accountability through transparent performance metrics.[93] At the state level, integrated Land Administration Authorities would replace the current fragmented departmental structure.

3. Procedural Simplification: Implementation of procedural reengineering that eliminates unnecessary discretionary touchpoints, standardizes decision criteria, and creates predictable, transparent service pathways. Single-window clearance systems for all property services would replace the current multi-departmental approval chains.[94]

4. Technology Architecture: Development of an integrated digital platform combining blockchain-secured records, GIS-based spatial information, and AI-powered anomaly detection.[95] Unlike current digitization efforts, this would be designed specifically to constrain corruption through embedded accountability mechanisms, automated compliance verification, and distributed validation requirements.

5. Capacity Enhancement: Creation of a specialized Property Rights Protection Service to professionalize land administration with dedicated training, competitive compensation, and career advancement tied to integrity rather than revenue metrics.[96] For vulnerable communities, simplified "rights recognition pathways" would enable property formalization without requiring navigation through complex bureaucratic channels.

Implementation would follow a strategic sequencing approach, beginning with urban land markets where corruption costs are most visible and technological infrastructure is most developed. Pilot implementation in high-pressure districts would create integrated Land Transparency Zones that demonstrate the viability of

---

[92] Law Commission of India, *Framework for National Land Governance Legislation* 48-56 (Law Commission of India, New Delhi, 2020).

[93] Second Administrative Reforms Commission, Govt. of India, *Report on Land Administration* 124-32 (2nd ARC, New Delhi, 2017).

[94] NITI Aayog, Govt. of India, *Procedural Simplification for Land Services* 65-72 (NITI Aayog, New Delhi, 2019).

[95] Ministry of Electronics & Information Technology, Govt. of India, *Integrated Land Information Management System: Technical Architecture* 38-45 (MEITY, New Delhi, 2020).

[96] Department of Personnel & Training, Govt. of India, *Specialized Services Framework for Land Administration* 75-82 (DoPT, New Delhi, 2018).

comprehensive reform before nationwide scaling.[97]

8. Limitations of the Study

This research acknowledges several limitations that should inform interpretation of its findings. First, the empirical data on corruption patterns relies primarily on documented cases, official reports, and expert interviews, potentially underrepresenting forms of malfeasance that remain undetected or unreported. Second, the analysis focuses predominantly on formal governance systems with limited exploration of informal property arrangements that govern significant land resources, particularly in rural and tribal areas. Third, the evaluation of reform initiatives occurs within a limited temporal frame that may not fully capture long-term effectiveness or adaptation dynamics. Finally, the transferability of international lessons to India's diverse and complex governance context requires careful adaptation rather than direct application. Future research addressing these limitations would further enhance understanding of effective anti-corruption strategies for land governance in India.

9. **Conclusion and Future Research Directions**

This unified approach acknowledges that land corruption represents a fundamental governance design failure requiring holistic reimagination of property administration—moving from a vulnerability-laden system to one that effectively secures rights, enables legitimate development, and restores public trust in state institutions. By targeting the structural foundations of corruption rather than its symptomatic manifestations, the proposed framework offers a pathway to transformative rather than incremental change in India's property governance landscape.

Future research directions should focus on several key areas:

(1) empirical assessment of implementation dynamics for recent reforms;

(2) development of robust metrics for measuring cadastral governance integrity;

(3) comparative analysis of state-level innovation effectiveness; and

(4) examination of interaction patterns between formal and informal property systems. Understanding these dimensions will provide critical insights for designing context-appropriate interventions that address the systemic nature of land corruption in India.

The significance of this research extends beyond the Indian context. As developing countries worldwide grapple with similar challenges in property governance, the analytical framework and recommended approaches offer transferable insights for designing interventions that address corruption not merely as isolated incidents but as structural governance challenges requiring comprehensive reform.

[97] Ministry of Housing & Urban Affairs, Govt. of India, *Land Transparency Zones: Implementation Framework* 42-48 (MoHUA, New Delhi, 2021).

THE CHANGING LANDSCAPE OF FORENSIC SCIENCES UNDER NEW CRIMINAL LAWS IN INDIA: LEGISLATIVE REFORMS, OPPORTUNITIES AND CHALLENGES

Abishieke R [*]
Aayush Tripathi [**]

Abstract

The introduction of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represents a seismic shift in India's criminal legal administration since the colonial era. Paramount to these reforms is the enhanced integration of forensic science and modern technological approaches to criminal investigation, prosecution, and adjudication. Such reforms are imperative as the criminal justice system must evolve with the evolving nature of crime in society. This paper explores the transformative role that forensic science can play in India's newly reformed criminal justice system following the legislative changes in 2023. This paper explores how digital evidence provisions, mandatory forensic examinations for serious offences, and modern investigative methods can improve India's criminal justice system's accuracy, efficiency, and fairness. This paper finds the challenges in implementation, including inadequacy, expertise gaps, standardization problems, and financial constraints that may slow down the potential of these reforms. By examining the framework of law, technology, and forensic science, this paper reviews how forensic advancements rooted in the new laws can address longstanding backlogs, inadequacies, and outdated mechanisms in the Indian criminal justice system.

Keywords: Criminal Justice System, Forensic Science, Investigation, Evidence, New Laws

"Wherever he steps, wherever he touches, whatever he leaves, even without consciousness, will serve as a silent witness against him. Not only his fingerprints or his footprints, but his hair, the fibers from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. All of these and more, bear mute witness against him. This is evidence that does not forget. Physical evidence cannot be wrong, it cannot perjure itself, it cannot be wholly absent."

I. Introduction

The criminal justice system forms the backbone of the rule of law in any democratic society, serving as the primary mechanism through which justice is delivered, rights are protected, and social order is maintained. This system has operated in India for more than a century under colonial-era legal frameworks that have increasingly struggled to address the complexities of modern crime, technological advancements, and evolving societal

[*] Abishieke R, Student, Amity Law School, Noida

[* *] Assistant Professor (Law), Amity Law School, Noida

expectations.[1] The Indian Penal Code of 1860[2] (Hereinafter IPC), the Code of Criminal Procedure of 1973[3] (Hereinafter CrPC), and the Indian Evidence Act of 1872[4] (Hereinafter IEA) have been the foundation of this system, establishing the substantive and procedural part of criminal justice administration.

However, these legislations developed primarily during British rule, have faced high criticism for their ineffective procedures and incapacity to handle modern issues like financial fraud, terrorism, organized crime networks, and cybercrime. Moreover, numerous case backlogs, delays in investigations and trials, resource constraints, and uneven use of forensic technology in criminal investigations have also caused problems for the system.

Against this backdrop 21st December, 2023, marked a watershed moment in India's legal history as both houses of Parliament passed three comprehensive bills to replace the existing colonial-era criminal laws[5]: the Bharatiya Nyaya Sanhita of 2023[6] (Hereinafter BNS), replacing the IPC; the Bharatiya Nagarik Suraksha Sanhita of 2023[7] (Hereinafter BNSS), replacing the CrPC; and the Bharatiya Sakshya Adhiniyam of 2023[8] (Hereinafter BSA), replacing the IEA. This revamp represents a significant change in our criminal justice system since independence, seeking to tackle longstanding issues while updating the structure to meet current challenges.

A defining feature of these new laws is their emphasis on integrating forensic science and modern technology into criminal justice. Forensic science is when experts use scientific tools and methods to gather, examine, and interpret evidence to understand what happened in a crime or legal dispute. It pulls in everything from chemistry and biology to physics and computer forensics, DNA tests, fingerprint checks, blood-spatter analysis or digital data recovery and then presents those findings in court to help judges and juries make fair decisions. The reforms recognize that scientific evidence and forensic analysis have become indispensable tools in modern criminal investigations[9], offering greater reliability, objectivity, and precision than traditional investigative methods. Among the notable provisions are the mandatory requirement for forensic examination in cases involving offences punishable with imprisonment of seven years or more[10], the admissibility of electronic records as primary evidence[11], and the systematic digitisation of various stages of criminal proceedings, from FIR registration to judgment delivery.

---

[1] M. Z. Khan and N. Prabha Unnithan, "Criminological and Criminal Justice Education in India: A Comparative Note" 19 *Journal of Criminal Justice Education* 97-109 (2008).
[2] The Indian Penal Code, Act No. 45 of 1860
[3] The Code of Criminal Procedure, Act No. 2 of 1974
[4] The Indian Evidence Act, Act No. 1 of 1872
[5] Government of India, "Pre-Legislative Consultation for the Bhartiya Nyaya Sanhita, Bhartiya Nagrik Suraksha Sanhita and the Bhartiya Sakshya Acts" (Ministry of Law and Justice, 2024)
[6] The Bharatiya Nyaya Sanhita, No. 45 of 2023
[7] The Bharatiya Nagarik Suraksha Sanhita, Act No. 46 of 2023
[8] The Bharatiya Sakshya Adhiniyam, Act No. 47 of 2023
[9] The Lucknow Tribune, *available at:* https://thelucknowtribune.org/law-department-of-rohilkhand-university-has-published-the-book-navigating-criminal-law-reforms-in-india/ (last visited on April 18, 2025).
[10] Government of India, "The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023" (Ministry of Home Affairs)
[11] Bharatiya Sakshya Adhiniyam (Act No. 47 of 2023), s. 57

These changes come at a time when forensic science itself is undergoing rapid advancement globally. DNA profiling, digital forensics, ballistics analysis, toxicology, and fingerprint identification methods have progressed from basics to advanced scientific fields that can offer insights into investigations.[12] However, effectively integrating these techniques into the criminal justice system presents opportunities and challenges, particularly in a mixed and resource-constrained environment like India.

This paper broadly explores the role of forensic science within India's recently updated criminal justice system, analyzing the opportunities, concerns, and obstacles that emerge at the intersection of law, science, and technology in this transformative setting. The paper is divided into various parts and examines the historical role and evolution of forensic sciences in criminal justice administration in India, covering pre-independence, post-independence, and pre-2023 scenarios. The growing importance of forensics is also discussed while exploring the broad changes brought about by the 2023 laws. Furthermore, the paper explore the provisions related to forensic sciences in the new criminal laws, including mandatory forensic examinations, video analysis, and other relevant aspects. Lastly, it discusses the opportunities and challenges associated with implementing forensic technology. By thoroughly examining the new legislation, its forensic components, and its application environment, this research paper aims to support criminal justice reform in India and provide perspectives that can guide the effective implementation of these changes.

II.

Historical Context and Evolution of Forensic Science in India's Criminal Justice System

The application of scientific methods to criminal investigation in India has a long but uneven history, evolving from fundamental techniques during the colonial era to increasingly sophisticated approaches in the contemporary period.[13] Understanding this historical course provides essential context for valuing the significance of the current reforms.

2.1. Origins and Early Development

The formal introduction of forensic science into India's criminal justice system can be traced to the establishment of the Chemical Examiner's Laboratory in Madras in 1849, followed by similar facilities in Calcutta and Bombay.[14] These laboratories primarily conducted toxicological analyses and chemical examinations related to suspected poisoning cases.[15] The enactment of the IEA in 1872 provided the first legal framework for the admissibility of scientific evidence in court proceedings.[16] Section 45 of IEA[17] specifically

[12] Ankit Srivastava, Abhimanyu Harshey, Tanurup Das, Akash Kumar, Murali Manohar Yadav and Pankaj Shrivastava, "Impact of DNA Evidence in Criminal Justice System: Indian Legislative Perspectives" *Egyptian Journal of Forensic Sciences* (2022).
[13] *Ibid.*
[14] Douglas H. Ubelaker (ed.), *The Global Practice of Forensic Science* 147-153 (Wiley Blackwell, UK, 2014).
[15] *Ibid.*
[16] Dr. Kusum Chauhan, "Admissibility and Evidentiary Value of Scientific Evidence: Legislative and Judicial Approach in India" 8 *International Journal for Research Trends and Innovation* 146-157 (2023).

recognised the role of expert testimony in areas requiring specialised knowledge. In *Ramesh Chandra Agrawal v. Regency Hospital Ltd*[18], an expert, as per Section 45[19], was defined as someone who has done special study of the subject or acquired exceptional experience therein or, in other words, he is skilled and has adequate knowledge of the subject.

The introduction of fingerprint-based identification in the early 20th century marked a significant advancement in forensic capabilities.[20] The establishment of the Fingerprint Bureau in Calcutta in 1897 demonstrated India's early adoption of this crucial forensic technique,[21] with *Hem Chandra Bose*[22]*, Qazi Azizul Haque*[23] and *Sir Edward Richard Henry*[24] developing the Henry Classification System for fingerprint identification while serving in Bengal.[25]

2.2 Post-Independence Developments

Following independence in 1947, India's forensic capabilities expanded by establishing the Central Forensic Science Laboratory (Hereinafter CFSL) in Calcutta in 1957 and developing regional forensic science laboratories across various states.[26] The creation of the Directorate of Forensic Science Services (Hereinafter DFSS) under the Ministry of Home Affairs in 2002 represented an important institutional development aimed at coordinating and enhancing the quality of forensic services nationwide.[27]

Despite these institutional developments, the application of forensic science in criminal investigations remained inconsistent and often inadequate.[28] The pre-reform legal framework presented several structural limitations, such as Forensic examination was largely discretionary rather than mandatory,[29] resulting in different implementations across jurisdictions and cases. Conventional types of evidence, especially eyewitness accounts and confessions, frequently dominate scientific evidence in court proceedings despite known reliability issues

[17] Indian Evidence Act (Act No. 1 of 1872), s. 45
[18] Ramesh Chandra Agrawal v. Regency Hospital Ltd., (2009) 9 SCC 709
[19] Supra Note. 18
[20] Ashraf Mozayani and Carla Noziglia (eds.), *The Forensic Laboratory Handbook Procedures and Practice* (Humana Press, New York, USA, 2nd edn., 2011).
[21] Dr. Varsha R. Yadav, "A Historical Development of the Fingerprint in India with Special Reference to Ayurveda" 11 *World Journal of Pharmaceutical and Medical Research* 60-62 (2025).
[22] Rai Bahadur Hem Chandra Bose (1867-1949)
[23] Khan Bahadur Qazi Azizul Haque (1872-1935)
[24] Sir Edward Richard Henry, 1st Baronet, GCVO, KCB, CSI, KPM (1850-1931)
[25] The Quint, *available at:* https://www.thequint.com/news/india/bsf-jawan-purnam-kumar-shaw-returns-to-india-20-days-after-being-detained-by-pakistan-rangers (last visited on: April 10, 2025)
[26] Tewari RK and Ravikumar KV, "History and Development of Forensic Science in India" 46 *Journal of Postgraduate Medicine* 303-308 (2000).
[27] Central Forensic Science Laboratory, *available at:* https://www.cfslchandigarh.gov.in/(S(i3au2hwqcrt52ze3iqxles4i))/History.aspx (last visited on April 10, 2025).
[28] V.R.Dinkar, "Forensic Scientiic Evidence: Problems and Pitfalls in India" *International Journal of Forensic Science & Pathology* 79-84 (2015).
[29] Dr. Ashu Dhiman and Mr. Param Bhamra, "Evidentiary Value of Forensic Reports and Legal Implications" 2 *NFSU Journal of Forensic Justice* 7-13 (2023).

with such testimony.[30] The CrPC lacked specific provisions for handling various types of forensic evidence, resulting in procedural uncertainties that often-compromised evidence integrity. The definition of documents[31] under IEA was not explicitly revised to account for digital and electronic records, creating challenges for the admissibility of digital forensic evidence.

These constraints became an issue as technological progress introduced new types of crime and investigative opportunities that the conventional framework was unprepared to handle.

2.3 Growing Recognition of Forensic Science's Importance

In the decades preceding the 2023 reforms, several factors contributed to the growing recognition of forensic science's importance in criminal justice administration:

Through various judgments including *Dharam Deo Yadav v. State of U.P.*[32] nevertheless, not exhaustively, the *Supreme Court of India* emphasized the importance of scientific evidence in criminal proceedings and highlighted the limitations of over-reliance on testimonial evidence. Widely publicized cases, such as *Priyadarshini Mattoo case*,[33] where forensic evidence played a crucial role in securing convictions or exposing miscarriages of justice and increased awareness of forensic science's value. Gradual amendments to the laws, particularly in response to specific types of crimes like sexual violence, included provisions for forensic examination. The Criminal Law Amendment Act of 2013[34], enacted after the *Nirbhaya case*[35], strengthened provisions related to medical examination and DNA profiling in sexual assault cases. The fast development of forensic technologies, particularly DNA profiling and digital forensics, indicated the potential of science to revolutionise criminal investigation.[36]

These developments set the backdrop for reforms incorporated in the new laws, which boost the role of forensic science from an optional investigative tool to a mandatory component.

2.4 Overview of India's New Criminal Laws

The introduction of the three new criminal laws, i.e. BNS, BNSS, and BSA, represents a significant revamp in India's framework, driven by several key objectives:

a) The reforms aim to equip the legal system to address modern crimes such as terrorism, organized crime, cybercrime, and financial fraud.[37] b) A critical objective was to address delays in India's criminal justice system

[30] Association for Psychological Science, *available at:* https://www.psychologicalscience.org/uncategorized/myth-eyewitness-testimony-is-the-best-kind-of-evidence.html (last visited on April 10, 2025).
[31] Indian Evidence Act (Act No. 1 of 1872), s. 3
[32] Dharam Deo Yadav v. State of U.P., (2014) 5 SCC 509
[33] State (Through CBI) v. Santosh Kumar Singh, 2007 CRILJ 964
[34] The Criminal Law (Amendment) Act, 2013, Act No. 13 of 2013
[35] Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1
[36] Penelope R Haddrill, "Developments in Forensic DNA Analysis" 5 *Emerging Topics in Life Sciences* 381–393 (2021).
[37] Lt Gen Gurmit Singh, "Paper on Implementation of Three Criminal Laws" *Conference of Governors* (2024).

by streamlining procedures, setting time limits, and leveraging technology.[38] c) The reforms seek to strengthen the position of victims in the criminal justice process through various provisions that enhance their rights and involvement.[39] d) A primary motivation was to replace colonial-era laws with legislation that reflects India's sovereign identity and contemporary values.[40] e) One of the main objectives was to formally incorporate modern technological tools and forensic techniques into the legal framework.[41]

2.4.1. Bharatiya Nyaya Sanhita, 2023

BNS replaces IPC, providing substantive criminal law defining offences and prescribing punishments. Major innovations include:

The BNS introduces several new offences, including organised crime (encompassing criminal breach of trust, forgery, financial scams, Ponzi schemes, mass marketing frauds, and cybercrimes), terrorism, mob lynching, and sexual intercourse under the false promise of marriage.[42] The BNS removes several offences either struck down by courts or considered obsolete, notably abolishing offences such as adultery, unnatural offences, and sedition.[43] The new law increases punishments for several heinous offences, reflecting a more assertive deterrence approach to serious crimes.[44] The BNS introduces community service as a punishment for specific crimes, representing a shift toward more rehabilitative approaches.[45]

2.4.2. Bharatiya Nagarik Suraksha Sanhita, 2023

BNSS replaces the CrPC, establishing procedural criminal investigation and trial framework. Major innovations include:

BNSS primarily promotes technology use throughout criminal justice, enabling videoconferencing for trials and testimony, electronic communication of summons, and electronic cognisance of offences.[46] The most noteworthy procedural change is the requirement for mandatory forensic examination in cases involving offences punishable with imprisonment of seven years or more.[47] BNSS mandates video recording of the crime

[38] LexisNexis, *available at:* https://www.lexisnexis.in/blogs/new-criminal-laws-in-india/ (last visited on April 10, 2025).
[39] Government of India, "New Criminal Laws" (Ministry of Home Affairs, 2024)
[40] AuthBridge, *available at:* https://authbridge.com/blog/new-criminal-laws-india-2024/#:~:text=Addressing%20Colonial%20Influences,the%20needs%20of%20Indian%20society (last visited on April 10, 2025).
[41] Ready Reckoner, "Highlighting the Use of Technology in New Criminal Act" *Digitizing Justice, Elevating Credibility!*
[42] Supra Note. 38
[43] Government of India, "The Bharatiya Nyaya (Second) Sanhita, 2023" (Ministry of Home Affairs)
[44] Legal Kart, *available at:* https://www.legalkart.com/legal-blog/ipc-vs.-bns-a-comprehensive-modern-comparison-of-key-legal-sections (last visited on April 10, 2025).
[45] Irfan Rashid and Arpit Pandey, "Community Service Under the BNS: Progress, Pitfalls, and Potential" *NLIU Law Review* (2025).
[46] Supra Note. 42
[47] Supra Note. 11

scene investigation process for serious offences and of statements by survivors of sexual violence.[48] The law establishes various procedural timelines to prevent delays in the criminal justice process.[49]

BNSS directs police to consult victims before withdrawing serious cases, enhancing victim participation in the criminal justice process,[50] and this follows the judicial pronouncement of the Hon'ble Supreme Court in *Rattiram & Ors. v. State of M.P. through Inspector of Police,*[51] which provides *"The criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries. In respect of certain offences in our existing criminal jurisprudence, the testimony of the victim is given paramount importance. Sometimes it is perceived that it is the duty of the court to see that the victim's right is protected."*

2.4.3. Bharatiya Sakshya Adhiniyam, 2023

BSA replaces IEA, governing the admissibility and evaluation of evidence in court proceedings. Major innovations include:

BSA substantially expands the definition of documents as shown in Figure 1 below, to include electronic or digital records, encompassing online communications, emails, messages, server logs, user files, and communication devices.

A significant change is the reclassification of electronic records from secondary to primary evidence, enhancing the standing of digital evidence in court proceedings.[52] BSA establishes specific criteria for the admissibility of electronic evidence, including authenticity, integrity, and reliability requirements.[53]

III.

Forensic Provisions in the New Criminal Laws

New laws strongly emphasize incorporating forensic science into the criminal justice system. This chapter analyses the scope, requirements, and possible ramifications of the specific forensics-related provisions in the three new statutes.

[48] Government of India, "Standard Operating Procedure (SOP) for Audio - Visual Recording of Scene of Crime" (Ministry of Home Affairs)
[49] Supra Note. 11
[50] Deccan Herald, *available at:* https://www.deccanherald.com/india/bnss-makes-it-hearing-of-victims-mandatory-before-withdrawal-of-case-3088575 (last visited on April 11, 2025).
[51] Rattiram & Ors. v. State of M.P. through Inspector of Police, [2012] 3 S.C.R. 496
[52] Government of India, "The Bharatiya Sakshya Bill, 2023" (Ministry of Home Affairs)
[53] "Admissibility of Electronic Evidence Under the Bharatiya Sakshya Adhiniyam, 2023" *Jus Corpus Law Journal* (2024).

3.1. Mandatory Forensic Examination for Serious Offenses

The most significant forensic innovation is found in the BNSS, which introduces a mandatory requirement for forensic examination in cases involving serious offences. Specifically, the law stipulates that a forensic examination will be mandatory in cases with offences that are punishable by imprisonment of seven years or more and are categorised as heinous offences.[54]

This provision represents a shift from the discretionary approach to forensic evidence under the previous Act. By making forensic examination mandatory for serious offences, the law specifies scientific evidence as a central rather than peripheral element of criminal investigations. This prerequisite applies to a broad range of serious crimes, including murder, rape, kidnapping, robbery, terrorism-related offences, trafficking, and many forms of organised crime.

The mandatory nature of this requirement has substantial implications for India's forensic infrastructure, necessitating adequate laboratory capacity, trained personnel, and quality control systems to handle the increased volume of forensic work. It also raises questions about compliance verification mechanisms and the consequences of non-compliance.

3.2. Video Recording Requirements

The BNSS also mandates video recording in several contexts with forensic implications:

BNSS requires video recording of the complete crime scene examination process for serious offences, and this creates a permanent visual record of the crime scene, documents the evidence collection process, allows later expert review, and provides a reference point if allegations of evidence tampering arise.[55] BNSS makes video recording of statements by survivors of sexual violence compulsory, and this reduces the trauma of repeated testimony, creates a record, helps prevent coercion or manipulation, and provides a standard for evaluating consistency in later statements.[56]

These recording requirements enhance the documentary aspects of forensic evidence, creating objective records that provide essential context for assessing other evidence and improving clarity in the investigative process.

[54] Supra Note. 11
[55] Supra Note. 49
[56] *Ibid.*

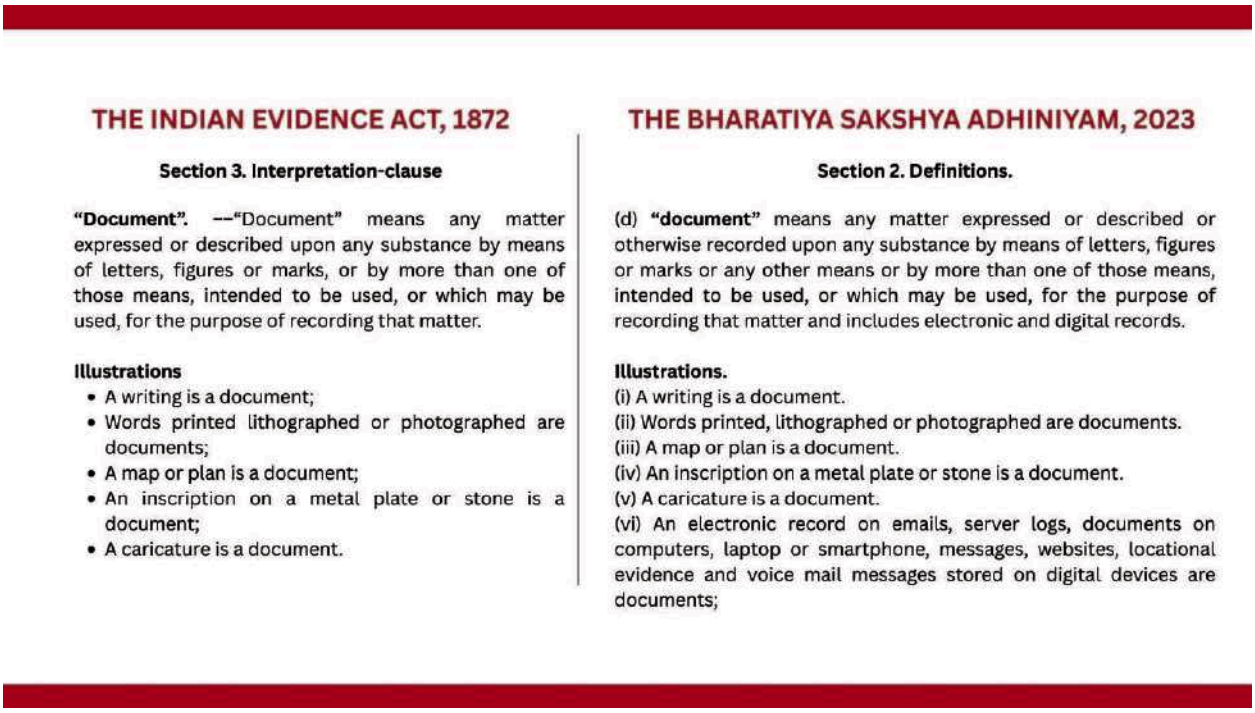


FIGURE 1 COMPARISON OF THE TERM "DOCUMENT" UNDER THE IEA AND BSA

3.3. Digital and Electronic Evidence Provisions

The most substantial forensic innovations regarding digital evidence appear in the BSA, fundamentally transforming how electronic evidence is conceptualised and treated in the legal system.

3.3.1 Expanded Definition of Documents

The BSA has transformed the conceptualisation and treatment of electronic evidence within India's legal system by explicitly expanding the definition of documents to include electronic or digital records,[57] moreover, this encompasses online communications, emails, messages exchanged on digital platforms, server logs documenting digital activity, user files such as photographs and call recordings, communication devices like mobile phones, laptops, websites, cameras, and any other electronic device specified by the Government. This expanded definition recognises the contemporary reality that evidence predominantly exists in digital rather than physical form, necessitating adaptive legal frameworks.[58] A key aspect of this evolution is the reclassification of electronic records as primary evidence, moving beyond their previous status under the IEA as secondary evidence, which required additional authentication and carried less weight than physical documents.[59] By treating electronic records as original evidence, the BSA places them on equal footing with physical documents, fundamentally reconceptualising digital information and significantly influencing the collection, presentation,

[57] Divyansha Goswami, "Electronic Evidence in Focus: Navigating Legal Shifts in the Law on Electronic Evidence Under the BSA, 2023" *SCC Online Times* (2024).
[58] Vera Causa Legal, *available at:* https://veracausalegal.com/blogs/bharatiya-sakshya-adhiniyam-2023/#:~:text=The%20BSA%202023%20has%20expanded,as%20admissible%20documents%20in%20court (last visited on April 12, 2025).
[59] AZB & Partners, *available at:* chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.azbpartners.com/wp-content/uploads/2024/07/final-version-1.pdf (last visited on May 10, 2025).

and evaluation of evidence in court proceedings.

To complement this improved status, the BSA establishes detailed admissibility criteria focusing on authenticity, integrity, and reliability, ensuring that digital evidence is genuine, unaltered, and trustworthy, thus integrating technological advancements without compromising evidential reliability.[60] The foundation for acknowledging electronic communications and recordings as legitimate kinds of evidence was established in India by the Information Technology Act of 2000.[61] BSA has revised to handle the growing significance of digital evidence in India, and this revision has strengthened the emphasis on the integrity and reliability of digital records, ensuring that the evidence submitted in court has not been tampered with or manipulated.[62]

3.3.2 DNA Profiling and Biological Evidence

The new laws implicitly enhance the role of DNA profiling and other biological evidence in criminal investigations.[63] The mandatory requirement for forensic investigations in serious criminal cases, including sexual assault, homicide, and missing persons, enhances the integration of biological evidence like DNA profiling into modern criminal investigations.[64] In sexual assault cases, video recording survivors' statements complements DNA evidence collection protocols, creating a comprehensive approach that corroborates or denies testimonies and strengthens case prosecution. For homicide investigations, systematic forensic examination ensures the collection and analysis of biological evidence at crime scenes, aiding in identifying suspects and reconstructing events. Similarly, enhanced forensic provisions in cases of missing people facilitate using DNA databases to identify missing individuals and human remains. Advancing forensic examination to a statutory obligation establishes a strong foundation for expanding the use of DNA profiling and other biological evidence analysis, which are increasingly important for ensuring justice through scientific precision.[65]

IV.

Opportunities for Improving Criminal Justice through Forensic Integration

Integrating forensic science into India's criminal justice system through the new laws presents significant opportunities for enhancing the efficiency, accuracy, and fairness of criminal investigations and prosecutions. This chapter examines these opportunities.

---

[60] Prithwish Ganguli, "Admissibility of Digital Evidence Under Bharatiya Sakshya Sanhita: A Comparative Study with the Indian Evidence Act" *SSRN* (2024).
[61] The Information Technology Act, Act No. 21 of 2000
[62] Supra Note. 61
[63] Drishti IAS, *available at:* https://www.drishtiias.com/daily-updates/daily-news-analysis/dna-profiling-in-the-justice-system#:~:text=Code%20of%20Criminal%20Procedure%2C%201973,DNA%20profiling%20for%20rape%20suspects (last visited on April 09, 2025).
[64] Dr. Vibhuti Nakta and Shruti Dahiya, "Genetic Jurisprudence: Reimagining Indian Legal System's Approach to DNA Evidence and Privacy Protections" 63 *Panjab University Law Review* 130-146 (2024).
[65] *Ibid.*

4.1. Enhancing Investigative Accuracy and Reducing Wrongful Convictions

Mandatory forensic techniques in serious criminal cases can substantially improve investigative accuracy.[66] This advancement addresses several longstanding issues in Indian criminal investigations:

India's criminal justice system has historically been criticised for over-reliance on confessions, which research has shown can be unreliable and susceptible to coercion.[67] Enhanced forensic provisions create opportunities to build cases on objective scientific evidence rather than potentially problematic confessional evidence.[68]
Sir William Blackstone[69] mentioned, *"It is better that ten guilty persons escape, than that one innocent suffers."*[70] We as a Country have emphasised this quote relentlessly, yet there have been numerous wrongful convictions, not only in India but worldwide, and a systematic application of forensic techniques offers a powerful check against wrongful convictions, which have been documented in multiple cases, including the famous *O. J. Simpson murder case*.[71] The legislative necessity for forensic examination in serious cases creates a possibility to standardise investigative procedures across different jurisdictions within India, potentially lowering disparities in the quality and thoroughness of investigations.[72] These opportunities are significant in the Indian context, where the criminal justice system has faced criticism for inconsistent investigative quality across different jurisdictions and cases.[73]

4.2. Addressing Case Backlogs and Enhancing Efficiency

Enormous case backlogs and procedural delays have infested India's criminal justice system.[74] The provisions in the new laws present several ideas for potentially decreasing these backlogs, such as objective forensic evidence facilitating early case resolution by clarifying factual disputes earlier in the criminal justice process, and this can lead to an increased rate of guilty pleas and fewer cases that proceed to full trial.[75] Digital evidence provisions can expedite trial proceedings by streamlining court processes and minimising unnecessary adjournments and procedural delays.[76] Further, scientific evidence enhances the screening of unmeritorious cases by providing an objective basis for identifying those that lack evidentiary merit, and this allows prosecutorial and judicial

[66] Shichun Ling, Jacob Kaplan, *et.al.*, "The Importance of Forensic Evidence for Decisions on Criminal Guilt" 61 *Science & Justice* 142-149 (2021).
[67] Muskan Sahni, "Punishing the Innocent: An Insight into Wrongly Convicted Individuals" 6 *International Journal for Multidisciplinary Research* 1-36 (2024).
[68] *Ibid.*
[69] English judge, Jurist, and Professor
[70] Commentaries on the Laws of England
[71] The People of the State of California v. Orenthal James Simpson, 43 Cal.2d 553, [Crim. No. 5547. In Bank. Oct. 26, 1954.]
[72] Srishti, "The Impact of Forensic Science on the Legal System in India" *Journal of Forensic Science and Research* 001-006 (2025).
[73] Vinay Kumar and Yogendra Singh, "Investigation and Trial: Analyzing Procedural Challenges in the Indian Criminal Justice System" 4 *International Journal of Criminal, Common and Statutory Law* 196-203 (2024).
[74] *Ibid.*
[75] National Institute of Justice, U.S. Department of Justice, "The Role and Impact of Forensic Evidence in the Criminal Justice Process" (2010)
[76] Padmaja Sharma and Dr. Christabell Joseph, "Evolution of Electronic Evidence: Navigating the Admissibility of the New Criminal Laws in India" 5 *Indian Journal of Integrated Research in Law* 1017-1028.

resources to be concentrated on cases with more substantial evidentiary support, improving the efficiency and fairness of the justice system.[77]

Implementing these provisions will require substantial investment in infrastructure and training, but they offer promising avenues for addressing what has been described as a crisis of delay in India's criminal courts.

4.3. Strengthening Prosecution of Complex Crimes

The expanded framework for digital evidence and mandatory forensic examination creates new opportunities for effectively prosecuting complicated forms of criminality that have conventionally been challenging to address:

The recent legal reforms have immensely strengthened the framework for prosecuting cybercrime by reclassifying electronic records as primary evidence and expanding the criteria for their admissibility in court.[78] This shift addresses longstanding evidentiary challenges that earlier hindered the effective prosecution of digital offences.[79] In parallel, recognising organised crime within the new legal provisions, encompassing financial scams, Ponzi schemes, and fraud, combined with improved digital evidence mechanisms, offers new avenues for investigating and prosecuting complex financial crimes, which typically involve detailed digital trials.[80] Further, in the context of terrorism cases, the law now mandates forensic examination and provides enhanced provisions for handling digital evidence, thereby equipping investigators and prosecutors with more potent tools to address terrorism-related offences frequently involving digital communications, financial transactions, and traceable forensic elements.[81]

The framework for these forms of complicated criminality addresses an essential gap in the previous criminal justice system, which was developed before many of these crime types emerged in their contemporary forms.

4.4. Modernising Evidence Standards for Contemporary Challenges

The recent law offers opportunities to modernise evidential standards to address contemporary technological and social challenges. The expansive definition of electronic documents and the provision allowing the Government to add new electronic devices through notification provide a framework that can accommodate future technological changes without requiring legislative amendments,[82] and this adaptability is essential in keeping pace with speedy advancements in digital technology. Introducing video recording requirements for crime scene investigations strengthens the documentation process, reinforcing the chain of custody for physical evidence, a known vulnerability in our criminal prosecutions.[83] The legal recognition of various forms of

[77] John Morgan, "Wrongful Convictions and Claims of False or Misleading Forensic Evidence" *Journal of Forensic Sciences* 908–961 (2023).
[78] Supra Note. 54
[79] "Special Edition on New Criminal Laws" 71 *The Indian Police Journal* (2024).
[80] Supra Note. 38
[81] Supra Note. 49
[82] Supra Note. 42
[83] Supra Note. 49

electronic communication enables the integration of technology into investigations, and this recognises the significant role that mobile devices play in modern interactions and, consequently, in the commission and investigation of criminal activities. These modernisation opportunities are substantial given the pace of technological change, which has often outpaced legal evolution.

V.

Implementation Challenges and Institutional Requirements

The transformative prospect of the forensic provisions in new laws faces challenges that must be addressed to realise their full benefits. This chapter examines the institutional, infrastructural, financial, and human resource requirements for effective implementation.

