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Editorial Note

It is with immense pleasure that we present Volume XIX, Issue I of the *UILS Law Journal* 2025, a compilation of diverse and engaging scholarship that reflects the dynamism of legal research and its dialogue with society. This edition brings together contributions that revisit foundational theories of justice, interrogate contemporary socio-political challenges, and critically evaluate evolving legal and technological landscapes in India and beyond.

The volume opens with a thoughtful exploration of justice in political philosophy, tracing the arc from John Rawls to Amartya Sen with particular resonance for the Indian constitutional framework (Prof. (Dr.) Rattan Singh and Pallavi Bhardwaj). The historical dimensions of partition politics find voice in an incisive study of the Punjab Hindus' resistance to the creation of Pakistan (Prof. (Dr.) Sheena Pall). The increasing prominence of artificial intelligence in law and policy is reflected in three distinct yet interconnected contributions: the uncertainty in copyright and authorship (Prof. (Dr.) Pardeep Mittal and Deepti Gupta), the challenges to privacy (Dr. Nancy Sharma and Mr. Sanjeev Kumar Sharma), and the comparative transnational perspectives on intellectual property regimes (Sahibpreet Singh and Dr. Manjit Singh).

The enactment of new criminal law reforms has prompted detailed scrutiny, as in the comparative analysis of the *Bharatiya Nagarik Suraksha Sanhita, 2023* and the *Code of Criminal Procedure* (Dr. Anju Choudhary and Ramanpreet Kaur). Equally pressing are the socio-legal dimensions of issues such as modern slavery (Dr. Shridul Gupta), tribal chieftainship systems in North-East India (Dr. Samiksha Godara and Kiloigombe Joseph), and the evolving debates on Muslim women's

rights under the *2019 Marriage Act* (Shweta Aggarwal and Dr. Parmod Malik).

Environmental and resource concerns are foregrounded in studies on traditional water management systems (Dr. Sunny Sharma), the role of extended producer responsibility in e-waste regulation (Ashish Shukla), and the global challenge of sustainable development goals as a roadmap for recovery (Dr. Kulpreet Kaur Bhullar). Other contributions probe critical frontiers of pedagogy and governance through the PM SHRI initiative (Antaryami Hissaria and Gautam), assess the contours of antibody patenting in India (Akash Chatterjee), and engage with the complexities of investor-state arbitration reform (G. Mahith Vidyasagar).

Further, the issue underscores the importance of bridging structural gaps in legal access, literacy, and equality. Essays on digital justice and online dispute resolution in rural India (Ms. Shriya Badgaiyan), legal literacy as a foundation for citizenship (Ms. Preksha and Dr. Kanwalpreet Kaur), and the persistent barriers to gender equality in Sub-Saharan Africa (Samuel Ugbo and Egondu Grace Ikeatu) invite readers to rethink law's transformative potential across contexts.

Taken together, the contributions in this volume represent the breadth and depth of contemporary legal scholarship—moving seamlessly between philosophical inquiry, doctrinal critique, historical analysis, and comparative perspectives. They are united by a common commitment to interrogating the law as a living instrument of justice, constantly challenged and reshaped by society, technology, and global imperatives.

Acknowledgements:

I extend my sincere gratitude to all contributors for enriching this edition with their critical perspectives and thought-provoking analyses. I

remain indebted to our esteemed Advisory Board members - Hon'ble Justice A.K. Sikri, International Judge at the Singapore International Commercial Court and Former Judge, Supreme Court of India; Prof. (Dr.) Balram K. Gupta, Professor Emeritus and Former Director of the National Judicial Academy; Mr. Sudhish Pai, Senior Advocate and Prof. Dr. Dilip Ukey, Vice Chancellor of Maharashtra National Law University, Mumbai, for their continuing guidance and support.

I am especially thankful to our Patron, Prof. Renu Vig, Vice Chancellor of Panjab University, whose leadership has been vital to the sustained growth of this journal. The dedication of the Co-Editors, Prof. Rattan Singh and Prof. Chanchal Narang, has shaped this edition with clarity and purpose. I also acknowledge with appreciation the tireless efforts of the Editorial Board: Prof. Navneet Arora, Prof. Virender Negi, Prof. Anupam Bahri, and Dr. Sunny Sharma, whose commitment has ensured the smooth publication of this issue.

A word of gratitude is also due to the faculty members who have supported this process with diligence: Dr. Sugandha Passi, who led the editorial work for this edition, and Dr. Sital Sharma along with Dr. Abha, Dr. Kritika Sheoran, Ms. Tania Singh, and Ms. Yuvina Goyal, for their meticulous contributions and coordination. Their collective commitment has brought this issue to fruition.

With these acknowledgments, I commend Volume XIX, Issue I (2025) to our readers. It is my hope that this edition will spark dialogue, inspire further research, and contribute meaningfully to the ongoing pursuit of justice, equity, and knowledge within legal academia.

Prof. Dr. Shruti Bedi

Director, UILS

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Revisiting the Idea of Justice from John Rawls to Amartya Sen with Special Reference to the Indian Constitution

Pallavi Bhardawaj [*] ***& Prof (Dr.) Rattan Singh*** [**]

Abstract

'Justice and Law' are inherently interconnected like 'water and the ocean' are inseparable, yet distinct in their form and function. The relationship between justice and the legal system forms the cornerstone of governance and administration across all democratic states, including India. At the heart of any legal framework lies the pursuit of justice, a concept that has evolved through centuries of philosophical inquiry. From the classical deliberations of Plato to the contemporary theories of John Rawls and Amartya Sen, the idea of justice has been explored as both a moral ideal and a practical necessity.

Justice serves a dual role: it is the broader objective for which laws are formulated, and the ultimate goal that the legal system strives to achieve. Within the Indian Criminal Justice System, judges often perceive themselves as instruments in the realization of this ideal. However, justice is not a monolithic concept—it is abstract, nuanced, and often interpreted differently across individuals and societies. It manifests in various forms, shaped by social, political, and cultural contexts.

This research work adopts a qualitative doctrinal methodology, with particular reference to Rawls' Theory of Justice and Sen's Idea of Justice. The study aims to explore the contemporary relevance and application of these

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theories within the Indian democratic framework, with a focus on how justice is conceptualized and pursued in practice today. In doing so, it seeks to bridge the gap between theoretical ideals and ground realities, offering critical insights into the moral foundations of legal structures delivering justice. Ultimately, this exploration underscores that the measure of a just society lies not merely in the letter of its laws, but in the lived experiences of its people.

Keywords:*Justice, Equity, Fairness, Equality, Law.*

1. Introduction and Jurisprudential Note

In the body of Law, Justice is the breath without which, Body is of no use. The Political systems around the world could be seen as the instrument of delivering justice, while running the administration. Hence, it becomes important to first understand the concept of justice before it could be seen to have been done or served. *Justice* (an English word) originates from the Latin words '*jungere*' (to bind, to tie together) and *'jus'*(a bond or tie). In present times, it is one of the most celebrated words especially in the democratic setup such as India and USA.

The idea of Justice has come a long way; it could be termed as subjective value which depends upon the perspective of the individual. Recently, Indian Government introduced the new criminal laws referring to the word *'Nyaya'* which is a close associate of word justice. Secondly, the six feet tall *'New Lady Justice'* statue was unveiled by the former Chief Justice of India, *D.Y. Chandrachud* in the Supreme Court Library premises. This marks a significant departure from the colonial symbolism remanent in the Indian Justice System whereby the new statue cladded in Saree, has removed the blindfold and is holding the Indian Constitution in one hand and scales in the other.

The Change in the present times in India, clearly arouses the curiosity amongst the Indian Citizens in particular and world at large. It could also be seen as a classic example of our evolving constitution with a touch of *'Transformative*

Constitutionalism'. It could also refer to the jurisprudential evolution of the Indian judicial system towards the 'judge-made law' as followed in United States of America as a tool of legislation. The traditional attire depicts the Indianness and invokes a feeling of 'fraternity' amongst the Citizens. The continuation of symbol of 'Lady' justice with certain amendments, being a symbol of Justice in itself, is clearly in consonance to the universal idea of justice. It boldly reinforces the need of adaptability to change with the growing times towards the idea of justice as also talked about by Amartya Sen and John Rawls. The updated version of *'Nyaya Devi'* reflects the contemporary approach to the Indian legal and judicial system, which resonates with the cultural values represented in the new Indian criminal laws as well. These recent developments could be seen as outcome of the changing dynamics of 'idea of justice', with the growing times as to be discussed in this study.

In ancient times, the meaning and interpretation of 'justice' was different, usually depending upon the cognitive faculties of mind and wisdom acquired. With the advent of groups/clans, community, societies at village level were formed adhering to the social nature of man. In order to have a common collective voice for attaining their political and civil aspirations, political system of governance came into picture. To fulfil these goals, a head, historically, on the basis of might and power, eventually on the basis of lineage of inheritance was chosen.

Institutions emerged up as tool to govern and administer the people living in a particular territorial jurisdiction (what we call as 'States' in the International Law). For Instance, in the contemporary times various institutions came into existence such as '*Monarchy*[1]', '*Dictatorship*[2]', '*Republic*[3] and '*Democracy*[4]'.

[1] Britannica. (2025). Monarchy. 'Monarchy, political system based upon the undivided sovereignty or rule of a single person. The term applies to states in which supreme authority is vested in the monarch, an individual ruler who functions as the head of state and who achieves his or her position through heredity. Most monarchies allow only male succession, usually

Presently, *'Democracy'* is commonly prevalent in world and as per *World Population Review*[5] more than 2000 classifications exist of it.

Historically speaking, the king or Queen's justice for his/her subjects was generally idealized as that of a parent or coming from the Divine Source. This was the beginning of justice, originating from Divine source or Higher power, it could be viewed as an abstract concept but widely acknowledged till date as documented in the religious sacred texts and books.

In these primitive times, Justice was believed to be the doing of some divine powers or God but how it was implemented in the society, was the prerogative of the person in authority, purely based upon the intellect of the doer. Hence, subjective to the wisdom of the person in power. ***Kelson***was critical of this

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from father to son.', *available at:*https://www.britannica.com/topic/monarchy(Last visited on 12th June, 2025).

[2] Britannica. (2025). Dictatorship. 'Dictatorship, form of government in which one person or a small group possesses absolute power without effective constitutional limitations. The term dictatorship comes from the Latin title dictator, which in the Roman Republic designated a temporary magistrate who was granted extraordinary powers in order to deal with state crises. Modern dictators, however, resemble ancient tyrants rather than ancient dictators. Ancient philosophers' descriptions of the tyrannies of Greece and Sicily go far toward characterizing modern dictatorships. Dictators usually resort to force or fraud to gain despotic political power, which they maintain through the use of intimidation, terror, and the suppression of basic civil liberties. They may also employ techniques of mass propaganda in order to sustain their public support.', *available at* https://www.britannica.com/topic/dictatorship (Last visited on 15thJune, 2025).

[3] Britannica. (2025). Republic. 'Republic, form of government in which a state is ruled by representatives of the citizen body. Modern republics are founded on the idea that sovereignty rests with the people, though who is included and excluded from the category of the people has varied across history. Because citizens do not govern the state themselves but through representatives, republics may be distinguished from direct democracy, though modern representative democracies are by and large republics. The term republic may also be applied to any form of government in which the head of state is not a hereditary monarch.', *available at:* https://www.britannica.com/topic/republic-government (Last visited on 20th June, 2025).

[4] Britannica. (2025). Democracy. 'Democracy, literally, rule by the people. The term is derived from the Greek dēmokratia, which was coined from dēmos ("people") and kratos ("rule") in the middle of the 5th century BCE to denote the political systems then existing in some Greek city-states, notably Athens.', *available at:* https://www.britannica.com/topic/democracy (Last visited on 21st June, 2025).

[5] World Population Review, *Democracy Countries 2025* (2025, *available at*: https://worldpopulationreview.com/country-rankings/democracy-countries (Last visited on 22nd June, 2025).

school of thought as '*an illusion*[6]'. Similarly, different personalities came up with unique interpretation of justice which enables one, to understand the journey of justice. Jurisprudentially seen, these ideas propounded by the scholars, jurists, eminent personalities over the period of time as discussed now evolve coming in contact with the different political systems around the globe. Thereby, manifesting a varied form of theories, principles, rules, regulations, legislations and eventually systems of governance such as:

a. ***Plato*** idea of justice was '*idealistic'* quite similar to the idea of God as in theology which he propounded in his book '*The Republic*[7]'. According to him, Justice forms one of the four virtues '*Wisdom, Temperance and Courage*[8]' which are to be observed in order to maintain '*harmony*[9]' in the '*division of work*' and society at large.

b. ***Hegel***adopting the views from Plato, terms Justice in '*Universal Spirit*[10]' as equivalent to '*Eternal Good'*. However, Hegal does not dwells deep into the concept of Justice but thinks of it as a balancing order to be maintained by the authority.

c. ***Thomas Hobbes*** in his political philosophy begins by analysing the '*Man's Nature*' which due to fear of security and concern for his future endeavors his powers to the 'State'. Hence, Justice to him is '*working according to Law'*. This conception could be seen as purely legal in absence of '*social and moral elements*[11]' entirely contrary to the Plato's Philosophy.

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[6] Hans Kelsen, *What Is Justice: Justice, Law, and Politics in the Mirror of Science* (University of California Press, 1st ed., 1957), *available at*: https://doi.org/10.2307/jj.13083426 (Last visited 20th June, 2025).
[7] Plato, *The Republic*, Translated by Desomond Lee, (2007).
[8] Ashok K. Upadhyay, *John Rawls Concept of Justice* 17 (1999).
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*

d. ***John Locke***also known as **'***the father of Liberalism*[12]*'* commences by analysing the 'nature of man' like Hobbes but it differs as according to him Man is '*Rational and co-operative*[13]*'* and seeks double security in the form of contract firstly, between '*the individuals and society'* and second, with '*the society and the State*[14]*'*. Therefore, Justice is a tool of correct distribution of resources.

e. ***Bentham***introduced *the principle of utility*[15], a consequentialist ethical theory that evaluates an individual's actions based on their consequences. He believed that good actions would result in good consequences, and that pleasure and pain quality should be the most important consideration. Utilitarianism differs from egoism, which endorses individual pleasure, as it focuses on pursuing pleasure for as many sentient beings as possible. Bentham created the utilitarian calculus to calculate pleasure or pain, assessing individual actions based on intensity, duration, certainty, propinquity, fecundity, purity, and extent. He rejected the concept of group interest and proposed that all persons are equal when calculating pleasure attached to an action. The Bentham principle has been criticized in a number of ways. The idea put forward by Jeremy Bentham is known as Act-utilitarianism, or classical utilitarianism.

f. ***Rawls'*** approach differs from *classical utilitarianism*, focusing on individual relative positions rather than aggregating utilities. Popular

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[12]The Life and Legacy of John Locke – The Father of Liberalism, *available at:* https://anthropologyreview.org/anthropology-explainers/the-father-of-liberalism-john-locke/ (Last visited on 25thJune, 2025).

[13] Ashok K. Upadhyay, *John Rawls Concept of Justice* 22 (1999).

[14]*Ibid.*

[15]Britannica. (2025). Utilitarianism. 'Utilitarianism, in normative ethics, a tradition stemming from the late 18th- and 19th-century English philosophers and economists Jeremy Bentham and John Stuart Mill according to which an action (or type of action) is right if it tends to promote happiness or pleasure and wrong if it tends to produce unhappiness or pain—not just for the performer of the action but also for everyone else affected by it.', *available at:*https://www.britannica.com/topic/utilitarianism-philosophy (Last visited on 26thJune, 2025).

social welfare weights depend on an individual's rank-order, similar to rank-dependent utility in choice under uncertainty theory. This approach is attractive due to its analogy but is further challenged and elaborated by Amartya Sen's Justice.

g. ***Amartya Sen*** in his book[16], discusses his own idealization of justice which is based on critically analysis of the previous theories being laid down by the utilitarian theory of *Bentham, John Rawls's* 'just social order'. Sen's main argument is that justice shouldn't be confined to merely material or economic distribution. Conventional ideas frequently overlook the tangible experiences and abilities of individuals in favor of equitable resource distribution or abstract concepts. Sen presents the idea of *'realization-focused comparisons[17]'* in an effort to refute this constrained viewpoint. This method takes into account the real accomplishments and capacities of individuals within a community, accounting for elements like social well-being, healthcare, political freedom, and education. Sen challenges us by extending our conception of justice to take into account all the facets that have an impact on people's lives.

After going through the jurisprudential insights of justice, this study brings the emphasis over John Rawls and Amartya Sen's contributions to the field of Justice, these two works are profound, intellectually refreshing and gives the reader a new perspective over 'Justice'. The idea and concept given in these two theories is thought provoking for every person, who is interested in the looking for the true meaning of Justice in the contemporary times. Rawls' theory of justice emphasizes distributive justice, fairness, and equity in the social contract. Amartya Sen's Idea of Justice emphasizes Niti (organizational propriety) and Nyaya (inclusive realized justice). On close observation one

[16] Amartya Sen, *The Idea of Justice* Belknap Press, (2011).
[17]Amartya Sen the Idea of Justice*, available at:* https://legalvidhiya.com/amartya-sens-the-idea-of-justice/ (Last visited on 26thJune, 2025).

can witness the essence of both the theories in the Indian Justice System, imbibed beautifully often highlighted by way of judicial precedents. At times, Sen critiques Rawls' theory, arguing for a move beyond perfect justice to accommodate plural views of justice which is also a modern-day dilemma for democracies. As Indian legal system is reforming itself by way of inculcation of new criminal offences such as organised crimes, Mob lynching, snatching, hit and run cases etc., in the Bharatiya Nyaya Sanhita, 2023. This is to address the changing dynamics of justice and also the means to serve it, by way of having updated legislations.

With the dawn of Industrial Revolution came the wave of Liberalism, individual rights being given more weightage due to the *'Renaissance and other reformatory Movements'* across the globe which glorified Human reason. Individual being considered as the focal point, his/her rights and Liberty were thought of prime importance, marking an onset of new era based on *'Individualism and Liberalism'*. However, there's difference between these two phenomena, the former one is on extreme side and the later based on the middle way.

Although, Justice is like a vast ocean yet different minds interpret it differently so as to create a pattern of waves over the surface for certain period of time. This study by undergoing the above-mentioned jurists tries to understand the idea of justice from different perspectives as laid down by Scholars, jurists etc., at different point of times. For the ease and clarity in the research focus is laid upon the Rawls and Sen's theories of Justice, correlating them to the present times, in a '*Welfare State*[18]' model in democratic set ups such as India.

[18] Britannica. (2025). Welfare State. 'Welfare state, concept of government in which the state or a well-established network of social institutions plays a key role in the protection and promotion of the economic and social well-being of citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization. A fundamental feature of the welfare state is social insurance, a provision common to most advanced industrialized

2. John Rawls's Theory of Justice

Rawls in his book[19] has propounded in detail the topic 'Justice', which for him, is first virtue of social institutions apart from truth, both being '*uncompromising*'. Jurisprudentially speaking, Rawls has commenced by doing elaborate analysis of principle of '*utilitarianism',* taking a hypothetical recourse to the '*Contract Theory*', with his unique touch of '*Veil of Ignorance'* that leads to the coming together of individuals giving up their mutual self-interest for the sake of cooperation in just social order. In India, the phrase 'WE, THE PEOPLE OF INDIA', marks the allegiance of the Indian Citizens to the State which is done by the act of adopting and giving to ourselves our constitution. This is the classic example of how, Political system of governance puts the administration onto operation that is by way of Constitution means. Justice is the end towards which every democratic setup is aiming to reach by way of moral and legal means.

In simple terms, Justice to Rawls is '*Fairness'* in order to lay down comprehensive theory, he begins the foundation of the theory by taking certain presumptions like of two basic principles in a society that is made up of:

a. *'Equality'* and

countries (e.g., National Insurance in the United Kingdom and Social Security in the United States). Such insurance is usually financed by compulsory contributions and is intended to provide benefits to persons and families during periods of greatest need. It is widely recognized, however, that in practice the cash benefits fall considerably short of the levels intended by the designers of the plans. The welfare state also usually includes public provision of basic education, health services, and housing (in some cases at low cost or without charge). In these respects, the welfare state is considerably more extensive in western European countries than in the United States, featuring in many cases comprehensive health coverage and provision of state-subsidized tertiary education. Antipoverty programs and the system of personal taxation may also be regarded as aspects of the welfare state. Personal taxation falls into this category insofar as its progressivity is used to achieve greater justice in income distribution (rather than merely to raise revenue) and also insofar as it used to finance social insurance payments and other benefits not completely financed by compulsory contributions. In socialist countries the welfare state also covers employment and administration of consumer prices, *available at*: https://www.britannica.com/money/welfare-state (Last visited on 28thJune, 2025).

[19] John Rawls, *A theory of Justice* (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2005).

b. '*Of equal distribution of unequal distribution'* which forms the *'Basic Structure of Society'* and leads to existence of a *'just social order'*.

As per Rawls, Individuals have certain '*Natural Duties'*[20] such as '*Duty to help other when in need provided it is not excessive, duty not to harm others, duty not to inflict unnecessary sufferings, duty of mutual respect*[21]*'*. These Natural duties are followed by principles of political obligation for the individuals in the form of Individual Conduct to obey '*those laws promulgated by the social principles of justice*[22]*'*. Coming to the Indian Constitution, one can witness the culmination of Rawls's ideas in the various provisions of the Constitution such as *Article 39,* assimilating the principles of *'economic and social justice'* under the Part IV stating the Directive Principles of State Policy. This shows the commitment to the arena of justice by the framers of the Indian Constitution; similar instance could be seen in terms of fundamental duties under Part IVA.

Talking about '*Injustice*', Rawls states that if a situation arises wherein institutions are just but not functioning then, there are two tools to deal, *'Civil Disobedience'* and '*Conscientious Refusal'*. First one, is a kind of '*Political Act'*, applicable in Democratic Society and can be termed as a '*Public Act'* too where there is '*clear injustice in society and failure of a Legal Procedure'*. Secondly, 'Conscientious Refusal' is correlated to Private Morality, or a situation wherein grouping of the individuals for civil disobedience is not possible. Both of these aspects could also be observed emerging in the Indian Democracy times and again such as the recent

Rawls approaches his work from the perspective of the social contract. That is to say, he thinks that the rules that govern our society should be ones that we would have all agreed upon in a broad, public conference that took place

[20] *Ibid.*
[21] *Ibid*.
[22] Ashok K. Upadhyay, *John Rawls Concept of Justice* 127 (1999).

before any of our experiences in life, which is illusory in this practical world. Rawls uses an intriguing philosophical trick to get around this, beginning with us (society) in the original setting, a meeting where we, as individuals talk about the norms that should govern society. He blinds us all with a veil of ignorance so that we cannot perceive the reality of our future circumstances. We cannot tell whether we will be powerful or weak, intelligent or dull, wealthy or poor from birth behind this curtain. We have to create the social norms in this setting. His idea is unique in understanding the intricacies of mankind and its complex relationship with justice, which he tries to present through a theory for the sake of enhanced knowledge over this subject and mandates the reader to imagine the ideal equilibrium state.

In formulating his *'theory of justice*[23]*'*, **John Rawls** stated two fundamental principles that underpin the idea of justice. The concepts of "original position" and the "veil of ignorance" played significant roles in Rawls' views. Imagining a group of people who are unaware of their age, sex, color, religion, or social class—that is, their money, income, IQ, abilities, etc.—seems to be the greatest approach taken by Rawls to put these concepts into practice. This group of people would agree to the following rules for obtaining justice.

a. The first principle states that every person has a right to the fundamental liberties and rights required for human survival. Furthermore, equal access to these privileges must be granted to the public. Some examples of fundamental rights are the freedom of conscience and thought, the freedoms necessary to protect the law, the right to health and sanitary conditions, and other rights usually seen as essential. Fundamental rights cannot be violated for any reason, even if doing so would monetarily benefit a greater number of individuals.

[23] John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971).

Unfortunately, economic prosperity would also mean suffering for those who don't fit into the larger group.

b. The 'difference principle' refers to the first part of the second principle. Stated otherwise, money and income should be dispersed so that the most disadvantaged people gain from it more than they would from any other sort of distribution that adheres to principle one, including equal distribution, even in situations when it is not distributed evenly. The second part of the second principle highlights the need for society to provide each and every citizen with the basic tools needed to compete. comparable to educational and medical institutions. Since "fairness" is now a political notion that unites practically all cultures, Rawls' theory of justice is sometimes viewed as "an unrealistic idea" of a just social order.

One can draw inference from Rawls's interpretation of justice align closely with the values enshrined in the Indian Constitution. India's provisions for fundamental rights, affirmative action, and democratic participation reflect Rawlsian ideals. However, in practice, persistent issues like caste-based discrimination, economic inequality, and unequal access to education and healthcare hinder the realization of true fairness. While India's democratic framework aspires to Rawls's vision of justice, there remains a significant gap between constitutional ideals and social realities. Bridging this gap requires a stronger commitment to equity, transparency, and institutional reforms that ensure justice is not only formal but also substantive and inclusive.