5.1. Forensic Infrastructure Requirements

The mandatory requirement for forensic examination in cases involving offences punishable by seven years or more creates unprecedented demands on forensic infrastructure, which has historically been inadequate to meet even discretionary forensic requirements.[84]

India currently has a severely limited number of forensic laboratories relative to its population and caseload. The DFSS oversees six CFSLs, and most states have State Forensic Science Laboratories (Hereinafter SFSL), however, these facilities cannot handle the volume of forensic work that mandatory examination will generate. Forensic laboratories are unevenly distributed across India, with rural and remote areas particularly underserved, and this disparity creates challenges for collecting and analysing forensic evidence in many regions,[85] and many existing laboratories lack state-of-the-art equipment for various types of forensic analysis. Significant upgrades will be required to meet the expanded demands.[86] Practical forensic analysis requires strong quality assurance systems to ensure the reliability and validity of results, but many forensic facilities lack quality management systems that meet international standards.[87]

Addressing these infrastructural challenges will require substantial capital investment in building new laboratories, upgrading existing facilities, procuring modern equipment, and implementing quality management systems across the national forensic network.

5.2. Human Resource Development and Training Needs

[84] Supra Note. 73
[85] Legal Service India, *available at:* https://legalserviceindia.com/legal/article-16371-challenges-facing-forensic-science-in-india.html (last visited on April 05, 2025).
[86] Supra Note. 73
[87] Aby Joseph, Istkhar Rao, *et.al.*, "Towards Standardized Forensic DNA Practices: Comparative Analysis of Forensic DNA Quality Management Systems in India and the UK" *Multidisciplinary Science Journal* 1-10 (2025).

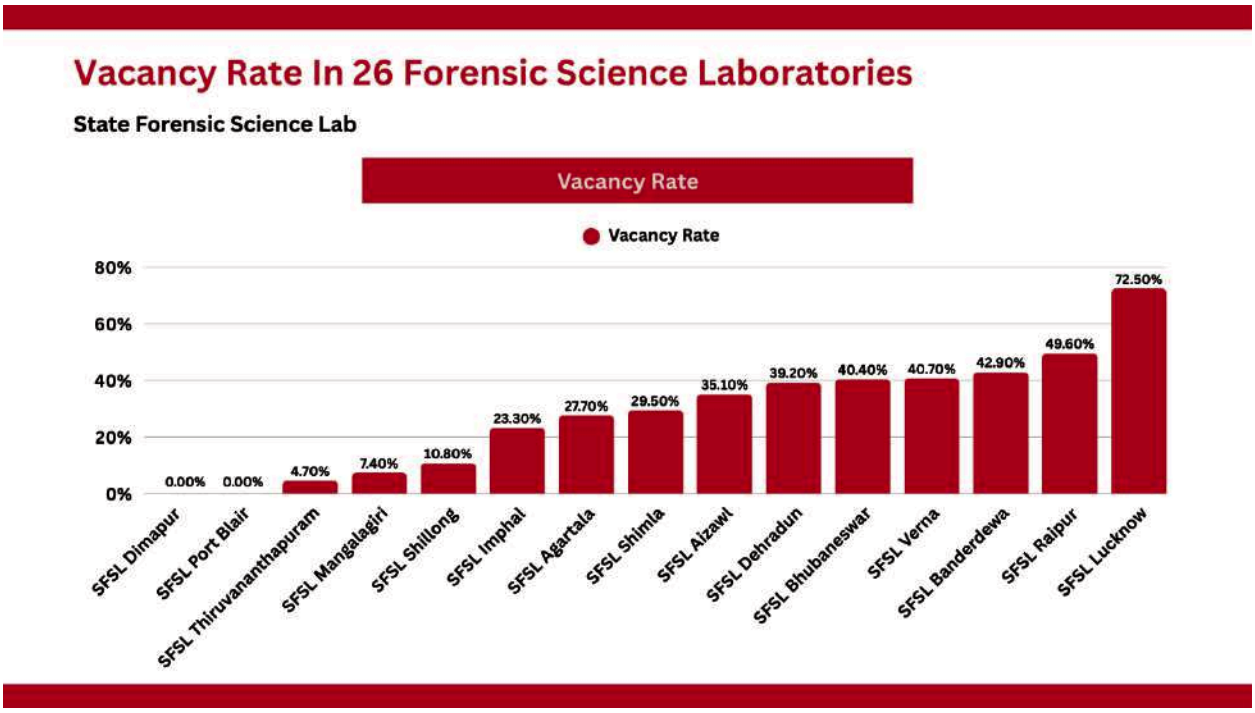


FIGURE 2 VACANCY RATE IN 26 FORENSIC SCIENCE LABORATORIES[88]

Beyond physical infrastructure, we will require expanding and enhancing human resources. As provided in Figure 2, across the 26 laboratories that provided recruitment-related data, 40.3% (1294 out of 3211 posts) of total sanctioned posts were vacant.[89] We face a severe shortage of qualified forensic scientists across various disciplines.[90] The mandatory forensic examination requirement will dramatically increase demand for professionals, necessitating workforce expansion and measures to retain existing experts. Effective forensic investigation begins at the crime scene, requiring police officers to be trained in evidence identification, collection, and preservation.[91]

Addressing these challenges will require combined efforts in educational curriculum, specialised training programs, and international collaborations to rapidly enhance forensic capacity across the criminal justice system.

5.3. Procedural Standardisation and Protocol Development

Effective implementation of the forensic provisions requires standardised procedures and protocols to ensure consistency and reliability.

Detailed Standard Operating Procedures (Hereinafter SOPs) must be developed for various types of forensic

[88] IndiaSpend, *available at:* https://www.indiaspend.com/police-judicial-reforms/large-vacancies-underutilised-budgets-in-indias-forensic-science-system-873773 (last visited on April 19, 2025).
[89] "Forensic Science India Report: A Study of Forensic Science Laboratories (2013-2017)" *Project 39A*.
[90] Khushi Jadhav, Dr. Pravin More, *et.al.*, "The Dark Side of Forensic Science: Issues and Pitfalls in India" 6 *International Journal of Research Publication and Reviews* 1317-1326 (2025).
[91] U.S. Department of Justice, "Crime Scene Investigation: A Guide for Law Enforcement" (2000).

analysis to ensure consistency across different laboratories and jurisdictions.[92] The video recording requirement for crime scenes necessitates standardised protocols for what aspects of crime scenes should be documented and how this documentation should be conducted and preserved.[93] The provisions for electronic evidence require detailed protocols for collecting, preserving, and analysing various types of digital evidence to maintain integrity and admissibility, as well as enhanced procedures for documenting the chain of custody.[94]

Developing and executing these standards and protocols require combined efforts among forensic institutions, law enforcement agencies, and judicial authorities to ensure validity and legal sufficiency.

5.4. Financial Implications and Resource Allocation

Implementing the forensic provisions carries considerable financial implications that must be addressed through proper budgetary allocations.

Establishing new laboratories, upgrading existing facilities, and procuring modern equipment will require substantial capital expenditure at both central and state levels.[95] Beyond initial capital investments, sustained operational funding is needed for consumables, equipment maintenance, quality assurance programs, and ongoing technology updates.[96] Expanding the forensic workforce will require competitive compensation packages to attract and retain qualified professionals and significant training and professional development investments.[97] Funding mechanisms must address regional disparities to ensure forensic services are accessible throughout India, not just in major urban centres.[98]

Addressing these financial challenges may require funding, public-private partnerships, and international assistance.

VI.

Conclusion

The introduction of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represents a turning point in the evolution of our criminal justice system, with the enhanced integration of forensic science standing as one of the most significant aspects of these reforms, revamping colonial-era frameworks offers various opportunities to improve criminal investigations and prosecutions'

[92] Government of India, "Standard Operating Procedure for Case Opening, Reporting and Upload on ICJS" (Ministry of Home Affairs).
[93] Government of India, "SOP for Audio-Video Recording Under Bharatiya Nagarik Suraksha Sanhita (BNSS)" (Ministry of Home Affairs).
[94] *Ibid.*
[95] Government of India, "Perspective Plan for Indian Forensics" (Ministry of Home Affairs, 2010).
[96] *Ibid.*
[97] Prachi Kathane, Anshu Singh, *et.al.*, "The Development, Status and Future of Forensics in India" 3 *Forensic Science International: Reports* (2021).
[98] Supra Note. 96

efficiency, accuracy, and fairness by systematically applying scientific methodologies and technological tools.

The mandatory requirement for forensic examination in serious cases signals a shift in investigative principles, moving from an over-reliance on testimonial evidence toward a more science-based approach to criminal investigation. Similarly, the reclassification of electronic records as primary evidence acknowledges the role of digital information in modern society and creates a foundation for addressing technology-facilitated criminality.

However, the transformative potential of these reforms can only be realised through thoughtful implementation that addresses the significant challenges involved. The current gaps in forensic infrastructure, human resources, standardisation, and funding present substantial obstacles that must be overcome through policy interventions, planned investments, and institutional development. Without adequate attention to these requirements, the progressive provisions in the new laws risk becoming unfulfilled promises rather than operational realities.

The way forward requires a commitment to building forensic capacity across multiple dimensions, infrastructure, human resources, quality systems, and legal frameworks. This commitment must extend beyond the initial implementation course to include ongoing investment in research and development, education and training, and public engagement to create a self-sustaining ecosystem of forensic excellence.

If these challenges can be effectively addressed, the forensic provisions in new laws can enormously enhance the criminal justice system's ability to deliver accurate, efficient, and fair outcomes. In this context, the current reforms may be viewed not merely as the replacement of colonial-era laws but as a fundamental reimagining of how justice is delivered in the *world's largest democracy,* a redefining in which science and technology serve as tools for strengthening the rule of law and protecting fundamental rights.

CRITICAL ANALYSIS OF CONSUMER LITERACY IN REAL ESTATE: LEGAL MANDATE OF CONSUMER AWARENESS AND EDUCATION IN INDIA'S REAL ESTATE SECTOR

Amanpriya Singh[*]
Parveen Kumar[**]

Abstract

Globally, the consumer is accepted as the king of the market, therefore protecting the consumer's interest is indispensable to enabling informed decision-making and ensuring fair market space. The Consumer Protection Act, 2019 (CPA) was established to offer extensive protection for consumers in India, guaranteeing their rights. Meanwhile Real Estate (Regulatory and Development) Act, 2016 (RERDA) has been a transforming legislation to protect real estate homebuyers and boosting real estate investments. Strikingly, a notable issue surrounding the scarcity of knowledge regarding the homebuyer's rights under the two laws remains unexplored empirically. This article assesses how the homebuyers as consumers can be empowered through strengthening of consumer literacy and by bridging the awareness gaps to preserve the rights of the homebuyers whilst promote ethical real estate practices in India, thus ensuring a better implementation of these laws and building fair market-space.

Summarily, this paper aims to empirically discern barriers to consumer knowledge and discuss the difficulties in reaching a broad audience of consumers including differences on basis of income, gender gap, demography, access to digital platforms. It shall also assess the current state of awareness among homebuyers in India particularly in Delhi/ NCR region and other states, and propose strategies to improve educational outreach with a united effort between government and stakeholders to make consumer education a top priority so as to give homebuyers the power to make informed decisions and confidently exercise their rights in the real estate transactions.

Key Words: Consumer awareness; consumer protection; homebuyer's rights; informed decisions; real estate.

I.
Introduction

The consumers/customers are the ultimate users of the goods and services and the marketers rely on

[*] Ph.D Scholar, V.M. Salgaocar College of Law, Goa, India.
[**] Advocate, Delhi High Court, Delhi, India.

the customers' money to earn profits. Earlier it was followed that the buyer must be aware or '*Caveat Emptor'* meaning 'let the buyer be made aware', however with changing times now the customer is the king of the market and now it's the seller who must be aware i.e. '*Caveat Venditor'* and provide such products to the consumers which do not compromise on the standards of such finished products and to provide original and valid details of the product to the consumer[1]. The sellers are duty bound to sell and produce promised goods and maintain ethical standards and offer a courteous behavior to consumers i.e. the sellers must treat all the customers/consumers in a unified manner in all forms of market[2]. The sellers must respect the customers and treat the customers in the dignified manner as this will also facilitate the business to grow with better reputation and goodwill and increase their profits margins. The sellers must ensure to deliver the goods as demanded in timely and in appropriate acceptable manner.[3] Furthermore, the need to protect consumers rises because there are 'n' number of products in market which are injurious to the health of consumers, or do not stand up to the standards of usable products, adulteration, false weights, fake products, monopoly, unfair trade practices, deficiency in services, misleading advertisements are few challenges which need to be addressed.

The Indian Constitution allows for consumer justice within the sphere of socio-economic justice[4]. Moreover, many other laws exist which secure the interest of the consumers namely Essential Commodities Act 1955, The Drugs Control Act 1950, Prevention of Food Adulteration Act 1954, Standard of Weights and Measures Act 1976, Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980[5]. The CPA of 2019 enacted and effective as of July 20, 2020, is viewed as a superior legislation compared to the earlier CPA of 1986. This new enactment brought about numerous significant changes, notably offering enhanced protection for consumers involved in online transactions and broadening the definition of "consumer" such that it involves the persons who buy or avail commercial products online[6]. There was establishment of exclusive regulatory authority i.e. Central Consumer Protection Authority (CCPA) for safeguarding the consumer's benefit and welfare and also to take effective and robust actions against the anti-consumer practices by the businessmen[7]. The consumer grievances were submitted to consumer forums for redressal under the given Act. In Delhi, the pecuniary jurisdiction for consumer disputes is structured

[1]Sanidhi Agarwal, "Critical Analysis of Consumer in CPA 2019", 8 *International Journal of Novel Research and Development* 6, (2023).
[2] *Ibid.*
[3] S Tamilmani, "A study on Consumer Awareness on Consumer Rights with Reference to Coimbatore City", 2 *International Journal of Advanced Research* 429, (2016).
[4]Consumer Guide, *available at:* https://consumeraffairs.nic.in/sites/default/files/file-uploads/consumer_information/Consumer%20Handbook.pdf (last visited on May 13, 2025).
[5] *Ibid.*
[6] Kushangi Sameliya, "An Analysis of CPA 2019, Section 2(D)", 3 *Indian Journal of Law and Legal Research*, 1 (2021).
[7] *Supra* note 6.

across three tiers, District Commissions deals with matters valued up to fifty lakhs, State Commission deals with matters valued above fifty lakhs but not exceeding two crores and National Commission handles matters valued above two crores[8].

The discussion in the paper shall briefly acknowledge the matter concerning whether the homebuyers are considered as consumers such that their awareness and education is of paramount importance to ensure better implementation of the RERDA and why it is necessary to empower the homebuyers through consumer literacy in the real estate industry.

II.
Research Methodology and Methods

This paper shall entail an empirical analytical research study entailing primary sources particularly collecting necessary information from respondents belonging to Delhi/Delhi NCR and other states. The sample size shall cover both women and men from both urban/rural areas who are prospective consumers or investors in real estate developments, real estate agents, teachers and law students and advocates. The method adopted to acquire primary data shall be through interviews and questionnaires. The secondary sources have been cited like the journals, legislations, newspaper articles, and global accords to strengthen descriptive theories and arguments. The study is limited in scope such that it is assessing the consumer literacy since RERDA till 2025 and purely for academic purposes, particularly in Delhi/NCR region. In addition, it is time constrained study by the researchers thus leaving the room for similar survey as a policy by the government.

II.
Meaning of Consumer Awareness and its Importance

The United Nations Guidelines for Consumer Protection were adopted by the UN General Assembly in the year 1985 which provided for the member states to adopt such rules and laws to preserve the interests of consumers[9]. These brief guidelines provided that the consumers must be provided with safe and secure products which are not hazardous in nature, government must promote and protect the

[8] Press Information Bureau, Centre notifies rules for Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021, *available at:* https://www.pib.gov.in/PressReleasePage.aspx?PRID=1786342 (last visited on May 13, 2025).

[9] UN Economic and Social Council, United Nations Guidelines for Consumer Protection, New York 2003, *available at:* https://unctad.org/topic/competition-and-consumer-protection/un-guidelines-for-consumer-protection#:~:text=The%20United%20Nations%20Guidelines%20for,formulating%20and%20enforcing%20domestic%20and (last visited on May 13, 2025).

economic interest of consumers, to enable consumers to make informed choice, to provide effective redressal mechanism while also to foster green consumption behavior[10].

In India with the operationalization of the CPA 1986 a gateway opened benefitting consumers and to provide simpler and quicker access to redressal of consumer grievances by providing basic consumer rights[11]. The CPA 2019 envisages a basic consumer right i.e. right so as to make a choice after assessing all the related information by the consumers, however to be well informed about the products available in the market, the consumers are also required to be well learnt and informed about the same[12]. Unless a consumer knows and is a learned consumer, he cannot make a choice which is informed choice. It is imperative to understand that a well aware consumer is when such information is disseminated by the manufacturers and sellers of the products. Thus, consumer awareness serves to establish that the consumer or the buyer is well informed and learnt about the goods and services alongside their basic consumer rights. This awareness allows consumers to acknowledge the best in all and to well meet their required choice and preferences amongst the available goods and products in the market[13]. It is also significant that consumer awareness is not confined to only information about the products but also implicitly includes the awareness regarding various laws and rules which are made in regard to protect interest of consumers, legal remedies and the policies and schemes implemented by the government in order to benefit the consumers.

In India, there is Right to Information Act 2015 (RTI Act, 2015), which includes obtaining information from the public authority[14]. However, the issue at hand in discussion is that creating consumer awareness as a responsibility upon the , authorities and the government is visioned as major drawback when it comes to creating an environment for protecting the consumer[15]. The Ministry of Consumer Affairs, Food and Public Distribution (MCAFPD), Government of India (GOI) has been keenly working into the matter through the Department of Consumer Affairs to come up with such methods and ways to combat this problem and ensure that there is a well aware consumer in every corner of the nation. Additionally, the Ministry of Housing and Urban Affairs (MoHUA) shall also make efforts in association with industries and institutions, with other ministries to make the homebuyers also aware of their rights and spread literacy of the laws in force.

---

10 Dr Shweta Bajaj, "Navigating Legal Avenues: A Comprehensive Analysis of RERA, NCLT, and Consumer Redressal Commission for Homebuyers" 12 *International Journal of Creative Research Thoughts* b419 (2024).

11 *Supra* note 6 at 3.

12 Dr. G. Linganna, "Consumer Awareness towards Consumer Protection", 1 *International Research Journal of Economics and Management Studies* 429, (2022).

13 *Ibid.*

14 *Supra* note 12.

15 *Id.,* at 9.

III.

Status of Real Estate Homeowners under the CPA, 2019, RERDA, 2016 & IBC, 2016

Before the enactment of RERA in 2016, homebuyers faced an uncertain legal position. There were no clear or specific remedies available to them, which often left them vulnerable to exploitation by builders[16]. If an allottee or homebuyer qualifies as a 'consumer' under the Consumer Protection Act (CPA), they can file complaints under the Act in addition to pursuing civil remedies. However, if they do not fall within the definition of a consumer, they may still initiate a civil action against the builder through the appropriate civil court[17]. Homebuyers can also choose to go for arbitration, provided there's a clause for it in their agreement with the builder[18]. Generally, homebuyers just want their homes delivered on time, built with good quality, and complete with all the amenities the builder promised [19]. Therefore, homebuyers have relied on the CPA to raise claims about delays in possession or poor-quality services from builders; since these issues are covered under the Act. Significantly, the 2019 version of the CPA recognizes 'construction' as a kind of 'service'[20]. The law has helped protect real estate homebuyers, recognizing them as 'consumers' under its provisions. That said, the legal proceedings under the Act have often been slow and exhausting.[21].

It was through RERDA's historical progression which clearly highlights the need to preserve the homebuyer's rights who were victimized community of consumers in the baleful relationship of builder-buyer arrangement[22]. Under the RERDA, there is establishment of Regulatory Authority which acts as an intermediary to resolve the complaints lodged by the parties and ensure compliance within the framework of the Act[23]. The law also requires a compulsory listing of real estate developments by the builders in accordance to the Act[24]. The homebuyers can claim seeking compensation with accrued interest for delayed possessions and also claim for structural and construction quality assurance for a term of five years from builders[25]. Under the said Act, the appellate structure follows as the Real Estate

[16] *Supra* note 10 at b420.
[17] *Ibid.*
[18] *Id.,* at b421.
[19] Dr Gurmanpreet Kaur and Dr Parineeta Goswami, "Real Estate Dispute Resolution: A Study of Remedies Available Under Real Estate Regulation Act and Consumer Protection Act" *SSRN* 1 (2025).
[20] *Supra* note 10.
[21] *Supra* note 19 at 3.
[22] Prasanna S and Lavanya P, "Evolving Trends in Real Estate Development Regulations: A Study of RERA (Real Estate Regulation and Development Act)" 1 *Ile Property and Land Law Review* 26 (2023).
[23] *Ibid.*
[24] Real Estate Regulatory and Development Act, 2016 (Act 16 of 2016), s. 3.
[25] *Supra* note 22 at 27.

Regulatory Authority, Real estate Appellate Authority, High Court, and Supreme Court allowing for smooth grievance redressal specific to real estate transactions[26]. There is no requirement of pecuniary jurisdiction under the said Act. Moreover, the resolution process takes sixty days in comparison to the Consumer forums leading to speedy redressal mechanism[27]. The Act remains silent on defining 'homebuyers' as 'consumers. Section 2(d) of the given Act provides the definition of '*allottee*' but exclusive mention of 'consumers' is absent. However, the Preamble under the Act reads as, "*An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure that the real estate sector is regulated and that the interests of consumers are protected"*[28]. Upon applying the general interpretation rules and literally interpreting the preamble, one can infer that the homebuyers are the consumers whose interest needs to be protected through this law.

It is often argued by the builders that the delayed possession owes to the non-completion of the projects or stalled construction which is further reasoned to the non-availability of funds or misuse of the funds[29]. Even though escrow accounts are a mandate under the RERDA, there is issue of insolvency of builders pertaining to the real estate projects. Under the Insolvency and Bankruptcy Code, in 2016 (IBC), the law pertains to protecting the companies and individuals from insolvent conditions and reorganize and maximize their value for assets in order to promote entrepreneurship[30]. The provision of the said Code require for commencement of insolvency resolution process before the National Company Law Tribunal (NCLT) or Debt Recovery Tribunal (DRT) through application from financial creditors or operational creditors[31]. The Code was silent upon the matter of homebuyers to initiate insolvency proceedings against the insolvent builders[32]. In 2018, Apex Court through *Chitra Sharma* v. *Union of India*[33] **clarified that the homeowners must have some significant status among the creditor class as listing them at the last in the list of creditors amounts to grave injustice. The Code was amended in the given year and homebuyers were recognized as 'financial creditors' thus enabling them to initiate insolvency proceedings against the builders[34]. This amendment received a positive constitutional validity status from the Apex Court through**

[26] *Supra* note 22 at 27.
[27] Real Estate Regulatory and Development Act, 2016 (Act 16 of 2016), s. 71 (2).
[28] Real Estate (Regulation and Development) Act, 2016 (Act 16 of 2016), preamble.
[29] Harsh Bhushan, Impact of RERA in Real Estate Sector in India: An Analysis", *Indian Journal of Projects, Infrastructure and Energy Law*, (2022).
[30] Siddharth Praveen Acharya and Poorva Vyas, "IBC Amendments 2025: Revolutionising the Rights of Homebuyers and a New Dawn for the Real Estate CIRP" *IBC Laws* (2025).
[31] Trisha Agarwala, "The Plight of Homebuyers and the Real-Estate Industry in India under the Insolvency and Bankruptcy Code, 2016" *SSRN* 5 (2023).
[32] *Supra* note 31 at 6.
[33] 2018 SCC OnLine SC 874.
[34] *Supra* note 31 at 10.

Pioneer Urban Land and Infrastructure Limited and Ors. v. *Union of India and Ors*[35]. **The homebuyers also became a part of Committee of Creditors (CoC) and thus were actively part of decision making in resolution plans**[36]**. This Code was amended to widen its scope and protect the rights of homebuyers as well. In 2020, the Code was amended to impose a minimum threshold to initiate insolvency proceedings by the allottees**[37]**. In other words, the amended law brought forth a minimum requirement of at least hundred allottees of that very realty project or at least one-tenth of the total allottees of the same project, whichever is lower, will be allowed to proceed with their applications before NCLT**[38]**. The Apex Court also upheld the validity of this amendment in** *Manish Kumar* v. *Union of India*[39]**.**

The recognition of homebuyers as consumers under the **CPA, allottees in line with the RERDA and as financial creditors in line with the IBC summarizes that their interests and rights are being recognized and protected through laws. However, the question is how far the homebuyers or end users themselves are** acquainted with the presence of **such laws, or** if aware, the extent to which they are capable of employing them in **real life or are their issues getting resolved as intended by these laws in force.**

III.
Role of RERDA in Promoting Consumer Protection and Awareness

The RERDA has significantly contributed to increasing consumer awareness in the Indian realty market by bringing a pivotal shift in the interrelationship between developers and homebuyers. The major objective of this legislation has been to safeguard the rights of the consumers. One can find a noticeable positive impact in regard to consumer protection after the implementation of this Act. The developers are now mandated to disclose their projects details and compulsorily register their projects with the established Authority under the given law[40]. This enhanced transparency and accountability has empowered the homebuyers to make informed decisions regarding the projects.

The major aspect of the RERDA is the guarantee of completion of projects within a stipulated time

[35] *2019 10 S.C.R. 381.*
[36] *Supra* note 31 at 11.
[37] PRS India, The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020, *available at:* https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-second-amendment-bill-2020 (last visited on May 13, 2025).
[38] *Ibid.*
[39] 2021 SCC OnLine SC 30.
[40] *Supra* note 29.

period and extensions shall only be granted by the Authority upon due consideration with reasonable reasons, thus allowing the homebuyers to get timely possession[41]. The RERDA has mandated the developers to maintain a separate escrow accounts for project wise fund raising and construction of the buildings. This allows for reducing the risk of financial diversions and chances of insolvency of builders. The provision for security against structural defects in the buildings lies for five years under the Act thus making the builders accountable for such defaults and ensuring quality assured projects in the hands of the homebuyers[42]. The Act also requires mandatory registration of the real estate agents who shall deal in such deals only after their due registration with the Authority[43]. While the RERDA has brought a huge bracket of safety for the homebuyers, the operationalization of the law is somewhere in question even today. The major cause of lack of implementation is catered to the absence of consumer awareness and literacy amongst many buyers of realty properties. The aspect of ensuring consumer awareness in the realty industry is not only in the hands on the consumers or the homeowners themselves but the developers and realty agents shall also take active participation. The developers must follow the laws strictly before engaging in the realtor business and transactions which is to mandatorily register their projects, maintain financial transparency and keep updated details on the online portal for the homebuyers to access the information, meanwhile the realty agents must be completely educated regarding the projects and ensure the communication is clear with the homebuyers. Moreover, a collaborative approach is appreciated between the Authority, government and the stakeholders. The Act itself provide for undertaking such measures with the goal of promoting the advocacy, creating consumer awareness and imparting training about the laws relating to the realty sector and policies[44]. The real question is how much is being done and if it not being executed, then the reasons thereof for non compliance or limitations encountered by the Authority.

IV.

Consumer Awareness Post-RERA: Challenges in Consumer Literacy & its Impact thereof

India has made notable advancements in consumer protection through the introduction of several legislative and regulatory measures aimed at curbing unethical business practices and reinforcing consumer rights[45]. "These measures aim to raise consumer awareness and ensure accessible, effective channels for grievance redressal. The enactment of the Consumer Protection Act, 2019, and the Right to Information Act, 2005, marks a significant step forward in the evolution of

[41] Dhrubajyoti Ray and Dr. Sanjay Bhattacharya, "Real Estate Sector in India: An Overview of the Trends and Progress" 6 *International Journal of Multidisciplinary Trends* 21 (2024).
[42] *Supra* note 22 at 28 and 29.
[43] Real Estate Regulatory and Development Act, 2016 (Act 16 of 2016), s. 9.
[44] Real Estate Regulatory and Development Act, 2016 (Act 16 of 2016), s. 33 (3).
[45] *Supra* note 37.

consumer rights law, providing individuals with the legal tools to access information and assert their rights[46]**.**

The Real Estate (Regulation and Development) Act, 2016 (RERDA) is also a consumer-centric and social welfare legislation aimed at protecting homebuyers in their role as allottees. As of July 1, 2024, over 130,186 real estate projects and 88,461 realty agents have been registered under RERDA, reflecting a meaningful progress toward transparent governance and formalization of the sector[47]. However, a lack of awareness and prevailing misconceptions continue to make many developers and realty brokers hesitant to fully comply with the law. This underscores the urgent need to sensitize all stakeholders about the provisions of RERDA, to ensure its effective operationalization along with other associated regulations.

Traditionally, **the major challenge in enhancing consumer literacy** in India has been low due to **novelty of the sector still finding its pace with changing times, irrespective the sector is peaking to heights, the growth is somewhat subjected to many complexities in the laws and market conditions. There is lack** of transparency in property related matters, non-access to verified project information, over-dependence on agents and brokers without proper checks. As a result, many homebuyers have faced issues such as project delays, false commitments, financial losses, and poor construction quality. **One must critically understand the legal along with socio-economic aspects from the eyes of homebuyers as consumers and thus make the consumer literate and aware. It is often said, 'a little knowledge is as dangerous as knowing nothing'.** Consequently, the responsibility falls on the **government, industrialists, businessmen and other stakeholders including consumers to upgrade the level of consumer literacy in order to boost real estate investments and ensure fair market space.**

In 2021, a report namely, '"Five Years On: An Assessment of RERA - The Road Ahead for a Stronger On-ground Regime' was launched by the Omidyar Network India (ONI) and Boston Consulting group (BCG) which show cased the lack of implementation of the RERDA is significant and the grievance redressal mechanism is not efficient[48]. The report covered around 1300 respondents from Uttar Pradesh, Orissa, Madhya Pradesh, Maharashtra and Karnataka. The report also witnessed

[46] *Supra* note 16.
[47] National Real Estate Development Council, RERA disposes of nearly 1.25 lakh consumer complaints across India, *available at*: https://naredco.in/rera-disposes-nearly-125-lakh-consumer-complaints-across-india (last visited on May 13, 2025).
[48] Ravi Srivastava, Neetu Vasanta, *et.al,* "Five Years On: An Assessment of RERA – the Road Ahead for a Stronger On-Ground Regime" 3 (2021).

that 30 per cent of consumers were still unaware of RERA's role as a regulatory authority[49]. This survey itself concluded that it is imperative to improve the grievance process, streamline the provisions of RERDA and increase consumer confidence to boost real estate investments[50]. Now, this is only achievable if there is active consumer consciousness towards their rights as a homebuyer under the RERDA and appropriate information disseminated on time-to-time basis by the authentic government authorities and stakeholders.

V.

Steps for Protecting the Homebuyers and creating Awareness in India

In 2005, a significant and successful consumer awareness initiatives was introduced and launched by the Indian Government, 'Jago Grahak Jago' campaign[51]. It proves itself as a great example of consumer awareness initiative. As the name suggests itself 'Jago' meaning 'to be awake and be aware'[52]. This campaign was sought to ensure protection to consumers from the unscrupulous and unfair trade/ business practices by the sellers, to sell products at a competitive price only, right to consumer education, right to seek redressal[53]. This campaign primarily addressed about utilizing the print media, advertisements, audio-video activities and programmes and posters which would raise consumer awareness in far remote areas as well. Additionally, numerous governmental NGOs are demonstrating commitment through proactive consumer protection measures and to safeguard their interest. The organizations are following various methods and measures to achieve their goals to create consumer awareness and spread information to every consumer. Some of these methods are listed below:

1. **Seminars**: Seminars and talk shows on television and radio shall address consumer concerns, spotlighting how businesses may overlook consumer interests and related issues.
2. **Print Media & social media: Brochures, flyers, and advertisements in print media are employed to** educate the public on their consumer related rights and obligations**. Social media is very common amongst the youth; therefore there can be ways to interact with the young minds in creative ways to sensitize them about their rights as homebuyers.**
3. **Quality Testing: Organizations conduct quality tests and publish the results** communicate with consumers regarding the **quality of long-standing products. Similarly, the quality**

[49] *Supra* note 48.
[50] *Id.,* at 70.
[51] *Supra* note 4.
[52] *Ibid.*
[53] *Id.,* at 10.

testing for the real estate developments shall also be detailed by the builders with their registration application to the regulatory authority.

4. **Legal Assistance & Filing Complaints: Consumer organizations offer legal advice and support to** facilitate individuals understanding of their rights and **address their challenges. Additionally, some legal professionals provide their expertise on a pro-bono basis.** These groups serve as intermediaries by filing complaints and petitions in court advocating for consumers to facilitate their pursuit of justice.
5. **Public Interest Initiatives**: They undertake legal actions on behalf of the broader public rather than individual cases, working to secure justice for the general population.
6. **Online/Offline Protesting**: They organize demonstrations to highlight various consumer issues food adulteration, unjust price increases, underweight products, and damaged goods, stalled projects, insolvent builders and delayed possessions of various real estate projects.
7. Additionally, the Reserve Bank of India (RBI) has launched initiatives namely Retail Direct Scheme and the Integrated Ombudsman Scheme to strengthen grievance redressal mechanisms and improve consumer protection within the financial sector[54]**.**

In India, World Consumer Rights Day was commemorated on 15th March 2025, with the Ministry of Consumer Affairs, Food and Public Distribution (MCAFPD), GOI, leading the celebrations. The Ministry marked the occasion by encouraging citizens to be mindful of their rights and actively promoting consumer awareness[55]. The theme for World Consumer Rights Day 2025, *'A Just Transition to Sustainable Lifestyles,'* highlighted the importance of making sustainable and healthy lifestyle choices accessible, affordable, and available to all consumers, while ensuring that this transition respects and upholds people's basic rights and needs[56]. The main address emphasized government programs such as eco-labeling, safeguarding consumers from deceptive trade practices in the e-commerce sector, and strengthening consumer grievance redressal platforms — all aimed at empowering consumers[57]. The role of the National Consumer Disputes Redressal Commission (NCDRC) becomes critically important in ensuring efficient consumer grievance redressal, specifically in relation to real estate disputes. These disputes, when addressed by the NCDRC, align with the broader spirit of World Consumer Rights Day and its evolving themes. It is equally essential for regulatory authorities under RERA to proactively participate in awareness programmes, thereby

[54] Government of India*, "*RBI Retail Direct Scheme' and 'Integrated Ombudsman Scheme, 2021" (Ministry of Finance, 2022), *available at:* https://www.pib.gov.in/PressReleasePage.aspx?PRID=1778537 (last visited on May 13, 2025).
[55]Government of India, "World Consumer Rights Day 2025" (Ministry of Consumer Affairs, 2025), *available at*: https://pib.gov.in/PressReleasePage.aspx?PRID=2111483 (last visited on May 13, 2025).
[56] *Ibid.*
[57] *Id.,* at 2.

educating homebuyers and investors about their legal rights and the latest developments. Such efforts will empower them to seek appropriate remedies and assert their claims more effectively in the future.

The Governments at Central and State level together have taken measures to establish dispute resolution mechanisms[58]. Nonetheless, there remains a pressing need for enhanced consumer consciousness to facilitate the pursuit of appropriate remedies[59]. The following outlines strategies to preserve the rights of the end users and foster awareness by safeguarding consumer interests.

1. **Promote General Awareness**: Enhance consumer awareness by promoting education and disseminating information to both remote and urban areas, including international consumers via digital platforms[60]. Social media has the potential to reach large audiences effectively, fostering positive influence and widespread engagement.
2. **Publish Educational Materials**: Develop and distribute periodical and product-specific materials, such as booklets, cassettes, posters and pamphlets, CDs, presentation slides, and documentary films, in both English and regional languages[61]. These materials should address issues in key sectors such as realty, public utilities, and non-banking financial agencies to promote consumer literacy.
3. **Strengthen Dispute Redressal**: Support consumer activities that enhance the existing formal mechanism for resolving conflicts by facilitating communication between consumers and relevant institutions[62].
4. **Evaluate Legal Remedies**: Assess the current in effect legal remedies and propose new measures for improved consumer protection. File formal complaints with consumer forums to seek redress and appropriate compensation for consumers' grievances[63]. Online consumer complaint submission is also available through platforms such as www.ncdrc.nic.in and www.consumerhelpline.gov.in.
5. **Facilitate Collaboration**: Organize interactions among consumers, manufacturers and traders, and policymakers to share mutual information and improve coordination. Equip NGOs and

[58] *Supra* note 19 at 5.
[59] Andhra Pradesh State Consumer Disputes Redressal Commission, "Consumer Awareness & Suggested Measures to Increase Consumer Awareness", *available at:* https://scdrc.ap.nic.in/consumer.html (last visited on May 13, 2025).
[60] *Ibid*.
[61] *Id.,* at 2.
[62] *Supra* note 19 at 6.
[63] *Supra* note 10 at b424.

consumer activists with the requisite and necessary information and resources to act as key change agents[64].

6. **Conduct Educational Events**: Organize seminars, workshops, and group discussions to provide a platform for in-depth exploration of consumer issues and development of effective remedies. Implement motivational campaigns targeting consumers.
7. **Coordinate with Various Entities:** Collaborate with Central and State authorities, State Legal Aid bodies, academic institutions, and consumer organizations at the national and international levels organizations. Legal Aid Cells and Bar Councils can facilitate free consumer awareness campaigns and assist with legal grievances, including guidance on filing online complaints and understanding the roles of different authorities established under the given laws.
8. **Engage Media/Apps**: Regularly interact by means of electronic and print media to highlight consumer success stories. Provide National Consumer Helpline (NCH) numbers to offer support and protect consumer rights. There can be mobile apps for the consumers/homebuyers which is directly accessible to the updates from the Authority or developer regarding any project being registered or likewise any other information is updated or shared.
9. **Enhance Authority Role**: The authorities under the CPA and RERDA, along with central and state consumer councils, should actively promote and safeguard consumer rights and homebuyers rights respectively. Consumer courts must also contribute to increasing the visibility and effectiveness of consumer laws by ensuring prompt justice[65].
10. **Develop a Consumer/Homebuyers Database**: Create a comprehensive database to allow consumers or homebuyers to access information quickly and affordably through online apps and even modify the online RERA websites at state level.