3. Amartya Sen's Idea of Justice

Amartya Sen in his famous book, discusses his own idealization of justice which is based on the critical analysis of the previous theories being laid down by the utilitarian theory of Bentham, John Rawls's 'just social order'. Sen argues that ***'Niti'*** and ***'Nyaya'***are two different perspectives on justice. Niti, a

realization-focused approach, emphasizes the prevention of manifest injustice rather than seeking a perfectly just society. He cites the unsuccessful agitation against slavery in the 18th and 19th centuries as an example. Nyaya, on the other hand, emphasizes the need to examine social realizations generated through institutions, incorporating divergent points of view. Sen proposes principles for modern justice that avoid 'parochialism[24]' and address global injustice. He remarks wisely that ***"The only way to have a just society is to work constantly towards achieving it.[25]"*** Sen propounds a *'Capabilities Approach'* providing detailed understanding which shifts the emphasis from ends (what people can do and be with those resources and commodities) to means (the resources individuals have and the public goods they can access). This change in emphasis is warranted as goods and resources by themselves do not guarantee that people would be able to transform them into actual doings and beings. Depending on their conditions, two people with comparable sets of commodities and resources may nevertheless be able to achieve radically different purposes. This approach is radically different from Rawls' theory of justice, as moral attribute of an individual with their varied reasoning to value is seen in assessing the justice. Being a welfare economist, Sen with an 'ethical analysis' as in branch of 'Welfare Economics' brings out the limelight on '*the quality of Life that individuals are actually able to achieve[26]'*. The 'quality of life' is understood through the concepts of '*Functioning'*, it is described as a state of being and attaining basic amenities and '*Capability'* as freedom of choice exercised by the person between different functioning alternatives of the kind of life one wishes to Live.

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[24] "The quality of showing interest only in a narrow range of matters, especially those that directly affect yourself, your town, or your country", *available at*: https://dictionary.cambridge.org/dictionary/english/parochialism (Last visited on 27thJuly, 2025).

[25] *Supra* note 22.

[26] The Capability Approach, *available at:* https://plato.stanford.edu/entries/capability-approach/ (Last visited on 27thJuly, 2025).

Sen's *Capabilities Approach* was further elaborated by ***Martha Nussbaum,*** she tried to give an organized and simplified '*Partial theory of Justice',* and made the case for the political ideas that ought to guide a constitution in an effort to create a partial philosophy of justice. Nussbaum thus approaches the capabilities approach from a moral-legal-political philosophical standpoint, specifically arguing for political values that a government ought to ensure for every one of its citizens via the constitution. Nussbaum creates and defends a comprehensive yet general list of '*central human capabilities'* that ought to be included in any constitution in order to accomplish this goal. Her work on the capability approach is therefore universalistic because she thinks that all governments ought to support these capacities[27]. Second, Nussbaum offers a list of ten essential human qualities while concentrating on the creation of a fair constitution. Life, health, integrity, senses, imagination, and thought, emotions, practical reason, affiliation, other species, play, and control over one's surroundings are the first ten. This list is included in Nussbaum's list. Furthermore, Nussbaum contends that Sen himself must support such a list if Sen's capabilities approach is to have any real impact on justice. Sen, though, has consistently declined to support a single, clearly defined set of skills. Amartya Sen argues that traditional political philosophy, which focuses on identifying just principles for a just society, fails to address the issue of identifying and reducing injustices in the present. He suggests that a more effective approach should focus on addressing injustices in the present.

Sen argues that the dominant approach, which he refers to as "*transcendental institutionalism*," suffers from two basic problems: duplication and practicality. The first is due to how difficult—possibly even impossible—it is to agree upon a single set of principles that will allow us to select just institutions through objective analysis.

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[27]An Introduction to the capability approach, *available at*: https://commonweb.unifr.ch/artsdean/pub/gestens/f/as/files/4760/24995_105422.pdf (Last visited on 28th July, 2025).

As per Rawls' theory of justice, for instance, his two lexically ordered principles of justice are those that would be universally adopted through an unbiased decision-making process through the hypothetical original position using the "*veil of ignorance*" mechanism. These ideas are subsequently used as a basis by the *"legislative stage"* to choose the actual institutions. However, it is clear that much depends on the assumption that Rawls's two principles of justice are those that do, in fact, follow from the first perspective. Sen is unsure about this as well. Sen actually says that the impartiality test can be passed by a broad variety of notions. He explains his concept by way of a story about three children who were fighting for the same flute in order to illustrate this idea. Three kids debate about who should get the flute: the best player because they are the richest; the poorest since they made the flute on their own without help from the other kids; and the third because they made it themselves. The concepts of utility, economic fairness, and the right to partake in the fruits of one's own labor serve as the foundation for the three points of debate. Each can be backed up by objective, convincing arguments. Returning to Rawls, it is also possible to make compelling cases for resolving distributional disputes in situations that resemble the original position by applying *Harsanyi's utilitarian principle* (Harsanyi's utilitarian theorem asserts that social welfare is the sum of individuals' utility functions if society maximizes expected welfare, individuals maximize expected utility, and society is indifferent to probability distributions[28]) as opposed to Rawls' maximin principle.

Sen argues that transcendental institutionalism, the dominant approach to societal justice, is challenged by two main problems, the first problem is the difficulty in selecting just institutions through impartial reasoning. Rawls' theory of justice, for example, has two principles that would be unanimously

[28]Harsanyi's Utilitarian Theorem: A Simpler Proof and Some Ethical Connotations, *available at:* https://web.stanford.edu/~hammond/HarsanyiFest.pdf (Last visited on 28th July, 2025).

selected through an impartial decision procedure. Sen argues that there are many principles that can pass the test of impartiality, such as utility, economic equity, and entitlement to the fruits of one's unaided efforts. However, this indeterminacy has profound implications for Rawls' theory of justice, as it would be hard to use if there is no unique emergence of a set of principles that identify the institutions needed for the basic structure of society. The second problem is the redundancy problem, which states that identifying fully just social arrangements is neither necessary nor sufficient for reasoned choice of just policies, strategies, or institutions. Sen advocates for a *'realization-focused comparative approach'* that considers the merits of different social arrangements and their relative merits.

Hence, Sen's framework aligns well with the country's pluralism, diversity, and constitutional commitment to social justice. His focus on capabilities *'what people are actually able to do and be'* resonates with India's challenges in areas like education, health, and gender equality. Sen's emphasis on public debate, democratic participation, and informed citizenry also reinforces the role of democracy in addressing injustice. However, practical barriers such as poverty, illiteracy, and social hierarchies often limit the effective exercise of these capabilities. Thus, Sen's theory provides a grounded and flexible model for improving justice in India by focusing on enhancing people's real freedoms and expanding their opportunities through democratic means.

4. Conclusion and Observations

Defining Justice is a noble task, which have been discussed and deliberated over the ages by the renowned political thinkers, jurists and remained as the core of entire criminal justice system, being students of Law, here from a neutral perspective, attempt has been made to understand 'justice' through two broad classifications:

4.1. Idealistic: Justice is an abstract idea as it requires a certain degree of social harmony in order to be achieved or even aspired for. For instance, a person living in society affected by the drug peddlers or criminals, in the absence of law and order would have to face greater challenges even to make his voice been heard or to report the offence caused to him to the appropriate authorities for that matter such as in remote areas of villages etc., where justice seems to be the job of the sarpanch or village community. This is termed as Idealistic because justice here is accessible and done as per the circumstances. What is 'ideal' for the entire society is to accepted by the person seeking the justice, his/her wishes are not considered. 'Idealistic Justice' is usually met with the mindset to set an example for the others rather than satisfying the mind and soul of the victim.

4.2. Individualistic: Just as everyone has a different idea of God or the Universal Spirit, so too does everyone have a different idea of justice. For example, in a criminal case of murder, justice to the victim's family would be the conviction of the Accused, regardless of how long the court proceedings take. Financial compensation would undoubtedly play a significant role depending on the victim's family's socioeconomic situation, but in this case, there is immense mental satisfaction in seeing the Accused behind bars. However, this situation differs for different individuals, as a victim suffering acute poverty would be bound to compromise or settle out of the court in order to minimize the already incurred damage or sufferings and to move on from damage by the monetary compensation awarded in terms of fine or penalty to the accused.

'Individualistic Justice' is the subjective standpoint of the victim, how he/she wants redressal from the existing mechanism of a state, by making use of the available resources and yet putting in efforts for a better future by way of individual struggle in his journey to justice. This concept could be treated just like 'equity' which is often cited as one aspect of justice and a part of phrase

'equity, just and conscience' commonly used at the end of the legal documents in litigation. This leave the door open for the judge to meet the ends of justice in a broadest manner as per the requirements of the case, generally used in the instances where the existing laws are unable to address the grievance of the victim due to inadequacy of the provisions in the legislations or statues.

It can be observed that Justice is a phenomenon, ever changing like time. It is organic and living concept which in a society is determinant of various factors and consequently, related to the prevalent political scenario in the state. Judiciary, being an organ of political system solely responsible for implementation of Laws and Justice as their prime task. Hence, Judges, Lawyers and every member of at least Legal Fraternity in every institution should also be made aware about the concept of '*Social Justice*[29]*'* as demarked

[29] Britannica. (2025). Social Justice. 'Social justice, in contemporary politics, social science, and political philosophy, the fair treatment and equitable status of all individuals and social groups within a state or society. The term also is used to refer to social, political, and economic institutions, laws, or policies that collectively afford such fairness and equity and is commonly applied to movements that seek fairness, equity, inclusion, self-determination, or other goals for currently or historically oppressed, exploited, or marginalized populations. In theoretical terms, social justice is often understood to be equivalent to justice itself, however that concept is defined. Many somewhat narrower interpretations conceive of social justice as being equivalent to or partly constitutive of distributive justice—that is, the fair and equitable distribution of social, political, and economic benefits and burdens. According to some interpretations, social justice also encompasses, among other conditions, the equal opportunity to contribute to and to benefit from the common good, including by holding public office (such readings are sometimes referred to as "contributive justice"). Other interpretations promote the stronger goal of equal participation by all individuals and groups in all major social, political, and economic institutions.
Another set of definitions of social justice emphasizes the institutional conditions that encourage individual self-development and self-determination—the former being understood as the opposite of oppression and the latter as the opposite of domination. A related concept of justice, suggested by the American philosopher Martha Nussbaum, is that a just society fosters the capabilities of individuals to engage in activities that are essential to a truly "human" life—including, among others, the capabilities to live a life of normal length, to use one's mind in ways "protected by guarantees of freedom of expression," and to meaningfully participate in political decision-making. Still other accounts define social justice, or justice itself, in terms of broad categories of human rights, including the entire range of civil and political rights (such as the rights to personal liberty and to participation in government), economic and social rights (such as the rights to employment and to education), and solidarity or group rights (such as the rights to political independence and to economic development).', *available at*: https://www.britannica.com/topic/social-justice (Last visited on 30thJuly, 2025).

by the Indian Constitution outlines three forms of justice: '*social, economic, and political'*. Social justice ensures equal treatment for all citizens without social distinctions, improving conditions for backward classes and women. Economic justice eliminates discrimination based on economic factors, while political justice ensures equal political rights and government voice[30]. Everyone can benefit from social justice when it is applied kindly and flexibly. Despite the fact that the constitution makes no mention of social justice, it is an objective that the document seeks to achieve.

Justice has always elicited thoughts of equity and proportion of compensation, according to *Dr. B.R. Ambedkar*. He summarizes his thoughts on the essential elements of justice as follows: '*Justice is simply another term for liberty, equality, and fraternity'*. As a fervent supporter of social justice, Ambedkar thought that these fundamental principles are what true justice is all about. To treat everyone equally, without distinction, is to practice equality. In order to provide justice and balance, proportion of compensation proposes that individuals should receive just recompense for the harms or losses they have suffered. According to Ambedkar, a just society must ensure that everyone has the same rights and opportunities, that everyone is treated equally, and that there is a spirit of brotherhood and support among all members of society. This is known as fraternity. Ambedkar's quotation essentially highlights the fact that justice involves establishing a society in which everyone is free, treated fairly, and joined in solidarity, in addition to ensuring that the law is applied evenly. Every person can live with respect and dignity thanks to this all-encompassing perspective on justice.

The concept of social justice as enshrined under the Indian Constitution is a relative one that can shift depending on the period, environment, society, and

[30]Concept of Social Justice under Indian Constitution, *available at:* https://www.lawyersclubindia.com/articles/Concept-Of-Social-Justice-Under-Indian-Constitution-3685.asp (Last visited on 28th July, 2025).

aspirations of the individual[31]. As per *Chief JusticeGajendra Gadkar, 'social justice tries to prevent inequality and provide equal opportunities for all citizens in social and economic matters[32]'*. The Indian constitution does not give full weight to any of the conventional ideologies, including entitlement theory, contractarianism, utilitarianism, or equality. The progressive idea of social justice is ingrained in the dedication of the constitution, and its supporting mechanisms include the rules of justice such as equality, equity, and good conscience. Our Constitution's focus is to a facet of social justice that can meet Indian citizens' expectations for a welfare state as our founding fathers had a positive attitude toward the idea of equal justice. Its manifestations could be seen explicitly under *Articles 14, 21, 22(1), 32, 39-A, 38, 41, 46, 142, 226 and 282* of the Constitution reinforcing this preamble promise to the *'people of India'* even more[33]. The aforementioned analysis makes it clear that the preamble, fundamental rights, directive principles, and numerous other Articles of the Indian Constitution provide strong constitutional support for equal access to justice.

The Government by bringing in new criminal laws has also taken the initiative to ensure that these constitutional provisions are implemented effectively and a shift in approach can be seen as word 'Nyaya' has been used in the new laws such as *the Bharatiya Nyaya Sanhita, 2023*, *the Bharatiya Nagarik Suraksha Sanihta, 2023*. This shows the transition in the criminal justice system of the country from punitive towards rehabilitative and reformative, which is also step forward in making justice equitable and accessible to all.

In concluding remarks, Justice according the Indian Constitution can be defined as way more than mere an abstract idea or concept, it incorporates

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[31] V.R. Krishna Iyer, *Social Justice- Sunset or Dawn* 53 (Eastern Book Company, 1987).
[32] *Ibid.*
[33] Access to Justice under Constitution of India, *available at*: https://ebooks.inflibnet.ac.in/lawp04/chapter/access-to-justice-under-constitution-of-india/ (Last visited on 30th July, 2025).

various facets of life such as Social, Economic, Political etc., thereby making it more inclusive subject and open to interpretation as per the need of time. Indian Democracy is swiftly transiting into the era of restorative justice as Amartya Sen uses terms like Nyaya and Niti. Recent, introduction of three new criminal laws has brought this approach in the mainstream envisaging Indian Society based on the cornerstone of '*Niti-Nyaya*' approach to governance is crucial for redressing injustices and advancing justice. It also requires citizens and civil society to actively participate in decision-making processes. This two-layered strategy is essential for eliminating poverty, reducing inequalities, and achieving development goals eventually Justice at every level.

The future of justice in India, guided by Rawls and Sen, lies in ensuring both *'fair institutions'* and *'real freedoms*.' While Rawls stresses equality through just systems, Sen highlights the importance of enhancing people's actual capabilities. Together, they suggest that justice must go beyond laws to empower every citizen with dignity, opportunity, and meaningful participation in democracy.

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Akhand Hindustan: The Punjab Hindus in Opposition to the creation of Pakistan

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Abstract

The Lahore resolution of the All-India Muslim League was passed in 1940 outlining the proposal of separating the Muslim majority provinces from India. This paper takes in account the response of Punjabi Hindus to the Pakistan Scheme. Their reaction can be seen in various stages in the decade of 1940s. The Punjabi Hindus were a minority in Punjab and but were part of the majority community in India. For the Punjabi Hindus the Pakistan scheme was untenable and they believed that it would not be allowed to come to pass. This work is based on both primary and secondary sources. The primary sources used are The Indian Annual Register and the contemporary newspaper The Tribune. The methodology used is analytical and multi–disciplinary.

Keywords: *Akhand Hindustan, Punjabi Hindus, Pakistan, Indian National Congress, Muslim League, Hindu Mahasabha, Partition.*

1. Introduction

The proposal for the creation of Pakistan in 1940 by the Muslim League was categorically rejected by the Hindus of the Punjab. Reactions of different communities to this proposal varied. The Muslims after initial rejection came to accept the formation of Pakistan. Hindus and the Sikhs continued to oppose

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the idea. This paper analyses reactions of the Punjabi Hindus to the idea of Pakistan from 1940 to 1947. The Hindus of Punjab in the 1940s responded to five stages: the Lahore resolution of the Muslim League demanding separate states for Muslim majority areas (March 1940); the Cripps proposals conceding Pakistan in principle (March 1942); the C.R. Formula suggesting on behalf of the Congress, separation of Muslim majority areas (9 July 1944); victory of the Muslim League in the Punjab provincial elections (February 1946); and acceptance of the Congress of the compulsory grouping clause of the Cabinet Mission Scheme.[1] The first section examines the responses of the Punjabi Hindus to the demand for the creation of Pakistan from 1940 to 1944. The next section focuses on the events and reactions of Hindus of the Punjab till partition and independence of India. The last section analyses the response of the Punjab Hindus to creation of Pakistan in the larger context of India.

The Lahore Resolution was passed by the All-India Muslim League at Lahore in March 1940, under the presidentship of Muhammad Ali Jinnah, presenting the 'idea of permanent Muslim domination' in the Punjab province. The idea of a Muslim majority state called Pakistan had already existed since 1930 and throughout 1939 the Muslim League had underlined the possibility of a physical division of the country. The Lahore resolution soon came to be called 'Pakistan Resolution'. This resolution was important for Punjab as it was the only province in colonial India with three communities: Muslims, Hindus and Sikhs. In the 1940s, Muslims were in majority in Punjab with over 55 per cent population. They were in majority in the ruling Unionist Party in the Punjab. Hindus formed less than 30 per cent of the population of Punjab and dominated business and professions and the Sikhs were less than half that of

[1] Indu Banga, "The Demand for Pakistan and Sikh Politics at Crossroads" *The Punjab Revisited: Social Order, Economic Life, Cultural, Articulation, Politics, and Partition (18th-20th Centuries)* (ed.), Karamjit Malhotra (Punjabi University, Patiala, 2014) p. 293.

Hindus. [2]

Jinnah referred to the Muslim problem as 'an international one'; the best course in his view was 'to allow the major nations separate homelands by dividing India into autonomous states'. He emphasized that Hinduism and Islam were 'different and distinct social orders because they belonged to two different religious philosophies, social customs and literatures. They neither intermarry nor interdine together and indeed they belong to two different civilizations. Jinnah made it clear that since Muslims were a nation, they must have their 'homelands, their territory and their state'. He further added, 'we wish our people to develop to the fullest our spiritual, cultural, economic, social and political life in a way that we think best and in consonance with our own ideals'.[3]Different political groups reacted strongly to the Pakistan scheme. Master Tara Singh, president of the Shiromani Akali Dal, in his address to Uttar Pradesh Sikh Conference declared that the League's demand might result in," a declaration of civil war", and that the Muslims would have to, "cross an ocean of Sikh blood", to fulfill this scheme. The Congress leaders too reacted strongly, for Gandhi it was, "an untruth" and for Nehru, "an insane suggestion". But the leaders of the Congress did not believe that the Muslims of India would support the League's demand. At the same time, the Congressites felt that they could not oppose it if the Muslims wanted it. Congress individual leaders by May 1940 had made it clear that the 'party would not use coercion to resist the demand for Pakistan'.[4]

The Punjabi Hindus opposed the Lahore resolution. An Anti-Pakistan Conference took place on 1 December 1940 at Lahore convened by the Arya Samaj. The purpose of organizing the conference was to present a 'united front', against an, 'unholy move for division of India'. This conference was

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[2]*Ibid.*
[3] Uma Kaura, *Muslims and Indian Nationalism: The Emergence of the Demand for India's Partition, 1928-40* (Manohar, New Delhi, 1977), pp. 149-50.
[4] Indu Banga, "The Demand for Pakistan and Sikh Politics at Crossroads", pp. 295, 296.

attended by Arya Samajists, Sanatanists, eminent leaders of Punjab like Raja Narendra Nath and the well-known Sikh leader, - Master Tara Singh. Emphatically opposing the Scheme, Swami Gangeshwara Nand, the Sanatanistleader pointed out that the 'very idea of Pakistan meant creation of communal hatred'. Furthermore, 'Pakistan would mean slavery of India forever'. [5] A Punjab, Sindh and NWFP (North West Frontier Province) Hindu conference was held in Lahore in 1941 in which every Hindu was called to save India from "the proposed vivisection".[6]

Disagreeing with Jinnah's contention that Muslims in India were a separate nation and should be treated as such, Gulshan Rai[7] defined nation as people concentrated in a particular territorial area. A people scattered all over the world could not claim any particular territory as peculiarly their own and could not be called a nation. The idea that the entire world was the native land of the Muslims could be excused as poetic license, but could not be accepted as a 'political reality'. The territorial division of India into communal zones was impossible as Muslims were scattered all over India in greater or smaller numbers. In every scheme of territorial division proposed by the Muslims, there was bound to be a majority and a minority community. If the Muslims formed less than one quarter of the total population in the whole of India, the Hindus formed less than one fourth of the total population in the north-western region. If the Muslims were not willing to be ruled by the Hindu majority in the country as a whole, why should the Hindus agree to be ruled by a Muslim

[5] *The Tribune,* 2 December, 1940, p. 5.
[6] M. Rafique Afzal, *A History of the All-india Muslim League 1906-1947* (Oxford University Press, Pakistan, 2013),p. 522.
[7] Gulshan Rai was born in 1885 at Lahore. He served as Vice-Principal of the Sanatan Dharm College and was also the principal for a year in 1930. In his own words Gulshan Rai remained a 'Sanatanist Hindu' all his life. He was incharge of the Temple Reform department of the Sanatan Dharm Pratinidhi Sabha Punjab in 1928. He had also held the post of the Managing Director of a Sanatanist periodical the *Bhism*. Gulshan Rai was a prolific writer and contributed a large number of articles for the press, especially *The Tribune* and *The People*. Sheena Pall, "The Sanatan Dharm Movement in the Colonial Punjab: Religious, Social and Political Dimensions" Ph.D. Thesis (Panjab University, Chandigarh, 2008), pp. 307, 308.

majority in the north –west. Exchange of population from one part of the country to another was equally impossible for Hindus and Muslims both. Gulshan Rai questioned the nature of social, religious, cultural and political autonomy, desired by Jinnah for the Muslims living in India. The social structure of any community was controlled by its law of inheritance, law of marriage and divorce and family life; the Muslims, like the Hindus, were governed by their own personal laws. As the state had always kept itself aloof from the religious affairs of the people, the places of worship of different communities like temples, *gurdwaras*, mosques, churches, monasteries, *khanqahs* and *dargahs* were managed by the members of their community. They were free to run their charitable and educational institutions. Members of all the communities had the freedom to perform their religious obligations without injuring the religious feelings of other communities. Rai maintained that special provisions had been made for learning Urdu in provinces governed by the Congress. The economic interests of the Muslims could not be distinct from the rest of the population living in India. He enquired whether political autonomy entailed Muslim monopoly of all important appointments in the administration in local and legislative bodies, for which they already had communal representation. There were already four provinces with Muslim majority.[8]Reacting to the stance taken by the Indian National Congress on the Pakistan scheme, Gulshan Rai asserted that there was no doubt that the Congress 'fully safeguarded the rights and interests of the Muslims and in a way even pampered them'.[9] Similarly, a Hindu Minorities conference held at Lahore in 1941attended by leaders of All India Mahasabha in which the Congress was accused of following a policy of appeasement towards the Muslims.[10]

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[8]*The Tribune*, 26 January, 1941, pp. 8, 12.
[9]*Ibid.*
[10] Satya M. Rai, *Legislative Politics and Freedom Struggle in the Punjab 1897-1947* (Indian Council of Historical Research, Delhi, 1984) p. 272.

Resentfully, Rai Bahadur Lala Ram Saran Das [11] asserted that the enforcement of the Pakistan scheme would mean the establishment of 'Muslim Raj' which would not be tolerated by the Hindus and Sikhs.[12] The Akhand Bharat conference was held at Lahore in 1941. This meeting was attended and addressed by Hindu and Sikh leaders of Punjab. A resolution was by adopted by Master Tara Singh, the leader of the Akali Dal, Rai Bahadur Mehr Chand Khanna from Peshawar and Sir Gokul Chand Narang, a well-known Arya Samajist, rejecting the Pakistan Scheme. It was labelled as 'unpatriotic' and was regarded as the 'logical culmination of divide and rule policy' of the British.[13] Significantly, for the Punjabi Hindus only rule by the majority community was legitimate.