The strategies outlined above are illustrative of various approaches to guaranteeing that consumers are well-informed and conscious of their rights. However, for these initiatives to accomplish their intended goals, it is essential that they have backing from robust infrastructural and logistical arrangements at all levels of government, including central, state, and local authorities. The mere observance of days such as World Consumer Rights Day or National Consumer Day, while important, is not abundant on its own. These commemorative events should serve as catalysts for reinforcing consumer awareness campaigns and improving the reach and effectiveness of consumer protection schemes. It is essential for such schemes to be formulated to reach every consumer, regardless of their geographic location, whether they reside in urban centers, rural areas, or even beyond national borders. This requires a

[64] *Supra* note 59.
[65] *Ibid*.

concerted effort to develop and implement comprehensive logistical frameworks that facilitate the dissemination of information and resources effectively. There is World Realtors Day celebrated to celebrate the realtor's fraternity annually on March 20th to recognize the achievements of the real estate professionals across the world, thus some aspect of awareness can be disseminated as information amongst the real estate agents on how to educate their clients regarding the real estate laws and related transactions. On similar lines, the real estate developers can be asked to celebrate their success of delivery of apartments to strengthen the homebuyer-developer relation and build trust while also use this platform to further inform and make the homebuyers aware of the prospective projects by the builder. In addition, ongoing evaluations and budget allocations are necessary to address emerging challenges and adapt to evolving consumer needs. The collaborative efforts shall ensure that consumer protection initiatives are not only put into action but also continuously refined and expanded; the government can more effectively safeguard consumer interests and enhance the overall efficacy of consumer rights advocacy.

Moreover, the governmental schemes to promote real estate investment and ensure affordable housing is provided to all, there are various schemes launched like the Pradhan Mantri Awas Yojana (PMAY), Affordable Rental Housing Complexes, Pradhan Mantri Gramin Awas Yojana (PMGAY), Credit Linked Subsidy Schemes, Delhi Development Authority (DDA) Housing Schemes, Real Estate Investment Trusts (REITs), concession on stamp duties and registration if the owners of the properties are women are some of the ways to boost the housing market in the economy, but the real question is what steps have the government taken to make the consumers aware of such schemes and publicized the benefits to the users. The public notice of such schemes and declaration through Budget Sessions and other Parliamentary sessions does not suffice their efforts to create the awareness needed at the grassroots level unless the people are made aware of how and what these schemes have to offer in practical set up.

VI.
Analysis of the Empirical Data, Arguments & Discussions of Issues

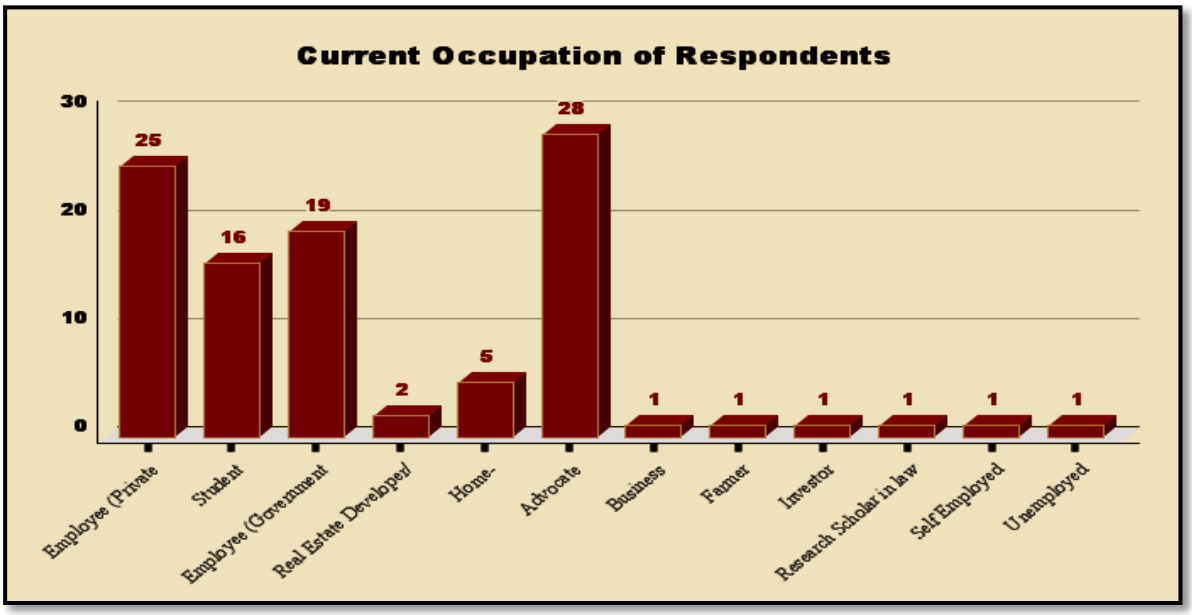
Consumer awareness is an indispensable aspect in empowering homebuyers and establishing a fair, transparent real estate market[66]. It involves educating buyers about their legal safeguards provided under laws like the RERDA, verifying project approvals and builder credentials, understanding project

[66] Rahul Ranjan, "Empowering Consumers: Understanding Rights, Safeguarding Interests", *The Times of India*, Dec. 30, 2023, *available at*: https://timesofindia.indiatimes.com/blogs/blackslate-corner/empowering-consumers-understanding-rights-safeguarding-interests/ (last visited on May 13, 2025).

documents and agreements, knowledge of financial aspects such as EMIs, interest rates, and hidden charges, availability of grievance redressal mechanisms under various laws etc.

This paper attempts to highlight the major issue of lack of consumer awareness amongst the homebuyers of their rights and available legal recourse available under distinct laws when purchasing or buying any real estate property. Since, this lack of consumer literacy is known as a major drawback on why there's snail-pace implementation of the RERDA and the IBC laws with respect to the real estate transactions. The collection of data sources from 100 respondents, out of which 70 is solely from Delhi/ NCR and remaining from other states including both male and female belonging to both urban and rural areas. Due to limited resources and time constraints, the data collection is as per convenience and therefore stands restricted and also the analysis thereafter. This widens the scope for future research in the given subject matter on much larger scale with much wider parameters to assess the level of awareness.

Analysis of the Survey



Graph no. 1: Depicting the occupation of the respondents including male and female.

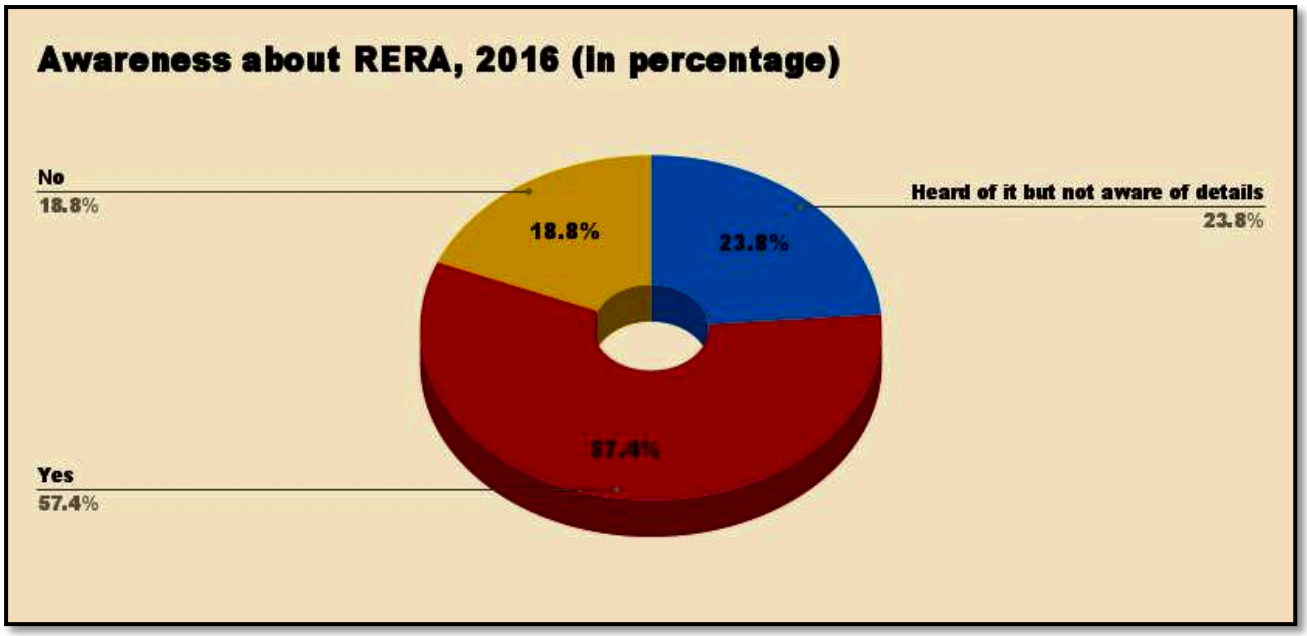
Current Location/State:	Gender		Grand Total
	Female	Male	
Delhi/ Delhi NCR	18	53	71
Other States	13	17	30
Grand Total	**31**	**70**	**101**

Table no. 1: Shows the number of males and females from Delhi/ Delhi NCR and other states.

Analysis of Graph no. 1 and Table no. 1: The graph clearly shows that the majority of the respondents were advocates followed by employees from private and government sector. Table No. 1 shows the number of males and females who are belonging from Delhi/Delhi NCR and other states. It is imperative to understand the socio-economic status, behavior and choices, income levels, education which are fundamental for marketing, public awareness and policy making and social studies.

Awareness of the RERA, 2016?	**Gender**		**Grand Total**
Are you aware of the Real Estate (Regulation and Development) Act, 2016 (RERDA, 2016)?	**Female**	**Male**	
Yes	18	39	58
No	7	13	20
Heard of it but not aware of details	6	18	24
Grand Total	**31**	**70**	**101**

Table no 2: Shows the number of respondents including male and female having awareness about RERDA, 2016

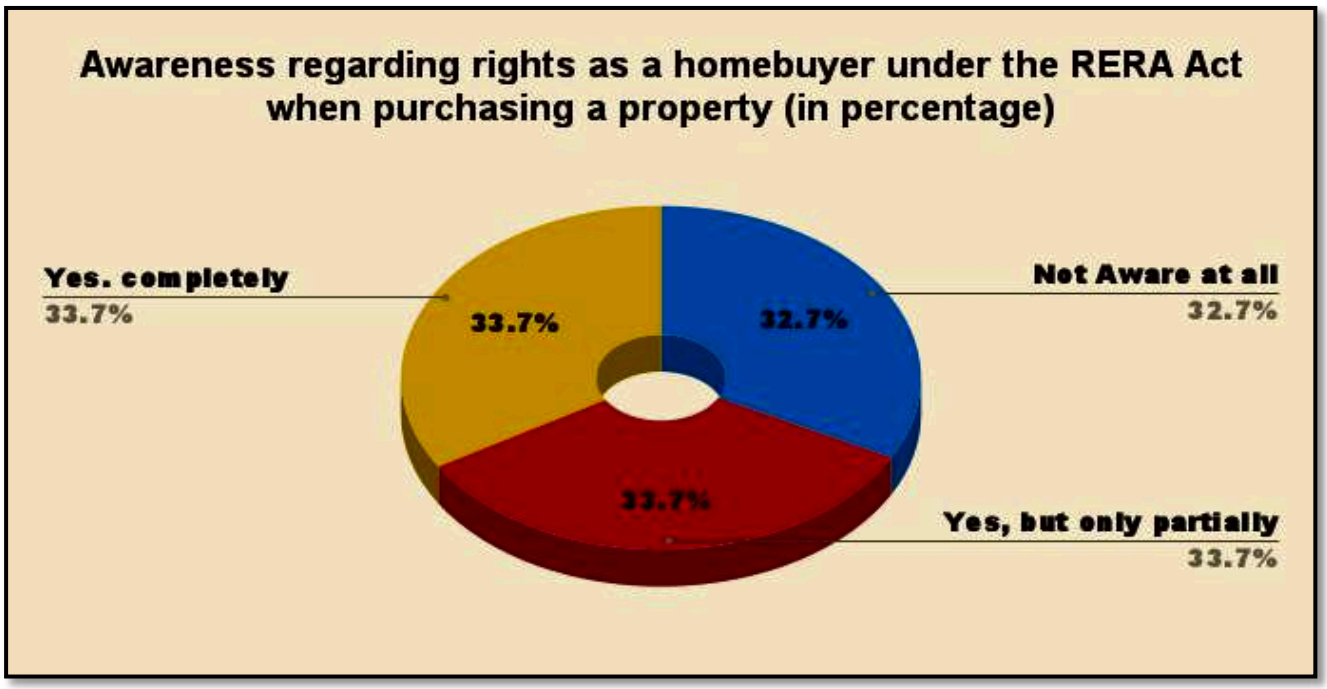


Pie Chart no. 1: Shows the awareness about RERDA, 2016 (in percentage) amongst the respondents.

Analysis of Table no. 2 and Pie Chart no. 1: In table no. 1, it shows that approximately (approx.) 70% males and 30% were females participated out of which approx. 41% of females are either not aware or are partially aware about the RERDA, 2016. It is significant to assess that government provides for various schemes in form of subsidies and discounts to invest in properties, yet only few of the females are aware of their rights as homeowners. In addition, 44.49% (approx.) males are not aware or partially aware about RERDA, 2016. It is paramount to understand that even though majority of the awareness exists amongst the females and males i.e., 59% and 55% (approx.), it is only through thorough analysis from the survey. Additionally, in pie chart no. 1, it is clear that in overall approximately 57.4% are aware (including males and females) and those who are not aware or are partially aware amounts to 42.6%(including males and females). Notably, this awareness is just regarding the existence of the legislation and not specific about the provisions of the law per se.

Pie Chart no. 2: Shows the awareness about Registration of Real Estate Projects under RERDA, 2016 (in percentage) amongst the respondents.

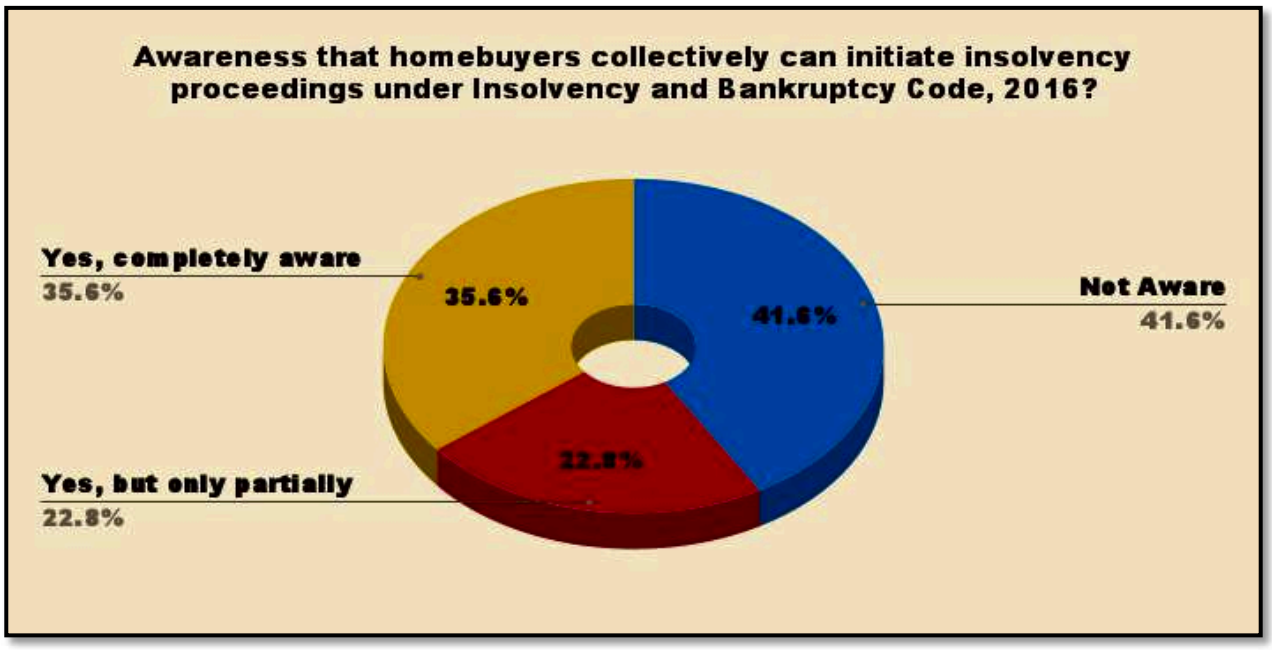
Analysis of Pie Chart no. 2: It is essential that 40.6% (including males and females) are aware but 59.4% are not aware or partially aware regarding the mandatory registration of the realty projects under RERDA, 2016. It is crucial to acknowledge that partial knowledge of the laws is due to lack of public awareness by government, authorities.



Pie Chart no. 3: Shows the awareness regarding the rights as a homebuyer under the RERDA, 2016 (in percentage) amongst the respondents.

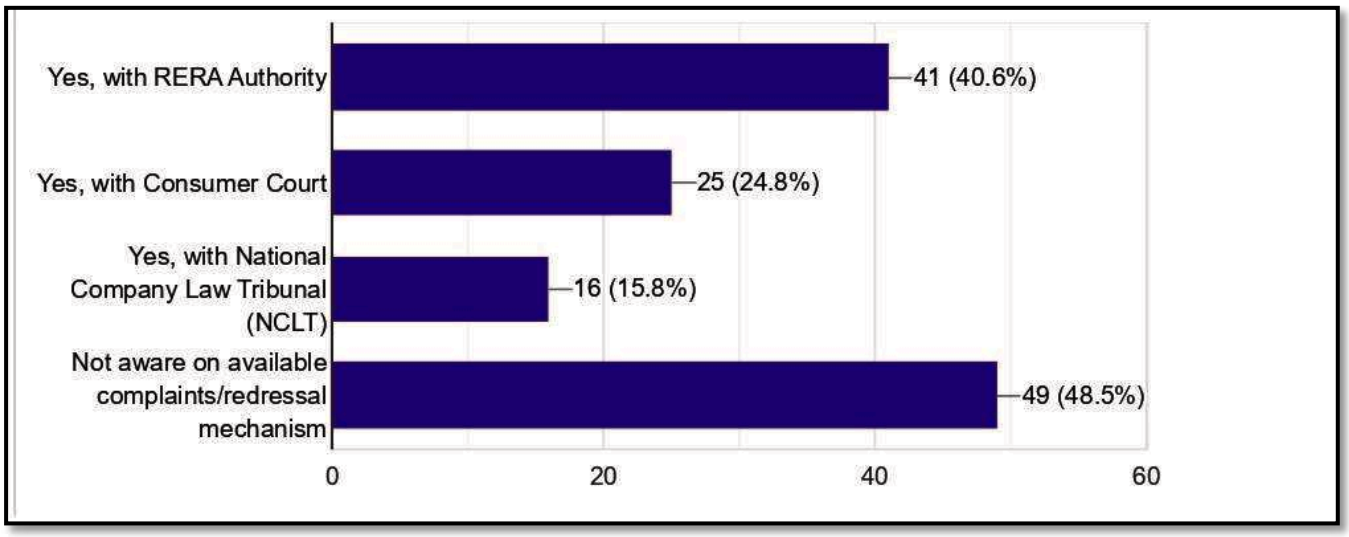
Analysis of Pie Chart no. 3: In pursuance to the earlier discussion, this becomes significant outcome of the survey that 66.7% are either not aware or partially aware about their rights as homebuyers under

the RERDA,2016, This supports the above contention that the mere awareness regarding the RERDA, 2016 is the existence of legislation. This concludes the fact that there is absence of awareness as mandated by the RERDA, 2016.



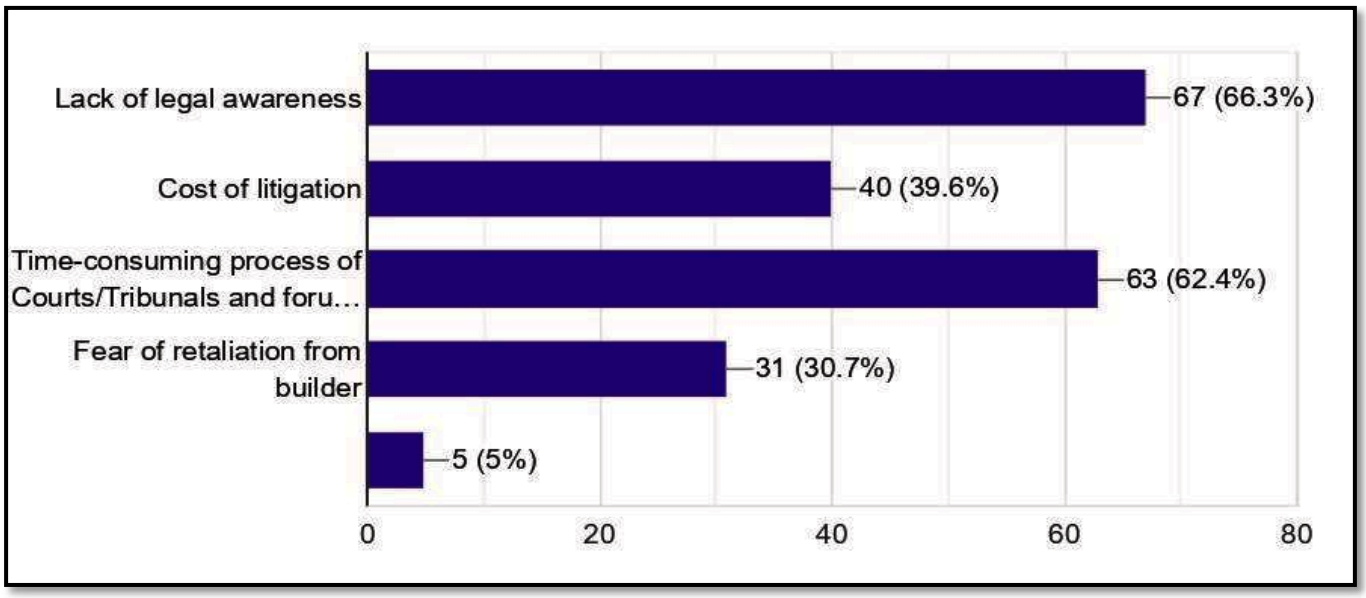
Pie Chart no. 4: Shows the awareness homebuyers collectively can initiate insolvency proceedings under the IBC, 2016 (in percentage) amongst the respondents.

Analysis of Pie Chart no. 4: This analysis shows that out of 35.6% who are aware about the homebuyers rights to intiate insolvency proceedings under the IBC, 2016, 64.4% are either not aware or partially aware about the same. This is due to the insufficient awareness regarding the RERDA, 2016 and IBC, 2016.



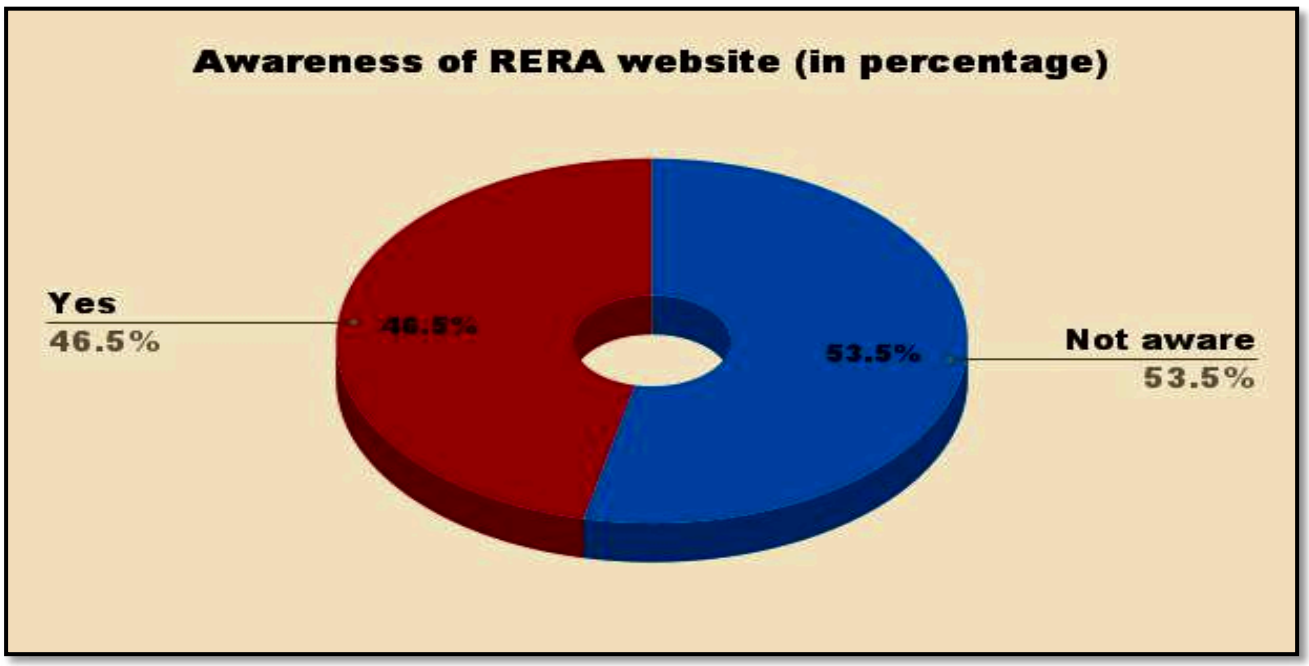
Graph No. 2: Awareness about redressal mechanism for homebuyers.

Analysis of Graph No. 2: This graph shows that approximately 48.5% are not aware about the redressal mechanism available under the given laws. It shows the extent of implementation of the RERDA, 2016 laws despite the operationalization of the legislation since 2016.



Graph No. 3: Challenges faced by homebuyers in accessing Justice under RERDA, 2016

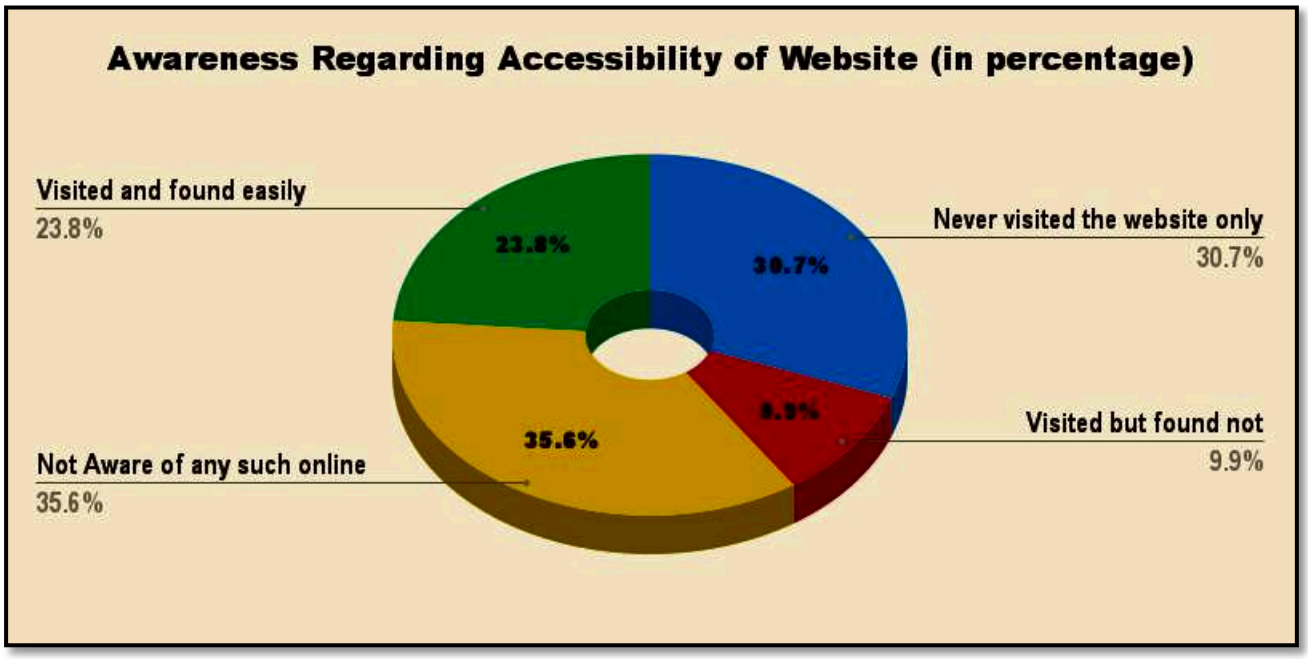
Analysis of Graph No. 3: It is paramount to understand that the majority of the respondents (66.3%) are of the view that there is lack of legal awareness and the time consuming process of the courts/tribunals or forums (62.4%) which is causing a hindrance to access justice as homebuyers under the given laws. In addition, 39.6% feel that the cost of litigation and the fear of retaliation from builders (30.7%) is what causes the delay in accessing justice.



Pie Chart No. 5: Awareness of existence of RERA website within every State amongst the

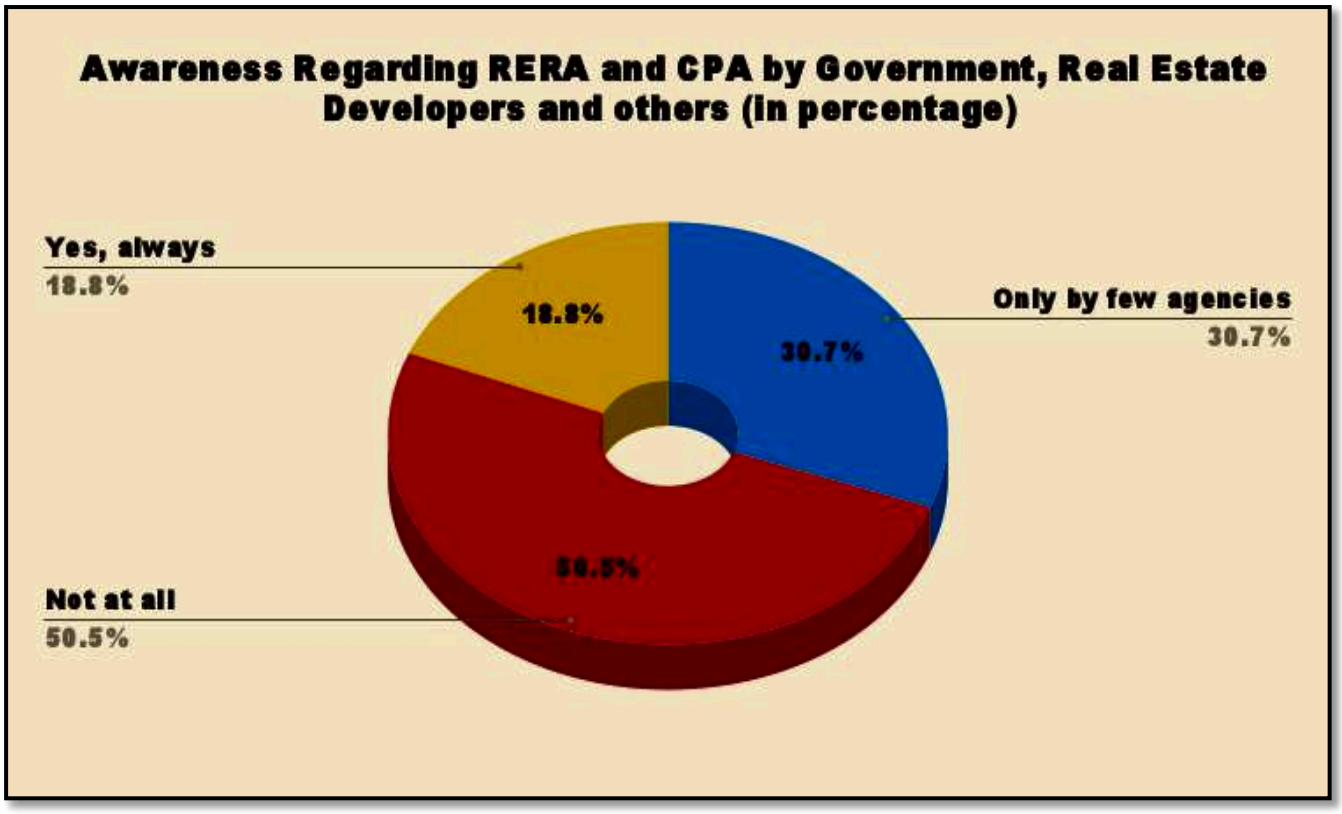
respondents

Analysis of Graph No. 5: The above analysis clearly shows that 53.5% respondents are not aware regarding the online websites of RERA within their states. This further shows that the inadequate awareness and enforcement of the provisions of the RERDA, 2016. It is important to understand that this is a legal mandate and allows the homebuyers to easily access the details of the realy projects so registered by the developers and builders.



Pie Chart No. 6: Awareness regarding accessibility of RERA website

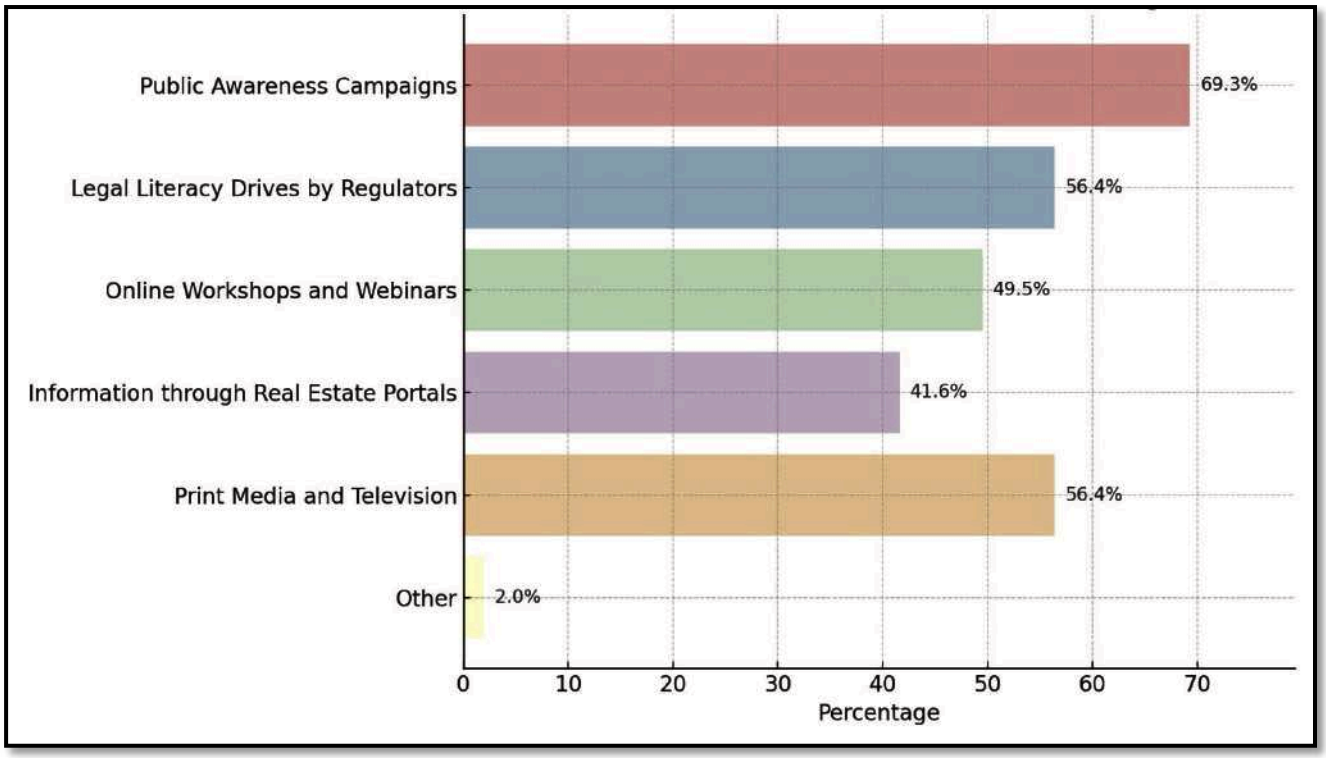
Analysis of Graph No. 6: In contiunation of the earlier analysis, this shows that 35.6% are not aware of such website, while 30.7% have not visited the website, remaining 9.9% claims that the webiste was not accessible. This call for further improvement in the legal mechanism for creating better awareness and implementation of the RERDA, 2016. It is further argued by authors to make these webistes accessible and user-friendly.



Pie Chart No. 7: Awareness regarding RERA and CPA by Government, Real Estate Developers and Agents and media

Analysis of Graph No. 7: This analysis is crucial to comprehend that the efforts made by the government, authorities established under the RERDA, 2016, real estate developers and agents as well as the marketing channels to create awareness for general public including homebuyers stands insufficient or negligible as 50.5% of respondents have claimed the same, while only 18.3% feel that the initiatives are undertaken. Thus, the authors have projected this as the main argument of this research paper as well that despite the legal mandate under Section 33(3) of the RERDA, 2016, the regulatory authorities have failed to create the public awareness needed to successfully implement this law. The authors also view that the collaborative efforts are demanded from the government and the stakeholders as well.

Q. What steps do you think can improve consumer awareness within the real estate sector? (Select all that apply)



Graph No. 4: Steps to improve Consumer Awareness within Real Estate Sector (Respondents View)

Analysis of Graph No. 4: In the survey, 69.3% respondents have suggested to create public awareness campaigns, followed by legal literacy drives by regulatory authroties (56.4%), print media and television (56.4%), online workshops and webinars (49.5%) and finally information dissemination through real estate online portals (41.6%).

Additionally, the majority of the recommendation from respondents that followed from the above survey can be summarized as follows:

1. By advertisements and creating Awareness Apps.
2. Organizing awareness drives, seminar in workplace or residential areas by the Government.
3. Information should be disseminated by use of print media and television, social media in regional languages.
4. Simplification of the rules and guidelines for general public.
5. Awareness through financial institutions which lend loans to homebuyers.
6. Legal literacy

In conclusion, the authors summarize their findings and analysis by submitting that there is serious lack of public awareness and the extent of consumer literacy is absent amongst the homebuyers under the RERDA, 2016. Consequently, extensive participation and efforts are needed from the government and the legal authorities to extend their share of socio-legal contributions.

VII.

Conclusion

Consumer protection is fundamentally concerned with the safeguarding of consumer rights and interests, guaranteeing that individuals are spared from exploitation or unfair practices by merchants[67]. This protection is paramount not only for the well-being of consumers, who often lack the necessary information about the current regulations and laws, but also serves the long-term interests of businesses, which have a moral and ethical obligation to ensure equitable dealings and responsible use of societal resources[68]. Thus, consumerism moulds through healthy and progressive consumer awareness mechanisms and education.

VIII.

Suggestions/ Recommendations

While India has established a range of beneficial laws in respect of the consumer protection and institutions, a considerable segment of the population remains uninformed about their rights still. Therefore, an effective consumer protection framework requires a dual focus: robust legislative enforcement and active consumer education. Protection and awareness are inherently interconnected, serving as complementary pillars of a unified strategy. An informed consumer is better equipped to assert their rights, challenge unfair practices, and contribute to a more accountable marketplace, thereby strengthening the overall system of consumer protection.

In addition to the recommendations provided by the survey respondents, the authors further propose that the effective implementation and enforcement of consumer protection laws depend significantly on the active engagement of the government and the statutory authorities established under the relevant legislation. The analysis clearly indicates that the success of these laws is closely linked to the government's commitment to their robust execution. A pressing need to strengthen awareness mechanisms to safeguard and promote the well-being of the intended beneficiaries of these laws should be priority. Moreover, the government must plan to execute significant number of consumer programmes or workshops under the umbrella of "Jago Grahak Jago" or should come up with another scheme similar to it like "Jaagte Raho Grahak", to ensure persistent and consistent efforts for creating consumer awareness till date regarding different welfare and social legislations including the real estate laws. Along with this the ongoing evaluations and budget allocations are necessary to address emerging challenges and adapt to evolving consumer needs with proper

[67] *Supra* note 6 at 2.
[68] *Ibid.*

infrastructural development. The authors continue by additionally proposing that the Authorities should ensure that the promotional brochures and website of the developers which must clearly enlist the rights of the homebuyers and the remedies available to them in case any redressal is needed. The RERA websites must exclusively contain this information.

While the collaborative efforts are made to increase the level of transparency amongst the consumers, there is also a need to cater to the audience of consumers who are to be educated upon the understanding of their level of literacy, language spoken etc. This is a major facet to creating an effective environment for spreading the words of wisdom to the consumers. Additionally, there must be an enhancement of infrastructural support at both central and local levels to facilitate effective consumer protection and dispute resolution[69].

The integration of technological solutions to streamline the grievance redressal process can significantly enhance accessibility and efficiency, enabling consumers to easily obtain information, file complaints, and track their resolutions. Furthermore, a continual review and refinement of consumer protection measures are essential. This adaptive approach will affirm that consumer protection frameworks remain robust and effective, providing a secure environment for end-users to exercise their rights confidently. In summary, the government must not only fulfill the mandates of consumer protection laws but also adapt ways to organize comprehensive awareness campaigns, and inclusive protection measures for fostering a well-informed and empowered consumer base[70].

In conclusion, while India has made substantial progress in the realm of consumer protection through legislations and regulatory efforts, the true effectiveness of these measures hinges on the level of consumer awareness and engagement. An extensive strategy that includes education, infrastructural support, and collaborative efforts is necessary to create a resilient consumer protection system. By addressing these elements holistically, it is viable to create a framework where consumer rights are robustly safeguarded, and individuals are empowered to navigate the marketplace with confidence and security.

[69] *Supra* note 6 at b425.
[70] *Supra* note 3 at 430.

THE EFFECT OF REPEAL AND RECALL: THE 2018 AMENDMENT TO THE SPECIFIC RELIEF ACT, 1963 AND THE SIDDAMSETTY SAGA

Siddharth Srikanth [*]

Abstract

Ever since the Specific Relief Act, 1963 came to be amended in 2018, thereby culling the discretionary power of the court to decree specific performance, judicial confusion reigned as to its temporal applicability. This seemingly was quelled by the Supreme Court, holding that the amendment would be prospective and would only apply to contracts formed after 01.10.2018. Recently however, the Supreme Court has recalled the said order on merits, without adverting to its ruling on the 2018 Amendment. This article seeks to study the consequence of the said recall, and the existing legal landscape in which it is ensconced. The Karnataka High Court has recently taken the view that the mere recall on facts, would not disturb the postulation of law made prior. This article therefore, seeks to examine the veracity of such a claim. In doing so, the author first examines the fact circumstance in which the decision of the Supreme Court in Katta Sujatha Reddy came to be passed, along with that of the eventual review. The author then, surveils the decisions of various High Courts across India as regards the applicability of the 2018 Amendment. Based on the existing legal framework, the article analyses the consequence of various Supreme Court decisions in light of well settled legal principles, to examine the question as to the applicability of the 2018 amendment to pending legal proceedings that were instituted prior to the amendment.

Keywords: Procedural law; Prospective application; Retrospective application; Specific performance; Substantive law;

I.
Introduction

One of the primary sources of litigation in the Indian court system is the relief of specific performance. Countless suits, and appeals remain pending on the file of the courts, wherein the case of the Plaintiff surrounds an alleged agreement, whose obligations are sought to be enforced on the one side, and avoided on the other. The relief of specific performance is therefore, an integral part of the system for enforcement of contracts in India. Equally important therefore, is the law prevailing on the books of the statute that outline the manner and mode of enforcing contracts against persons.

In India, this legislation is called the Specific Relief Act, 1963. The Act *inter alia,* enumerates the types of contracts/agreements that are capable of being specific enforced, the circumstances in which

[*] Advocate, High Court of Karnataka, Bangalore

specific performance *can* be ordered etc. However, by way of the Specific Relief (Amendment) Act, 2018[1] (*hereinafter "*2018 Amendment"), the above italicized "can" was watered down considerably, by diluting the discretionary powers of the court, when it came to awarding specific performance. This amendment came to be interpreted by the Supreme Court in *Katta Sujatha Reddy*[2]*,* wherein the Apex Court was of the view that since the amendment was substantive in nature (as it provided substantive rights to the parties), the same ought to be made applicable prospectively i.e. the amendment would only be applicable to agreements that were entered into by parties *after* the coming into force of the said amendment. Subsequently however, the said decision came to be recalled by the Supreme Court in *Siddamsetty*[3] (while both decisions arise out of the same proceedings the latter being a review of the former, distinct reference names have been assigned for the sake of convenience and clarity). Recently, the Karnataka High Court considered the effect of this review, and came to the conclusion that the position of law postulated in *Katta Sujatha Reddy* was not interfered with by *Siddamsetty.* This judgement however is amenable to intellectual attack on multiple fronts. Therefore, the question remains as to should the amendment apply to pending proceedings (in other words, be retroactive) or should it only apply to future contracts (a la *Katta Sujatha Reddy*). Either answer raises crucial questions that have wide ramifications for the court system.

In this paper, the author seeks to analyze the existing literature on the 2018 amendment, to ascertain as to whether the said amendment is applicable retrospectively to pending proceedings. Hence, Part II concerns itself with the basic concepts of specific performance and the features of the 2018 Amendment. Part III thereafter, studies the *Siddamsetty* saga wherein the Supreme Court first held the 2018 Amendment to be prospective, and thereafter, recalled the said order. In light of the judicial vacuum seemingly created by the recall of *Katta Sujatha Reddy*, Part IV studies the legal landscape of the amendment *de hors Siddamsetty.* Part V hence, considers its predecessors and postulates as to the nature of the 2018 Amendment and its applicability, before concluding in Part VI.

II.

Specific Performance: Concepts and Statute

The concept of specific performance is to compel a person to be perform his obligations under a contract. This judicial relief is to be contrasted with the relief of damages, which occupies the other side of coin. The relief of damages is to compel a person to compensate for any loss caused to a party

[1] The Specific Relief (Amendment) Act, 2018 (Act 18 of 2018).
[2] *Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd*., (2023) 1 SCC 355.
[3] *Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy,* 2024 SCC Online SC 3214.

to contract by virtue of its breaking. The contract however, remains broken. Across its history, common law has often turned up its nose towards the notion of compelling performance of contract. Instead, the mantra of common law has been damages.[4] However, there came instances when no adequate standard for assessing damages could be ascertained. In those circumstances, it became equitable for parties to be held to their prior promises. Nonetheless, specific performance, to borrow criminal bail parlance, was the exception, and never the rule.

This common law principle came to be codified by the Indian Parliament, in the Specific Relief Act, 1963[5] (*hereinafter* "SRA"). Section 10 of the SRA as it then stood, provided for cases in which specific performance of a contract could be decreed. It stated that, the specific performance of any contract *may*, in the discretion of the court, be enforced when (1) there is no adequate standard for determining the actual damage caused by the non-performance of the contract and (2) when compensation for breach, would not provide adequate relief. Further, Section 20 encapsulated the above discretion of the court in decreeing specific performance, and provided as under:

> 20. *Discretion as to decreeing specific performance*.—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.
>
> (2) The following are cases in which the court may properly exercise discretion not to decree specific performance—
>
> (*a*) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or
>
> (*b*) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or
>
> (*c*) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.
>
> *Explanation I*.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (*a*) or hardship within the meaning of clause (*b*).

[4] *See* L.C. Goyle, *Law of Specific Performance* 1 (Eastern Law House, Calcutta, 1984).
[5] The Specific Relief Act, 1963 (Act 47 of 1963).

> *Explanation II*.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (*b*) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.
>
> (3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.
>
> (4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

The upshot of the said provision is that, even if a suit for specific performance is filed within the prescribed limitation, and the plaintiff shows himself to be ready and willing to perform his part of the contract, the court need not decree the suit.[6] The court can always take into consideration various other factors, such as the conduct of the Plaintiff(s), that of the Defendant(s), the timelines stated in the contract sought to be enforced and the time elapsed since the execution of the contract as well as any hardship that would be faced by the Defendants if specific performance were to be decreed.

While this discretion was not arbitrary and was to be guided by reason, courts in India often refrained from decreeing specific performance suits, and instead opted to awarded damages for the breach and loss caused to the Plaintiff, which was often favourable to Defendants. The reason being that in the time that it took for the civil suit to be determined, the value of the property in question would have increased manifold, and the Defendant at the culmination of the suit, would only have to return the advance paid (along with any interest awarded), and would continue to enjoy the much more valuable title over property. This incentivized or rather, failed to deter dishonest actions on the part of sellers, who deliberately avoid performing their obligations under the agreements so executed. Hence, the Indian Parliament proposed an amendment to the Specific Relief Act, 1963 in 2018, seeking to amend various provisions of the Act including Section 10 and 20.[7]

Once the amendment was duly passed, Section 10 of the Act mandated that a contract shall be enforced by the court, subject to Section 11(2), Section 14 and 16. While Section 11 relates to contracts pertaining to trusts, Section 14 which provided for contracts which could not be specifically enforced, was also amended. The bar on specific performance where compensation was adequate relief was done away with. Section 20 which previously ring-fenced the discretionary power of courts, was

[6] *Saradamani Kandappan v. S Rajalakshmi*, (2011) 12 SCC 18.
[7] *Supra* note 1, Statement of Objects and Reasons.

substituted by the conferring of the power to decree substituted performance. While the intricacies of the 2018 amendment perhaps warrant a whole-hearted discussion elsewhere, the relevant consequence of the amendment was the culling of the discretion previously vested with the courts to decree specific performance. If a Plaintiff met the requirements under Section 10, 14 and 16, the court had no choice, but to decree the suit for specific performance.

III.

The Siddamsetty Saga: Prospective but not Quite

Any change in law invariably results in a controversy as to its temporal applicability. While the amendment was to be in force with effect from 01.10.2018, the question was whether it would be applicable to pending proceedings as well. In other words, the question was whether the amendment would be prospective or retrospective. This question was eventually answered by 3-judge bench of the Supreme Court of India (N.V. Ramana C.J., Krishna Murari J., and Hima Kohli J.) in *Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd.*[8].

A. Katta Sujatha Reddy: A Prime Facie Reading of the 2018 Amendment

The facts of the said case, shorn of unnecessary details was that a suit came to be filed in O.S. No. 88/2002 for specific performance of Agreements of Sale dated 26.03.1997 and 27.03.1997 before the District Judge, Ranga Reddy District, LB Nagar, Hyderabad, which was filed on 09.08.2002. The Trial Court *vide* judgement dated 12.12.2010, dismissed the suit on multiple grounds viz. that the suit for specific performance was barred by time as it was instituted beyond the stipulated limitation of three years from the date fixed for performance; that the Plaintiff failed to prove that he was ready and willing to perform the contract; and that the Plaintiff had suppressed material facts before the Trial Court.

This judgement came to be challenged by way of an appeal in Appeal Suit No. 998/2010 before the Telangana High Court, Hyderabad Bench. The High Court *vide* judgement dated 23.04.2021 reversed the decision of the Trial Court, and decreed the suit. In doing so, the High Court held that, the suit was within time and that the Plaintiff had established that he was ready and willing to perform the contract. It is during the pendency of this appeal that the 2018 Amendment came into effect. Hence, an issue was framed by the High Court as to the applicability of the said amendment on the above proceeding. The High Court came to the conclusion that, as Section 10 and 20 had been substituted by the 2018 Amendment, would mean that the court would have to proceed as if the earlier Section 10 and 20 never existed. Hence, the amendment would have retrospective application.

This decision of the High Court came to be challenged by few of the Defendants in the suit, in Civil Appeal No. 5822-24/2022, before the Supreme Court of India. The Apex Court *vide* order dated

[8] *Supra* note 2.

25.08.2022, allowed the appeal. It held that the Trial Court was right in holding the suit was barred by time, and that the Plaintiff had failed to establish his readiness and willingness. The Apex Court further held that, the 2018 Amendment is substantive in nature, and is not procedural, and as such could only be prospective.

The Apex Court noted that across the history of the common law, specific performance has always been discretionary, and delivery of property ought only to be ordered, when the property is of such special nature that damages would not compensate.[9] In the eyes of the Apex Court, the 2018 amendment sanctified contracts in a manner that was novel to the common law, as well as the law of specific performance in India. This conversion of discretion to mandate by the 2018 amendment, was seen as creation of new rights and obligations which did not exist prior to the amendment. The removal of the factor of "adequacy of damages" under Section 14(1)(a) also emphasized the point for the court, that the amendment was indeed substantive. Hence, once the court came to the conclusion that the amendment was substantive in nature, in the absence of a specific provision in the amending Act to indicate retrospective operation, the Apex Court held the 2018 Amendment to be prospective. Hence, the Apex Court declined to exercise its discretion in decreeing specific performance.

B. Siddamsetty Infra: Review of the Specious

Aggrieved by the said order, Siddamsetty Infra filed a review petition before the Supreme Court of India in Review Petition (C) No. 1565/2022 under Order XLVII Rule 1 of the Supreme Court Rules, 2013. Since two of the three judges had since retired, by the time the said petition came up for issuance of notice, a new Bench of three judges of D.Y. Chandrachud C.J., Hima Kohli J., and P.S. Narasimha J., was constituted. The Chief issued notice in the said matter and permitted oral hearing of the review. Kohli J., dissented from that view, and passed an order dismissing the review petition. Narasimha J. however, recused from the matter. Hence, a new Bench was once again constituted with Manoj Mishra J., taking the place of his recused brother judge. Mishra J., agreed with the Chief, and issued notice.

Before the matter could be heard however, Kohli J., retired and was therefore replaced with J.B. Pardiwala J., in the 3-judge Bench. After hearing the parties, the Supreme Court allowed the review by way of order dated 08.11.2024 in *Siddamsetty Infra Projects (P) Ltd. v. Katta Sujatha Reddy*[10]. The review however, was on the facts of the said case, and the law was left in many ways untouched. The review bench held that, the suit was indeed within time, as until the Defendants refused to convey the subject property, no cause of action arose for the Plaintiff to file the suit. The Bench also held that, the Plaintiff having paid about 75% of the consideration, could not be said to have failed to prove his readiness and willingness.

[9] *Whiteley Ltd. v. Hilt*, (1918) 2 KB 808 (CA).
[10] *Supra* note 3.

On the question of the 2018 Amendment however, the review bench remained curiously silent. Instead, in ¶32 of the review decision, this court observed as under:

> This Court held that the 2008 amendment to Section 10 of the Specific Relief Act does not apply retrospectively and decided the matter based on Section 10 before the amendment. Section 10, before the amendment, conferred courts with the discretion to provide a decree for specific performance. In exercise of review jurisdiction, we must not disturb a finding unless there is an error apparent on the face of record. *Even assuming that the grant of relief of specific performance continued to be discretionary to a suit instituted before the date of the amendment*, we are of the opinion that this Court committed a grave error in its analysis of whether the Court ought to use its discretionary power in this matter. (emphasis supplied)

The Court therefore, was conscious of the postulation of law by the 3-judge Bench regarding the prospective application of the 2018 Amendment. Despite having noticed the said postulation, the Bench proceeded on the basis that the relief was indeed discretionary. Based on the above assumption, the Apex Court in ¶42 proceeded to hold that, it is fit case of exercise of the court's discretionary power to direct specific performance. Hence, the Apex Court recalled the judgement dated 25.08.2022, and restored the judgement of the High Court.

IV.
Applicability of the 2018 Amendment De Hors Siddamsetty

Before one begins to consider the effect and impact of the review order, it is apposite to surveil the jurisprudence surrounding the 2018 amendment (*de hors Siddamsetty*) adopted by the Supreme Court in other contexts, as well as by other High Courts. The tenor of various Supreme Court decisions seems to be in favour of retrospective application of the amendment. Various High Courts have taken conflicting views on the applicability of the amendment.

A. Inter-State Concurrence of Retrospective Application

Before delving into the decisions of the various High Courts in favour of retrospective application, it would be relevant to study the approach of the Supreme Court vis-à-vis the nature of the Specific Relief Act, 1963, as well as the 2018 Amendment.

a. Decisions of the Supreme Court of India

The first decision which warrants a look, is one which finds extensive mention in *Katta Sujatha Reddy* viz. *Adhunik Steels Ltd. v. Orissa Manganese & Minerals Pvt. Ltd.*[11] In this case, the question

[11] (2007) 7 SCC 125.

that arose for consideration of the Supreme Court was regarding the scope of powers of the civil court under Section 9 of the Arbitration and Conciliation Act, 1996, which provided for interim relief to be granted to parties prior to, during or after arbitration. In analyzing the powers of the Section 9 court, the Supreme Court traversed the law on injunctions including the Specific Relief Act, 1963. In doing so the court held that, the law of specific performance essentially formed a party of the law of procedure as specific relief is form of judicial redress. This hence, assists in the present analysis of the nature of SRA as being procedural in nature, as opposed to substantive. This reliance on *Adhunik Steels* for analyzing the 2018 Amendment, has its share of problems.

As the Supreme Court in *Katta Sujatha Reddy* noted, the Apex Court in *Adhunik Steels* was not concerned with the issue of retrospectivity of any provision of the SRA, or even with the nature of SRA. The controversy before the court pertained to Section 9 of the Arbitration and Conciliation Act, 1996. A judgement which relies on a principle *sub silentio* cannot be taken to be binding as a precedent. A judgement delivered *sub silentio* while not being binding on the court (unlike in case of the author), cannot be ignored without assigning reasons thereof.[12] While on the technical ground of *sub silentio*, one can indeed ignore *Adhunik Steels,* the said judgement is immensely illuminative on the general understanding of SRA and its procedural nature.

A better decision for the case of retrospectivity of the 2018 Amendment, is *Sughar Singh v. Hari Singh*[13]. In this case, a suit for specific performance was instituted for enforcement of an agreement to sell which was executed on 10.10.1976 in the year 1984. The said suit came to be decreed by the Trial Court, after finding that the Plaintiff was ready and willing to perform the terms of the contract. The first appellate court thereafter, dismissed the resultant appeal filed by the Defendant in the year 1998. A second appeal came to be filed before the High Court of Allahabad. The High Court set aside the decision of the First Appellate Court and remanded the matter for fresh consideration on the question of readiness and willingness. The First Appellate Court once again held in favour of the Plaintiff, holding that the Plaintiff had established his readiness and willingness to perform the contract. The resultant second appeal to the High Court, came to be allowed by the Allahabad High Court, and the suit was dismissed, on the ground that no specific averments were made in the plaint as required under Section 16(c) of the SRA, and further held that, as the power to decree specific performance is discretionary in nature, suit was liable to be dismissed. Hence, after two rounds of litigation, the matter reached the Supreme Court. While the discussion of the court on Section 16(c) is not strictly relevant for the purpose of the present analysis, the court dedicates a portion of its judgement on the un-amended Section 20 of the SRA. The Apex Court held that, the discretion under Section 20 was to

[12] *State of Punjab v. Devans Modern Breweries Ltd*., (2004) 11 SCC 26.
[13] (2021) 17 SCC 705.

be exercised judiciously and reasonably. In its opinion, not to grant specific performance despite the proving of the agreement of sale, payment of part consideration, and establishing of readiness and willingness would punish the Plaintiff and would encourage dishonesty on the part of the person who received the money pursuant to the agreement. The Court in this light, took note of the 2018 Amendment made to the SRA, and held that, although the same may not be retrospectively applicable, the same could be used as a guide for courts to decide suits instituted prior to the amendment. Further, the Apex Court specifically kept the question, as to whether the said provision would be applicable retrospectively or to pending proceedings, open. Hence, the Apex Court allowed the appeal, set aside the order of the High Court, and decreed the suit.

The obvious pitfall in using this decision for determining the applicability of the 2018 Amendment, is that that very question was kept open. Therefore, no reliance perhaps can be placed on the said judgement. Nonetheless, if one were to meaningfully interpret the said judgment, it is clear that while the 2018 Amendment would not *stricto sensu* apply to pending proceedings, the shift in approach of the court, towards favouring specific performance, would indeed apply. This shift, is in essence, the thrust of the 2018 Amendment.

b. Decisions of the High Courts across India

Various High Courts across India have followed *Katta Sujatha Reddy,* prior to its recall in *Siddamsetty.* However, even before *Katta Sujatha Reddy*, there have been concurrent views of various High Courts, agreeing as to the retrospective nature of the 2018 Amendment. The Delhi High Court in *Jindal Saws Ltd. v. Aperam Stainless Services Solutions Precision Sas*[14], using *Adhunik Steels* came to the conclusion that, as SRA is a procedural law, the same would be applicable to pending proceedings.

A couple of months prior to the Delhi High Court decision, the Calcutta High Court in *Church of North India v. Rt. Reverend Ashoke Biswas*[15]*,* came to a similar conclusion that the 2018 Amendment could be applied to pending proceedings. However, the ratio was decidedly distinct from that of *Jindal Saws.* The Calcutta High Court was of the view that, the question of specific enforcement, is in essence, a question of relief to be granted by court. Therefore, the relevant date to decide the applicability of the 2018 Amendment ought to be the date on which the decree is passed, and not the date of initiating the suit. The slippery consequence of this is that, the 2018 Amendment can be held applicable to situations wherein, the decree has been challenged in appeal. The appeal, as is trite, is a continuation of the suit proceeding.[16] Moreover, whenever a decision is made by the appellate court,

[14] 2019 SCC Online Del 9163.
[15] 2019 SCC Online Cal 3842.
[16] *Union of India v. West Coast Paper Mills Ltd.*, (2004) 2 SCC 747.

the same merges with the trial court judgement, and it is the High Court judgement that is enforced.[17] Finally, the Allahabad High Court in *Mukesh Singh v. Saurabh Chaudhary*[18]*,* held that the 2018 amendment was retrospective in nature, as it was a repeal of the previous regime. In the view of the court, the 2018 Amendment showed a completely different intent to that of the previous regime, and as such, Section 6 of the General Clauses Act, 1897 (*hereinafter "*GCA") would not be applicable. The case also surrounded the defense of undue hardship, which permitted the court not to decree specific performance, if doing so would cause undue hardship to the Defendant. This defense finds no mention in the post-2018 SRA. Hence, the High Court held that, the amended Act would be applicable, and the defense of undue hardship would not be available to the Defendants. This judgement however, perhaps errs in its interpretation of Section 6 of the General Clauses Act, 1897. The section provides that "*unless a different intention appears*"[19], any repeal shall not affect any right, obligation etc. and shall not affect any proceeding initiated thereto. The High Court seems to have come to the conclusion in ¶37 that, as the amendment displayed a different intention to that of the previous Section 20, Section 6 of the GCA would not apply. Such a reading of Section 6 would render each and every shift in philosophy by the legislature, to be retrospective. The more workable meaning assignable to Section 6 would be that the term "*unless a different intention appears*" refers not to the provisions being amended, but to the effect of the amendment on the rights, obligations etc. of parties, and the applicability of the amendment to any pending proceedings. If the true meaning of Section 6 were to be applied, it could be argued that the 2018 Amendment would not apply to pending proceedings. Much reliance therefore, cannot be placed on *Mukesh Singh*.

B. The Discordant Insistence of the Prospective Application

As every head of a coin has its tail, every contentious decision of a High Court has its counter-part in a sister court (or sometimes from a sister Bench). For instance, the Delhi High Court in *Shon Randhawa v. Ramesh Vangal*[20], came to the conclusion that a Section 34 court considering an arbitral award, cannot take into account the subsequent 2018 Amendment, as the scope of its jurisdiction is quite limited. The Delhi High Court therefore, distinguished this decision from *Jindal Saws*, which arose from a suit. In any event, strictly speaking, *Shon Randhawa* cannot be said to have ruled on the prospective application of the 2018 Amendment as regards regular suits for specific performance, or even pending arbitral proceedings. However, the tenor of the judgement would indicate that the 2018 Amendment could be made applicable to pending arbitral proceedings, as the court found that "*the test to be applied under Section 34 i.e. whether the arbitral award is in conflict with the public policy*

[17] *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359.
[18] 2019 SCC Online All 5523.
[19] The General Clauses Act, 1897 (Act 10 of 1987), s. 6.
[20] 2020 SCC Online Del 2548.

of India, is of the date of the making the award and cannot be of the changes if any in the public policy after the date of making of the award." (emphasis supplied). While some have interpreted this decision to imply solely the prospective application of the 2018 Amendment, the same may not be entirely correct. This is for the simple reason that at a Section 34 stage, the arbitral proceeding has in fact concluded. A Section 34 proceeding is not a continuation of the arbitral proceedings, unlike an appeal to a suit. Hence, all that the court has held is that, concluded proceedings cannot be re-opened in challenge proceedings, based on subsequent changes in law. This judgement therefore, offers no shelter to those who insist on the prospective application of the 2018 Amendment.

The impetus of the votaries of prospective application, perhaps arises from the decisions of the High Court of Karnataka. In *M. Suresh v. Mahadevamma*[21]*,* the Karnataka High Court while considering the 2018 Amendment, also considered the decision in *Mukesh Singh*. The Karnataka High Court held that Section 6 of the GCA would be applicable as no explicit affect was caused to the rights and obligations of persons under the previous regime. Further, the court noted that, the Amendment was to come into force from the date on which it was to be notified by the Central Government. Hence, the question of retrospective application would not arise. The High Court also undertook the substantive-procedural analysis of the 2018 Amendment, and came to the conclusion that "*the sea change brought by amendment to Section 20, would be substantive in nature. Though the remedy of specific performance was not available to the party as a matter of right under the unamended provisions that was dependent on the discretion of the Court, the same was indeed a right or privilege enjoyed by the defendants.*"[22] Kaustav Saha quite rightly points out that, this holding of the court, conflates rights with remedies.[23] Apart from this, after *Katta Sujatha Reddy,* the Karnataka High Court in *T. Susheelamma v. R. Krishna*[24] once again refrained from decreeing specific performance, *inter alia,* on the ground that the 2018 Amendment was prospective in nature and the courts retained a modicum of discretion.

Recently, the Karnataka High Court had occasion to consider the review and recall of *Katta Sujatha Reddy*, in *M/s. Sun Rama Exports Pvt. Ltd. v. Smt. Shantha Srinivas*[25]. In this case, the question once again arose as to the applicability of the 2018 Amendment, and whether the court in matters which preceded the 2018 Amendment, continued to be vested with discretion to decree specific performance. This is a rare circumstance where the court did indeed decree specific performance, but came to the conclusion that the 2018 Amendment was prospective in nature. The Court noted the

[21] 2020 SCC Online Kar 3425.
[22] *Id.* at para 34.
[23] Kaustav Saha, "Rights, Remedies and Retrospectivity: The Curious Case of The Specific Relief (Amendment) Act, 2018" 17 *NUJS Law Review* 3 (2024).
[24] 2023 SCC Online Kar 234.
[25] R.F.A. No. 178/2015 decided on 04.04.2025 (Karnataka High Court at Bangalore).

review of *Katta Sujatha Reddy* in *Siddamsetty* and held that merely because an order came to be recalled, does not mean that the law laid down in the said order came to be interfered with. In the opinion of the court, as the Apex Court did not explicitly overrule *Katta Sujatha Reddy*, and further assumed that it had discretion to decree specific performance, it implicitly affirmed the position of law that the 2018 Amendment applied only to contracts entered into after 01.10.2018. While this finding of the High Court did not meaningfully impact the outcome of the case, the said finding of the High Court in *Sun Rama* warrants significant consideration.

V.

Applicability of the 2018 Amendment: Consequence of Siddamsetty

Before one begins to understand the current state of affairs, one would do well to dwell on the concept of review and the consequences thereof. It is well settled now that, the effect of allowing review of an order, is that, the order subsequent passed, overrides and supersedes the original order.[26] But in *Siddamsetty,* while the court was indeed deciding a review petition under order XLVII Rule 1 of the Supreme Court Rules, 2013, the Supreme Court in the operative portion of the judgment, has "recalled"[27] the judgment dated 25.08.2022 in *Katta Sujatha Reddy.* As regards recall of an order, the judicial position is that the recall of an order, results in the complete abrogation of the order which has been recalled. Hence, it is as if the recalled order, never existed.[28]

The consequence hence, of the recall of *Katta Sujatha Reddy*, is that one must proceed to consider the 2018 Amendment as though *Katta Sujatha Reddy* never existed. In the absence of *Katta Sujatha Reddy*, it would seem that *Sugar Singh* would hold the field as to the application of the 2018 Amendment towards pending disputes. This would mean that, the civil court must have a bent towards enforcing contracts through specific performance, but at the same time consider other factors such, as undue hardship as well as redressal through adequate compensation. Such a minimal change in the perceived attitude of the civil court may not be of much help in order to achieve the lofty goals of the 2018 Amendment. Hence, a few other aspects warrant consideration.

In *Siddamsetty*, the Supreme Court after recalling its judgement, has restored the judgment of Telangana High Court dated 23.04.2021. As stated in Part III above, the Telangana High Court came to the conclusion that, specific performance was to be decreed. However, the Telangana High Court in doing so, extensively analyzed, the nature of SRA as being procedural in nature; the concept of retrospective operation of procedural laws; and the decisions of various High Courts in *Mukesh Singh, M Suresh, Shon Randhawa*, *Church of North India,* and *Jindal Saws*. After considerable discussion, the Telangana High Court found that "*substituted Section 3 of act of 2018 (which Section 10 in*

[26] *Sushil Kumar Sen v. State of Bihar*, (1975) 1 SCC 774.
[27] *Supra* note 3, at para 52.
[28] *Giridharilal v. Pratap Rai Mehta*, 1989 SCC Online Kar 165.

principal Act) is retrospective in nature and applies to pending proceedings"[29]. This decision therefore, was affirmed by way of a speaking order, by the Supreme Court in appeal in *Siddamsetty* (*Katta Sujatha Reddy* having been recalled). The doctrine of merger dictates that when the Supreme Court by way of a speaking order, affirms the decision of a lower court, the latter decision merges with that of the Supreme Court.[30] Therefore, in effect, with the restoration of the High Court decision in *Siddamsetty,* the Supreme Court has in effect held the 2018 Amendment to be retrospective insofar as it would apply to pending proceedings It must also be kept in mind that one cannot read too much into a judgement of the Apex Court for much of the analysis above is deduced *sub silentio*.

Therefore, from first principles, if one considers the issue of the applicability of the 2018 Amendment, one must necessarily wade into the murky waters of the substantive-procedural dichotomy. Some have advocated for a right-remedy analysis as opposed to a substantive-procedural analysis.[31] The right-remedy analysis is a necessary concomitant of Section 6 of the GCA, as it specifies that unless a contrary intention is evident, any right or obligation pre-existing the repeal, will not be impacted. But the substantive-procedural analysis goes slightly further, to say that if one has procedural rights, and if a repeal changes the same, the change would have retrospective effect. Therefore, the question is whether the 2018 Amendment confers procedural rights or substantive rights. As regards the Plaintiff, the 2018 Amendment does not impact any of his rights and obligations. His entitlement to specific performance remains the same. It is only the manner or ease in which he obtains specific performance is changed. The obligation to prove the elements of specific performance continue to remain the same. It is only as against the Defendant, that the 2018 Amendment takes away defenses that could have been otherwise alleged. Defenses such as undue hardship as well as adequate compensation through damages, have been done away with. But these defenses cannot be said to have been rights of the Defendant. These are merely appeals to be made by the Defendant to the discretion of the court, seeking favourable exercise thereof. Therefore, it would seem that the majority of the High Courts across India are right, insofar as they have held that the 2018 Amendment only concerns itself procedural rights.

Even otherwise, it is matter of common logic and practice that any change in law would apply to contracts under performance. Rights and obligations brought about by change in law, would bind the parties thereafter, despite the same not having been enacted on the date of execution of the contract. Even as regards court proceedings, it is increasingly settled law that, a change in law would be applicable to pending proceedings, unless a specific prohibition is made out in the amendment. For

[29] *Hyderabad Potteries (P) Ltd. v. Debbad Viweswara Rao*, 2021 SCC OnLine TS 3590, at para 100.
[30] *Supra* note 17.
[31] *Supra* note 23.

instance, in *R.S. Madireddy v. Union of India*[32], the Apex Court held that, if during the pendency of a writ petition, a public entity undergoes privatization, then the said petition would no longer be maintainable, as the writ court exercises jurisdiction on the date it issues the writ i.e. decides the petition, and the date of filing of the proceeding would be irrelevant. A similar rationale was used by the Calcutta High Court in *Church of North India* to hold that, the relevant date for determining the applicability of the 2018 Amendment is the date on which the decree is being passed. Even otherwise, the Apex Court has consistently held that, developments in law apply to pending proceedings.[33] Hence, even *de hors Siddamsetty,* the position of the law seemingly enables the 2018 Amendment, to apply to pending proceedings.

VI.

Conclusion

The endeavor of the above analysis has been to showcase that out of rampant confusion in the judicial systems, arises at times, harmony. The general consensus prior to *Katta Sujatha Reddy* was that the 2018 Amendment was indeed applicable to pending proceedings, and as such, would be retrospective. *Katta Sujatha Reddy* struck a discordant note when it insisted that no contract before 01.10.2018 could take benefit of the said amendment. Such a reading, would also render the *sententia legis* obsolete, for the amendment was brought with the aim of harmonizing the provisions of SRA, in light of the rapid economic growth experienced in India. Hence, the amendment was brought in to improve enforcement of contracts, and settling of disputes in a speedy manner.[34] To read the 2018 Amendment to be solely prospective, would be to defeat the intention of the legislature. A retrospective reading would also ensure that those who have intentionally failed to perform the contract, are penalized for stringing along the Plaintiff, while enjoying the fruits of their labour (or lack thereof). Such a reading would also go a long way in reducing the burden on the courts of India, and reducing case pendency. However, because the specter of *Katta Sujatha Reddy* continues to haunt the Indian courts, it may perhaps be necessary for the Supreme Court to finally lay the matter to rest in an appropriate case. One would hope, it would do so, in a direction distant from its now-deceased, and would-be predecessor.

[32] 2024 INSC 425; 2024 SCC Online SC 965.
[33] See *Vineeta Sharma v. Rakesh Sharma,* (2020) 9 SCC 1*; Ganduri Koteshwaramma v. Chakiri Yanadi & Anr*.(2011) 9 SCC 788.
[34] *Supra* note 7.

THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN PROTECTING SPORTS BRANDS, ATHLETE ENDORSEMENTS

Oluwagbenga Atere*

Abstract

Intellectual Property Rights (IPR) play a crucial role in protecting sports brands and athlete endorsements in an increasingly commercialised global sports industry. Trademarks, copyrights, and image rights safeguard the identity, reputation, and financial interests of athletes, sports teams, and sponsors. Trademarks help sports brands establish unique identities, while copyrights protect creative content such as logos, promotional materials, and broadcasts. Athlete endorsements, a lucrative aspect of sports marketing, rely on image rights and contractual agreements to prevent unauthorised use of a player's name, likeness, or personal brand. The digital era presents new challenges, including counterfeit merchandise, online piracy, and unauthorised social media endorsements. Legal frameworks such as the Lanham Act in the United States, the EU Trademark Regulation, and other international treaties provide mechanisms to enforce IP protection. However, evolving technologies and the global nature of sports necessitate continuous adaptation of IP laws. This paper explores the intersection of sports branding, athlete endorsements, and IPR, analyzing key legal protections, landmark cases, and emerging challenges. It also examines how sports entities and athletes can leverage IPR to enhance brand equity while mitigating legal risks. By addressing contemporary issues such as ambush marketing and unauthorised digital content distribution, the paper provides insights into best practices for sports organisations, athletes, and legal practitioners. Strengthening IP protection in sports ensures fair commercial practices, protects athlete rights, and fosters a sustainable sports marketing ecosystem.