Stafford Cripps was sent by the British War Cabinet to get India's support for the Second World War. The Cripps proposal of 1942 recognized India's right to frame its own constitution after the war. It envisaged a loose federation giving the provinces the right to opt out of the Indian Union. [14] This first public admission of the possibility of Pakistan was rejected by the Punjab Hindus. Participating in the Hindu Mahasabha silver jubilee celebrations in Amritsar in 1943, the Punjabi Hindus rejected the Cripps proposal for injecting the 'germs of Pakistan'. Leaders like Gokul Chand Narang, Rai Bahadur Mehr Chand Khanna, Raja Narendra Nath, and Goswami Ganesh Dutt [15]participated in the Punjab Provincial Hindu Conference at Lyallpur in 1943 to promote the idea of 'Akhand Hindustan' and to oppose the 'creation

[11] Rai Bahadur Lala Ram Saran Das (1876-1945) was an eminent Sanatanist from an influential business family of Lahore. He had been associated with the Punjab Hindu Sabha as well as the Hindu Mahasabha. Sheena Pall, "The Sanatan Dharm Movement in the Colonial Punjab: Religious, Social and Political Dimensions", pp. 304-305.
[12] *The Tribune*, 9 August, 1940, p. 5.
[13] H. N. Mitra, *The Indian Annual Register* (II, July-Dec,1941), p. 248.
[14] Indu Banga, "The Demand for Pakistan and Sikh Politics at Crossroads", p. 298.
[15] Goswami Ganesh Dutt (1889-1959) was an important Punjabi Sanatanist leader of the late nineteenth and twentieth centuries. He was the General Secretary of the Sanatan Dharm Pratinidhi Sabha of Punjab and was also closely associated with Pandit Din Dayalu Sharma and Pandit Madan Mohan Malaviya. Sheena Pall, "The Sanatan Dharm Movement in the Colonial Punjab: Religious, Social and Political Dimensions", pp.302-304.

of Pakistan'. The idea of Pakistan was seen as unworkable economically, financially and politically. It was suggested as an alternative that the boundaries of the provinces should be redistributed by agreement and if necessary, they could retain maximum possible autonomy. Muslims could develop their culture in their own zones subject to full and equal rights to minorities there. A strong representative government at the center, controlling essential subjects like defense, foreign relations, customs, currency and communication could answer the needs better.[16]In the same year an All India Hindu Students conference was held at Amritsar directing Hindu and Sikh young men to work towards 'Akhand Hindustan' and oppose Pakistan.[17] In yet another conference of the provincial Hindu Mahasabha at Lyallpur, Mehr Chand Khanna asserted that although Hindus did not support 'violence', but if they were pushed in a corner they would respond to 'Jinnah's threat'.[18]

It is interesting to note that the Punjabi Hindus did not appreciate the scheme called the Azad Punjab, put forth by the Akalis as a solution to the problem embodied in the idea of Pakistan. 'Azad Punjab' was the name given to the province to be created through reorganization of territory to ensure a balanced population of about 40 per cent Muslims, 40 per cent Hindus and 20 per cent Sikhs. Every community would be free of the fear of domination of any single community. [19] For Gulshan Rai, this scheme was based on 'rank communalism'.[20]Lala Shiv Ram Sewak subjected the Azad Punjab scheme to a 'trenchant criticism' at the Punjab and Frontier Akhand Hindustan Conference in Rawalpindi in 1943. He challenged the Akali leaders that even

[16] N. N. Mitra, *Indian Annual Register* (I, Jan-June, 1943), pp. 270-71.
[17] Satya M. Rai, *Legislative Politics and Freedom Struggle in the Punjab 1897-1947,* p. 294.
[18]*Ibid*.
[19] Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", *Sikh History and Religion in the Twentieth Century,* (eds.), Joseph T. O' Connell, Milton Israel,, Willard G, Oxtoby, W. H. Mcleod and J. S. Grewal (Manohar, New Delhi, 1990), p. 242. It was essentially a reiteration of the demand for 'territorial rearrangement' of the province made by the Sikhs in 1931 at the Second Round Table Conference. *Ibid,* p. 243, n72, n73.
[20]*The Tribune*, 5 January, 1943, pp. 4, 10.

theSikhs would not accept the scheme.[21]At the Akhand Hindustan Conference at Chakwal he contended that the Azad Punjab scheme was 'anti-national' and denounced the Akalis for cooperating with the Unionists and having the Sikandar-Baldev Singh Pact since March 1942.[22]

Similarly, the C.R. Formula was rejected by Raja Narendra Nath, Rai Bahadur Durga Das, Goswami Ganesh Dutt, Rai Bahadur Ram Saran Das, Lala Bhagat Ram and Lala Kundan Lal Vij along with other Hindus who attended the All-Parties Hindu Conference held at Lahore in August 1944.[23] C. Rajagopalachari's purpose was to secure the 'installation of a national government' by accepting the League's claim for separation. Essentially, it allowed the inhabitants of the 'contiguous districts' with absolute Muslim majority to decide the issue of separation from Hindustan on the basis of plebiscite, retaining by mutual agreement common interests like defense, commerce and communication. This formula had the approval of Mahatma Gandhi.[24]The Punjab Hindus labeled it as 'unjust' adversely affecting the cultural, economic and political life of the Hindus. Ganesh Dutt and Ram Saran Das, both Sanatanists, denounced the Congress for using the 'C.R. Formula' as a ploy to get the League's cooperation in forming government at the center. This formula was against the principles of the Congress; the pledges and declarations of Mahatma Gandhi and the latest resolution of the

[21] N. N. Mitra, *Indian Annual Register*(I, July-December, 1943), pp.306-07.
[22]*Ibid*, pp. 302-03. According to Indu Banga, the Sikander-Baldev Singh Pact was an attempt at a limited cooperation between the Akalis and the Unionist and at mitigating what were seen as the adverse effects of 'Muslim domination'. It covered nearly all those issues that had been agitating the minds of the Sikhs before the League's resolution in 1940, such as legislation on religious matters, the share of the Sikhs in services, teaching of Punjabi in Gurmukhi and facilities for Jhatka meat. Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", p. 241.
[23] N. N. Mitra, *Indian Annual Register* (II, July-December, 1944), pp. 207-08. *The Tribune*, 14 August, 1944, p. 4. Jinnah dismissed the 'C.R. Formula' as offering 'a shadow and a husk, a maimed, mutilated and moth-eaten Pakistan'. But he was pleased that personally Gandhi had accepted the principle of partition. Indu Banga, "The Demand for Pakistan and Sikh Politics at Crossroads", p. 324.
[24] Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", p. 247.

All-India Congress Committee passed in May 1942. [25]Referring to the Gandhi-Jinnah talks, Ganesh Dutt remarked that Mahatma Gandhi had been 'instrumental in reviving Jinnah's dying leadership'.[26]Highlighting the implications of the C.R. Formula, Professor Brij Narain underlined that it would divide Punjab into Muslim and non-Muslim dominant areas.[27]

In response to the Reconciliation Committee formed by Sir Tej Bahadur Sapru on the suggestion of Mahatma Gandhi after the failure of the Gandhi-Jinnah talks (July-October 1944),[28] the leading Hindus of the Punjab, including Gokul Chand Narang, Narendra Nath, Lala Ram Saran Das and Lala Gopal Das, submitted a memorandum expressing opposition to the establishment of Pakistan. It listed detailed fundamental rights of citizenship to be incorporated in the future Constitution of India, the share of minorities in the Legislatures both at the center and in the provinces, division of functions between the center and the units and the rights of the untouchables. The memorandum supported the inclusion of Indian States in an All-India union, parliamentary form of executive at the center and the provinces, joint electorates and proposed formation of a constituent Assembly of representatives from provincial legislatures.[29]

2. The Post War Development

The post war developments towards full self-government were initiated by Lord Wavell on June 14 1945. Discussions of the Wavell plan and the new constitution began at Shimla (June25-July 14, 1945), but this conference failed due to Jinnah's insistence that the League alone could represent the Muslims. When Atlee's Labor Government announced the Central and Provincial

[25]*The Tribune*, 15 August, 1944, p. 8.
[26] N. N. Mitra, *Indian Annual Register* (II, July-December, 1944), pp. 207-08. *The Tribune*, 14 August, 1944, p. 4.
[27] Satya M. Rai, *Legislative Politics and Freedom Struggle in the Punjab 1897-1947,* p. 300.
[28] S. L. Malhotra, *Gandhi, Punjab and the Partition* (Panjab University, Chandigarh, 1983), pp. 97, 98.
[29]*The Tribune*, 23 February, 1945, pp. 1, 10.

Assembly elections in July 1945,[30]Lala Behari Lal Chanana, presiding over a meeting of the Sanatan Dharm Pratinidhi Sabha, attended by about 500 delegates, appealed to the Sanatanists to support every Sanatanist candidate who contested from the Congress ticket in the forthcoming Assembly elections.[31] The election results in the Punjab showed significant shift in the party position since 1937. The Congress won 51 seats, Akalis won 22 seats, the League captured 75 out of 86 seats and the Unionist could only win 20 seats.[32] Significantly, Lala Behari Lal Chanana, a Punjabi Sanatanist, who contested the electionon a Congress ticket from the South East Multan Division in the General-Rural category, was elected unopposed. Fakir Chand, another Punjabi Sanatanist also contesting on the Congress ticket from the West Lahore Division was also elected. Pandit Mohan Lal, well-known Sanatanist, too contested on a Congress ticket from Una in the General-Rural category and was elected.[33]Evidently, Punjabi Hindus had relegated their differences to the background and came together on a common platform of Hindus to eventually join hands with the Indian NationalCongress.

In spite of the massive victory of the Muslim League, it needed the support of another party to form the government in the 175 member Punjab Assembly. It failed to get support from the Congress and the Akali Dal, and an Akali-Congress-Unionist coalition under Khizr Hayat Khan took over the government in March 1946. [34]The Muslim League organized a strike throughout the Punjab on 7 March 1946 before Khizr Hayat Khan took office. There were noisy demonstrations outside the Premier's house.[35] A procession of Muslim students staged a mock funeral of Khizr Hayat Khan. This procession went to the Sanatan Dharm College and staged a demonstration

[30] Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", p. 248.
[31]*The Tribune*, 28 October, 1945, p. 7.
[32] Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", p. 250.
[33] K. C. Yadav, *Elections in Panjab 1920-1947* (Manohar, New Delhi, 1987), pp. 108 109.
[34] Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", pp. 250-51.
[35] Satya M. Rai, *Legislative Politics and Freedom Struggle in the Punjab 1897-1947,* p.318.

raising slogans of 'Pakistan Zindabad', resulting in a clash with the students of Sanatan Dharm College.[36]

A few days later the Cabinet Mission came to India on 24 March 1946 to finalize the mode of transfer of power to India.[37]Prominent signatories of the Punjab Non-Muslims Memorandum sent to the Cabinet Mission in April 1946 were eminent Punjabis like, Goswami Ganesh Dutt, Sir Tek Chand, Dr G.C. Narang, Rai Bahadur Durga Das, and Mister Rallia Ram. They argued that the inclusion of the whole of the Punjab in Pakistan could not be justified. On the basis of the census figures showing the communal percentages of population since 1881 in the Punjab, it was pointed out that till 1911 the Punjab was not a Muslim majority province and even in 1941 the margin was 'so small' that it could not be claimed as a Muslim province. Furthermore, the census figures were 'admittedly inaccurate and unreliable'. For conducting plebiscite, the entire province could not be taken as a unit because there were 12 districts with a non-Muslim population of over 75,00,000. Therefore, the plebiscite in each area should be conducted separately and the entire adult population in the area concerned should be entitled to vote and there should be a clear majority of 66 per cent in favor of separation. The creation of Pakistan would lead to further divisions. The Sikhs had already demanded a separate Sikh state in case of division of the Punjab and there were schemes for a Jat state too.[38]

The Punjabi Hindus were also concerned with the problems with regard to princely states in case of partition. There were three categories of Punjab States: the Hindu States of Chamba, Mandi, Suket, Sirmaur, Bilaspur and the Simla Hill States; the Sikh states of Patiala, Kapurthala, Nabha, Jind and Faridkot and; the Muslim States of Bahawalpur and Malerkotla. With the exception of Bahawalpur, the remaining states were contiguous to and

[36]*The Tribune*, 10 March, 1946, p. 1.
[37] Satya M. Rai, *Legislative Politics and Freedom Struggle in the Punjab 1897-1947,* p.321.
[38]*The Tribune*, 15 April, 1946, pp. 4, 10.

surrounded by the non-Muslim majority districts and were predominantly non-Muslim in population. If to the total population of 12 non-Muslim majority districts in the south-east and center of the Punjab, was added the population of the states in that area, the communal percentage would work out to be 29.22 for Muslims, 50.04 for Hindu and 20.58 for Sikhs. These states would thus, naturally gravitate towards the non-Muslim areas, both on the ground of contiguity and the distribution of population by religion.[39]

The announcement of the Cabinet Mission scheme on 16 May 1946, gave the 'substance of Pakistan' to the Muslim League. The Muslim League rejected the Cabinet Mission scheme because of the later interpretation of one of its provisions, and gave a call for 'direct action' which unleashed violence in different parts of India, including the Punjab. On 20 February 1947, Prime Minister Atlee announced his government's decision to hand over power to Indians by June 1948. Persistent agitation by the Muslim League in the Punjab brought down Khizr Hayat Khan's coalition ministry on 2 March 1947.[40] Neki Ram Sharma, a Congressite, criticized the 'nefarious activities' of the Muslim League for bringing down the government which resulted in bringing about the Governor's rule. [41] The Congress Working Committee was constrained to admit on 8 March that 'the tragic events' of the last six weeks in the Punjab had necessitated 'a division of Punjab into two provinces' separating the 'pre-dominantly non-Muslim part'. [42]The Punjabi Hindus, however, refused to accept this, and a few days later, on 11 March, Kundan Lal Vij, one of the Vice-Presidents of the Sanatan Dharm Pratinidhi Sabha and President of the Sanatan Dharm Mahabir Dal, assembled in a Gurdwara at Lyallpur along with 15,000 Hindus and Sikhs, and took the pledge to 'offer

[39] *Ibid*.
[40] Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", pp. 251, 252.
[41] *The Tribune*, 12 March, 1947, p. 3.
[42] Indu Banga, "The Crisis of Sikh Politics, (1940-1947)", p. 252.

every possible resistance to the establishment of Pakistan'.[43]

3. Undivided India

Like the Hindus of the rest of India, most of the Punjabi Hindus, whether Aryas, Sanatanists or Congressites, subscribed to the ideal of 'Undivided India' (Akhand Bharat). This formed the basis of their opposition to Pakistan. Punjabi Hindu's relegated their differences to the background and came together on a common platform of Hindus and eventually joined hands with the Indian National Congress. Significantly, Mr K. M. Munshi, former Home Minister in the Government of Bombay resigned from the Indian National Congress and founded the 'Akhand Hindustan Front'. [44] Initially he had named it the 'Akhand Bharat Front' but replaced Bharat with Hindustan to make it inclusive.[45] Interestingly, Mr Munshi believed that the Sikhs stood with Hindus as the 'sword arm of Akhand Hindustan' and regarded the 'Khalsa as the spearhead of the movement for Akhand Hindustan'.[46] Significantly, the Punjabi Hindus and the Sikhs, both continued to oppose the creation of Pakistan.

Like the Hindu nationalists of India, for the Punjabi Hindus the preservation of Akhand Bharat was a matter of emotional attachment with their motherland (Bharat Mata). The image of Bharat Mata was inserted onto a map of India thus explicitly connecting her to a territory. For the Hindu nationalist, Aurobindo Ghosh the map of India was not a map but the 'portrait of *Bharat-mata* (Mother India)' and he went on to add that the 'cities and mountains, rivers and jungles form her physical body'. He urged his countrymen to 'concentrate on Bharat (India) as a living mother, worship her with the nine-

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[43] *The Tribune*, 12 March, 1947, p. 3. For Kundan Lal Vij see, *The Tribune*, 3 July, 1944, p. 8 and 17 August, 1944, p. 3.
[44] K.M. Munshi, *Akhand Hindustan*(New Book Co, Bombay,1942), pp. 272, 273.
[45] Bhide Guruji, *From Quit India to Split India* (Manohar Mahadeo Kelkar, Poona, 1945) p. 98.
[46] K.M. Munshi, *Akhand Hindustan*, p. 101.

fold *bhakti* (devotion)'.[47] An early visual image came in 1905 with Abanindranath Tagore's painting, *Bharat-mata*. He had titled the image 'Bharat-mata', for the larger cause of Indian Nationalism.[48] Religious sentiment was associated with this iconic representation of nation. Punjabi Hindus wanted to retain Bharat as one unit that had been the cradle of Hindu civilization over centuries. Akhand Bharat was seen as the land of the Hindus and maintaining its territorial integrity was their duty as Hindu nationalists.

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[47] Sumathi Ramaswamy, "Maps and Mother Goddesses in Modern India" *The International Journal for the History of Cartography*, 53, 2001, pp. 97-114.
[48] Sugata Bose, *The Nation as Mother and Other Visions of Nationhood* (Penguin, India, 2017), p. 5.

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Artificial Intelligence and Copyright: Navigating Legal and Ethical Uncertainty in Creative Authorship

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Abstract

Today's world is all about the merger and intersection of intellect and innovation. The intersection of law and technology no doubt has fostered quantum dynamics of computing and automation, but has disrupted the creativity and authorship that is attached to a human brain. The need for copyright lies in the incentivisation and preservation of human creativity, which is being threatened by the hands of AI. We live in an age where AI can do everything, ranging from writing a book on its own, generating music, programming games, generating artwork, etc. So, is AI an author, co-author, or owner? If yes, then can AI copyright the content it generates? Monopolization of AIs has raised many ethical concerns. Due to the absence of specific statutes and policies, AI in the World largely remains uncontrolled. AI is plagiarizing the content, creating deepfakes, and copyrighting the content. Who can be sued? This paper examines current legal frameworks and ethical discussions through a doctrinal and analytical lens to understand how AI is testing the limits of human creativity and innovation. By inter-jurisdiction comparison through case laws, the paper concludes that current laws are ill-equipped to handle the complexities of AI authorship, creating gaps that have increased multidimensional risks. The paper calls for balanced

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legal and ethical regulation that encourages creative innovation while maintaining ethical standards.

Keywords: *Artificial Intelligence, Authorship, Copyright Law, Digital Ethics, Accountability*

1. Introduction

> *"Once humans develop artificial intelligence, it would take off on its own and redesign itself at an ever-increasing rate."*
>
> -Stephen Hawking

Technology is evolving at the speed of light. Standing on an edge, we are witnessing the rise of Fourth Industrial Revolution.[1] A period of transformation which has from alpha to omega changed conventional technological system. We are chained in a web of interconnectivity with a large number of networks. These technological blueprints have taken a new shape with rise of cutting-edge inventions like Artificial Intelligence (AI), Quantum Computing, Robotics, Virtual Assistants and many more. Imagining today's world without Artificial Intelligence (AI) is next to impossible. AI has become the reality of society. AI is getting deeply embedded in our day-to-day life. No sector of life has remained untouched by it.

AI has gained tremendous momentum in recent years but this term was coined decades back by John McCarthy in 1956 in a conference discussing the subject matter. According to him, AI is defined as "the science and engineering of making intelligent machines". But the recent few years, post-2022 have seen a surge in the formulation by various jurisdictions to regulate its unregulated use.

[1] Klaus Schwab, "The Fourth Industrial Revolution: what it means, how to respond", *available at*: https://www.weforum.org/stories/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/ (Last visited on 21st March, 2025).

Law and AI have been very uneasy partners. AI has posed nuanced threats to various legal spheres- one of them is the Intellectual Property (IP) arrangement. [2] IP rights underpin the creative and innovative structural framework.Leading technology companies worldwide are vying for legal protection under the current IP legal framework as a result of recent advancements in the AI regime. Of the various IP mechanisms, Copyright mechanisms provide safeguard to creators for their original works of authorship which are new and are not reproduced. AI and copyright are like oil and water. Indian Copyright Act, 1957 was made decades ago and it only recognises natural persons as authors and does not validate AI in the category. The rise of AI and its increasing use as human helpers in producing a variety of works, including literary and creative masterpieces, has seriously upended this long-standing governmental approach. Due to the absence of direct legislation clearly regulating AI, there are ambiguities regarding its mandate.

Different jurisdictions have adopted multi-faceted regulatory measures to regulate the same. Various countries, including India, New Zealand, and the UK, are on the path to take significant steps in amending and changing conventional regulatory methods to be amenable to the current technological changes. These very steps have established an ultramodern, high-tech image of these countries in international forums. The initial steps taken by the countries are no doubt not directly dealing with the issues relating to AI and computer-generated content and have opened a Pandora's box of interpretations. But on a large scale, when we analyse the situation of most jurisdictions that are unregulated and muted on the same issue, the small steps are welcomed.[3]

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[2] Alexander Cuntz, Carsten Fink, *et.al.*, "Artificial Intelligence and Intellectual Property: An Economic Perspective" *Economic Research Working Paper WIPO* (2024).

[3] Hafiz Gaffar, Saleh Albarashdi, *et.al.*, "Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape" *Asian Journal of International Law* (2024).

The foundation stone of copyright laws lies in ethics and standards. However, these ethics are being compromised by the hands of misuse of AI. Too much involvement of AI in humanly dedicated fields has started to create destruction. The very burgeoning perspectives about the ethical complexities begin from the unlicensed use of data by companies while training their AI models. The term "AI data laundering" was coined in the landmark case against Google, *Authors Guild* v. *Google,* whichdenote the same act of use of unlicensed data. Various AI models are developed to surpass transparency, privacy, bias and consent-based algorithms making their use unethical and concerning.

As we embark on this Legal- Techno Odyssey, we shall explore the ongoing conflict in the field of copyright due to the emergence of AI. A broader perspective shall be discussed and analytically viewed through various ethical and standard-based lenses. Comparison of the situation prevailing in other jurisdictions will help in reaching at a better conclusion. A perfect balance of rigid and flexible approach in addressing the issue surrounding AI-Copyright's "frenemiship" will contribute significantly to the discussion.

2. Methodology

This research paper uses an analytical, qualitative, thematic, and doctrinal research approach to explore the legal and ethical questions raised by the growing impact of Artificial Intelligence on the Copyright Law. Thematic analysis was employed at various stages in identifying various ethical concerns raised by AI in creative freedom. To analyse how efficiently existing legal frameworks can solve the complexities raised by AI-generated content with the help of significant court rulings and case laws in addition to essential legal documents like the Indian Copyright Act, 1957. The study also examines how other countries around the globe and policymakers are addressing these emerging concerns by referring to a wide range of secondary sources, like

publications, policy papers, and various laws. The study intends to show how legal systems vary in their approaches towards technology and, notably, to the ethical and regulatory discrepancies that are hindering our conventional understanding of authorship and ownership in the age of artificial intelligence.

3. Tussle between Authorship and Ownership

Sec 2(d) of the Indian Copyright Act, 1954 defines an "author" as a person who causes the computer-generated work to be created. Thus, according to this definition, it has been established that machines are made to work only by human force. In further eliminates the chance of granting authorship to AI. Therefore, it establishes the responsibility of the creator of an AI system over the content that has been generated by AI should not infringe the copyrights of others. They should not be unjustly enriched by the commercialisation of the infringed content.

Responsibility of the creator was well established in the case of *United States* v. *Athlone Industries, Inc*.[4]This case helped in clearing the air which was there regarding the liability of cases regarding AI.[5] In the present case, an automatic baseball pitching machine was purchased by Athlone. After various engineering analyses, it was disclosed that it had various defects. The machine was flawed and was continuously disconnected from the power source continuously. The court passed a side note saying the case was brought against the manufacturers because robots cannot be sued. Applying the tort principle of strict product liability, the court held the manufacturers liable since robots cannot be sued independently.

The main reason for the denial of copyright to work generated by non-humans is also due to a lack of personhood. Current legal regimes are anthropocentric.

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[4] *United States* v. *Athlone Industries, Inc.*, 746 F.2d 977 (3d Cir. 1984).

[5] "Case Comment on United States v. Athlone Indus., Inc", *available at:* https://thecolumnofcurae.wordpress.com/2020/12/10/case-comment-on-united-states-v-athlone-indus-inc/(Last visited on 31st March, 2025).

Different laws give legal rights only to a natural person and not otherwise. The perplexity of personhood was made clear in the famous "Monkey Selfie" case, in the US known as *Naruto* v. *Slater*[6]. The case dates back to 2011 when a wildlife photographer, Slater, left the camera unguarded in Indonesia. A macaque took that camera and clicked multiple selfies of itself in the camera. The conflict broke out when Slater claimed the copyright over those photos, but PETA (People for Ethical Treatment of Animals) advocated for Naruto. PETA claimed that the monkey was the original copyright holder. The suit was settled against Naruto as the court's opinion was rooted in the absence of statutory provisions in granting copyright to non-human entities, here animal. [7]

A parallel can be drawn between the non-human entities like Animals and AI. At present every statute recognises persons to hold and to be sued for copyright. With the increase of growth of AI, the gap that was there in natural intelligence and artificial intelligence has narrowed with improvement. The reasoning behind assigning copyright to a human author is that authorship can be significantly determined by proving a causal relationship between the human author's input and the final AI-generated work.

The International Committee of Medical Journal Editors released the recommended guidelines for authorship rights, known as the Vancouver Protocol[8]. Four criteria were being recommended in the protocol, which are:

- significant input into the work's conception or design
- drafting the piece or critically evaluating it to identify significant intellectual substance
- final acceptance of the published version

[6] *Naruto* v. *Slater*, 2018 WL 1902414 (9th Cir. Apr. 23, 2018).

[7] Katherine Abraham, "AI's right to copy", *available at:* https://law.asia/generative-ai-copyright-law/ (Last visited on 18th March, 2025).

[8] "Defining the Role of Authors and Contributors", *available at:* https://www.icmje.org/recommendations/browse/roles-and-responsibilities/defining-the-role-of-authors-and-contributors.html (Last visited on 18th March, 2025).

- A commitment to take responsibility for every facet of the job, including making sure that any concerns about the integrity or correctness of any portion of it are properly looked into and addressed.