Keywords: Intellectual Property, Sports Branding, Athlete Endorsements, Trademarks, Image Rights

1.
Introduction

In the modern sports industry, intellectual property rights (IPRs) play a crucial role in safeguarding the commercial value of sports brands and athlete endorsements. With the global expansion of sports as both an economic and cultural phenomenon, the protection of trademarks, image rights, and

sponsorship agreements has become increasingly significant[1]. Intellectual property law provides the legal framework that ensures sports organisations, athletes, and sponsors can commercially exploit their brand identity while preventing unauthorised usage by third parties[2] .

Trademarks serve as a fundamental legal mechanism in the protection of sports brands, allowing teams and organisations to establish distinctive identities and maintain consumer trust [3]. For instance, major sporting leagues such as the National Football League (NFL) and the English Premier League (EPL) rely heavily on trademark law to prevent counterfeit merchandise and unauthorised branding[4] . Similarly, copyright and design rights extend protection to logos, broadcasting rights, and even sports apparel designs, ensuring the exclusivity of sports-related intellectual property.[5]

Athlete endorsements, a key component of modern sports marketing, also benefit significantly from intellectual property protections. Image rights, often protected under the right of publicity or trademark law, enable athletes to monetize their personal brand while deterring unauthorized commercial exploitation[6] . The increasing importance of social media has amplified the value of endorsements, necessitating legal measures to combat digital infringements and fraudulent endorsements[7] . This paper will explore the role of intellectual property rights in protecting sports brands and athlete endorsements by examining key legal frameworks, landmark cases, and emerging challenges in the digital age. It will analyze the effectiveness of existing intellectual property laws in maintaining brand integrity and commercial viability while addressing potential areas for legal reform.

2. Historical Evolution of Intellectual Property Rights in Sports

The role of intellectual property rights (IPRs) in the sports industry has evolved significantly over time, reflecting changes in commercial practices, legal frameworks, and the increasing economic value of sports brands and athlete endorsements. This evolution can be traced through three key phases: the early recognition of branding, the expansion of legal protection, and the modern commercialization

* Oluwagbenga Atere, Associate Professor, Ajayi Crowther University

[1] W. Cornish, D. Llewelyn, et al. *Intellectual Property: Patents, Copyright, Trade Marks & Allied Rights*. (Sweet & Maxwell ltd, United Kingdom,9th Edition 2019)

[2] C. McCutcheon, *Sports Law: A Global Perspective*. (McCuthe, United States of America First edition 2021)

[3] G. Dinwoodie, and M. Janis, *Trade Mark Law and Theory: A Handbook of Contemporary Research. (Edward Elgar , UK and North America 5th edition 2018)*

[4]K. Keller, and P. Kotler, *Strategic Brand Management: Building, Measuring, and Managing Brand Equity*.(Pearson, England 5th edition 2020)

[5] N. Gopalakrishnan, *Intellectual Property Rights in the Global Economy*(Peterson institute for international economics, United states, Second edition2018

[6] J. Grady, and S. McKelvey, *The Evolution of Sports Endorsements: Law and Business Perspective.(UNKNO, United States 4th edition, 2019*

[7] R. Boyle, and R. Haynes, *Digital Media and Sports Sponsorship: Legal and Commercial Challenges (Raymond Boyle, United States, first edition 2022)*

era.

2.1 Early Recognition of Branding in Sports (19th - Early 20th Century)

The emergence of sports as a commercial activity can be traced back to the late 19th and early 20th centuries, when teams and athletes began to recognize the importance of branding. The establishment of professional sports leagues, such as Major League Baseball (MLB) in 1876 and the English Football League in 1888, marked the beginning of sports teams using distinctive names and logos to attract fans[8] . However, legal protections for these identifiers were limited, as early intellectual property laws primarily focused on literary and artistic works[9]. During this period, trademarks began to be used in a rudimentary form, particularly for sports merchandise. The 1905 UK Trade Marks Act and the 1946 Lanham Act in the United States laid the groundwork for protecting team names and logos from unauthorized use[10]. However, athlete endorsements were still in their infancy, with little formal recognition of individual rights over their image and name.

2.2 Expansion of Legal Protections for Sports Brands and Athletes (Mid-20th Century - 1990s)

The mid-20th century saw a significant expansion in intellectual property protection, coinciding with the growth of sports broadcasting and the commercialization of sports apparel. Landmark cases such as National Basketball Association v. Motorola, Inc. (1997) highlighted the importance of protecting sports-related intellectual property from unauthorized broadcasting and real-time data dissemination[11]. Athletes also began to leverage their personal brands during this period. The rise of global sports icons such as Pelé and Muhammad Ali demonstrated the financial potential of personal branding, leading to the increased use of trademark laws to safeguard athlete names and images[12]. The introduction of personality rights, particularly in jurisdictions like the United States through the right of publicity, helped establish legal precedents for athlete endorsements.[13]

2.3 Modern Commercialisation and Digital Era (2000s - Present)

[8] M. McCann,``*Historical Development of Sports Law and Branding Rights''.* 25 (1) Sports Law Review, 33-56 2018

[9] W. Cornish, D. Llewelyn, et al. *Intellectual Property: Patents, Copyright, Trade Marks & Allied Rights*. (Sweet & Maxwell ltd, United Kingdom,9th Edition 2019)

[10] J. Phillips, J., &A. Firth, *Trademarks and Unfair Competition in Sports.* (Cambridge University Press, United Kingdom, first ed2020

[11] D. Kitchin, and D. Llewelyn, *Modern Intellectual Property Law.* (Oxford University Press, United Kingdom first ed 2011)

[12]C. Schmidt, and J. Holzmüller, *Personality Rights and Athlete Endorsements: A Legal Perspective.* (Springer, United states first ed 2021)

[13] J. Ginsburg, `` *The Right of Publicity and Athlete Endorsements.''116(3)* Harvard Law Review, 489-512 2003

The early 21st century has seen an unprecedented surge in the commercialization of sports brands and athlete endorsements, driven by globalization and digital technology. Intellectual property laws have adapted to the digital landscape, addressing challenges such as online brand infringement and social media exploitation[14]. With the rise of e-commerce and direct-to-consumer marketing, sports brands and athletes have become increasingly vigilant in enforcing their intellectual property rights. Notable legal cases, such as Adidas AG v. Payless Shoesource, Inc. (2008), reinforced the importance of trademark protection in the sports industry[15] . Similarly, the endorsement deals of contemporary athletes, such as Cristiano Ronaldo and Serena Williams, have demonstrated the economic significance of personal brand management through licensing and trademark strategies.[16]

Furthermore, the advent of non-fungible tokens (NFTs) and the metaverse has introduced new legal challenges concerning the ownership and licensing of digital sports assets. Intellectual property frameworks continue to evolve to address these emerging issues[17] .

The historical development of intellectual property rights in sports highlights the growing importance of legal protection for sports brands and athlete endorsements. From early trademark use in professional sports to modern digital brand management, the evolution of IPRs has played a crucial role in safeguarding commercial interests in the sports industry.

3. Analyzing Key International Legal Protections in Protecting Sports Brands and Athlete Endorsements

The global sports industry is a multi-billion-dollar sector driven by brand recognition, athlete endorsements, and intellectual property (IP) rights. Protecting sports brands and endorsements requires a robust legal framework, which spans international treaties, national laws, and contractual agreements. This section explores key legal protections for sports brands and athlete endorsements, examining intellectual property rights, contract law, and recent case law to highlight how international legal instruments safeguard these interests.

3.1 Intellectual Property Protections for Sports Brands

[14] R. Dworkin, *The Legal Landscape of Sports and Digital Media.* (Oxford University Press, United Kingdom First edition 2022

[15] T. Jacobsen, *Sports Branding and Trademark Law: Case Studies and Legal Analysis.* Edward Elgar,United Kingdom, first ed, 2017

[16] World Intellectual Property Organization (WIPO). . *The Future of Sports Branding and Intellectual Property.* Geneva: WIPO Publications , first ed,2023)

[17] L. Bentley, *Intellectual Property in the Digital Age: NFTs and Sports Branding.* Cambridge University Press, First ed, 2023

One of the primary legal mechanisms protecting sports brands is intellectual property law, which encompasses trademarks, copyright, and patents.

3.1.1 Trademarks

Trademarks are essential in preventing unauthorized use of logos, names, and symbols associated with sports brands. The Madrid System, administered by the World Intellectual Property Organization (WIPO), allows brand owners to register their trademarks internationally under a unified system[18]. For instance, Adidas successfully defended its three-stripe design in *Adidas AG v. Shoe Branding Europe BVBA*, reaffirming the importance of distinctiveness in trademark protection[19] . The case *Adidas AG v. Shoe Branding Europe BVBA* is a significant ruling in trademark law, reinforcing the importance of distinctiveness in protecting well-known brand symbols. Adidas, a global sportswear giant, has long been known for its iconic three-stripe design, which has been central to its brand identity.

3.1.2 Background of the Case

Shoe Branding Europe BVBA, a Belgian footwear company, attempted to register a two-stripe design for its shoes. Adidas opposed this, arguing that the similarity between the two-stripe and its own three-stripe design would create confusion among consumers. The dispute escalated into a legal battle concerning whether Adidas' three-stripe mark was distinctive and whether Shoe Branding's two-stripe mark infringed upon it. Addidas contended with shoe Branding Europe BVBA on the following grounds;

1. Distinctiveness and Reputation – Adidas argued that its three-stripe design had acquired distinctiveness through extensive use and was strongly associated with the brand.
2. Likelihood of Confusion – Adidas claimed that consumers might mistake Shoe Branding's two-stripe design for Adidas products.
3. Unfair Advantage and Dilution – Adidas further contended that the two-stripe design took unfair advantage of the reputation and goodwill of Adidas' branding.

3.1.2.1 Court's Decision and Reasoning

The European General Court ruled in favor of Adidas, emphasizing that Adidas' three-stripe design had acquired strong distinctiveness through extensive use in the market. Even though Shoe Branding used only two stripes, the visual similarity was enough to create confusion. The Court also held that

[18] World Intellectual Property Organization (WIPO), *The Madrid System for the International Registration of Marks*. (WIPO,2021)
[19] *Adidas AG v. Shoe Branding Europe BVBA*, ECJ (Judgment) 2016 Case C-240/18.

the presence of two rather than three stripes did not significantly alter the overall impression of the branding. Furthermore, the Court also held that the Shoe Branding's attempt to register its mark could dilute Adidas' brand identity and take unfair advantage of its well-established reputation.

3.1.2.2 Significance of the Case

1. Strengthened Protection for Established Trademarks – The ruling reinforced that a trademark with acquired distinctiveness, even if it is a simple design, can enjoy broad protection.
2. Prevention of Free-Riding – The case set a precedent that companies cannot use designs that closely resemble established trademarks to benefit from their reputation.
3. Consumer Confusion Standard – It reaffirmed that trademarks are protected based on consumer perception, not just technical differences in design

Adidas AG v. Shoe Branding Europe BVBA serves as a landmark case in trademark law, highlighting the significance of distinctiveness in brand protection. It underscores that even simple designs, if strongly associated with a brand, can be protected against imitation. This decision helps safeguard brands from dilution and ensures that consumers are not misled by similar-looking marks.

4. Copyright Protection

Copyright law safeguards creative works such as promotional materials, advertisements, and digital content. The Berne Convention for the Protection of Literary and Artistic Works[20] (1886) ensures automatic copyright protection for registered works in member states[21]. This protection is critical for sports brands that produce promotional campaigns and athlete-sponsored content. The Berne Convention for the Protection of Literary and Artistic Works (1886) establishes a system of automatic copyright protection across member states, ensuring that original works, including sports brands' creative assets, are safeguarded without the need for formal registration.

4.1 Key Provisions Ensuring Automatic Copyright Protection

4.1.1 Automatic Protection Without Formalities

Article 5(2) of the Convention states that works created in any member state are automatically protected in all other member states without the need for registration or compliance with local formalities.

[20] World Intellectual Property Organization (WIPO). (2018). *The Berne Convention for the Protection of Literary and Artistic Works*.
[21] World Intellectual Property Organization (WIPO). (2018). *The Berne Convention for the Protection of Literary and Artistic Works*

This means that sports brands' logos, slogans, marketing materials, and promotional content are protected globally as soon as they are created.

4.1.2 National Treatment Principle

Under Article 5(1), authors from any member state enjoy the same rights in other member states as nationals of those countries.

A sports brand from one member state receives the same copyright protection as local brands in other member states.

4.1.3 Minimum Protection Standards

The Berne Convention mandates minimum protection standards, including exclusive rights over reproduction, adaptation, and public distribution of copyrighted works.

This applies to sports brands' visual designs, advertisements, and broadcasting materials.

4.1.4 Moral Rights Protection

Under Article 6b is, authors have the right to claim authorship and object to modifications that may harm their reputation.

This prevents unauthorized alterations of sports brands' copyrighted materials that could misrepresent their identity.

4.1.5 Recognition of Copyright Duration

The Convention mandates a minimum protection period of 50 years posthumous (Article 7).

Many member states have extended this to 70 years or more, ensuring long-term brand protection.

4.2 Impact on Sports Brands

Brand Identity Protection: Sports logos, slogans, and designs used in global promotions are automatically protected.

Merchandising Control: Unauthorized reproductions of sports apparel, digital content, and advertisements can be legally challenged.

Broadcasting and Licensing: Sports events and promotional videos are safeguarded against unauthorized use.

The Berne Convention provides sports brands with global copyright protection without the need for registration, helping maintain their brand integrity and preventing unauthorized exploitation. However,

while copyright protects creative aspects, sports brands must also rely on trademark laws for full brand protection.

5. Legal Frameworks Protecting Athlete Endorsements

Athlete endorsements rely on contractual agreements and image rights protection, which are enforced under national and international legal systems.

5.0.1 Contract Law and Endorsement Agreements

Endorsement agreements outline the terms under which athletes lend their image to brands. The validity and enforceability of these contracts depend on national laws, with many jurisdictions enforcing strict contract terms to prevent breaches. The Court of Arbitration for Sport (CAS) has played a pivotal role in resolving endorsement disputes, as seen in *Maria Sharapova v. International Tennis Federation (ITF)*, where contractual obligations were analyzed in light of doping allegations[22] .

5.1 Case Background

Maria Sharapova, a Russian tennis star, tested positive for meldonium at the 2016 Australian Open. Meldonium had been added to the World Anti-Doping Agency (WADA) Prohibited List on January 1, 2016. Sharapova admitted to using the substance but argued that she was unaware of its ban. The ITF Tribunal initially imposed a two-year suspension, but Sharapova appealed to the Court of Arbitration for Sport (CAS), which reduced the suspension to 15 months, finding that she bore "no significant fault or negligence."

5.2 Endorsement Implications

Sharapova had lucrative endorsement deals with major brands like Nike, TAG Heuer**,** Porsche, and Head. When her suspension was announced: Nike suspended their deal but reinstated it after CAS reduced the ban.TAG Heuer chose not to renew its contract with her.Porsche temporarily distanced itself from Sharapova**.**

6.3 This case underscored key legal considerations for endorsement contracts in sports law:

5.3.1 Morality and Doping Clauses: Many endorsement contracts include "morals clauses" allowing termination if an athlete's behavior damages the brand's reputation. The ITF decision and CAS ruling highlighted the importance of contract wording—some sponsors reinstated their deals because CAS found her fault to be minimal.

---

[22]. *Maria Sharapova v. International Tennis Federation (ITF)*.(2016) Court of Arbitration for Sport (CAS). (2016) CAS 2016/A/4643.

5.3.2 Legal Reasoning of CAS in Relation to Endorsements: CAS focused on Sharapova's degree of fault, ruling that while she bore some responsibility, she did not intend to cheat. This reasoning influenced how sponsors viewed the case—companies that terminated deals likely had stricter clauses, while others (like Nike) reinstated their endorsement after the CAS ruling. Precedent for Future Endorsement Disputes: The Sharapova case set a precedent for how courts and arbitrators assess an athlete's intent and degree of fault in doping cases. This affects endorsement disputes where sponsors must decide whether an athlete's actions constitute a material breach of contract. While *Maria Sharapova v. ITF* was not primarily an endorsement dispute case, its outcome helped clarify how legal reasoning in doping cases influences sponsorship agreements. The CAS ruling demonstrated that fault determination plays a crucial role in contract enforcement, offering guidance on how endorsements should be structured to account for doping-related breaches.

6. Image Rights Protection

Athletes' image rights are protected under personality rights, which prevent unauthorized commercial use of an individual's likeness. The European Convention on Human Rights (Article 8) recognises the right to privacy, which extends to the commercial use of an individual's image [23]. In the U.S., the *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953)[24] case established the legal foundation for image rights protection, influencing global jurisprudence on the matter. The case *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.* (1953) played a crucial role in establishing the legal foundation for image rights, particularly the "right of publicity." Before this case, courts primarily recognized only a "right to privacy," which protected individuals from unwanted commercial exploitation of their likeness. However, *Haelan* introduced the concept that individuals, particularly celebrities and athletes, have a distinct, transferable property right in their likenesses.

7. Key Legal Impact of the Case

7.0.1 Creation of the Right of Publicity

The Second Circuit Court, in its decision, recognized that an individual's image or likeness has commercial value beyond mere privacy concerns. The ruling stated that celebrities and public figures have a property interest in their publicity rights, which they can license or assign to third parties.

[23] Council of Europe. (2020). *European Convention on Human Rights*. Retrieved from https://www.echr.coe.int/.

[24] *Haelan Laboratories, Inc.* v. *Topps Chewing Gum*, Inc., 202 F.2d 866 (2d Cir. 1953).

7.0.2 Transferability of Image Rights

The court held that these rights were not just personal but also transferable, meaning athletes and entertainers could contractually grant exclusive usage rights to specific entities.

7.0.3 Foundation for Future Legislation and Cases

This case laid the groundwork for later statutory and common law developments in right-of-publicity law, influencing decisions such as Zacchini v. Scripps-Howard Broadcasting Co. (1977), in which the U.S. Supreme Court affirmed an individual's right to control the commercial use of their performance.

8. Effects on Sports Endorsements and Athlete Image Rights

8.1.1 Monetization of Likeness in Endorsement Deals

Athletes and sports personalities today frequently sign multi-million-dollar endorsement deals with brands that use their image in advertising. Thanks to *Haelan*, athletes can control and commercialize their name, image, and likeness (NIL).

8.1.2 Exclusive Licensing Agreements

Sports leagues, teams, and individual athletes sign exclusive licensing agreements with companies for trading cards, apparel, video games (like EA Sports' FIFA or NBA 2K), and other merchandise.

8.1.3 Legal Basis for NIL Rights in College Sports

The modern movement toward Name, Image, and Likeness (NIL) rights in college sports—allowing student-athletes to profit from their personal brand—is rooted in the principles established by *Haelan Laboratories*.

9. Protection Against Unauthorized Use

9.0 The case helps athletes and public figures sue for unauthorized use of their image in advertisements, as seen in cases like *Michael Jordan* v. *Jewel-Osco* (where Jordan sued a grocery chain for using his image without permission). The *Haelan Laboratories* decision was a pivotal moment in intellectual property law, establishing that individuals—especially athletes and entertainers—have a marketable right of publicity. This has transformed sports marketing, allowing athletes to secure lucrative endorsement deals while also providing legal grounds to challenge unauthorized commercial use of their image. Today, right of publicity laws continue to evolve, but the precedent set in *Haelan* remains fundamental to sports and entertainment law.

10. Challenges and Emerging Trends

Despite strong legal protections, challenges remain, including the rise of digital piracy, unauthorized deepfake endorsements, and jurisdictional inconsistencies. The emergence of non-fungible tokens (NFTs) has also created new legal questions regarding ownership and commercialization of athletes' digital likenesses[25]. Protecting sports brands and athlete endorsements requires a multi-faceted approach involving trademark law, copyright protections, contractual agreements, and personality rights. International treaties such as the Madrid System, the Berne Convention, and national laws play a crucial role in safeguarding these interests. Future developments in digital branding and emerging technologies will necessitate continuous adaptation of legal frameworks to address new challenges in the sports industry.

10.0.1 Leveraging Intellectual Property Rights in Sports to Enhance Brand Equity and Mitigate Legal Risks

In the competitive world of sports, brand equity is a significant asset for both athletes and sports organizations. IP rights provide a legal framework to protect and commercialize sports brands, ensuring economic benefits and reputation control[26] . Mismanagement of IP, however, can lead to legal disputes, dilution of brand value, and financial losses[27].

10.0.2 Trademarks and Brand Protection Trademarks are among the most valuable IP assets in sports. They help athletes and sports entities establish a unique identity and prevent unauthorized commercial use[28] . For instance, Michael Jordan's trademark litigation against Qiaodan Sports in China exemplifies the importance of securing global trademark rights[29] .

10.0.3 Copyrights in Sports Media and Merchandising Copyrights protect creative content such as broadcasting rights, promotional materials, and team logos. The commercialization of copyrighted content through media licensing deals generates significant revenue streams[30] . The unauthorized

[25] A. Murray, "*Legal Implications of NFTs in Sports Endorsements"* 14(2) Harvard Journal of Sports Law, 112-135. 2022).

[26] D.A Aaker, Managing Brand Equity. (Free Press,United States of America, first ed 1991)

[27] T.B Cornwell, Sponsorship in Marketing: Effective Partnerships in Sports, Arts, and Events. (Routledge, United States, 2nd edition 2019

[28] K.L Keller, Strategic Brand Management. (Pearson Education USA and England Fifth edition(2003)

[29] Y. Liu, `` Trademark Protection and Athlete Branding in China''25(3) Journal of Intellectual Property Law, 245-267.2020

[30] R. Boyle, and J. Jenkins, Sports Journalism: Context and Issues. (SAGE, United States first ed(2018)

reproduction of copyrighted content, as seen in the legal battles between sports leagues and online streaming platforms, underscores the need for robust copyright enforcement[31].

10.0.4 Patents and Technological Innovations in Sports Innovations in sports equipment and training methodologies can be protected through patents, fostering a competitive edge.[32] For example, Nike's patented Flyknit technology has enhanced the company's market dominance while deterring competitors from copying its designs.[33]

10.0.5 Image Rights and Athlete Endorsements Athletes' image rights are critical in securing endorsement deals and sponsorships. Image rights agreements ensure that athletes control the commercial use of their name, likeness, and persona[34] . The dispute between Cristiano Ronaldo and a sportswear company over unauthorized use of his image exemplifies the significance of such rights[35].

10.0.6 Challenges and Legal Risks in IP Management Despite the benefits, managing IP rights in sports presents challenges such as counterfeiting, unauthorized branding, and jurisdictional legal complexities. Sports organizations must adopt proactive legal strategies, including international trademark registration, robust licensing agreements, and digital content protection[36]. IP rights are instrumental in enhancing brand equity and minimizing legal risks in the sports industry. Strategic management of trademarks, copyrights, patents, and image rights can help athletes and sports entities maintain a strong market presence while avoiding legal pitfalls. Future research should focus on emerging IP challenges in digital sports and the metaverse.

10.0.7 Legal Strategies for Protecting Sports Brands Against Ambush Marketing and Unauthorized Digital Content Distribution

Sports brands are valuable assets for organizations, leagues, and teams. The commercialization of sports events creates opportunities for brand partnerships, sponsorships, and exclusive broadcasting rights. However, challenges such as ambush marketing and unauthorized digital content distribution threaten the value and integrity of sports brands. This paper explores the legal strategies that sports entities can use to safeguard their intellectual property (IP) and commercial rights.

[31] D. Smith, and P. Stewart, "Copyright and Digital Media in Sports". 34(2) Journal of Law and Sports 89-112 2021
[32] D. Haugen,. Patents and Innovation in Sports Equipment. (Springer, United States, first ed, 2016)
[33] J Mills, and B. Ford ``Patent Strategies in the Sports Industry''. 97(4) Harvard Business Review, 120-134 2019
[34] K. Gibson, and R. Johnson, Athlete Endorsements and Brand Protection. (Cambridge University Press, United Kingdom first ed 2017
[35] M. Davies, Intellectual Property and Athlete Image Rights: Emerging Legal Perspectives. Oxford University Press England, first ed, 2022
[36] J Phillips, and H. Lee, "Global IP Management in Sports". 29(5)International Business Review, 345-367 2020

11. Legal Framework Against Ambush Marketing

Ambush marketing occurs when non-sponsor companies attempt to associate themselves with a sports event without paying sponsorship fees[37] . Legal mechanisms available to counteract ambush marketing include:

11.0.1 Trademark Protection – Sports organizations can register trademarks for event names, logos, and slogans. Trademark laws enable rights holders to take action against unauthorized use that creates consumer confusion[38].

11.0.2 Event-Specific Legislation – Some countries enact special laws during major sporting events. For instance, South Africa introduced the 2010 FIFA World Cup Special Measures Act, which restricted non-official sponsors from using FIFA-related branding[39].

11.0.3 Contractual Enforcement – Sponsors and event organizers often use contractual provisions to prohibit ambush marketing tactics by competitors[40].

11.0.4 Advertising and Consumer Protection Laws – Regulators may intervene when ambush marketing misleads consumers about a company's official association with a sports event[41].

12. Legal Approaches to Prevent Unauthorized Digital Content Distribution

With the rise of online streaming and digital media, unauthorized distribution of sports content is a significant challenge. Legal strategies to combat this include:

12.0.1 Copyright Protection and Enforcement – Sports broadcasts and digital media are protected under copyright laws. Rights holders can pursue legal action against unauthorized streaming and reproduction[42].

---

[37] S. McKelvey, and J. Grady, (2017). "Trademark Protection Strategies in Sports Marketing." 54(3) *American Business Law Journal, 515-540, 2017*

[38] S. Cornelius, "Intellectual Property and Sports Marketing." 17(3) *Journal of Intellectual Property Law, 245-268 2020*

[39] S. Townley, D. Harrington, et al "Legal Challenges in Major Sporting Events." 22(1) *International Sports Law Review, 27-42,2017*

[40] J. Grady, and S. McKelvey, "Ambush Marketing and Sponsorship Law in Sports Events." *Sports Law Review, 12(4), 178-194 , 2018*

[41] M. Phillips, and B. Hutchins, "Consumer Protection and Ambush Marketing in Sports." 11(2) *Consumer Law Quarterly 96-120 , 2017*

[42] K. Karkkainen, "Sports Broadcasting and Copyright Law." 24(1) *European Sports Law Journal, 89-103, 2021*

12.0.2 Digital Millennium Copyright Act (DMCA) Takedowns – Under the DMCA, copyright holders can issue takedown notices to platforms hosting infringing content [43]

12.0.3 Geo-Blocking and Content Licensing Agreements – Sports organizations employ geo-blocking technologies to enforce territorial broadcasting rights[44] .

12.0.4 Anti-Piracy Alliances – Collaboration with digital platforms, search engines, and law enforcement helps mitigate illegal streaming and distribution[45]

13. Case Studies

13.0.1 FIFA's Legal Battle Against Ambush Marketing – FIFA has aggressively enforced trademark rights against companies attempting to associate with the World Cup without sponsorship[46].

13.0.2 Premier League's Fight Against Illegal Streaming – The English Premier League has employed AI-powered detection systems and legal action to shut down unauthorised streams[47].

13.0.3 Olympic Games Brand Protection Measures – The International Olympic Committee (IOC) utilizes Rule 40 to restrict non-sponsors from leveraging athlete endorsements during the Games.[48]

Sports entities must adopt a comprehensive legal approach to protect their brands from ambush marketing and unauthorised digital content distribution. Trademark registration, copyright enforcement, event-specific legislation, and digital rights management are essential tools. As digital platforms evolve, sports organisations should collaborate with regulatory authorities and technology providers to safeguard their commercial interests.

14. Conclusion

Intellectual property rights play a crucial role in protecting sports brands and athlete endorsements by

[43]B. Hutchins and D. Rowe, "Digital Media and Sports Broadcasting Rights."15(2) *International Journal of Digital Media Studies, 134-152.2019*

[44]J. Rookwood, "The Role of Geoblocking in Sports Broadcasting Rights." 28(1) *Journal of Sports and Media, 66-82, 2021*

[45] J. Borland, and R. MacDonald, "Sports Economics: Contemporary Issues." *Oxford University Press United Kingdom, First,2020*

[46] S. Townley, D. Harrington,et al (2017). "Legal Challenges in Major Sporting Events." 22(1) *International Sports Law Review, 27-42, 2017*

[47] J. Rookwood, "The Role of Geoblocking in Sports Broadcasting Rights." 28(1) *Journal of Sports and Media, 66-82, 2021*

[48]J. Grady, and S. McKelvey, "Ambush Marketing and Sponsorship Law in Sports Events." 12(4) *Sports Law Review, 178-194* , 2018

safeguarding trademarks, copyrights, and image rights against unauthorised use. Strong IP protections help maintain brand value, prevent counterfeiting, and enable athletes to control and monetise their personal brands. As the sports industry continues to grow, the enforcement of intellectual property laws becomes increasingly important to prevent exploitation and maintain fair commercial practices. By strengthening legal frameworks and embracing technological advancements, stakeholders can ensure that sports brands and athletes receive the recognition and financial rewards they rightfully deserve.

Recommendations

1. Strengthening Trademark Protection for Sports Brands

Sports organizations and athletes should register trademarks for their names, logos, and slogans to prevent unauthorized use and regularly monitor and enforce trademark rights to combat counterfeiting and brand dilution. They should also utilize international trademark protections under agreements like the Madrid Protocol to secure rights across multiple jurisdictions.

2. Enhancing Athlete Image Rights and Endorsement Agreements

Athletes should secure licensing agreements for their name, likeness, and image to ensure proper compensation and control over their personal brand.More importantly, sponsorship contracts should include clear intellectual property (IP) clauses specifying the permitted use of the athlete's identity. Anti-ambush marketing strategies should be implemented to prevent unauthorized associations with athletes or sports events.

3. Combatting Counterfeit Sports Merchandise

Sports organizations should work with enforcement agencies to prevent the sale of counterfeit products that infringe on trademarks and copyrights and also leverage digital tools like blockchain for authentication of licensed merchandise. They should also educate consumers on identifying genuine products to reduce the demand for counterfeit goods.

4. Leveraging Copyright Protection in Sports Content

Sports broadcasters and organizations should secure copyright protections for event footage, branding materials, and marketing content and implement strict licensing agreements for media distribution to control how content is shared and monetized. They should also monitor social media and online platforms for unauthorized use of copyrighted materials.

5. Adapting to Emerging Technologies and Digital Media

National Governments should establish clear legal frameworks for the use of sports brands and athlete images in virtual reality (VR), gaming, and NFTs and create an enabling environment for interested persons to develop AI-powered monitoring systems to track unauthorized use of IP assets online.

Sports organizations should consider new business models that integrate technology, such as direct-to-consumer sales and digital collectibles, to enhance brand protection.

6. Strengthening Legal Enforcement Measures

Sports Organizations should Collaborate with legal and regulatory bodies to improve IP enforcement strategies in sports and also advocate for stronger anti-piracy laws to protect digital sports content and athlete endorsements and more importantly use alternative dispute resolution (ADR) mechanisms to handle IP disputes efficiently.

CORPORATE RESTRUCTURING VIS-À-VIS PROTECTION OF CAPITAL MARKET INVESTORS IN INDIA – AN ANALYTICAL STUDY FOCUSING ON MERGERS AND ACQUISITIONS

Mayank Shrivastava*

Abstract

This paper focuses on critically assessing the safeguards for the interests of investors in India's capital market within the complex landscape of Mergers and Acquisitions in India. In this respect, the paper will focus on how the interplay of regulatory frameworks, legal safeguards, and integrity of the market will create investor confidence and resilience during restructuring.

The first key area for research would be the regulatory framework, where in-depth analysis is undertaken on the regulations made by the Securities and Exchange Board of India (SEBI) mainly the Takeover Code, 2011, along with other relevant legal and governance norms to achieve a comprehensive understanding of the regulatory landscape governing M&A activities in India.

In addition, the paper looks into the effectiveness of the investor protection framework provided. This refers to a scrutiny of issues that range from transparency and disclosure practices up to the standards set for accountability, in which it is discovered that these factors significantly help in mitigating risk on M&A-related ventures. Based on this, the study will discuss legal redress available to investors while also pointing out the precedents in case study examples.

Further dimensions of M&A activities encompass implications on market integrity in a broader sense, that is concerned with the assessment of potential market manipulations, insider trading, and all other forms of malpractices that are likely to compromise investor confidence. The study further engages on preventive measures and regulatory interventions thus culminating into the capital market's integrity.

The research is intended to integrate the regulatory regime of investor protection as it will provide insight for policymakers, market regulators, and industry stakeholders at large. It basically establishes that there is a critical requirement for a strong regulatory framework and proactive measures to give Indian capital market strength regarding pitfalls in the context of M&As.

Keywords: Mergers and Acquisitions, Capital Market, Investor Protection, Regulatory Framework, Market Integrity

I.

Introduction

The Indian capital market has seen a phenomenal growth and transformation in the last few decades. Being a vital component of the country's economic structure, it forms an important avenue of raising

* Assistant Professor, Hidayatullah National Law University, Raipur.

capital, besides being a means for the exchange of financial assets. Mergers and acquisitions have, within this dynamic landscape, emerged as important tools for corporate expansion, consolidation, and restructuring. While M&A transactions are believed to facilitate the creation of value and spur economic growth, they also usher in tremendous challenges and risks, mainly for capital market investors. This paper has tried to carry out an effective analysis of the mechanisms, regulations, and practices in vogue to protect the interests of capital market investors while M&A activities are going on in India.

India has emerged as a global economic superpower along with an increase in the number and volume of M&A deals. The rapid growth of the economy, openness of the nation to foreign investment, and increasing competition can be considered some of the reasons behind this increasing trend of M&A deals. Such proliferation of M&A needs an analysis of investor protection in capital markets while such deals are taking place. This is the research article seeking to fill in this lacuna in understanding the concept of investor protection under M&A, which is indeed of key interest in the Indian context.

II.

Mergers and Acquisitions in India

The strategic business activities used by companies to combine or restructure their operations include buying assets, selling other assets, acquiring other businesses, or merging with them. M&A transactions in India have evolved from being an infrequent occurrence to a dominant trend that is starting to shape the corporate landscape. The Indian M&A environment is therefore a wide array of transactions in areas such as mergers, acquisitions, divestitures, joint ventures, and strategic partnerships. All the above activities also result in a positive impact on the Indian economy, labor market, and financial sectors besides contributing to the growth of a firm[1].

III.

Investor Participation in M&A

Investors are indeed the very backbone of the capital market and play a very crucial role for a successful and fruitful outcome of a deal related to M&A. These can be broadly classified under two heads: one, retail investors, which include individual shareholders; and two, institutional investors like mutual funds, insurance companies, and pension funds. As these investors hold a major interest in the entities involved in M&A, their interests, rights, and safeguards become the paramount consideration.

IV.

Challenges and Risks to Indian Investors

There are some risks associated with investing in capital markets generally; however, these risks are

[1] *Mergers and Acquisitions in India: Current Trends and Future Prospects*, NASSCOM, https://nasscom.in/knowledge-center/publications/mergers-and-acquisitions-india-current-trends-and-future-prospects (last visited on Sept. 20, 2024)

increased manifold during M& A transactions. The capital market investor in India confronts various challenges and uncertainties at the time of mergers or acquisitions undertaken by the companies in which they have invested. The first challenge is information asymmetry whereby the investors generally do not have the access to critical information relating to the transaction undertaken, its likely impact on the company concerned, and its valuation. A lacuna in such information might lead to dire consequences for investors like losses and reduced transparency of marketplaces. Issues of corporate governance, like conflict of interest and fiduciary duties of management, further blur this sketch of the M&A activities landscape in India.

Indian capital market investors are touched and safeguarded within such a complex M&A environment-this is the significance of this research paper. This study intends to shed light into the complexities that characterize interest protection for investors during mergers and acquisitions transactions through discussions and analysis of the regulatory framework, case studies, protective mechanisms, challenges, and areas for improvement. Enhance the protection of capital market investors in the context of M&A-investment-friendly country, attracting significant foreign investment and witnessing rapid economic development is a critical step to maintaining investor confidence and the integrity of the Indian financial market.[2]

V.

Regulatory Framework in India

The regulatory framework in India, which protects investors in the capital market while conducting M&A, falls within a set of laws, regulations, and oversight bodies working to ensure integrity and transparency in the dealing process. These regulations and agencies protect the interests of both retail and institutional investors and ensure fair and equitable conduct in the practice of M&As. Let us first discuss the crucial components of the regulatory framework for M&A in India:

5.1 Securities and Exchange Board of India (SEBI):[3]

SEBI is the main regulator governing the securities market of India. As an important agency, SEBI regulates the securities of M&A by providing safety for investors. A few of the critical regulations and guidelines issued by SEBI are as follows:

1. **Takeover Code[4]:**

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 - known as the Takeover Code - provides for acquisition of shares or control in listed companies. It ensures that investors are

[2] *Overview of the Capital Market in India*, World Bank Group, https://www.worldbank.org/en/country/india/publication/overview-capital-market-in-india (last visited on Sept. 22, 2024).