Having a close look at this criterion, it can be concluded that AI does fulfil and can be trained to fulfil the first three conditions. But I think that to date no AI can claim to ensure the considerable levels of accuracy and integrity. Chatbots like ChatGPT on the homepage itself give the disclaimer that it can make mistakes. Accountability for these AI tools is thus reduced significantly. Therefore, the need for human contribution and involvement even in the smooth functioning of these AI tools is of paramount importance. Apart from this, there are many other criteria that lack of being an author. An amalgamation of innovation, creativity, and uniqueness are the elements that serve the true purpose of a copyright. We shall view this through the various lenses:

3.1. Art

As defined by the Royal Spanish Academy of Language, "*art is a subjective, objective viewpoint conveyed through the use of linguistic, visual, or auditory resources to understand what is real or imagined, which is a depiction of human activity.*[9]" But the definition of art has evolved over time and is constantly changing and evolving itself with time. The current definition of art finds its strong support from the period of the renaissance in Europe. With the advent of technology, this universally accepted definition finds itself embedded in an enigma. Art has always been connected to the emotions of a person expressed through various media.

The concept of AI being creative is very sensitive as by stepping in the human-specific forum of creating art, AI is leaving very little space for us to be

[9] "What is Art and what is it for?", *available at:* https://www.fundacionmapfre.org/en/blog/what-is-art-what-is-it-for/ (Last visited on 31st March, 2025).

unique. Various AI models like DALL-E-2, Midjourney, Stable Diffusion, Adobe Firefly, etc. have aced the process of art. In just a span of a few seconds or hardly some minutes, these tools can give you your desired medium of art. [10] But do we want to develop and accommodate the artificial intelligence that can compose music, paint, or write a book that might pass for our human creation? Gifted individuals already possess these skills. Now, the world is moving to the algorithmic tune of the invisible web that artificial intelligence has produced. Is art a piece of creativity? Does AI mimic human art or can it create on its own? To find the answer to these fascinating questions let's have a close look at various media of arts where AI's presence is felt strongly.

3.2. Visual Art

Visual art is a category of art that can be seen by the eyes and it encompasses various artistic expressions. It includes photography, painting, drawing, video, design, print, crafts, etc. Virtual art is very fundamental to human growth and it reflects our societal growth at present. It was conventionally been said that "Robots can do great things but can't make art," but this has been proved wrong. Various AI models like Midjourney, DALL-E-3, Stable Diffusion, Leonardo AI, etc., can on the basis of a fed prompt can give desired results.

A Chinese-Canadian artist and coder, Sougwen Chung, built various generations of robots named Drawing Operations Unit Generation X (DOUG) [11]. This collaborative and innovative robot, with the help of data codes and AI, can draw in the own style of the artist. They can mimic the hand-drawn art of the artist.[12] Her drawings, installation pieces, and even sculptures have

[10] Peter McOwan, "Can robots be artistic?", *available at:* https://www.weforum.org/stories/2014/12/can-robots-be-artistic/ (Last visited on 23rdMarch, 2025).

[11] Shraddha Nair, "Sougwen Chung talks about her robot collaborator D.O.U.G. and the future of AI", *available at:* https://www.stirworld.com/see-features-sougwen-chung-talks-about-her-robot-collaborator-d-o-u-g-and-the-future-of-ai (Last visited on 25th March, 2025).

[12] "Selected Works by Sougwen Chung", *available at:* https://sougwen.com/artworks (Last visited on 28th March, 2025).

prominent computer-generated marks. The causative nexus between this union and copyright has not yet been solved.

According to the US Copyright Office, an award-winning AI piece of art is not eligible for copyright protection. Théâtre D'opéra Spatial, a piece by Matthew Allen was made using the help of the AI tool Midjourney. The work has been embroiled in a precedent-setting copyright fight. The final decision of the court has explicitly made it free of the copyright regime. But, the original art of the artist that was altered using Adobe was given copyright. He gave around 624 prompts to generate the art, but it didn't make it copyrightable. That being said, Allen's attorney thinks it is chilling the AI-assisted painting community overall.[13]

The copyright office in India itself is enigmatic about the recognition of an AI painting app "RAGHAV" that it conferred co-authorship, but then withdrew it faster than awarding. An art titled "Suryast" was a computer-generated robotic version of Starry Night by Vincent Van Gogh. The creator of RAGHAV contended that it shall be awarded copyright under Sec.13 of the Indian Copyright Act as it is an artistic work preserved under Section 2 (c) of the act. However, because there is no suitable legal or jurisprudential foundation for recognising co-authorship of AI, this issue becomes tricky.[14]It is a concerning conundrum.

A visual artwork created by algorithms on the machine, named "A recent entrance to paradise," was denied copyright because it does not contain an element of human authorship. Many other examples are before us where the

[13] Kate Knibbs, "Why This Award-Winning Piece of AI Art Can't Be Copyrighted", *available at:* https://www.wired.com/story/ai-art-copyright-matthew-allen/ (Last visited on 31stMarch, 2025).

[14]Sreelakshmi B, "Recognition of Ai Co-Author Raghav- An Anomaly?", *available at:* https://csriprnusrl.wordpress.com/2022/03/11/recognition-of-ai-co-author-raghav-an-anomaly/ (Last visited on 31stMarch, 2025).

copyright offices all around the globe are eager to reject the claims and applications of copyright involving AI intervention.

In a nutshell, it is very difficult for the copyright systems in the present scenario to award copyright without identification of a human author who has contributed significantly to the making of the art. Whether a human is the one who writes the algorithms that drive the generative AI system, provides the text prompts, or both, it is not clear that the result in each instance can be ascribed to a human author or not. But now, it is clear that when the human input has a "sufficient causal nexus with the final work".[15]It is impossible to identify the human author from whom a work originated. The line of causal nexus is very blurred, and it will probably take deep deliberations to reach a stable conclusion.

3.3. Music

Music is an art form that amalgamates various vocal and instrumental sounds involving expressions of culture and tradition. [16]The process of writing a new piece of music is called music composition. This entails creating and logically arranging melodies, harmonies, and rhythms. Whether it's a song, symphony, soundtrack, or another type of music, composers usually begin with an idea or concept and work their way toward a finished product.

AI plays a multi-dimensional role in the creation of music. With the help of algorithms and generative models, big datasets of vocals, chords, harmony, rhythm, etc, can be analysed in the span of a few seconds. It can also assist the music composers and lyrists in generating music. This ultimately leads to mixing and matching of various tunes and creating dynamic music compositions. Various artists use AI-led systems to enhance their performance

[15]*Global Yellow Pages* [2017] 2 SLR 185 at [24].
[16] Gordon Epperson, "Music", *available at:* https://www.britannica.com/art/music (Last visited on 26th March, 2025).

on stage during concerts with autotune.[17] French and American computer scientists are developing algorithms that will allow computers to compose original Bach-style fugues, improvise jazz solos like John Coltrane, or combine the two to create an unmatched combination. Taryn Southern's "I AM AI" tour is a live example of the same, where she united AI into art.

Section 13(a) of the Indian Copyright Act preserves the original musical works. The terms of this are further explained in Section 22. But the question that arises is what part of music can be copyrighted and what cannot? AI can also help with very small details of music composition. Identifying the human-created part and AI-generated is a near-impossible task[18]. Generally, different tests are used based on subjectivity to differentiate between human and AI-generated works. The major test is the "Turing test," where listeners, based on their subjective understanding, have to differentiate between the music type, melody, musicality, tonality, etc[19] But the reliability and accuracy of the tests are still under question.

As largely, AI's dimensions remain largely uncontrolled the cases regarding infringement of copyright in music have also increased manifold. Last year, the Recording Industry Association of America (RIAA) filed two suits of infringement against music generation services giants, Udio and Suno of sound recordings carrying copyright. The major allegations revolved around unlicensed and uncredited use of the work by these giants for their own

[17] Muskan Khan and Dr. Deepika Prakash, "The Intersection of AI and Copyright in Music Industry" *International Journal of Research and Analytical Reviews (IJRAR)* (2024).
[18] Marco Cantamessa, "Exploring the impact of generative AI on the music composition market: a study on public perception, behavior, and industry implications" *available at:* https://webthesis.biblio.polito.it/34172/1/tesi.pdf (Last Visited on 30th March, 2025).
[19] Belgum Erik, "A Turing Test for 'Musical Intelligence'?" 12(4) *Computer Music Journal* 7 (1988); *available at*: https://www.researchgate.net/publication/270056245_A_Turing_Test_for_Musical_Intelligence (Last visited on 29th March, 2025).

profits. This ingestion of others' work is an attack on human creativity and has the potential to take away the livelihood of many artists.[20]

Indian Copyright Act's Section 51 defines various criteria for classification of a copyrighted work as being infringed. But it is not absolute as it has various exceptions and a large dimension of AI is left uncovered.[21] In the veil of this shaded and unexposed area in act, many AI music generation companies surpass in surpassing legal obligations and infringe copyrighted music works. [22]

3.4. Literary Works

What if I tell you that you no longer need to do any research for writing a novel, and there is no need for you to give it months. By giving some prompts to AI, in a few hours your novel is ready to be read and to be presented before the world. This is what was done by Shen Yang, a Chinese professor, to write a novel in Chinese. The novel titled "The land of Machine Memories" even won a sci-fi competition.[23] This is where the reality of AI has taken us.

AI has even taken up the front seat in writing research papers. Around the globe various Large Language Models (LLMs) have excelled in writing research papers and all sorts of literary masterpieces. Back in the 2000s, Google developed a project titled "Verse by Verse," which was capable of

[20] Record Companies Bring Landmark Cases for Responsible AI Against Suno and Udio in Boston and New York Federal Courts, respectively", *available at:* https://www.riaa.com/record-companies-bring-landmark-cases-for-responsible-ai-againstsuno-and-udio-in-boston-and-new-york-federal-courts-respectively/(Last visited on 26thMarch, 2024).

[21]Jonathan Coote, "AI-Generated Music and Copyright", *available at:* https://www.cliffordchance.com/insights/resources/blogs/talking-tech/en/articles/2023/04/ai-generated-music-and-copyright.html(Last visited on 27th March, 2025).

[22]Sonisvision Corporates LLP, "Music and Copyright Law in India", *available at:*https://www.linkedin.com/pulse/music-copyright-law-india-sonisvision-ckzhc/ (Last visited on 28thMarch, 2025).

[23]Denborah Yao, "Author Admits to Using AI to Write Award-winning Novel", *available at:* https://aibusiness.com/nlp/author-reveals-using-chatgpt-for-award-winning-novel (Last visited on 28th March, 2025).

generating poetic verses and poetry. It used to first deeply analyse the works of various poets then create results based on that. In 2006, Wattpad, a digital story media platform, rose drastically. In the earlier years, it was limited to the content posted by the users there, but later AI-generated content took the major share of the app. The stories are indeed new and creative, but the attachment of the strings to human emotion lacks manifold. [24]

Not only books and articles, AI can also write the whole script of the movies. A movie, *Sunspring,* was written entirely an AI program model known as Benjamin.[25] The creator of the short film put dozens of Sci-Fi films and gave n number of prompts to the program, which, as a result, generated the script of the film. The program was developed based on techniques of machine learning. This way, the task of scriptwriting, which is one of the main contributors to the success of the film, has been reshaped by the advent of AI.[26]

Section 17 of the Indian Copyright Act states that the author of the literary work shall be called the first owner of the copyright. The development of generative artificial intelligence is still being embraced by Indian copyright law. But what will happen when AI is writing based on prompts? Initial ideas are of humans in giving the prompts, but the final generative output is of AI. Can claims be made over copyrighting the prompt? A considerable effort is surely lacking in writing a single line prompt. The doctrine of "sweat of the brow" states that copyright rights are awarded based on the efforts and

[24] Paulo Reis Mourão, "The Actual Use of Generative AI in Online Literary Production: An Exploratory Study with Lusophone Writers on Wattpad", *available at:* https://rupkatha.com/V17/n1/v17n103.pdf (Last Visited on March 27, 2025).

[25] Jonathan Cohn, "The Scientist of the Holy Ghost": Sunspring and Reading Nonsense", *available at:*https://quod.lib.umich.edu/cgi/t/text/idx/j/jcms/18261332.0060.501/--scientist-of-the-holy-ghost-sunspring-and-reading-nonsense?rgn=main;view=fulltext (Last Visited on 23rdMarch, 2025).

[26] Fatima Dayo, "Scriptwriting in the Age of AI: Revolutionizing Storytelling with Artificial Intelligence", *available at:* https://jmc.ilmauniversity.edu.pk/arc/Vol4/4.1/2.pdf (Last visited on 25thMarch, 2025).

diligence put by the author in the work.[27] But this standard is not accepted in the Indian copyright regime as defining what is significant human input requires an active balance between human authorship and AI.

4. The Ethical Dilemma: Fair Use or Foul Play?

AI's presence is universal, and no aspect of human life, whether social, moral, political, or legal, is isolated from it. AI's powerful and revolutionary potential, as well as its enormous influence across various socioeconomic dimensions, has initiated a debate about the morals and ideas that should guide its integration into society. Various factors have contributed to decreasing the reliability and accountability of AI over time. Recent scientific research and media discussions have extensively highlighted worries that AI could threaten employment opportunities, be exploited by malicious individuals, shirk accountability, unintentionally reinforce biases, or disrupt fairness and justice in society. Various ethical principles like transparency, trust, dual use, evasion, data poisoning, non-maleficence, and privacy are being compromised at various levels of AI's integration with the Copyright realm.