[3] *SEBI: Overview of Functions and Regulations*, Securities and Exchange Board of India, https://www.sebi.gov.in/sebiweb/ (last visited on Sept. 26, 2024).

[4] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, Pt. III, Sec. 4.

treated equitably in the context of M&A transactions. The Takeover Code lays down thresholds, which mandate an open offer to the shareholders at large. There are defined rules on the pricing and the disclosure and fairness requirements of such offers.

2. Insider Trading Regulations[5]:

Regulations of SEBI that prohibits insider trading, ensures timely disclosure by insiders regarding material information, preventing in this way any information asymmetry and ensuring equal access of potential information during M&A processes to all investors.

3. Delisting Regulations[6]:

Delisting of equity shares has to be governed by SEBI (Delisting of Equity Shares) Regulation 2009. It is a regulation to delist, under which the boards of the companies have opted voluntarily to leave their stock exchange by delisting. This is going to give a fair price discovery for the existing shareholders of the company and will guard the interest of the shareholders.

4. Disclosure Requirements[7]:

SEBI has a set of stern disclosure and reporting requirements in place for companies undertaking M&A transactions. The disclosure requirements include filing of detailed offer documents and making the disclosures to the stock exchanges, shareholders and the public in time.

5.2 Competition Commission of India (CCI)[8]:

The CCI is the body entrusted with the task of providing fair competition in the Indian market. It plays a significant role in M&A transactions by reviewing and approving combinations that may adversely affect competition. Some of the prime aspects concerning the role of the CCI in the regulation of M&A are as follows:

1. **Antitrust Approval:**

The Competition Act, 2002 brings a part of the M&A transactions within its purview for certain conditions and requires approval from the CCI. The combinations are tested on the basis of probability that they may have an appreciable adverse impact on competition in India. In this manner, M&A activities would not be carried out on account of monopolistic or anti-competitive practices, which hurts the investors[9].

2. Pre-Merger Notice:

A notifiable combination is required to notify the CCI prior to the consummation of a merger. The CCI

[5] Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India
[6] Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021, Gazette of India
[7] Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Gazette of India
[8] Competition Act, 2002, Sec. 7
[9] *Id.,* Sec. 20

then weighs up the effects the notified proposed combination may have on competition in markets[10].

5.3 Stock Exchange Regulations:

Stock exchanges in India, both NSE and BSE, have their own listing rules and regulations. They set out the requirements for compliance and disclosure that each listed company must maintain. The stock exchange role in M&A regulation can be summarized as:

1. **Listing rules** [11]

The stock exchanges have listing rules, which the listed company has to comply with. Compliance with the listing rules provides an assurance that the companies will enjoy some minimum acceptable standards in terms of how they conduct corporate governance, transparency, and investor protection.

2. **Compliance:**

Stock exchanges check and ensure compliance with listing regulations. They play a role in the process of ensuring that companies undertaking M&A transactions provide adequate and timely disclosure to investors and the public.

5.4 Companies Act, 2013[12]:

In India, the Companies Act 2013 will regulate company law. Provisions therein include the protection of the rights of the shareholders and delineation of the duties of the management of a company. Points worth noting:

1. **Fiduciary duties of management[13]:**

The board of directors and officers and employees are under fiduciary duties towards the shareholders and are responsible to work for the former's best interests. Their misconduct in such duties will leave them liable under law for the shareholder's improper actions.

2. **Shareholder Rights[14]:**

Section 43, 100, and 232 of the Companies Act 2013 of India has conferred shareholder rights whereby power could be vested to certain M&A deals through a special resolution. This, thus, would offer protection for all the rights of the shareholders and ensure active participation from the hands of their part in relevant decisions of the organization.

This means that the protections extended to capital market investors in mergers and acquisitions in India are robust and multi-layered. These regulations and regulatory bodies coordinate with each other to protect the integrity and transparency of M&A deals, ensuring that investors have been dealt with equitably and that their rights are protected. This has significantly impacted the confidence of investors

[10] *Id*., Sec. 29
[11] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 Gazette of India
[12] Act No. 18 of 2013
[13] *Id*., Sec. 166
[14] *Id*., Sec. 43

in the Indian capital market, which continues to be an attractive destination for investment and corporate locations.

VI.

Case Studies in the Indian Context

Let us now look at a few case studies of M&A in the Indian context in order to illustrate challenges, outcomes, and the role of regulations in protecting capital market investors.

These cases depict some successful M&A transactions and some involving quite dramatic challenges:

6.1 Tata Motors' Acquisition of Jaguar Land Rover (JLR)[15]*:*

In 2008, Tata Motors-the Indian automaker acquired iconic British luxury automobile brands, Jaguar and Land Rover, from Ford for an amount of $2.3 billion. It was a deal that virtually changed the portfolio for Tata overnight.

The major issue here was that Tata had to deal with loss-making brands and had to revive them. Tata Motors had to address the operational, financial, as well as branding issues.

A case in point is how, before the acquisition, there should be proper due diligence. The investors in Tata Motors were skeptical in the beginning, but later they saw windfalls as JLR was transformed and became a profitable asset. Regulatory requirements were tactfully complied with in the acquisition process and, thereby, brought transparency and accountability.

6.2 Vodafone-Idea Merger[16]:

It was in 2018 that Vodafone India merged with Idea Cellular to form India's largest telecom operator. The logic behind this was to look at their strengths in juxtaposition with each other to be even more effective competition against Reliance Jio and Airtel.

The Indian telecom market - already highly competitive and seen bearing witness to a prices-war, was facing too much of competition during the merger process and otherwise by the regulatory authorities.

Scrutiny by SEBI and the CCI would be highly important with regard to this merger's effects on competition and investor interests. This merger must be allowed subject to a full compliance with all other relevant regulations along with clearance for any potential antitrust issues.

6.3 Satyam Computer Services Scandal and Mahindra Satyam Acquisition[17]

Satyam Computer Services, one of India's leading IT companies, has had involvement with one of the largest corporate fraud scandals in 2009. Consequently, the scandal has ever since led to Tech Mahindra acquiring it and later rebranding it as Mahindra Satyam.

The scandal saw the erosion of trust from the investors, had financial turmoil at the same time, and

[15] NEWSROOM, JLR, https://media.jaguarlandrover.com/node/4917 (last visited on Sept. 1, 2024)

[16] VODAFONE, https://www.vodafone.com/news/corporate-and-financial/merger-vodafone-india-idea, (last visited on Sept. 1, 2024)

[17] THE ECONOMIC TIMES, https://economictimes.indiatimes.com/tech/ites/how-tech-mahindra-missed-the-growth-bus-after-satyam-acquisition/articleshow/68733871.cms (last visited on Sept. 23, 2024)

attracted legal challenges.

The Satyam case generally draws attention to the need for strict corporate governance and regulatory supervision. It drives home on how the investor's interests can be seriously thwarted when corporate fraud occurs. Later, the deal had gone on to trigger a whole series of regulatory reforms to bring more clarity to its corporate governance in India.

6.4 Fortis Healthcare and Manipal-TPG Deal[18]:

The deal has come out of the competitive bidding by Manipal-TPG consortium and Munjal-Burman consortium for India's leading hospital chain, Fortis Healthcare. This acquisition was turning point for the struggling healthcare company.

The M&A environment complicated by the process of competitive bidding and financial condition was full of twists and turns around it.

SEBI and other regulatory bodies ensured that much of transparency would happen during the bids, keeping within the laws and ethics. Investor protection was also ensured through fair play and adherence to takeover regulations.

6.5 HDFC Bank's Acquisition of Centurion Bank of Punjab[19]:

In 2008, HDFC Bank-one of the largest Indian private sector banks-acquired Centurion Bank of Punjab, which was an important player in the regional market. The strategic motive for this merger was to strengthen the HDFC Bank base in North India.

The main integration challenges arising from the merger of the banking system, cultures, and customer bases were mostly in terms of problems in ensuring an 'incident-free' transition and retaining customer confidence.

Although the most important role here went to RBI and SEBI in regulating the merger so that there is a good deal of compliance with banking and securities laws, the transaction was pretty transparent and well-executed; thus, it has been an amicable integration, and shareholder value has increased manifold.

6.6 Flipkart Acquisition by Walmart[20]

In 2018, retail giant from the United States, Walmart acquired a majority stake in one of the largest e-commerce companies of India, Flipkart. This served to be the entry point of Walmart into the e-commerce space of India.

The acquisition raised questions among various stakeholders about the current rules of FDI in e-

---

[18] TPG, https://press.tpg.com/news-releases/news-release-details/fortis-healthcare-announces-demerger-its-hospital-business (last visited on Sept. 12, 2024)

[19] HDFC BANK, https://www.hdfcbank.com/content/bbp/repositories/723fb80a-2dde-42a3-9793-7ae1be57c87f/?path=/Footer/About%20Us/News%20Room/Press%20Release/Archives%20pdf/Fr_April_June_2008.pdf (last visited on Sept. 15, 2024)

[20] WALMART, https://corporate.walmart.com/news/2020/07/23/walmarts-majority-owned-flipkart-launches-wholesale-business-to-help-small-businesses-in-india-source-directly-from-manufacturers-and-producers (last visited on Aug. 20, 2024)

commerce by the Government of India and how such acquisitions affected the nature of the competition.

There, the CCI and government played a vital role when it permitted this acquisition with an open consent. They checked that the deal was being followed according to the norms of FDI and antitrust and hence kept the consumer as well as investor's interest in safe protection.

6.7 Reliance Industries acquisition of Future Group's Retail Business[21]

Reliance Industries acquired the retail, wholesale, logistics, and warehousing businesses of Future Group, this is one of India's largest retail conglomerates, in the year 2020. The deal has helped strengthen the position of Reliance in the retail industry.

However, there were legal disputes along with opposition from Amazon against Reliance's acquisition due to an equity stake in Future Coupons, which is a Future Group entity.

The competition as well as takeover rules were witnessed in this deal as SEBI and CCI went through this deal. Court procedures and regulatory checks ensured investor protection in the hostile and complicated acquisition process.

6.8 JSW Steel acquires Bhushan Steel[22]

Bhushan Steel was acquired by JSW Steel in 2018 from the insolvency process under the Insolvency and Bankruptcy Code, IBC. Acquisition in this case was to increase the capacity and market share of JSW Steel.

The whole process of insolvency and bankruptcy itself has introduced complexities and necessitated the resolution plan to be approved by creditors and authorities.

The structure of the IBC in India organizes a clear mechanism in respect of insolvency cases and how different interest groups, particularly investors, can be protected. The process of resolution under the IBC, as initiated by the NCLT along with the Committee of Creditors, offers scope in such distressed assets to be resolved fairly and clearly.

These case studies indicate the very wide spectrum of M&A transactions within the Indian context. They are examples of regulatory oversight and protection afforded to investors. Many other successful M&A deals are marked by adherence to regulations, transparency and detailed due diligence. In contrast, an event like the Satyam scandal does highlight the perils of corporate malpractice and the helplessness of corporate governance, regulatory measures and judicial redress in protecting the interests of the investors, with respect to the deal. The Indian regulatory framework is developed in the light of new challenges it is targeting and thereby creating a safe and transparent investment environment by course of M&A activities.

[21] BUSINESS STANDARD, https://www.business-standard.com/article/companies/reliance-takes-over-operations-of-200-future-group-s-stores-122022601091_1.html (last visited on Sept. 13, 2024)

[22] [22] JSW, https://jswsteel.in/jsw-steel-acquires-bhushan-power-steel-ltd-0 (last visited on Sept. 29, 2024)

6.9 Merger between HDFC Ltd and HDFC Bank[23]

The merger of HDFC Ltd with HDFC Bank, which concluded in July 2023, is the largest corporate consolidation in India to date and values over USD 40 billion. The transaction, structured through a Scheme of Amalgamation approved by the NCLT, required clearances from SEBI, RBI, CCI, NCLT, and stock exchanges owing to its systemic importance. Certain legal and governance issues related to this deal included how related-party concerns were addressed under the SEBI LODR Regulations, how the swap ratio was determined for millions of minority shareholders, and whether the market dominance of the merged entity in housing credit needed regulatory mitigation. The case set a benchmark for restructuring in harmonizing the lending and mortgage businesses, streamlining compliance across regulatory agencies, and integrating two large financial entities under a unified governance framework. From an investor-protection perspective, this transaction is important because regulators insisted on enhanced disclosures, fairness opinions, independent valuation, and clear communication to shareholders-showing how massive re-organisations must ensure transparency and minority interests.

6.10 Adani Group – Ambuja Cements & ACC Acquisition[24]

The USD 10.5 billion acquisition of Ambuja Cements and ACC by Adani Group from Holcim constitutes one of the largest leveraged takeovers in India's manufacturing sector. The transaction triggered SEBI's Takeover Code, invoking open offers to public shareholders of both Ambuja and ACC, directly relating to investor-protection mechanisms such as minimum offer price, timing of disclosures, and fairness of acquisition terms. The deal also involved offshore funding structures routed through SPVs, which later came under regulatory and market scrutiny—especially after the 2023 Hindenburg report—highlighting the role of robust disclosure norms in protecting investors during large acquisitions. On the restructuring side, the acquisition allowed Adani to consolidate cement capacity, integrate logistics operations, and rapidly scale a new vertical within the group. From an investor-protection perspective, the case underlined the importance of transparency in beneficial ownership, adequacy of open-offer pricing, and continuous disclosure to prevent information asymmetry in high-leverage acquisitions.

VII.

Problems for the Investors

- **Information Asymmetry:**

[23] HDFC BANK, https://www.hdfc.bank.in/press-release/2023/q2/hdfc-ltd-to-merge-into-hdfc-bank-effective-july-1-2023 (last visited on Nov. 23, 2025)

[24] ADANI, https://www.adani.com/newsroom/media-releases/adani-to-acquire-holcims-stake-in-ambuja-cements-and-acc-limited (last visited on Nov 23, 2025)

Investors face problems concerning less access towards such crucial information regarding such M&A transactions- direct and indirect impacts on the company, valuation details, and strategic rationale. That primarily leads to an uncertainty and even losses for investors[25].

- **Corporate Governance Issues:**

Corporate governance issues, including conflicts of interest and the fiduciary duties of management, present challenges during M&A activities. Such risk to investors can be posed when the manager makes decisions so as to serve their personal interests instead of shareholder value[26].

- **Regulatory Compliance and Enforcement**

The implementation of regulations and their adherence by the companies engaged in M&A deals can be incompatible with a sound regulatory regime. Inadequate protection for investors coupled with deactivation of proper regulatory measures can result from non-conformative compliance.

- **Market Manipulation and Malpractices:**

The complications involved in M&A activities provide pathways for market manipulation, insider trading, and other malpractices that could lead to loss of investor confidence. It is challenging to prevent and detect the manipulative activities effectively[27].

- **Minority Shareholders Impact:**

M&A transactions tend to pose a threat to the rights of minority shareholders. For instance, controlling shareholders often have unchecked power in decision-making areas; hence, minority shareholders are not protected. This therefore requires that their interests be treated fairly and protected.

- **Operational and Financial Risks**

The principal operational risks that can potentially occur in the mergers process include the integration of different systems, cultures, and customers. This may lead to a potential failure in the M&A transaction as it could adversely affect the firm's shareholder value if ineptly managed.

- **Legal Disputes and Opposition:**

M&A deals are often ridden with legal complexities and a propensity for disputes. Reliance Industries acquisition of Future Group's retail business, for instance. Such legal uncertainty can pose a difficult

[25] Abhinav Mishra, *Information Asymmetry in M&A Transactions: A Growing Concern for Indian Investors*, NITI Aayog, available at: https://niti.gov.in/document/insights-information-asymmetry-m-and-a-indian-market (last visited on Sept. 29, 2024).
[26] Chandrajit Banerjee, *Corporate Governance and M&A in India: Issues and Challenges*, Confederation of Indian Industry (CII), available at: https://www.cii.in/PressreleasesDetail.aspx?id=45842 (last visited on Sept. 20, 2024).
[27] *Market Manipulation in Indian M&A: A Legal Perspective*, Securities and Exchange Board of India, available at: https://www.sebi.gov.in/sebiweb (last visited on Sept. 22, 2024).

challenge for the investor and would hence alter the overall outcome of the transaction.[28]

- **Concern about Competitive Landscape**

Fair competition would be regulated by these regulatory bodies, which are like the Competition Commission of India (CCI), thus a big statutory hurdle in assessing the competitiveness of the existing M&A transactions and protecting such investors from possible monopolistic practices.

VIII.

Comparative Study – U.K. and Singapore

India's corporate-restructuring framework, largely governed through NCLT-approved schemes, SEBI regulations, and company-law procedures, is markedly more court-supervised than the systems in the UK or Singapore. In India, mergers, demergers, capital reductions, and takeover-driven restructurings routinely require detailed disclosures, fairness opinions, shareholder votes, and—most distinctively—judicial sanction by the NCLT, even when the transaction is consensual. This judicial gatekeeping adds a layer of protection for minority shareholders but also increases the complexity and timeline of restructuring. SEBI's LODR norms, Takeover Code, and RPT rules further reinforce investor protection by ensuring transparent valuation, independent scrutiny, and mandatory open-offer processes during changes of control. As a result, India's system prioritizes procedural investor protection, often at the cost of speed and transaction certainty.

In contrast, the UK's restructuring regime is more market-driven and principle-based, with far less judicial involvement. UK schemes of arrangement, although court-sanctioned, are generally efficient and rely heavily on shareholder class voting and creditor consent, with courts intervening mainly to check fairness rather than to supervise the entire transaction. The UK Takeover Code—administered by the Takeover Panel—provides quick, predictable rules on offers, pricing, and mandatory bids, giving minority shareholders clear economic protection without the procedural burden seen in Indian schemes. Thus, investor protection in the UK is primarily substantive, grounded in equal treatment and transparent conduct, with courts acting as a backstop rather than a central approval authority.

Singapore's framework sits between India and the UK. Corporate restructurings proceed under the Companies Act using schemes of arrangement, amalgamations, and takeovers, with courts involved mainly for confirmation rather than ongoing supervision. MAS and the Singapore Takeover and Mergers Code emphasize disclosure, fairness, and equal treatment, similar to the UK model, but with Singapore's characteristic regulatory efficiency and rapid dispute resolution. Investor protection during

[28] "Reliance vs. Future Group: A Case of Legal Dispute in Indian M&A" *Economic Times*, https://economictimes.indiatimes.com/industry/services/retail/reliance-vs-future-group-a-case-study (last visited on Sept. 26, 2024).

restructuring comes from timely, detailed disclosures, strict enforcement of takeover rules, and technological systems that reduce information gaps. Compared to India, Singapore offers faster, less litigation-heavy restructuring pathways while maintaining high standards of transparency.

Overall, India's restructuring environment is protective but procedure-heavy, relying on judicial oversight and detailed regulatory compliance to safeguard investors. The UK and Singapore achieve investor protection through predictable, principle-based, and enforcement-driven systems that support faster corporate reorganisations. India is gradually moving toward this model, but its emphasis on court-monitored restructuring continues to shape a uniquely rigorous, though slower, investor-protection landscape.

IX.

Machinery to safeguard Indian Investors

Protection of Indian investors through mechanisms and safeguards in the context of M&A can be achieved only when all phases of the process are brought before the daylight. This means a series of mechanisms that will resolve the issues that arise in the process. Firstly, some issues are inherent with the investor, in turn provoking more serious problems: information asymmetry and corporate governance issues. Some of the major mechanisms to protect Indian investors in M&A transactions include:

- **Independent Financial Advisors:**

Independent financial advisors are the most critical ones in M&A deals. This is because they offer unbiased opinions and recommendations to the shareholders. They come to decide if the offer made is fair and reasonable from a financial perspective.

The advisors would study the pricing, structure of the offer, and the potential conflicting interest. Such a study could help investors determine whether to accept or reject the M&A proposal.

Regulatory frameworks require that the independent financial advisors hold no pecuniary interest or stake in the M&A transaction and therefore ensure that their suggestions are much more objective and in the best interests of the shareholders.

- **Shareholders' Voting Rights:**

Using proxy voting, shareholders are bestowed voting rights on M&A transactions. They can either accept, reject, or vote against the agreed deal or pass other important decisions concerning the transaction.

Where the controlling shareholders hold a large number of shares, there are usually provisions made to prevent the exploitation of the minority shareholders. There are special resolutions and safeguards put in place to protect the interest of the minority shareholders.

- **Class Action Suits:**

In Indian law, class actions are possible in a sense in that a number of shareholders may bring a collective action against a company, its management, or other parties to an M&A transaction.
Class action suits offer the investor a course of redress in the law against whatever wrong done or damages to their interest. The consequences could often result in financial compensation to the aggrieved shareholders, and regulatory action against those malfeasants.

- **Transparency and Disclosure:**

M&A legislations require disclosure of material information relating to the transaction well in time. This brings all retail investors as well as institutional investors onto the same platform, thereby reducing information asymmetry.
Investors gain access to offer documents, public announcements, and so on, which have underlying information related to the M&A transaction. This factual information will enable shareholders to take an informed decision.

- **Minority Shareholder Protection**

Company laws and regulatory bodies enact statutory provisions meant to safeguard minority shareholder rights. This includes insisting that special resolution in specific M&A transactions pass, to ensure fair valuation of the securities involved and exit avenues for dissenting shareholders. Some regulations support the involvement of minority shareholders in company matters by letting them nominate certain directors or members to sit on the board of the company, providing a possible safeguard of their interests in the important decisions made regarding the company.
These mechanisms together provide a very robust body for the protection of Indian investors through M&A processes. They push for transparency, fair play, and accountability in the process of mergers and acquisitions so that both retail and institutional investor interests are protected amidst this dynamic scenario of mergers and acquisitions.

X.
Requisite Frameworks

Regulators should facilitate corporate restructuring and better protect investors by introducing streamlined approval processes, including fast-track NCLT mechanisms for non-contested schemes, and adopting proportionate, principle-based disclosure requirements to reduce unnecessary procedural burdens. SEBI and MCA should further improve beneficial ownership transparency through a single digital registry and introduce predictable, time-bound pre-clearance checklists for restructurings involving takeovers, delistings, or cross-border entities. Enforcement would become more effective

through clearer standards on interim orders, speedier post-order reviews, and fuller reliance on data-driven surveillance in detecting related-party abuses and insider trading during restructuring activity. In particular, boards and institutional investors should move toward standardizing fairness opinions, conflict reviews, and early-engagement protocols in order to better protect minority shareholders. Finally, better coordination of cross-border regulatory cooperation and simplification of investor-facing disclosures would help to engender market confidence while appropriately calibrated penalties and better whistleblower protections ensure that misconduct is deterred during restructurings without discouraging bona fide transactions.

XI.

Conclusion

In a concluding note, therefore, it can be said that the challenge of protecting interests of India's capital market mergers and acquisitions is an issue-driven which requires an integrated and harmonized approach by the regulatory bodies, market participants, and corporate entities. A robust frame work of SEBI combined with CCI and various other legal provisions does provide a strong platform for this exercise, but constant implementation and watchfulness constitute prerequisites to redress the grievances of investors.

The diversified case studies presented in this paper reflect both the effectiveness and the challenges associated with the deal-making involved in M&A transactions in the Indian context. While this is the case for Tata Motors' acquisition of Jaguar Land Rover as well as the murky complexities of the Vodafone-Idea merger and legal tussle associated with the Reliance-Future Group deal, each of these cases underlines that higher regulatory oversight, improved transparency, and greater investor protection mechanisms are needed.

Policymakers, market regulators, and industry participants must combine their efforts to strengthen transparency, simplify regulatory processes, and enforce stronger mechanisms to remove pitfalls entailed by M&As in strengthening the Indian capital market. Investors, both retail and institutional, should be aware, demand transparency, and participate actively in the decision-making processes ensuring that their interests are appropriately protected.

Thus, an investor resilient ecosystem and having investment friendly policies during M& A activities requires constant evolution of regulatory frameworks, proactive measures, and commitment towards integrity to the market. This study looks into its scope of outlining insight in shaping policy that recognizes the capital market interest of its investors and sustains the strength of Indian financial markets in the dynamic landscape of Mergers and Acquisitions.

SUPRIYO @ SUPRIYA CHAKRABORTY & ANR. V UNION OF INDIA (2023): NAVIGATING ON THE THIN LINE OF EQUALITY BETWEEN CONSTITUTIONAL PROMISES AND JUDICIAL RESTRAINT

Tulika Singh*

Sakkcham Singh Parmaar**

Abstract

The Supreme Court of India ruling in Supriyo @ Supriya Chakraborty & Anr. v Union of India (2023), is a follow-up to Navtej Singh Johar v Union of India (2018), which legalised homosexuality by reading down Section 377 IPC which considered the constitutional assertions of queer couples who applied for legal validation of same-sex marriages and civil unions. The latest judgment reveals judicial protection's limitations in the lack of legislative will. The Court recognized queer dignity and the right to relational autonomy yet declined to grant enforceable rights upon marriage or civil unions under the pretext of separation of powers and judicial restraint. This analysis skirts the conflict between transformative constitutionalism and institutional conservatism, highlighting the judgment's inability to cross the gap between decriminalisation and socio-legal recognition. While the ruling instituted symbolic gains like acknowledging the principle of civil unions based on Articles 19 and 21 and decrying discriminatory adoption norms it denied substantive remedies, keeping queer families outside of legal benefits associated with marital status. Beyond judgment, the note suggests queer feminist jurisprudence-based alternative legal imaginaries in constitutional silence, non-marital constitutionalism, and socio-economic justice under Article 38(2). It imagines decentralised community-based recognition (e.g., "Queer Panchayats"), reparative justice mechanisms, and plural temporal frameworks to counter the heteronormative architecture of Indian family law. Finally, this case note proposes a jurisprudence of repair and anticipatory inclusion, a constitutional rethinking that legitimates queer kinship, agency, and belonging that is not in or through the marriage.

Keywords: Queer Constitutional Rights; Same Sex Marriage; Transformative Constitutionalism; LGBTQ+ Rights; Relational Autonomy

1. Introduction

The historic *Supriyo @ Supriya Chakraborty & Anr. v Union of India (2023)* case turned out to be a

determinative follow-up of the historic *Navtej Singh Johar v Union of India (2018)*,[1] which legalised consensual homosexuality by reading down Section 377 of the Indian Penal Code (IPC). The Navtej judgment reinstated the right of queer people to live with dignity and privacy by acknowledging their sexual autonomy under Articles 14, 15, and 21 of the Constitution. Although it was a historic verdict, it did not carry over into positive civil rights like the right to marry, adopt, inherit, or receive spousal benefits, making queer lives legally invisible in areas that are important for everyday life and social legitimacy. The Navtej judgment was merely the starting point of a constitutional journey.

The parliamentary codification of the Navtej judgment through the Bharatiya Nyaya Sanhita (BNS), 2023, effectively overturned Section 377, thus eliminating criminal penalties against queer people. However, the repeal did not touch on the wider constitutional void around the legal acknowledgement of queer relationships. Even though decriminalised, queer couples were still without access to formalised legal institutions like marriage, civil unions, adoption, or family welfare benefits. They were outside the purview of family laws, insurance policies, inheritance of property, hospital visitation rights, and taxation exemptions all of which are still bound to the institution of marriage or family forms.

The lacuna was brought into constitutional prominence in *Supriyo @ Supriya Chakraborty & Anr. v Union of India*, decided by a specially constituted five-judge Constitution Bench of the Supreme Court. The petitioners argued against the discrimination of queer couples from the institution of marriage and from obtaining legal benefits and family rights granted under the Special Marriage Act, of 1954, and the Foreign Marriage Act, of 1969. They argued against adoption rules under the Central Adoption Resource Authority (CARA) that indirectly discriminated against queer couples. The petition called upon fundamental constitutional protections under Articles 14, 15, 19, and 21 seeking not just protection against criminal prosecution for queer people, but a substantive right to create families, enter into state-recognized relationships, and live with dignity under the law.

Though the judgment fell short of recognizing an enforceable right to same-sex marriage or civil union, it was a momentous one in Indian constitutional jurisprudence. It clarified the Court's stance regarding the separation of powers between the judiciary and the legislature, judicial creativity within the limits of existing statutes, and a changing understanding of dignity and relational autonomy. More importantly, it acknowledged that queers still suffer socio-economic injustices because their unions remain unrecognized by law hence, laying the stage for future legislation. While it avoided reading gender-neutral meanings into current statutes or awarding positive remedies, the ruling added new

* Tulika Singh, Assistant Professor, Chanakya National Law University, Patna, Bihar
** Sakkcham Singh, Parmaar, Law Student, Jindal Global Law School, OP Jindal Global University, Sonipat
[1] *Navtej Singh Johar v Union of India* (2018) AIR 2018 SC 4321.

constitutional language regarding the acknowledgement of civil unions, the symbolic legitimacy of queer relationships, and non-discriminatory adoption rights even if only in a fractured and non-binding manner through concurring opinions.

Supriyo is, therefore, a significant, albeit partial, turning point: from mere decriminalisation of queer subjectivity to a constitutional examination of queer relational rights. It is a judicial moment balancing precariously between the potential of transformative constitutionalism and the discipline of democratic deference and deferring a determination on the relationship between lived equality and formal legality.

2. Legal Background and Issues

The petitioners in Supriyo argued against the exclusion of queer couples from marriage and accompanying family rights, which invoked Articles 14 (right to equality), 15 (prohibition of discrimination), 19 (freedom of expression and association), and 21 (right to life and personal liberty) of the Constitution. The Court picked seven core questions for determination:

i) Whether the right to marry constitutionally embodies same-sex couples?
ii) Whether the right to form a union is protected under Article 21?
iii) Whether it is covered by Articles 19(1)(a), 19(1)(c), and 19(1)(d)?
iv) Whether the exclusion from marriage offends Articles 14 and 15?
v) Whether the Special Marriage Act (SMA) and the Foreign Marriage Act (FMA) make unconstitutional provisions concerning same-sex couples?
vi) Whether there could be a read-in of inclusive language through interpretation by a judge to cure the exclusion?
vii) Whether Regulation 5(3) of the CARA Adoption Regulations discriminates against queer couples?

This summed up the constitutional, statutory, and regulatory framework that queer couples encountered in trying to attain the equality of marriage rights and adoptive entitlements.

3. Arguments Advanced

The petitioners maintained that prohibiting same-sex couples from marrying and accessing benefits infringes their fundamental rights, especially dignified, equal, private formation of relationships. They maintained that interpretation or amendment of marriage laws ought to legitimize queer marriages and remove all institutional impediments to adoption, inheritance, healthcare decision-making, and

entitlements under social welfare.

The Union of India, however, contended that marriage is primarily within the legislative domain and it is conditioned by social, cultural, and religious determinisms that Parliament alone could reform. It emphasized the heteronormative character of current marriage laws and expressed fears of judicial overreach undermining democracy. "*The tone of the argument is the tone of political reality, the improbability of any legislative reform in the face of the ruling coalition's conservatism favouring traditional family structures*".[2]

4. **Decision of the Court**

The Indian Supreme Court, in its divided judgment dated 13th September 2023, held constitutionally significant views in the *Supriyo @ Supriya Chakraborty & Anr. Vs Union of India* case. The five-judge Constitution Bench opined that there is no fundamental right to marry under the Constitution. The statutory institution of marriage and its regulation, including perhaps the canons of including same-sex couples, resides solely with Parliament. While recognizing that transgender persons in heterosexual relationships may marry under existing personal laws, it thus infers that same-sex couples do not have the same legal right under the present statutes.

On the question of the matter of civil unions, Chief Justice D.Y. Chandrachud and Justice S.K. Kaul opined that right to civil union operated under Articles 21 and 19 of the Constitution. They asserted that the dignity associated with them confers autonomy and freedom of choice to express oneself and associate with others. However, they explained that such unions are not and do not assume to be marriages and have no enforceable legal effects unless the pertinent statutes so declare.

Justices S. Ravindra Bhat, Hima Kohli, and P.S. Narasimha, however, rejected any suggestion that a constitutional right to civil unions exists. These Justices opined that while individuals do possess rights to partnership and cohabitation, recognition of that partnership would be an area of legislative concern and cannot be determined through judicial interpretation. Therefore, constitutional protection was afforded only to relationships within the ambit of the private sphere but not endorsed for public entities.

All five judges refused to engraft gender-free terminology onto the Special Marriage Act, of 1954 or the Foreign Marriage Act, of 1969. The majority held that these laws operate in a definite legislative context and structure, and amending these basic terminologies would be a legislative act that lies

[2] Sourav Mandal, "Marriage Equality in India," *Economic and Political Weekly*, September 2, 2023, available at: https://www.epw.in/journal/2023/35/commentary/marriage-equality-india.html (last visited on April 25, 2025).

outside the purview of the court. CJI Chandrachud conceded that the exclusion engendered discrimination in practice, yet he refused to read gender neutrality into those laws, saying it triggered cascading implications across the entire framework.

A point of contention was Regulation 5(3) of the Central Adoption Resource Authority (CARA) guidelines for adoption, restricting adoption to married couples with a further qualifying requirement of having been together for at least two years. This was ruled unconstitutional by Chief Justice Chandrachud as discriminatory against persons from queer and unmarried couples and in violation of the principle of the best interest of the child. The remaining judges protected the regulation as neutral discrimination applying equally to all other unmarried couples and not one that targeted queer persons.

The Court simultaneously recognized the evident socio-economic disadvantages being suffered by the queer couples due to non-recognition regarding the denial of rights to inheritance, hospital decision-making, spousal nomination, tax benefits, and legal parenthood. However, it refrained from providing remedies or positively imposing some obligations on the State.

5. Analytical Discussion

i) From Criminalisation to Recognition: In the context of Section 377

The old Section 377, which is a remnant of colonial times, criminalized "unnatural offences" and punished any consensual same-sex activity until it was decriminalized by the Supreme Court in 2018. The enactment of BNS 2023 is nothing more than a procedural repeal of Section 377 and continues to signal the progress of the law. Nevertheless, Supriyo bitterly illustrates the divide between the decriminalization of identity and the full recognition of those rights conferring social and legal dignity, especially related to marriage and family life. The judgment thus falls short of conferring enforceable rights and, therefore, has been critiqued to be the hallmark of a constitutional half-measure.[3,4]

ii) Civil Union and the Constitutional Right to Love

The protection of civil unions under Articles 19 and 21 as endorsed by CJI Chandrachud and Justice Kaul, seems to attempt to expand the scope of intimacy and family relations beyond the limits of marriage. At the same time, however, they refuse to equate civil unions with marriage and also do not

[3] Sakkcham Singh Parmaar, "Analysing Section 377 of the Indian Penal Code (IPC)," *SSRN*, December 14, 2024, available at: https://ssrn.com/abstract=5020046 (last visited on April 25, 2025).
[4] Srija Singh & Anant Gupta, "Beyond Decriminalization: The Ripple Effects of Section 377 Repeal on India's Criminal Justice System," *Manupatra*, February 16, 2024, available at: https://articles.manupatra.com/article-details/Beyond-Decriminalization-The-Ripple-Effects-of-Section-377-Repeal-on-India-s-Criminal-Justice-System (last visited on April 25, 2025).

provide a remedy through a judicial mechanism for enforcement of the rights of civil unions, so much so the recognition has mainly symbolic value. Critics point out that rights without remedies expose queer couples to the absence of legal and social recognition despite the rhetorical comfort from the judiciary on autonomy and dignity.[5]

iii) Transformative Constitutionalism vs. Judicial Restraint

A case in point offering a vivid overview of this philosophical and jurisprudential divide is CJI Chandrachud's preference for what may be termed "transformative constitutionalism". According to him, the judiciary must act as a dynamic principle of social change and a guardian of marginalized identities through the interpretation of the Constitution. Alternatively, the majority exercised judicial restraint, laying stress upon constitutional text, legislative supremacy, and democratic processes. The above tension is reflected in larger debates on the judiciary's role in the socio-political evolution of India and the limits of judicial intervention in seizures of a highly contested social character.[6]

iv) Queer Family Forms and Socio-Economic Rights

In India, marriage is not just a cultural or emotional relationship, but also a direct gateway to several social benefits, spanning spousal nominations, rights of inheritance, authority to make health care decisions, joint ownership, tax benefits, and government entitlements. Denial of marriage, thus, results in structural inequalities under otherwise neutral statutes. This denial only deepens socio-economic vulnerabilities for queer couples and perpetuates their marginalization and the precarity of their livelihoods.[7]

v) Adoption and the "Best Interest of the Child" Doctrine

Another area where there is a significant divergence would be Clause (3) of Regulation 5 of CARA adoption guidelines which require at least two years of marriage for a couple to adopt. Justice Chandrachud declared this as unconstitutional and discriminatory toward same-sex couples, linking it with the doctrine of the "best interest of the child" with principles of non-discrimination. But the

---

[5] Akshat Agarwal, "Supriyo and the Politics of Indian Family Law," *Taylor & Francis*, April 8, 2025, available at: https://doi.org/10.1080/24730580.2025.2488234 (last visited on April 25, 2025).

[6] Kushagr Bakshi, "Marriage, Courts, and Substantive Equality: A Transformative Interpretation," *Michigan Law Review*, December 2024, available at: https://michiganlawreview.org/journal/marriage-courts-and-substantive-equality-a-transformative-interpretation/ (last visited on April 25, 2025).

[7] Diksha Sanyal, "Going Beyond Marriage: A Case for Relational Equality," *Supreme Court Observer*, May 10, 2023, available at: https://www.scobserver.in/journal/going-beyond-marriage-a-case-for-relational-equality/ (last visited on April 25, 2025).

majority upheld the regulation as valid thus failing to align the jurisprudence of child welfare with new family constructs and narrowing access to adoption and legal parenthood for queer families.[8]

vi) Socio-Political Context and Legislative Realities

This delineates the judicial position in the wider socio-political context, pointing out that there is no effective political will in Parliament to undertake marriage equality reforms. In the case of the current ruling coalition, there is an emphasis on conservatism as well as majoritarian electoral mandates which support a heteronormative family construction. Accordingly, any such judicial interventions meet with strong objections, resulting in the Court playing only a cautious or an incremental role. The majority opinion of the Supreme Court reiterates this compliant posture towards the prerogative of the legislature, indicating a deadlock between the constitutional promise and political reality.[9]

6. Reimagining Rights Beyond the Court's Frame

Queer constitutionalism in India after Supriyo requires a fundamental rethinking of deep-seated legal structures that traditionally revolved around marriage as the locus of legitimacy and dignity. The Supreme Court's failure to recognize same-sex marriage in *Supriyo Chakraborty v. Union of India* reflects acute limits of judicial power but at the same time opens up an intellectual space from which one can imagine constitutional futures which lie beyond the heteronormative and patriarchal institution of marriage. This part presents new constitutional imaginaries that extend beyond the Court's narrow horizon, taking cues from queer feminist jurisprudence, legal pluralism, theories of constitutional silence, bureaucratic critiques on temporality, directive principles of welfare, and reparative justice. These imaginaries of imagination call for community-based recognition, disaggregation of rights, temporal flexibility, and anticipatory constitutional remedies that would revolutionize queer legal subjectivity and social belonging in India.

i) Decentralising Marriage

The primacy of marriage as the ultimate legal and social aspiration for queer dignity has also faced persistent feminist and queer critique, questioning its historical entanglement with property relations, patriarchal control, and caste hierarchies. As analysis has established, marriage has been a place

[8] "Unmarried Couples, Including Queer Couples, Can Jointly Adopt Child: CJI in Minority Verdict," *The Economic Times*, October 18, 2023, available at: https://economictimes.indiatimes.com/news/india/unmarried-couples-including-queer-couples-can-jointly-adopt-child-cji-in-minority-verdict/articleshow/104505574.cms (last visited on April 25, 2025).
[9] Sourav Mandal, "Marriage Equality in India," *Economic and Political Weekly*, September 2, 2023, available at: https://www.epw.in/journal/2023/35/commentary/marriage-equality-india.html (last visited on April 25, 2025).

upholding male dominance, regulating women's bodies, determining social alliances, and upholding caste endogamy and exclusion.[10] The institution's inherent heteronormativity excludes multiple forms of relationality and intimacy that queer subjects inhabit, marginalizing non-normative lives within legal frameworks.

Queer feminist jurisprudence advocates for "non-marital constitutionalism," a framework that relocates legal recognition from marital status to relational terms like care, duration, mutual support, and designation.[11] This paradigm is congruent with demands to prioritize relational autonomy and social interdependence while not imposing heterosexist modes of legal recognition. This approach recognizes varied familial and affective arrangements, dramatically broadening the definition of legal families beyond matrimonially legitimated units.

A legal framework drawn from non-marital constitutionalism would make it possible for people to appoint cohabiting partners for important rights and benefits today tied to marriage, including health decision-making, pension benefits, inheritance and property succession, and parental co-guardianship.[12] Statutes, for example, may provide for the designation of "care partners" to enable health proxies as a way of acknowledging enduring commitments regardless of wedding ceremonies under the law. In the same vein, pension and survivor benefits might be unbundled from marital status, providing widowhood or caregiving protections to long-term cohabitants and non-marital kin networks. Parental rights might also be unbundled from heteronormative marriage, permitting queer co-parents or elder siblings to establish existing forms of guardianship or custodianship without marriage licenses.

This post-marital imagination defies the current Indian legal order, which predominantly locates dignity and socio-economic rights in marriage. It opens up affirmative potentialities not just for queer individuals but also for widows, older caregivers, older siblings, and various single cohabitants whose relational realities are still legally invisible. As legal pluralism and feminist challenges entice, this non-marital constitutionalism creates a decentralization of family law, turning on its head the state-

[10] Elizabeth Brake, *Feminism, Liberalism, and Marriage*, available at: https://www.brown.edu/Research/ppw/files/Feminism%2C%20Liberalism%20and%20Marriage.doc (last visited on May 15, 2025).
[11] *Id.*
[12] John Eekelaar, "Regulating Cohabitation: From 'Strangers' to 'Family'?" 60 *Family Court Review* 1 (2022), available at: https://onlinelibrary.wiley.com/doi/full/10.1111/fcre.12820 (last visited on May 15, 2025).

sponsored marriage ideal and redefining dignity in relational terms.

ii) The Queer Panchayat

Indian legal pluralism, which constitutionally identifies diverse personal law and customary structures, provides a unique site for developing queer recognition based on community-based forms, independent of state-centralized bureaucracies. Traditionally, family and marriage relations had been controlled by local panchayats and caste councils in ways decentralized from regular courts, including social and customary norms particular to caste, region, and religion. This pluralist heritage allows one to envision other forums or jurisdictions that can acknowledge queer relationalities beyond heteronormative state mechanisms without enforced assimilation.[13]

Building on this, it is possible to imagine "Queer Panchayats" or unions recognized by the community as forward-looking civil society institutions urban queer communities, municipal boards of partnerships, neighbourhood forums of recognition legitimizing relationships and granting legal identity documents like partner affidavits and emergency authorizations. These decentralized institutions might become places where queer kinship is legally recognized, socially celebrated, and functionally empowered within their communities. Their decisions may be respected by surrounding legal or administrative institutions, giving practical advantages in inheritance claims, medical decisions, or welfare access.[14] These plural queer jurisdictions would subsist alongside state law and personal law regimes horizontally, enabling queer relational norms to thrive consistent with their cultural and social origins. This arrangement is appreciative of the heterogeneity of queer kin and community attachments and resists assimilationist marriage equality regimes tendency to erase. It upgrades social recognition through self-determined community norms, situating queer constitutionalism within India's long-standing pluralistic legal tradition.

iii) Constitutional Silence as a Site of Queer Agency

The Supreme Court's interpretive denial of a constitutional right to same-sex marriage in Supriyo constructs that lack a limiting constraint. Constitutional silence, however, where the text and law do

[13] Sneha Ann Mathew, "Navigating Legal Pluralism: Personal Laws and the Uniform Civil Code," *Manupatra Articles*, available at: https://articles.manupatra.com/article-details/NAVIGATING-LEGAL-PLURALISM-PERSONAL-LAWS-AND-THE-UNIFORM-CIVIL-CODE (last visited on May 15, 2025).

[14] Kushagra Vashishth, "Khap Panchayat System in India: A Detailed Analysis," *Lawctopus Academike*, available at: https://www.lawctopus.com/academike/khap-panchayat-system-in-india-a-detailed-analysis/ (last visited on May 15, 2025).

not actively grant or withhold rights, can be revised to be read as a generative space that enables queer agency in ways beyond formal state directives.[15]

Based on Michel Foucault's non-sovereign power theories, constitutional silence creates room for extralegal practice whereby marginalized groups produce their own legitimacy and social order from outside or below sovereign law. Queer movements can use this space not by calling for mere inclusion within the current legal categories but by creating new languages, kinships, and codes that cannot be assimilated and state-controlled. There are many historical examples in India: Centuries ago, the hijra groups, organized themselves through kinship and guru-chela relationships to govern activities, inheritance, and social affiliation long before being legally recognized as a third gender. Likewise, the Gharwapsi movements have established social rites and claims of identity independent of codified family law. These extralegal practices represent living legality forms that prefigure and challenge state law.[16] Therefore, constitutional silence does not operate as a cage but as a canvas a space to redescribe law and legitimacy outside of marital or parental regimes of the state. Queer constitutionalism drawing on this silence is a project of creative reconfiguration and resistance.

iv) Queer Time, Bureaucratic Time, and the Crisis of Legal Temporality

The other key axis confronting the existing legal regime is the disjuncture between normative bureaucratic time and queer lived temporality. State law presumes a linear, normative life course with milestones like birth, marriage, childrearing, retirement, and death. Queer lives, by contrast, typically have broken, non-linear, collective, and asynchronous trajectories that deviate from these expectations. Bureaucratic requirements for documentation proof of cohabitation length, residence, marital status, or parental identity become an obstacle to queer recognition in that such strict temporal constructs are unable to grasp the fluidity and complexity of queer relational and temporal models. This temporal fixity prevents a great number of queer individuals from rights associated with lengths or official statuses tied to heterosexual timelines.[17]

---

[15] Lambda Legal, *Impact: Lambda Legal's Annual Review of LGBT and HIV Rights* 20 (2011), available at: https://legacy.lambdalegal.org/sites/default/files/publications/downloads/impact_201102_complete_1.pdf (last visited on May 15, 2025).

[16] Ina Goel, "Chapter 5: Understanding Caste and Kinship Within Hijras, a Third Gender Community in India", in *Gendered Lives* (Milne Publishing), available at: https://milnepublishing.geneseo.edu/genderedlives/chapter/chapter-5-understanding-caste-and-kinship-within-hijras-a-third-gender-community-in-india/ (last visited on May 15, 2025).

[17] Adam M. Mastroianni and Nicole L. Mead, "The Abundance Effect: Unethical Behavior in the Presence of Wealth" 11 *Analyses of Social Issues and Public Policy* 1 (2021), available at: https://spssi.onlinelibrary.wiley.com/doi/full/10.1111/asap.12342 (last visited on May 15, 2025).

In response to this, "Queer Time Commissions" based on human rights or equality commissions have been suggested. These commissions would authenticate non-documentary proof of relationships, endorse variable recognition periods for cohabitation, guardianship, or eligibility for adoption, and allow administrative law to more accurately depict the queer subjects lived temporalities who have heretofore been denied normative legal time.[18] Such a pluralism of times would enrich Indian public administration law, propelling it toward a diversity-sensitive justice that recognizes differences not just in identity but inexperienced historical time, promoting more diverse state acknowledgement without coercive assimilation into heteronormative timelines.[19]

v) Revisiting Article 38(2) of the Constitution of India

While most legal discussion of queer rights in India focuses on Part III of the Constitution (Fundamental Rights), Part IV's Directive Principles of State Policy, specifically Article 38(2), provide an underused lens for promoting queer well-being. Article 38(2) requires the State to make every effort to reduce inequalities between individuals and groups in status, facilities, and opportunities in different areas and vocations.[20] Identifying queer communities as a structurally marginalized "group" corresponds to their social reality of exclusion from socio-economic benefits and public goods. This constitutional imperative not only justifies but insists on specific state welfare policies targeting the material disadvantages queer individuals endure.[21]

Judicial and policy interventions based on Article 38(2) may consecrate individualized welfare schemes, such as housing subsidies for queer couples under threat of eviction or rental discrimination, tax credits for specified caregivers in queer cohabiting households, and secure access to health care and social benefits.[22] These efforts actualize the transformative potential of a welfare-oriented Constitution beyond the sometimes elusive purview of enforceable fundamental rights. Encouraging queer socio-economic justice by referencing Article 38(2) bases queer rights in the vocabulary of

[18] Michalinos Zembylas, "Theorizing 'Difficult Knowledge' in the Aftermath of the 'Affective Turn': Implications for Curriculum and Pedagogy in Handling Traumatic Representations" 14 *Curriculum Inquiry* 1 (2014), available at: https://www.tandfonline.com/doi/full/10.1080/10476210.2014.959487 (last visited on May 15, 2025).
[19] Contemporary Relationships, "QTAP Certification Requirements" (2023), available at: https://www.contemporaryrelationships.com/certification (last visited on May 15, 2025).
[20] Ministry of Education, Government of India, "Directive Principles of State Policy - Article 38", available at: https://www.education.gov.in/directive_principles_of_state_policy_article-38 (last visited on May 15, 2025).
[21] The Advocates for Human Rights, "Republic of India's Compliance with the International Covenant on Civil and Political Rights: LGBTQ+ Human Rights," submitted for the 141st Session of the Human Rights Committee (01 July – 02 August 2024), available at: https://www.theadvocatesforhumanrights.org/Res/TAHR%20India%20CCPR%20LGBTIQ%20FINAL.pdf (last visited on May 15, 2025).
[22] United Nations Development Programme, "Uniting Diversity: Shaping the Future of Legal Equality for LGBTQ+ in India," policy brief developed under the UNDP-supported SCALE initiative, available at: https://www.undp.org/sites/g/files/zskgke326/files/2024-11/uniting_diversity-policy_brief-final_version.pdf (last visited on May 15, 2025).

social and economic equality and anchors them securely within the ethical centre of Indian constitutionalism.

vi) Jurisprudence of Repair

Traditional rights-based remedies tend to be enforceable and litigation-oriented, but constitutional "repair" provides an alternative orientation centred on repairing systemic harm and promoting structural change. Reparative justice seeks to repair persisting violations by developing accountability, participation, and community involvement instead of simply providing compensatory entitlements.[23]

A queer constitutionalism-inspired constitutional jurisprudence of repair would impose on the State obligations like enacting a National Queer Welfare Commission with the authority to direct and monitor queer policy.[24] It would require regular audits of legislation through a queer rights perspective to discern and correct systemic discrimination, similar to gender budgeting or environmental impact assessments. Additionally, mandatory queer impact assessments before the implementation of any law or policy that involves family, welfare, or identity would institutionalize anticipatory inclusion and avoid retroactive harm.[25]

This reimagined toolkit enables the Constitution to operate proactively as a space of structural justice, repair, and restorative dignity providing marginalized communities with anticipatory protection and creating a constitutional commons.

7. Conclusion

This decision is a milestone in the legal recognition and acceptance of queer rights, proof of an enlightened step towards inclusiveness and equality in accordance with law. By affirming the rights of the queer people, the court not only challenged systemic social discrimination and stigmatization but also paved the way for legal redress against injustice to the community. This has served to introduce increased visibility and legitimacy for queer identity into the broader social and legal discourse.

[23] United Nations General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," adopted by resolution 60/147 on 16 December 2005, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation (last visited on May 15, 2025).

[24] The Hindu Bureau, "Centre Forms Panel to Ensure Queer Community Gets Access to Services, Welfare Schemes," The Hindu, April 17, 2024, available at: https://www.thehindu.com/news/national/centre-forms-panel-to-ensure-queer-community-gets-access-to-services-welfare-schemes/article68073328.ece (last visited on May 15, 2025).

[25] Rachel Bayefsky, "Remedies and Respect: Rethinking the Role of Federal Judicial Relief," 109 Georgetown Law Journal 1263 (2021), available at: https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2021/08/Bayefsky_Remedies-and-Respect.pdf (last visited on May 15, 2025).

But notwithstanding these advances, the judgment succeeds in failing to tackle some of the deeper and more structural issues still facing queer communities. For instance, it does not satisfactorily deal with the intersectional politics of discrimination for queer individuals based on caste, class, religion, and gender, all of which are robust predictors of their lived reality. The court's concern remains with the legality of types in abstraction from genuine concern with socio-economic issues and access to basic services like health care, housing, and employment queer individuals experience.

Additionally, the court could have imposed its effect stronger by providing clearer directions for putting into practice and implementing the rights it bestows. Without proper mechanisms for action, the implementation of these rights in reality stands vulnerable to the forces of bureaucracy and social resentment. The court missed the opportunity to be definite regarding intervention within violence against queers like hate crimes and domestic violence that still persist and remain common and keep occurring often but remain unreported.

Lastly, while this decision is undoubtedly a noble one in the position of being a first judicial ruling on queer rights, it also serves to signal the need for continued judicial vigilance and legislative reform in an effort to achieve full protection. Future activity will have to proceed beyond recognition to act cooperatively with the elimination of structural barriers and toward the creation of a facilitating environment in which queer individuals are able to exist in safety, equality, and dignity in every aspect of life.

ZOOMING INTO THE TRANSATLANTIC TRANSPARENCY: ZOOM'S DATA PRACTICES IN WAKE OF GDPR

Koomar Bihangam Choudhury[*]

Abstract

Zoom Video Communications has rapidly become a ubiquitous global platform for remote communication. This paper examines Zoom's compliance with the European Union's General Data Protection Regulation (GDPR), focusing on challenges in data transfers, consent, and processor obligations. The GDPR is an expansive privacy regime with extraterritorial reach, requiring robust safeguards for the personal data of EU subjects. Large technology platforms like Zoom face particular scrutiny as regulators and scholars note difficulties implementing GDPR requirements in complex technical environments. The literature highlights persistent compliance tensions, such as obtaining valid consent and securing cross-border transfers under Schrems II and the new EU-US Data Privacy Framework. The discussion section analyzes Zoom's recent measures and controversies: after Schrems II, regulators (e.g. Hamburg DPA) warned that Zoom's default practice of routing EU user data to the US likely violated GDPR; Zoom has since introduced EU data residency options for paying customers and claims participation in the EU-US Data Privacy Framework (July 2023) to legitimize US transfers. Zoom has also faced criticism over its terms for processing "Customer Content" (e.g. voice and chat) for AI training without explicit opt-out, prompting new disclaimers assuring users that such content will only be used with consent. The article also examines Zoom's Article 28 obligations as a data processor (e.g. contractual Data Processing Addendum and duty to assist controllers). The recommendations section proposes regulatory, policy and design measures for Zoom and similar platforms: stricter enforcement of cross-border data rules, mandatory privacy-by-design features (default encryption, consent controls), transparent data-use policies, and industry codes of conduct. In conclusion, Zoom's case underscores the global stakes of GDPR enforcement: approximately 90% of EU firms rely on transatlantic data flows. Ensuring legal accountability and harmonized standards for cross-border data is essential to protect individual rights while enabling international digital services.

Keywords: General Data Protection Regulation, Zoom, Data Transfer, Consent, Article 28.

[*] Legal Researcher and Advocate.

I.

Introduction

The General Data Protection Regulation (GDPR)[1] is a landmark EU law adopted in 2016 and in force since May 2018. It harmonizes data protection across the EU and imposes strict rules on the processing of "personal data" (any information relating to an identified or identifiable person). The GDPR has extraterritorial effect: it applies not only to companies based in the EU, but to any organization worldwide that processes the personal data of EU residents in the context of offering goods or services to them.[2] Non-compliance can trigger severe sanctions – fines of up to €20 million or 4% of global annual turnover, whichever is higher. Moreover, it grants individuals expansive rights (to access, rectify, erase and port their data) and imposes procedural obligations on controllers and processors (such as breach notification and data protection impact assessments).

As noted by commentators, "the GDPR represents a significant change in the EU's data privacy regulation…requiring that organizations be able to justify their reasons for holding or processing every piece of data"[3]. These sweeping requirements mean that global technology platforms – which often handle vast quantities of personal information and operate across jurisdictions – face complex compliance challenges. In particular, the GDPR's rules on cross-border data transfers and lawful processing have become focal points in the tech sector.

The Schrems II ruling of July 2020 by the EU Court of Justice (CJEU) found the US-EU Privacy Shield inadequate, affirming that data transfers to the U.S. (and other non-EU countries) require "essentially equivalent" privacy safeguards[4]. Subsequent guidance by the European Data Protection Board (EDPB) and national data protection authorities has underscored that merely using standard contractual clauses (SCCs) may not suffice unless additional technical or legal measures are in place[5]. These developments have placed cloud and communication services under renewed scrutiny, as experts observe that "[m]any businesses have been warned to avoid mainstream U.S. tools" like Zoom unless guarantees are ensured[6]. In parallel, GDPR's consent requirements – demanding freely given, specific and informed consent – pose difficulties for online platforms. The literature notes concern about the dilution of "informed consent" in practice, as Ill as regulatory confusion over

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L 119/1.
[2] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L 119/1.
[3] Regulation (EU) 2016/679, art 3 [2016] OJ L 119/1
[4] Data Protection Commissioner v Facebook Ireland Ltd (Case C-311/18) ECLI:EU:C:2020:559 (CJEU, 16 July 2020).
[5] European Commission, 'Data Protection' (European Commission, 26 May 2025) <https://ec.europa.eu/info/law/law-topic/data-protection_en> accessed 26 May 2025.
[6] Data Protection Commissioner v Facebook Ireland Ltd (Case C-311/18) ECLI:EU:C:2020:559 (CJEU, 16 July 2020).

legitimate interests and other legal bases for processing[7].

Given this backdrop, compliance with the GDPR has become an existential business issue. Organizations must implement privacy-by-design measures, appoint data protection officers, conduct DPIAs, and be able to demonstrate accountability at all levels. For multinational tech platforms, the stakes are especially high: they must navigate not only EU law but also evolving frameworks like the new EU-US Data Privacy Framework (DPF, July 2023)[8] and adhere to scrutiny from multiple regulators. Failure to align with GDPR can lead to regulatory action, fines and reputational damage, as the recent record €1.2 billion fine against Meta (Facebook) for unlawful data transfers illustrates[9].

This paper examines Zoom's practices in light of these GDPR requirements. Zoom is a US-based video-conferencing service with hundreds of millions of users worldwide. I first review the literature on GDPR compliance challenges for tech platforms, then analyse Zoom's specific data handling practices (data transfers, consent mechanisms, processor agreements) and recent incidents. I evaluate how Zoom has responded – for example by offering EU data residency options and revising its terms – against the backdrop of the new EU-US Data Privacy Framework and ongoing enforcement trends. Finally, I propose recommendations for regulators and platforms to strengthen privacy safeguards. Through the example of Zoom, this study illustrates the global implications of GDPR and the need for accountability in cross-border data flows.

This study makes a distinct contribution by examining how the multinational service provider's cross-border personal-data transfers navigate the intersection of corporate globalisation and regulatory demands for data sovereignty. Whereas much of the literature has focused on state-to-state data localisation regimes, this paper brings into relief how a leading SaaS firm situates its data-residency policy within the General Data Protection Regulation (GDPR) framework to operationalise — and in some cases challenge — emerging norms of transnational data governance. In doing so, the paper advances knowledge of how digital infrastructures, corporate strategy and regulatory regimes co-evolve in the governance of personal data in a global economy.

II.

Literature Review

Scholars and practitioners have identified several persistent challenges in GDPR compliance for digital platforms. A common theme is the gap between ambitious regulatory goals and practical implementation. One review observes that compliance often requires "organizational and technological

[7] European Data Protection Board, 'Recommendations 01/2020 on Measures that Supplement Transfer Tools to Ensure Compliance with the EU Level of Protection of Data' (EDPB, 10 June 2020) <https://edpb.europa.eu/our-work-tools/our-documents/recommendations/recommendations-012020-measures-2020_en> accessed 26 May 2025.
[8] European Commission, 'EU-US Data Privacy Framework' (European Commission, 10 July 2023) <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3721> accessed 26 May 2025.
[9] The Register, 'EU Warns Against Using US Cloud Services like Zoom after Schrems II' (The Register, 15 July 2020) <https://www.theregister.com/2020/07/15/eu-us-cloud-services-warning-us> accessed 26 May 2025.

changes" across systems, and notes a "roadmap gap" in using existing privacy standards effectively[10]. Enterprises must integrate data governance with business architecture, which is not straightforward. In the context of emerging technologies (cloud, IoT, AI, etc.), researchers highlight that GDPR was enacted before many new capabilities, leading to friction between the "natural characteristics" of these technologies and data protection law. For example, blockchain's decentralization makes it hard to identify a "controller" or to erase data, and AI-driven profiling complicates transparency obligations[11]. These analyses conclude that identifying compliance "opportunities" (e.g. using advanced consent management or privacy-enhancing technologies) is as crucial as addressing conflicts.

Consent and transparency have been flagged as problematic in practice. Several authors remark that GDPR's requirement of "freely given" and informed consent can be illusory in many online contexts. In telecom and advertising, for instance, users often face complex or lengthy consent forms, and regulatory guidance remains inconsistent on standards.[12] A recent critique of GDPR notes that it "has frustrated users and regulators," in part because of low and ambiguous standards for what constitutes valid consent.[13]

Similarly, in the education sector, Swedish authorities have found that consent obtained under a clear power imbalance (e.g. between students and schools) is invalid, emphasizing that "if there is an imbalance of power between the parties, [consent] cannot be a free choice"[14]. In platform contexts, experts warn that services must be careful about how they obtain consent for functionalities like recording or analytics – for example, one analysis points out that remote meeting invitations may be effectively compulsory for employees, raising the question of whether participants' implied consent is lawful[15].

2.1 Data Residency and Localization

The term data-residency refers to the physical or geographical location in which an organisation stores or processes its data. While data-residency is often driven by corporate policy (for performance, latency or jurisdictional preference), it may also implicate regulatory obligations if local laws require selection of specific storage locations. By contrast, data-localization denotes a stricter form of rule: it requires data generated within a jurisdiction be stored (and in many cases processed) within that

[10] Frederik J Zuidersen Borgesius, 'Improving Privacy Protection in the Area of Behavioural Data' (2014) 18 Intl J L & IT 279.
[11] European Commission, 'EU-US Data Privacy Framework' (European Commission, 10 July 2023) <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3721> accessed 26 May 2025.
[12] European Data Protection Board, 'Recommendations 01/2020 on Measures that Supplement Transfer Tools to Ensure Compliance with the EU Level of Protection of Data' (EDPB, 10 June 2020) <https://edpb.europa.eu/our-work-tools/our-documents/recommendations/recommendations-012020-measures-2020_en> accessed 26 May 2025.00
[13] Irish Data Protection Commissioner, 'Decision on Meta Platforms Ireland Limited and Meta Platforms Inc' (DPC, 22 May 2023) <https://www.dataprotection.ie/en/news-media/decision-meta-platforms-2023> accessed 26 May 2025.
[14] Paul M Schwartz & Karl-Nikolaus Peifer, 'Transatlantic Data Privacy Law' (2017) 10 J L & Tech 1.
[15] Data Protection Commissioner v Facebook Ireland Ltd (Case C-311/18) ECLI:EU:C:2020:559 (CJEU, 16 July 2020).

jurisdiction's borders and not transferred to other jurisdictions without meeting additional safeguards. For example, certain national laws demand that personal data of citizens remain within the country of origin. The distinction is important for the governance of transnational personal-data flows. In the context of the General Data Protection Regulation (GDPR), companies may offer 'EU-data-residency' options by hosting data in European data-centres, thereby aligning their infrastructure with EU-centric jurisdictional expectations — yet without necessarily meeting full data-localization mandates. Indeed, one obstacle to asserting full compliance lies in the fact that paid versus free-user segments may be treated differently, or in the fact that the data may still traverse third-country jurisdictions for backup or processing. Accordingly, this paper uses data-residency to denote the location-based decision by the firm to host data in a specific geographical region, and data-localization to indicate legal/regulatory mandates that restrict cross-border movement of data. Understanding this duality allows for a more nuanced appreciation of how a multinational firm manages its infrastructure and regulatory risk: the firm's choice of residency is a strategic variable; the regulatory environment may escalate it to mandatory localization. In the case under study, the firm's adoption of an "EU Data-Center" option reflects a residency decision aligned with regulatory signalling, while the absence of a legal requirement for full localization (for free-tier users) highlights the gap between infrastructure compliance and regulatory mandate. This gap provides fertile ground for analysing how corporate strategy and regulatory governance of personal data co-evolve

A second major challenge is cross-border data transfer. The Schrems II judgment confirmed that U.S. law does not offer EU-equivalent privacy protections, meaning transfers to the US (and other third countries lacking adequacy) require extra safeguards[16]. Researchers have analysed the fallout: many EU Data Protection Authorities (DPAs) have publicly warned government agencies and businesses to suspend or strictly limit use of US cloud services and social networks. Hamburg's data commissioner, for example, issued a warning that using Zoom's on-demand service "violates the GDPR" because it involves transferring personal data to the US.[17] Academic commentary notes that while Standard Contractual Clauses (SCCs) remain permissible, they demand case-by-case assessments and potential supplementary measures (e.g. encryption or pseudonymization) to mitigate foreign surveillance risks.[18] The literature also points out legal uncertainty: even after the 2023 EU-US Data Privacy Framework (DPF) was adopted, some analysts caution that it may face legal challenges

[16] Data Protection Commissioner v Facebook Ireland Ltd (Case C-311/18) ECLI:EU:C:2020:559 (CJEU, 16 July 2020).
[17] Hamburg Commissioner for Data Protection and Freedom of Information, 'Senatskanzlei vor dem Einsatz von „Zoom" formal gewarnt' (Press Release, 16 August 2021) <https://datenschutz-hamburg.de/presse/2021/08/16/zoom-warning> accessed 26 May 2025.
[18] Christopher Kuner, 'The GDPR and International Organizations' (2017) 35 AJIL Unbound 13.

and should be supplemented by technical "privacy-enhancing technologies" (PETs)[19]. In short, data transfers are "among the most drastic changes" wrought by GDPR's extended jurisdiction, and critics argue that many organizations struggle to adapt to the new regime.[20]

Finally, processing agreements and accountability (Article 28)[21] are often under-appreciated hurdles. GDPR mandates that any data processing by a third party (processor) must be governed by a binding contract enumerating strict requirements – for example, processing only on the controller's instructions, implementing appropriate security, and submitting to audits. Commentators stress that organizations should avoid boilerplate DPAs; the EDPB's guidelines insist that controllers must "take all of the elements provided in the GDPR into serious legal consideration" when vetting processors.[22] In practice, however, many data controllers have limited leverage, especially small entities using global platforms. The literature suggests greater emphasis is needed on ensuring processors (like cloud or SaaS providers) truly enforce end-user privacy rights and maintain transparency with both clients and regulators.[23]

III.

Zoom's Practices and Violations

Zoom, like most U.S.-based tech companies, processes personal data from EU customers in its global infrastructure. Early in the COVID-19 pandemic surge, privacy advocates warned that Zoom routed meeting traffic through U.S. (and even Chinese) servers without adequately informing users[24]. In August 2021, as mentioned hereinbefore, in the Schrems II wake, Hamburg's DPA formally advised government officials to stop using Zoom on-demand, stating that its use "violates the GDPR" because it involves sending users' data to the U.S. without sufficient safeguards. This warning explicitly cited Schrems II, noting that an adequacy finding (then Privacy Shield) had been invalidated, leaving default transfers unlawful. The Hamburg commissioner bluntly asserted that Zoom's setup could not "ensure a level of protection for personal data which is 'essentially equivalent' to that afforded by the GDPR". Zoom's response has been to bolster European data residency and contractual safeguards. In June 2023, Zoom announced a new feature letting paying customers in the EEA keep their meeting data and

[19] Frederik J Zuidersen Borgesius, 'Improving Privacy Protection in the Area of Behavioural Data' (2014) 18 Intl J L & IT 279.
[20] Frederik J Zuidersen Borgesius, 'Improving Privacy Protection in the Area of Behavioural Data' (2014) 18 Intl J L & IT 279.
[21] Regulation (EU) 2016/679, art 28 [2016] OJ L 119/1.
[22] Swedish Authority for Privacy Protection, 'Decision on Consent in Educational Settings' (IMY, 20 August 2019) <https://www.imy.se/en/news/decision-consent-schools-2019> accessed 26 May 2025.
[23] Frederik J Zuidersen Borgesius, 'Improving Privacy Protection in the Area of Behavioural Data' (2014) 18 Intl J L & IT 279.
[24] The Register, 'EU Warns Against Using US Cloud Services like Zoom after Schrems II' (The Register, 15 July 2020) <https://www.theregister.com/2020/07/15/eu-us-cloud-services-warning-us> accessed 26 May 2025.

recordings on servers located within the EEA[25]. Under this offering, only in "individual cases and exceptional circumstances" (e.g. with Zoom's Trust & Safety team) would data be shared with U.S. staff. While this move aligned with GDPR principles of data minimization and storage limitation, critics noted it is limited to paid accounts, leaving free users outside its scope. Zoom also updated its legal commitments: it now prominently declares participation in the EU-US Data Privacy Framework (the new adequacy scheme) as of July 2023[26]. Zoom's trust site explains that, following the Commission's adequacy decision, U.S. participants in the DPF (including Zoom) may transfer EU personal data without additional safeguards. In practice, Zoom has publicly pledged to self-certify to the DPF and to abide by its Privacy Principles.

However, transferring data under the DPF still raises questions under the e-Privacy rules. For end-to-end encrypted communications, GDPR itself permits transfer if the controller has a legal basis, but the related e-Privacy Directive (and Digital Code) require consent for intercepting or storing communications metadata. The TechCrunch analysis noted that by EU law Zoom must not intercept or use communications data unless users' consent. In response to public outcry over its AI data use, Zoom clarified it will "not use audio, video, or chat Customer Content to train [AI] models without customer consent"[27]. This statement helps address both GDPR and the e-Privacy confidentiality duty, since it commits Zoom not to repurpose private meeting content absent an explicit agreement. Zoom also publishes a Data Processing Addendum (DPA) to satisfy Article 28 requirements.[28] Its contract promises to act "only as instructed" by customer controllers, to implement "appropriate technical and organizational measures," and to assist customers with fulfilling data subject requests. In principle, this covers typical Article 28 obligations – e.g. allowing audits, using sub processors only with authorization, and helping with breach notifications. In practice, however, there have been few independent audits of Zoom. It relies heavily on subcontractors (for cloud hosting, compliance checks, etc.) and the DPA provides for subcontractor lists. How rigorously Zoom enforces these commitments remains partly opaque. Notably, Security week reported in 2020 that Zoom's own iOS app was found surreptitiously sending data to Facebook (despite no user consent) – a practice Zoom ceased only after public pressure[29]. That incident underlined a data transfer to a third party without transparency or consent, which experts called "a clear breach of GDPR"[30]. Though Facebook access was not Zoom's

[25] Zoom, 'Zoom Announces New Data Residency Options in the EU' (Zoom, 20 June 2023) <https://zoom.us/en/blog/eu-data-residency-options> accessed 26 May 2025.
[26] European Commission, 'EU-US Data Privacy Framework' (European Commission, 10 July 2023) <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3721> accessed 26 May 2025.
[27] TechCrunch, 'Zoom Knots Itself a Legal Tangle over Use of Customer Data for Training AI Models' (TechCrunch, 8 August 2023) <https://techcrunch.com/2023/08/08/zoom-ai-training-data-controversy> accessed 26 May 2025..
[28] Regulation (EU) 2016/679, art 28 [2016] OJ L 119/1.
[29] Christopher Kuner, 'The Schrems II Ruling and Its Implications for EU Data Transfers' (2020) 10 Eur J Privacy L & Tech 257.
[30] Data Protection Commissioner v Facebook Ireland Ltd (Case C-311/18) ECLI:EU:C:2020:559 (CJEU, 16 July 2020).

core service, it suggested weaknesses in Zoom's internal vendor controls. In any case, since Zoom is the processor (meeting hosts are controllers), such transfers arguably violated Art. 28's mandate to process only on controller instruction. Zoom's consent practices have also drawn scrutiny. By default, the host of a Zoom meeting acts as controller, with participants furnishing data through the meeting (audio, video, chat, and any uploaded files). Under GDPR, any processing of participants' data requires a lawful basis – often impliedly sought as consent. However, privacy experts caution that typical employment or school contexts involve an "imbalance of power," meaning consent cannot be considered freely given. Kevin Townsend noted that "many COVID-19 instigated teleconferences are being held in contravention of GDPR's consent rules," since invitations to join work or classroom meetings carry little real choice.[31] If a controller-host records or distributes the meeting, that data processing requires a basis. Townsend emphasized that if hosts (controllers) genuinely want to rely on consent, they must inform participants beforehand – even requesting verbal consent on record or offering opt-out of recording.

Zoom has taken steps to facilitate compliance. For example, it added an in-app "consent tool" for recording, prompting hosts to notify participants when a meeting is being recorded and (optionally) requiring all participants to assent. Zoom also launched a self-service tool to help companies respond to Data Subject Access Requests (DSARs) for meeting data, intending to simplify compliance with individuals' rights to access and delete their personal data. On the other hand, Zoom's Terms of Service updates in 2023 sparked controversy by appearing to grant Zoom itself broad rights to use non-sensitive customer content for AI training. Initially, Sections 10.2–10.4 of Zoom's ToS stated that users' "consent" to Zoom using "Service Generated Data" and even Customer Content (including call recordings) for model training. TechCrunch highlighted that these clauses effectively allowed Zoom to repurpose user data "with no opt-out".[32] Following public uproar, Zoom hastily revised its policy and issued a blog claiming that it would not use audio, video or chat content to train AI models without customer consent. Even so, the episode underscored risks: any ambiguity in user agreements can be seen as undermining the consent standard. EU authorities would likely scrutinize such provisions, given that the GDPR forbids processing data for new purposes without a legal basis and explicit permission.

As a cloud-based service provider, Zoom mainly acts as a processor of meeting data on behalf of its customers (the controllers). GDPR Art. 28 requires a written contract detailing how Zoom handles

[31] Camille Ford, 'The EU-US Data Privacy Framework is a Sitting Duck. PETs Might be the Solution' (CEPS, 23 February 2024) <https://www.ceps.eu/publications/eu-us-data-privacy-framework-pets> accessed 26 May 2025.
[32] TechCrunch, 'Zoom Knots Itself a Legal Tangle over Use of Customer Data for Training AI Models' (TechCrunch, 8 August 2023) <https://techcrunch.com/2023/08/08/zoom-ai-training-data-controversy> accessed 26 May 2025.

data[33]. Zoom's standard Data Processing Addendum (DPA) addresses this by committing to security measures, transparent use of personal data only as instructed, and cooperation with controllers' GDPR duties. For instance, Zoom states it will "assist customers in fulfilling their obligations when data subjects exercise their rights," and maintain technical safeguards. In theory, this places much GDPR compliance in the hands of Zoom's customers (the hosts). For example, if a host administers a Zoom account for employees, the host must ensure that the DPA is properly in place and that Zoom does not involuntarily breach it. Regulators have implied that merely having an SCC or DPA is not enough. Even before the EDPB's formal guidelines on controllers and processors, experts warned that organizations must rigorously vet service providers and avoid boilerplate contracts.[34] In practice, however, enforcement of Art. 28 is limited. Aside from Hamburg's warnings there is no confirmed amount of fines specifically levied on Zoom under GDPR (contrast Meta's €1.2 b fine)[35]. Rather, the pressure has been indirect: major fines for other companies (Meta, Google, Amazon) have reminded the industry of transfer obligations, and regulators have been vocal about expecting SaaS providers to comply. Overall, Zoom's actions in 2023 – enabling EU data residency, updating DPAs, and emphasizing DPF participation – show an intention to align with GDPR transfer rules. Yet genuine compliance depends on implementation: whether EU customers actually route their data to EU servers, whether Zoom's operations fully adhere to the DPA terms, and whether any personal data still leaks to US jurisdictions unchecked. The transition from an uncertain Privacy Shield era to the DPF regime has not completely assuaged concerns. As one think-tank analysis comments, "without an [adequacy] agreement, transatlantic data transfers are more susceptible to legal uncertainty," threatening both commerce and EU citizens' rights.[36]

IV.
Conclusion

Zoom's GDPR compliance efforts illustrate the broader global struggle to balance digital services with data protection. The challenges Zoom faces – securing transatlantic data flows, obtaining meaningful consent, and ensuring processor accountability – are emblematic of issues encountered by many tech platforms. The recent EU-US Data Privacy Framework offers some regulatory relief, but as

[33] Regulation (EU) 2016/679, art 28 [2016] OJ L 119/1.
[34] Swedish Authority for Privacy Protection, 'Decision on Consent in Educational Settings' (IMY, 20 August 2019) <https://www.imy.se/en/news/decision-consent-schools-2019> accessed 26 May 2025.
[35] The Register, 'EU Warns Against Using US Cloud Services like Zoom after Schrems II' (The Register, 15 July 2020) <https://www.theregister.com/2020/07/15/eu-us-cloud-services-warning-us> accessed 26 May 2025.
[36] Camille Ford, 'The EU-US Data Privacy Framework is a Sitting Duck. PETs Might be the Solution' (CEPS, 23 February 2024) <https://www.ceps.eu/publications/eu-us-data-privacy-framework-pets> accessed 26 May 2025.

commentators warn, any adequacy deal may be only a provisional fix. According to CEPS, "more than half of Europe's global data flows" are transatlantic, and some 90% of EU firms rely on them. This underscores that legal uncertainty in cross-border transfers puts not just business continuity but also citizens' rights at risk.

Going forward, global digital policy must reinforce that companies like Zoom are accountable to the jurisdictions they serve. International cooperation is needed to harmonize standards for data governance. In the EU and beyond, continued vigilance (by DPAs, courts and legislators) will be essential to ensure that privacy rights keep pace with technological change. Zoom's case shows that even Ill-intentioned measures (like data-center localization or DPF participation) are only part of the solution: comprehensive design safeguards and transparent practices are equally vital. Ultimately, enforcing GDPR extraterritorially and advancing new solutions (like PETs and privacy-by-design) can help guarantee that cross-border data flows respect fundamental rights while enabling global connectivity.

V.

Recommendations

5.1 Regulatory and Policy Measures:

Regulators should clarify and enforce rules for communication platforms. In the EU, data protection authorities could issue formal guidance on remote collaboration tools, explicitly addressing cross-border encryption, lawful interception, and consent mechanisms. For example, a code of conduct under the GDPR (Article 40) for videoconferencing services could establish best practices (e.g. default E2EE, limited data retention, standardized privacy notices). Coordination between jurisdictions is also vital: data adequacy discussions (such as the EU-US DPF) should be monitored to ensure companies like Zoom are held accountable under any new frameworks. The EU and other regions (UK, US) could consider mutual recognition of enforcement to avoid regulatory gaps. Policymakers might also incentivize or mandate privacy-enhancing technologies (PETs) research and development: as CEPS suggests, joint EU-US investment in PETs (such as anonymization or secure multi-party computation) could help platforms minimize identifiable data flows. Data protection agencies should continue investigating high-profile platforms and impose fines or orders as needed to create real deterrence: for instance, if Zoom Ire found to have misled users or breached Art. 28, an enforcement action would underscore the law's seriousness.

5.2 Platform Design and Organizational Controls:

Zoom and similar companies should adopt privacy by design as a default. Features that protect data should be enabled out-of-the-box: for example, end-to-end encryption (E2EE) should be the default setting rather than optional, with strong keys managed in a user-transparent way. Meeting recordings

should be off by default and require explicit host activation, with clear labels when recording or transcription is live. Zoom's new EU data-center option should be expanded (eventually to all users), eliminating any distinction betIen free and paid customers for essential privacy features. The platform UI should prompt hosts to obtain and record informed consent for any sensitive processing (e.g. biometrics in facial recognition or transcripts), reminding them of participants' data rights. Zoom can also implement granular consent controls: allow participants to withhold video if uncomfortable, opt out of analytics tracking, or delete their data post-meeting.

On the organizational side, Zoom should strengthen internal compliance processes. This includes rigorous vetting and auditing of third-party vendors (to ensure no hidden data flows, as happened with the Facebook SDK) and regular reviews of privacy policies. The Data Processing Addendum should be periodically updated to reflect new legal standards and be actively enforced. Zoom might publish transparency reports detailing how many data requests it receives and how it handles EU data transfers. Investing in independent privacy certifications (e.g. GDPRseal) or an external audit could also demonstrate accountability.

5.3 Customer Guidance and Controls:

Zoom's corporate and education clients (data controllers) must be educated on their GDPR duties. Zoom could offer tools or partnerships to facilitate compliance: templates for privacy notices, consent forms for participants, and guidance on conducting DPIAs when deploying video conferencing. For instance, embedding a simple "meeting notice" that links to an organizer's privacy policy could help fulfill the transparency requirement. Offering built-in recording consent checkboxes or meeting lobby functions (where attendees must wait for host approval) can give participants a real choice to participate under known terms.

5.4 Technology Innovation:

Industry-wide, fostering privacy-centric innovation is key. The use of Privacy-Enhancing Technologies (PETs) can reduce reliance on legal agreements alone. Zoom could experiment with techniques like differential privacy for aggregated usage analytics, or federated learning approaches that keep raw data on user devices. Ongoing research into secure video codecs or watermarking can help protect meeting content. The company should also align with emerging standards: for example, ensuring compliance with any successor to the ePrivacy Directive (e.g. the e-Privacy Regulation) once enacted, particularly regarding real-time communication confidentiality.

In summary, Zoom and regulators must engage in a collaborative accountability effort. Regulators need to translate GDPR principles into clear requirements for complex services, and Zoom must embed privacy at every layer of its design and contracts. Proactive measures (data localization, opt-in AI features, default encryption) combined with robust oversight (audits, enforcement) would

greatly improve GDPR alignment for Zoom and set positive precedents for similar platforms.

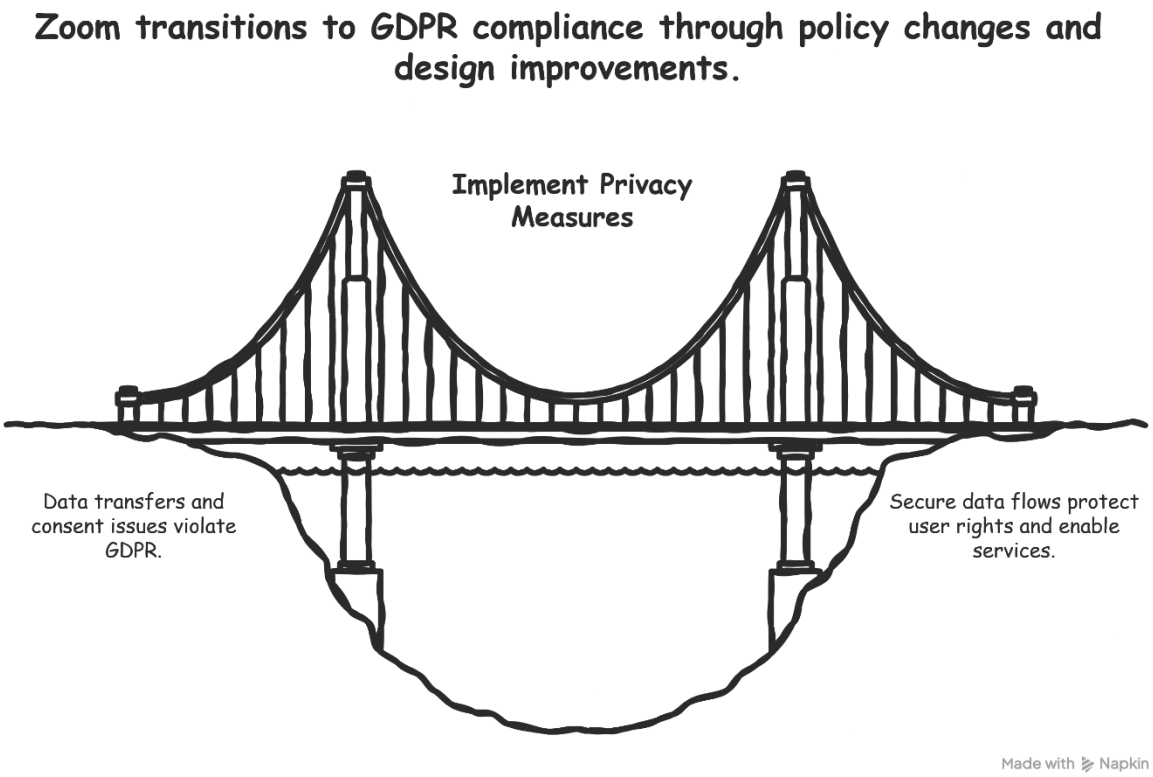


Fig. 1

LEGISLATIVE TRENDS IN 2025: AN ANALYSIS OF EMERGING BILLS AND THEIR IMPACT

I Madhav Ganesh*

Aiswaraya S**

Abstract

The year of 2025 is a year that will definitely be inscribed in the history books perhaps as the most important in terms of legislative trends across the world concerning emerging technologies, economic reforms, and social issues.[1] *An example of these trends is the new regulations being introduced into the realm of artificial intelligence (AI) legislation, cybersecurity reform, tax reforms, or even principles that combine environmental, social, and governance (ESG) aspects.*[2] *The need to regulate the rapid advancement of AI has also resulted in an enormous surge of legislative activities, the numbers climbing from about 700 bills in different jurisdictions at the close of the previous year to over 800 bills on AI before the beginning of 2025.*[3] *This upsurge seems to further depict a growing concern regarding the societal impacts of AI, ranging from issues such as algorithmic bias and discrimination to overarching regulatory framework and specific provisions.*[4]

On the international stage, the anticipated AI Act is expected to set a global standard for artificial intelligence regulation in terms of transparency, accountability, and consumer protection. This piece of legislation is probably going to be the source of multi-national impact in the aspect of AI governance, including in India, where businesses are now New Delhi.[5] *The Union Budget 2025-26 indicates the commitment towards digital transformation and economic progress; initiatives include 100% foreign direct investment (FDI) in the insurance sector, where entire premiums will be invested in India by the*

* Student, Hindustan University.

**Assistant Professor, Hindustan University.

[1] Gurjeet Chahal, Top Regulatory Compliance Challenges Facing India Inc. in 2025, EY (Apr. 15, 2024), https://www.ey.com/en_in/insights/forensic-integrity-services/top-regulatory-compliance-challenges-facing-india-inc-in-2025.

[2] Max Rieper, Kim Miller, and Sarah Doyle, 'ICYMI: Major Emerging Legislative Trends in 2025 (Webinar Recap)' (MultiState, 4 Feb 2025) https://www.multistate.us/insider/2025/2/4/major-legislative-trends-in-the-technology-and-privacy-space accessed 18 April 2025.

[3] Andrew Jones, State budget 101 (Plus Key State to Watch) (MultiState Insider, Apr 2025), https://www.multistate.us/insider/2025/4/8/icymi-major-emerging-legislative-trends-in-2025-webinar-recap.

[4] Ministry of Commerce and Industry, Government Puts in Place Investor-Friendly Policy to Promote FDI (Feb. 13, 2025), https://pib.gov.in/PressReleasePage.aspx?PRID=2101785.

[5] Andrew Jones, State budget 101 (Plus Key State to Watch) (MultiState Insider, Apr 2025), https://www.multistate.us/insider/2025/4/8/icymi-major-emerging-legislative-trends-in-2025-webinar-recap.

foreign companies.[6] *The budget also mentions heavy new income tax legislation and the creation of a high-level committee for regulatory reforms, thus displaying a clear intent of the government towards simplifying regulatory frameworks and making them more attractive for investment.*[7]

Keywords- AI; Legislative Framework; Income Tax Act; General Data Protection Rule

I.

Introduction

Cybersecurity is one of the most important themes that come at a legislative focus as governments around the world battle with the elements of protecting sensitive data and the state of the art for digital security. In the case of India, the recent judgments of the Supreme Court and the various High Courts have underscored the legal precedents on the importance of data privacy and cybersecurity, which would play a defining role for future legislative developments.[8] The verdict of the Supreme Court in *Justice K.S. Puttaswamy (Retd.) vs. Union of India*[9] also included a right that has been termed 'the fundamental right to privacy', which is going to significantly affect legislation regarding data protection.[10]

Taxation reforms are the major legislative trends in 2025. In the United States, talks about extending provisions of the Tax Cuts and Jobs Act in 2017 are ongoing, while in India, the income tax bill that's put forward expects to make the tax structure simpler and more rational.[11] ESG considerations are coming in as well, with businesses increasingly scrutinized over their environmental responsibilities and social affairs. This trend is being mirrored in India's regulatory landscape through things like the investment friendliness index of states and efforts to decriminalize some of the provisions to promote a better business environment.[12]

The research problem this paper tries to address is the need for a detailed analysis of the newest trends emerging from legislative activity in 2025 affecting businesses and populations. Then again, all this emerging dazzling activity in legislation does not address the intersection and mutual influence of trends, particularly in the cross-section of AI, cybersecurity, tax reforms, and ESG. This research

[6]PRS Legislative Research, Union Budget 2025-26 Analysis (2025), https://prsindia.org/files/budget/budget_parliament/2025/Union_Budget_Analysis_2025-26.pdf.
[7] PRS Legislative Research, Union Budget 2025-26 Analysis (2025), https://prsindia.org/files/budget/budget_parliament/2025/Union_Budget_Analysis_2025-26.pdf.
[8] The CP Legislative Updates Series – March 2025' (*Mondaq*, 10 April 2025) https://www.mondaq.com/industry-updates-analysis/1610328/the-cp-legislative-updates-series-march-2025 accessed 18 April 2025.
[9] Justice K.S. Puttaswamy (Retd.) vs. Union of India, AIR 2017 SC 4161.
[10] The CP Legislative Updates Series – March 2025' (Mondaq, 10 April 2025) https://www.mondaq.com/industry-updates-analysis/1610328/the-cp-legislative-updates-series-march-2025 accessed 18 April 2025.
[11] Andrew Jones, State budget 101 (Plus Key State to Watch) (MultiState Insider, Apr 2025), https://www.multistate.us/insider/2025/4/8/icymi-major-emerging-legislative-trends-in-2025-webinar-recap.
[12] Andrew Jones, State budget 101 (Plus Key State to Watch) (MultiState Insider, Apr 2025), https://www.multistate.us/insider/2025/4/8/icymi-major-emerging-legislative-trends-in-2025-webinar-recap.

purports to fill the gap by weaving together intricate stiches of the overwhelming tape try of legislative trends, their implications to a wide array of sectors, and the required strategic responses to be undertaken by stakeholders in using effective navigation vis-à-vis the changes in the legislative trends.

The gap area of research concern analyses that do not include jurisdictional integration, focusing mostly on domestic legislation consider a limited number of sector/regions, ignoring the wider implications of trends across nations. Bridging this gap will be done through an analysis of interrelationship of legislative trends governing cyber space, taxes, and the environment with case studies and legal precedents from India and other nations. Insight into how the interplay between these factors influences the way business strategize, comply with regulations, and want things to play out societally is what this type of work will give for better informed policy decision and strategic planning in the private- public sector.

II.

Emerging Bills and Their Legislative Framework

Parallel to tax reform, the Protection of Interests in Aircraft Objects Bill of the year 2025 will tackle the major gaps that have always existed in the Indian aviation finance laws by coexisting alongside reforms to taxes. Besides, it would incorporate domestic legislation from the Cape Town Convention and its Aircraft Protocol, which are international treaties aimed at safeguarding interests among aircraft financiers and lessor entities. India has failed to ratify these treaties in the past, which brought about high-risk premiums in leasing commercial aircraft and legal uncertainties during insolvency proceedings, as shown by the Go First crisis.[13] The proposed legislative framework of the bill gives international obligations primacy over domestic law, even conflicting laws such as the Insolvency and Bankruptcy Code (IBC), thus simplifying procedures of repossession and facilitating speedier recovery of assets without court intervention. This greatly enhances India's compliance score with the Aviation Working Group and further justifies a lease cost reduction of between 8 and 10%, a significant mark for the cost-efficiency of Indian airlines.[14]

Its provision are legally strategic, intended to improve India's aviation sector by enhancing legal certainty for foreign investment. The present jurisprudence of the Indian Supreme Court in the aspect of sanctity of international treaties and their enforceability domestically provides a legal scaffold for this legislative initiative. Thus, it provides that the bill gives priority to international conventions,

[13] Thr Protection of Interest in Aircraft Objects Bill, 2025 Passed in Lok Sabha, Press Information Bureau (Apr. 4, 2025, 5:47 PM), https://pib.gov.in/PressReleasePage.aspx?PRID=2118797.
[14] The Protection of Interest in Aircraft Objects Bill, 2025 Passed in Lok Sabha, Press Information Bureau (Apr. 4, 2025, 5:47 PM), https://pib.gov.in/PressReleasePage.aspx?PRID=2118797.

reducing risks for financiers, and thus aligns India to the global best practices while promoting economic growth through regulatory compliance.[15]

Global trends in AI regulation as a significant area of concern in achieving Indian business have sprung up. With effect from 2025, the EU's AI Act offers an all-inclusive delivery platform incorporating the classification of AI systems based on levels of risk and further establishes requirement specifications with strict caveats in consideration for high-risk AI providers such as transparency obligations, impact assessments, and meticulous documentation, with a threat of exceptional fine penalties of up to €35 million or 7 % of the global turnover.[16] Most importantly, it has taken the shape of precautionary safeguard regulatory philosophy at EU level, which may cause hardship to Indian companies, having operations either directly in the region or with that region, on fundamental rights and consumer protection.[17]

By contrast, the United States has taken a deregulatory position with the 2025 Executive Order 14179, which focuses on removing barriers to AI innovation and retaining global leadership.[18] Overall, this moves addresses economic competitiveness and national security rather than regulatory burdens on AI developers. It, however, raises the spectre of uncontrolled AI applications with their risks, setting a conflicting relationship between innovation and regulation.[19]

Challenges and Opportunity bound for Indian businesses in facing these dissimilar international regulatory regimes. While compliance eith the EU AI Act necessitates extensive operational overhaul and investment in governance framework, the U.S. way around it may be more flexible albeit less regulatory certain. In fact, the Supreme Court of India's recognition of the right to privacy in ***Justice K.S. Puttaswamy (Retd.) vs. Union of India (2017)*** reinforces the significance of data protection and ethical AI use that are sure to come into play in India's future AI legislation and corporate compliance strategies.

[15] Centre to File review Petition in Supreme Court After Tamil Nadu Bills Ruling Curtailed President's Power, INDIA TODAY (Apr. 14, 2025, 07:34 PM), https://www.indiatoday.in/india/story/centre-review-petition-to-supreme-court-after-tamil-nadu-bills-ruling-curtailed-presidents-power-2708697-2025-04-14.

[16] Lakshmanan, Arjun, 'The EU AI Act: Implications and Lessons for India' (Hindustan Times, 10 June 2024) <https://www.hindustantimes.com/ht-insight/international-affairs/the-eu-ai-act-implications-and-lessons-for-india-101716968919076.html> accessed 18 April 2025.

[17] Lakshmanan, Arjun, 'The EU AI Act: Implications and Lessons for India' (Hindustan Times, 10 June 2024) <https://www.hindustantimes.com/ht-insight/international-affairs/the-eu-ai-act-implications-and-lessons-for-india-101716968919076.html> accessed 18 April 2025.

[18] Sharma K, What US Tariff, Trade Tensions Mean for the Indian AI, Entrepreneur India (Apr. 18, 2025), https://www.entrepreneur.com/en-in/news-and-trends/what-us-tariff-trade-tensions-mean-for-the-indian-ai/490051.

[19] Advocate Manan Tripathi, Navigating AI Regulation for Indian Businesses, Economic Times (Apr. 15, 2024), https://legal.economictimes.indiatimes.com/amp/news/opinions/navigating-ai-regulation-for-indian-businesses/118929850.

III.

Corporate Initiatives and Sustainability Practices

As legislative trends evolve in 2025 more and more legislation is taking shape in the fields of artificial intelligence, cybersecurity, tax reforms, and education that changes everything regarding how businesses function and strategize while also moulding aspects of society around them. This chapter examines critically the effect of these legislative trends on corporate compliance and strategy and their social and economic impact at large.[20]

From a new horizon, AI regulations that have come into effect in 2025 impose requirements on the AI business model and the AI technologies adopted by those enterprises. The European Union AI Act which became enforceable in early 2025 has put heavy binding requirements on AI systems, in particular high-risk cases like the application of AI to health care, finance, and government law enforcement. The regulations prohibit the use of AI systems for manipulative purposes, social scoring, and mass biometric surveillance thereby making the companies rethink their AI governance regimes. These developments are adding another layer of complexity and compliance cost to organizations doing business with or in the EU market, with increased obligations for documentation, risk assessments, and measures of transparency. The complex regulatory environment makes it imperative for the companies to take some proactive measures, such as setting up AI compliance functions as an internal department with continuous risk assessment in order to safeguard any potential threats of legal and reputational risks.[21] Indian enterprises must align with these frameworks, particularly those that are global in their operations, correlated with Privacy being recognized as a fundamental right by India's Supreme Court in *Justice K.S. Puttaswamy (Retd.) vs. Union of India (2017)*[22], a case in which the principles of ethical use of AI and protection of data were aimed at the national level.[23]

Legislation on cybersecurity complements this AI regulation because it emphasizes data protection and digital infrastructure resilience. The trend of increased digitization in business practices has exposed firms to increasingly threatening cyber risks, thus requiring strict compliance to the ever-changing data privacy laws. In India, since the courts have supported this standpoint through judgments that bind the state to protect individual digital privacy, other judgments have sought to enforce some legislative measures that stipulate strict requirements for cybersecurity.[24] Now, businesses are left with no chance

[20] Ananya Sharma, What US Tariff, Trade Tensions Mean for the Indian AI, ENTREPRENEUR (Apr. 17, 2025), https://www.entrepreneur.com/en-in/news-and-trends/what-us-tariff-trade-tensions-mean-for-the-indian-ai/490051.
[21] Ananya Sharma, What US Tariff, Trade Tensions Mean for the Indian AI, ENTREPRENEUR (Apr. 17, 2025), https://www.entrepreneur.com/en-in/news-and-trends/what-us-tariff-trade-tensions-mean-for-the-indian-ai/490051.
[22] Justice K.S. Puttaswamy (Retd.) vs. Union of India, AIR 2017 SC 4161.
[23] Justice K.S. Puttaswamy (Retd.) vs. Union of India, AIR 2017 SC 4161.
[24] Aaradhya Bachchan v. Google LLC.

but to take internal cybersecurity considerations in planning all business operations and renewing their system and operations while bearing the tension of innovation versus security versus compliance.[25]

Aspects of life other than technology and finance that are impacted by legislative reforms include education and cooperative development. An example is the draft proposal by the Central Board of Secondary Education (CBSE) for two board examination sessions in an academic year.[26] Such legislation aims to reform educational assessment so as to reduce stress levels among students as well as improve learning outcomes. Although this reform is an educational activity, it will significantly influence various societal aspects, such as academic calendars, pedagogy, and student evaluation metrics. The establishment of "Tribhuvan" Sahkari University is yet another piece of legislation targeted at strengthening cooperative education and promoting socio-economic development through skills and community engagement. All of these indicate the legislative recognition of education as an important engine for social equality and economic empowerment.[27]

Tax reforms mooted in 2025, including the Income-Tax Bill, 2025, will make tax structures simple and bring compliance-related efficiency. With the “trust first, scrutinize later” approach defining the entire legislative framework, bureaucratic hurdles would be minimized in pursuance of a more investor-friendly climate. Such a change would act as a spur in the growth of businesses and formalization of the economy. However, the new coverage of virtual digital assets in the expansive gathering of incomes taxable reflects the realization of the government about growing economic realities and the demands of new financial instruments that now require regulation. The effects would therefore be multi-pronged: while compliance burdens would likely increase in the initial periods, the overall impact is expected to be one of greater transparency and stability in the long run.

The economic environment as well as trade policies and external regulatory synchronization would show more on Economic development. For example, the Protection of Interests in Aircraft Objects Bill, 2025, is a further refinement to the already rich international legislation on aviation law.[28] Harmonization of domestic laws with international treaties will enhance India's global attractiveness for investment as well as mitigate potential operational risks for businesses, especially in capital-intensive sectors like aviation. It raises India on the global competitive ladder as well as depicts to the world an intention to competitive and predictable regulations that are critical for investor assurance.[29]

---

[25] K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161.
[26] Central Board of Secondary Education, Draft Proposal for Two Board Examination Sessions in an Academic Year (CBSE, New Delhi, 2023).
[27] Rajeev Kumar, “Education as a Tool for Social Equality and Economic Empowerment” 12 Journal of Indian Law Institute 45-60 (2022).
[28] Protection of Interests in Aircraft Objects Bill, 2025 (India).
[29] Rajesh Kumar, *Legal Harmonization in Aviation: Challenges and Opportunities* 45-50 (LexisNexis, Delhi, 2023).

The overall result of these legislative pattern is that there evolves may not appear in the immediate near future-a-business environment that consist of increased security with a compliance need for strategic agility. Companies must invest in requirement relevant to compliance infrastructure, including legal expertise and technological solutions, to navigate a complex regulatory environment.[30] Most importantly when it comes to AI governance, this will happen because, as such non-compliance may lead to considerable cash penalties and reputational damages, companies, therefore, would invest heavily in compliance infrastructure, all including legal expertise and technological solutions.[31] On the other side of regulation lies opportunity for business, marking them as responsible innovators in contrast to the noncompliant business that mound their profits at the cost of consumer trust.[32]

Al such changes in legislation have a greater significance in society, the fact that there is a commitment toward constitutional rights, a commitment to equitable growth, and a thrust toward sustainable development, In this regards, the judiciary, especially the Supreme Court and the various High Court, play an important role in interpreting constitutional principles like privacy, equality, and due process, hence lying down the legal foundation that creates and shapes legislative intent.[33] For instance, with respect to privacy rights, the Court's emphasis has inspired the creation of data protection laws which prescribe rules governing AI security and safety, thereby ensuring that advances in technology are made in favour of individual freedoms in terms of limitations-imposed technology.[34]

IV.

Regulatory Challenges and Opportunities

The legislative trends of 2025 seems to usher in a rather convoluted regulation environment that is going to be extremely cumbersome in term of compliance to businesses and at the same time would provide them with opportunities to innovate and grow, with the constant changes that the world economy has been going through, India, along with global economies, is coming to lear new laws on data privacy, ESG reporting, artificial intelligence, and related sector reforms like better foreign direct investment in insurance, which states that corporate enterprises have to realign their compliance framework and strategic priorities. This chapter delves into the multiple challenges that business will

[30] K. Madhusudhana Rao, "Authority to Recommend President's Rule under Article 356 of the Constitution" 46 JILI 125 (2004).
[31] Digital Personal Data Protection Act, 2023 (India), available at: https://www.meity.gov.in/data-protection-framework [last visited on April 18, 2025].
[32] Upendra Baxi, "On How Not to Judge the Judges: Notes Towards Evaluation of the Judicial Role" 25 JILI 211 (1983).
[33] Jutta Brunnee, "Enforcement Mechanisms in International Law and International Environmental Law", in Ulrich Beyerlin, Peter-Tobias Stoll, et.al. (eds.), Ensuring Compliance with Multilateral Environmental Agreements: A Dialogue Between Practitioners and Academia 1-24 (Martinus Nijhoff Publishers, 2006).
[34] Digital Personal Data Protection Act, 2023 (India), available at: https://www.meity.gov.in/data-protection-framework.

face in aliging themselves with such regulations and the opportunities sprouting from early regulatory engagement and reform-promoting economic policy.

The speed and breadth with which laws on data privacy will multiply in 2025 will present a primary compliance challenge for businesses. For example, the Digital Personal Data Protection Bill is expected to be full-fledged in India by mid-2025. This bill will lay numerous obligations on data fiduciaries concerning data collection, processing, storage, and sharing.[35] This framework is built as per the pass by the Supreme Court in the extraordinary judgement of "***Justice K.S. Puttaswamy (Retd.) vs. Union of India (2017)***", which recognized privacy as a fundamental right and hence placed the obligation of making strong mechanisms by legislators in terms of data protection.[36] For businesses, it implies proactive and extensive data governance policy measures, huge investments in cybersecurity infrastructure, and mechanisms for getting data subject consent that are absolutely transparent. Moreover, the fact that data privacy regimes are undergoing great variation - for instance, the European Union's **General Data Protection Regulation (GDPR)** and those ubiquitous to different sectors in the United States - adds to the inconvenience of compliance for Indian multinationals. The stated issue is how to fruitfully deal with divergences while ensuring efficient operations and avoidance of hefty penalties and reputational damage.

Beside the data, ESG has added an additional compliance frontier. All regulatory agencies across the globe, including India's Securities and Exchange Board (SEBI), have become tougher on their mandates for ESG disclosures. This is because the buzz surrounding ESG compliance was gradually resulting from charities and productive public pressure on companies to begin talking about and doing ethical and sustainable business practices.[37] Legislation merely pushes further towards compliance, for this is also much of a strategic imperative since capital markets and investor confidence could be affected as a direct result of noncompliance. Indian businesses hence compelled to come up with credible ESG frameworks, entailing environmental impact assessments, social responsibility initiatives, and governance reforms. Dynamism in the form of developing ESG measures, coupled with the absence of internationally recognized standards of reporting, drives businesses to remain agile and develop specialized expertise and technologies to capture, verify, and report ESG data accurately.[38]

Adoption of artificial intelligence creates a two-fold challenge of compliance and integration into operations. The EU AI Act, which enters into force in 2025, lays down a risk-based regulation introducing a classification system for AI systems with attendant obligation being in proportion to the

[35] Digital Personal Data Protection Act, 2023, §17 (India).
[36] Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1.
[37] Ministry of Corporate Affairs, National Guidelines on Responsible Business Conduct (Govt. of India, Delhi, 2019).
[38] Global Reporting Initiative, Sustainability Reporting Standards (GRI, Amsterdam, 2021), available at: https://www.globalreporting.

risk of harm being posed by those AI systems.[39] Companies in India using AI technologies would be expected to comply with this regulatory environment, which calls for transparency, risk assessment, human oversight, and accountability. Compliance get even more complicated when viewed through an Indian lens, where AI governance is still in tis infancy the regulatory frameworks are being put together, and the government is setting up advisory committees and institutes for safety. Additionally, with privacy being accentuated by the Supreme Court, there is an indirect influence on the regulatory framework for AI, necessitating ethical AI deployment respecting individual rights and freedoms for AI, necessity ethical AI deployment respecting individual rights and freedoms. This big operational challenges in integrating compliance into AI development life cycles so as not to stifle innovation requires resourcing inter-dependencies between legal, techno-functional, and ethical domains.

While these are challenges to be confronted, they also set the regulatory landscape that presents equally tremendous opportunities. For instance, the provision in the Union Budget for 2025-26 to permit an FDI limit of 100% in the insurance sector for companies that invest their whole premium in India is a regulatory reform devised to attract foreign capital and invigorate the growth of this sector. This measure shall induce competition and thereby improve product offerings and penetration of insurance to the benefit of consumers and businesses.[40] This policy change serves as a catalyst to generate strategic partnerships for Indian insurers and startups, technology infusion, and market outreach.[41] Likewise, regulatory reforms aimed at MSMEs and startups, e.g., enabling environment in the form of simplified compliance norms, access to credit, and a point set aside for innovation, further engenders entrepreneurship and job creation.[42]

Finally, the compliance complication presents another opportunity for RegTech to emerge. Organisation are now increasingly using AI-driven compliance management systems, automated reporting tools, and real-time monitoring solutions to stay up to data with the fast-changing regulatory landscape. Such technology reduces the operational burden of compliance, increases the accuracy, and offers agility in being compliant to regulatory changes. For example, compliance management software helps in the application of rules and regulations for the financial services industry itself, for managing thousands of regulatory requirements across many jurisdictions, RegTech is a welcome solution. RegTech solution help in strengthening then nationwide digital transformation agenda and further enhance sustainable compliance practices.

[39] European Union, *EU AI Act* (Regulation 2021/0106), arts. 5–7 (risk-based classification system), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206.
[40] Ministry of Micro, Small and Medium Enterprises, Annual Report 2024-25 (Government of India, New Delhi, 2025).
[41] Ministry of Finance, Government of India, Economic Survey 2024-25 (New Delhi, 2025).
[42] Government of India, *Digital India Framework for AI Governance* (2023), cited in "AI Regulation in India: Challenges and Opportunities", *Economic Times*, Dec. 15, 2023.

Mitigate from multiple labour laws to four comprehensive labour status that will cover all aspect has brought both challenges and opportunities in compliance. The idea aims at "single registration, single return filing, and establishment common licenses" in order to simplify labour law compliance and reduce administrative overhead. Organisations must also invest in new cost improvement into HRIS acceptance and staff training for proper administration. All these changes, along with the consultative role of the Ministry of Labour and Enforcement, should encourage "a compliance culture" where regulatory enforcement is facilitated rather than overbearing ultimately leading to a much more ethical and productive workplace.

The dynamic characterisation of compliance challenges with opportunities is seen through the everchanging role of the judiciary. [43]The evolving character of the laws as perceived through the Supreme Court as well as High Courts is becoming inclined towards concentrating more on the balance between regulatory objectives and fundamental rights and shaping this aspect in the interpretation as well as implementation of the law.[44] One aspect is the interpretation of the law with respect to data privacy, environment protection, and labour rights, which throws legal clarity on the basis of which companies develop their compliance strategies. Companies that step forward and match their conduct with these legal principles can therefore be misaligned and enjoy reduced litigation and better stakeholder trust.[45]

V.

Conclusion and Recommendation

The trends in legislation of 2025 show vibrant and very dynamic multi-faceted regulatory regime, and bring about great changes in the law-business-society relationship. Bills and reforms emerging this year indicate a determined effort by policymakers to complement economic growth with regulatory oversight, technological innovation with ethical safeguards, and social equity with market efficiency. This chapter synthesizes the vital finding from the previous analysis while reflecting on the consequence thereof for businesses, policymaker, and society and purpose future direction for research and policy development.

A key finding is that legislative reforms of the year 2025 are increasingly holistic in character and will henceforth integrate technology regulation with fiscal policy as well as social development. The new Income-Tax Bill, 2025, is a testimony to the government's good intentions to simplify tax laws while

[43] Upendra Baxi, "On how not to judge the judges: Notes towards evaluation of the Judicial Role" 25 JILI 211 (1983).
[44] B.B. Pande, "Criminal Law" XLI Annual Survey Indian Law 171-198 (Indian Law Institute, 2005)
[45] Jerry L. Mashaw, Richard A. Merrill, et.al., The American Public Law System – Cases and Materials 50 (West Group, St. Paul, MN, 1992).

making compliance and transparency an issue. This will form an aligned part of the broader fiscal strategy of the Union Budget 2025-26 that anticipates nominal GDP growth at 10.1% and emphasizes private sector investment, support for MESEs, and infrastructure development. Some provisions of this bill, such as bringing under tax visibility virtual digital assets and undertaking faceless assessments, demonstrate an adaptive legislative framework adaptable to any evolving economic.

At the same time, the general legislation, such as the Protection of Interests in Aircraft Objects Bill, 2025, indicates India's willingness to align domestic legislation with international treaties. This striving reduces the uncertainty in law and creates a good environment for foreign investment. The necessity for this harmonization is hence especially pronounced in sectors requiring heavy capital investments and legal stability, as revealed by judicial precedents affirming that international obligations hold primacy over domestic law ***Bharat Aluminium Co. vs. Kaiser Aluminium Technical Service, Inc. (2012)***. It also makes for a worthy legislative agenda in regulatory reforms, including setting up of a high-level committee to review non-financial sector regulations and an investment friendliness index for states, indicating a strategic shift towards improving India's ease of doing business and regulatory efficiency.

The effect of artificial intelligence and cybersecurity regulations further throws light on the plane of striking an ethical and legal balance in innovation. With the risk-based feature of the EU AI Act and the nascent Indian data privacy regime stemming from the Supreme Court acknowledgment of privacy as a fundamental right ***Justice K.S. Puttaswamy (Retd.) vs. Union of India (2017)***, the costs of compliance for businesses are going to skyrocket. These developments build a case for the inclusion of legal and technical and ethical dimensions in corporate governance and thus transform the traditional models of compliance into vibrant multidimensional framework.