This paper provides a comprehensive thematic analysis. It delves deep into various ways through which AI is disrupting our right of copyright by harming ethical themes, which are Transparency, Fair Use, Dual Use, and privacy concerns. In the subsequent sections, these ethical concerns have been discussed in detail.

4.1. Transparency

Transparency is a crucial component of an AI framework that is designed and implemented in a manner that upholds responsibility, respect, and ethical standards. The transparency is put to stake by the AI companies for the sole purpose of increasing their profits. Given the surge in copyright infringement

[27] Ayush Pokhriyal and Vasu Gupta, "Artificial Intelligence Generated Works Under Copyright Law" 6 *NLUJ Law Review* (2020).

lawsuits, it is unsurprising that AI firms have adopted a more guarded approach, becoming less forthcoming about the copyrighted materials used to train their systems.[28] This question was raised significantly when Meta launched one of its greatest AI models, Llama 3, and remained tight-lipped when asked to reveal the sources of data that were used to train the model.[29]

A significant conflict is emerging regarding generative AI and copyright, as publishers advocate for compensation when their works are utilized to train large language models, while major technology firms resist the idea of making such payments. And AI companies have come up with a new solution that is not to disclose the data being used and to avoid transparency. [30]

The transparency standard has lowered over time. The research paper, which was originally written by some employees of Google back in 2017 to show the upsurge in Generative AI, contained every small detail of the data used. [31] But as demands and concerns of privacy are rising at an alarming rate, the companies are showing a nonchalant attitude has raised severe questions and many lawsuits[32]. Many writers based in the USA took Meta to court over the issue of data scraping allegedly being used by them for training their models.

In the case of The New York Times (NYT) v. OpenAI[33], the big newspaper establishment sued the AI company for training its model by using verbatim

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[28] Keith Kupferschmid, "Transparency in Copyright and Artificial Intelligence", *available at:* https://copyrightalliance.org/transparency-copyright-artificial-intelligence/ (Last visited on 30thMarch, 2025).

[29] Rani Molla, "Meta's not telling where it got its AI training data", *available at:* https://sherwood.news/tech/meta-wont-tell-you-what-went-into-training-its-new-ai-model-llama-3/ (Last Visited on 28thMarch, 2025).

[30]Alistair Barr, "Llama copyright drama: Meta stops disclosing what data it uses to train the company's giant AI models", *available at:* https://www.businessinsider.com/meta-llama-2-data-train-ai-models-2023-7 (Last Visited on 31st March, 2025).

[31]Ashish Vaswan,"Attention Is All You Need", *available at:*https://arxiv.org/pdf/1706.03762 (Last visited on 31st March, 2025).

[32] Joseph Saveri, "We've filed lawsuits challenging ChatGPT, LLaMA, and other language models for violating the legal rights of authors", *available at:* https://llmlitigation.com/ (Last visited on 31stMarch, 2025).

[33]*The* v. *Microsoft Corporation*, 1:23-Cv-11195, (S.D.N.Y.).

from the copyrighted text of NYT. ChatGPT gave results that were exactly similar to the copyrighted content of the NYT. This was neither exposed nor did OpenAI take the license before using copyrighted material.

In essence, the lack of adequate and well-implemented transparency regulations allows AI developers to take advantage of copyright holders, owners, and authors without their consent or awareness. Additionally, there are many justifications for introducing transparency measures that extend beyond the realm of copyright concerns. Effective transparency protocols and thorough documentation serve as invaluable tools for both copyright owners and AI developers, facilitating the resolution of challenges related to infringement, fair use, and compliance with licensing requirements. Additionally, transparency delivers broader advantages, such as advancing the creation of AI systems that prioritize safety, ethical standards, and impartiality.[34]

4.2. Fair Use

Artificial intelligence has transformed the creation and alteration of online media in various areas, while simultaneously shedding light on the scope and implications of copyright law and its policies, allowing fair use. Various AI systems utilise the data deeply for training models, which is sometimes copyrighted and sometimes not. The question that arises that whether this action is protected under fair use or not.

Section 52 of the Indian Copyright Act, 1957 states what shall not be considered infringement of copyright. This includes fair use of the work in a limited manner without permission of the author. The doctrine of fair use has been expanded to various cinematographic and musical dimensions after the 2012 amendment in the act. In *News Service Pvt. Ltd. and Ors.* v. *Yashraj*

[34] Artificial Intelligence, *available at:* https://copyrightalliance.org/policy/position-papers/artificial-intelligence/ (Last visited on 28thMarch, 2025).

Films Pvt. Ltd.[35], courts have emphasized factors like educational purposes, criticism, research, review, etc. If the work qualifies any factor, then that shall be spared from a copyright infringement suit.[36]

Imagine an AI system that can be taught how to track your favourite singer's music album, and it can mimic it too. It is not just an imagination but has been made reality when a track called "Heart on my Sleeves" used AI versioned sound of two most popular singers, Drake and the Weekend. Doing this in the name of fair use raises various moral and standard ethical questions about human creations themselves.

Generative AI systems are developed and optimized using vast datasets and inquiry samples, utilizing billions of parameters through software capable of processing extensive repositories of text and images. Many people have continuously been proposing that rules be made so stringent that it might become impossible to access data on the name of fair use without getting a license and shall pay a heavy amount if they do want the data. However, this impulsive response might serve as a concealed plot. The terms of fair use must be brought to light. Fundamentally, fair use is much more than simply altering the available content. It safeguards our collective ability to foster innovation, share ideas, and analyse them collaboratively.[37]

4.3. Dual Use

Like many technological advancements, AI possesses both advantageous and potentially detrimental applications. This inherent "dual-use" characteristic prompts important ethical considerations regarding how to curb misuse while

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[35]*India Tv Independent News Service Pvt* v. *Yashraj Films Pvt. Ltd.*, AIR 2013 (NOC) 315 (DEL.).

[36]Madhu Rewari, "Generative AI and fair use/fair dealing", *available at:*https://asiaiplaw.com/article/generative-ai-and-fair-usefair-dealing (Last Visited on 24th March, 2025).

[37]Roomy Khan, "AI Training Data Dilemma: Legal Experts Argue For 'Fair Use'", *available at:* https://www.forbes.com/sites/roomykhan/2024/10/04/ai-training-data-dilemma-legal-experts-argue-for-fair-use/ (Last visited on 27thMarch, 2025).

still fostering innovation and not infringing copyrights. An essential standard for classifying AI as dual-use would require evidence of its capability to inflict widespread harm, either through deliberate misuse or negligence.[38]

The most basic algorithm of AI written and performed was profound in performing the basic tasks only. As AI has evolved and the tasks which it can perform have also changed multifacetedly. AI can easily infringe copyrights, breach security, and pose severe threats of safety. With various tools of machine learning and based on data fed into the program, it has the ability to generate information which can be used for persuing terror activities.

The application of programmed robots placed at a position for attack, also known as "killer robots," can perform multiple critical functions. Data is fed into their system in large amounts so that they can access by permutation combination all possible ways of attack, whether by humans or by any other system. The data that is fed is many a times taken by infringing the copyright of various big security agencies. This way AI's dual use has the power to cause violence and can help in making lethal weapons. This also leads to infringement of data, which is copyrighted for useful purposes.

4.4. Privacy Concerns

With the advent of AI, privacy is compromised at various levels. This is even other way round, where due to the presence of many data privacy guidelines and regulations development of AI is hindered. Data is the new gold. The AI companies now are hungry for it and enjoy vast levels of control over users' data. Escaping pervasive digital surveillance while using online sources has become virtually unattainable across most aspects of life and the rise of AI

[38] Alexei Grinbaum, "Dual use concerns of generative AI and large language models", *available at:* https://www.tandfonline.com/doi/epdf/10.1080/23299460.2024.2304381?needAccess=true (Last visited on 27thMarch, 2025).

potentially is exacerbating this issue further. Privacy is both part of ethics and a right.

As generative AI *programs* are fed with big data. The data is inclusive of personal information of the users. Once the data is fed into the system it is nearly impossible to delete that data from the system of AI. This further poses a threat to the legitimate interests of an individual by curtailing their Right to be forgotten, which is the ultimate focal point of privacy of an individual.[39] The Court of Justice of EU defined the Right to be forgotten as, "*Every individual has the right – under certain conditions – to ask search engines to remove links with personal information about them."* This right is lost once data is fed into AI systems and which further leads to identity theft, fraud, voice cloning, etc.

Information privacy plays a pivotal role in guiding ethical decision-making around the use of new technologies. Tackling privacy challenges and considering the ethical dimensions of technology are essential for the enduring growth of AI. Achieving harmony between technological advancement, copyrighted works, and privacy concerns will foster the development of ethically responsible AI, ensuring it contributes to long-term benefits to the public.[40]

The challenges to privacy are ethical and moral in nature and can have severe consequences if effective strategies are not made. Various levels of anonymization must be employed at various levels of the AI model while training, so that the chances of misuse of personal data shall decrease[41]. AI

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[39] Right to be Forgotten, *available at:* https://gdpr.eu/right-to-be-forgotten/ (Last Visited on 28thMarch, 2025)

[40] Alex Campolo, Madelyn Sanfilippo, Meredith Whittaker & Kate Crawford, "AI Now 2017 Report", *AI Now*, 2017, *available at*: https://ainowinstitute.org/AI_Now_2017_Report.pdf (Last visited on 27th March, 2025).

[41]Iveta Petrova, "Data Privacy and AI: Securing Intellectual Property in the Modern Digital Landscape**"**, *available at:*https://www.evalueserve.com/blog/data-privacy-and-ai-securing-intellectual-property-in-the-modern-digital-landscape/ (Last Visited on 31stMarch, 2025).

companies must collaboratively develop a set of rules and guidelines to address the privacy concerns along with the copyright considerations. Copyright laws should be made more privacy-oriented and the roles of AI should be properly considered.

5. Conclusion

This paper, "*AI- Copyright: A paradoxical narrative and Ethical dilemma,*" has analysed the position that AI and copyright have in the legal framework. The widespread use of AI has posed severe questions about its policies of copyright infringement and has also given rise to severe ethical debates.

AI has taken over creative works of humans which has further destabilized the fundamental concepts relating to copyright. Capturing an illicitly large number of datasets for training the models has hinted at the growing autocracy in the field. For many creators and artists, the Generative AI has posed threats to their livelihood as companies no longer want to pay salaries to independent creators for similar works which AI can regenerate too.

The never-ending controversy between AI and schools of copyrights over claims of authorship and ownership is paradoxical in nature, as AI is beyond the levels of human creation and Intellectual Property finds its sole relevance in human creativity only. There is still a thin line between the two that is of emotional essence, which AI largely lacks. The biggest disadvantage which AI is that it is not human. AI can compete with humans as it is now doing but it cannot be on par with humans due to the fact that its existence is the result of human minds.

It is high time to develop the base concepts of Copyright laws focused primarily on the actions of AI. Economic criteria need a special evaluation while formulating laws. In our opinion, a perfect balance should be there between the standards of AI companies and the standards of ethics needed in society while formulating the laws. As we delve into the swiftly evolving field

of AI, the critical importance of ethical guidelines and robust corporate oversight becomes increasingly clear. [42]The ethical and legal challenges associated with AI, such as biases in decision-making, concerns about privacy, data security, transparency, copyright ownerships, patent holdings, etc., necessitate vigilant governance and a strong commitment to ethical morals.[43] By a thematic analysis of various ethical viewpoints, the study shows that various ethical dilemmas are challenging authorship and ownership in copyright law.

In a nutshell, the support for the development of growth of AI tools is a much-needed step in today's world, but at any cost, AI should not be given the liberty to digest the copyrighted works and creations of humans. This surely demands the collective efforts of AI companies, the government, and content creators. Internal and external factors, when combined, have the potential to protect the most vital asset of an organization and individual, Intellectual Property.

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[42] Innovation and Tech Resources Hub, *available at:*https://siliconvalley.center/blog/regulation-copyright-and-ethical-ai-new-challenges (Last visited on 27thMarch, 2025).

[43] Scott Warren, "Japan's New Draft Guidelines on AI and Copyright: Is It Really OK to Train AI Using Pirated Materials?", *available at:* https://www.privacyworld.blog/2024/03/japans-new-draft-guidelines-on-ai-and-copyright-is-it-really-ok-to-train-ai-using-pirated-materials/ (Last visited on 31stMarch, 2025).

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A Comparative Analysis of the BNSS, 2023 and the CRPC: Examining Legal Provisions and Procedural Changes

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Abstract

"Change is the law of life. And those who look only to the past or present are certain to miss the future."

–John F. Kennedy

This quote encapsulates the essence of legal evolution, which is central to understanding the transformation of India's criminal justice system. This paper provides a comparative analysis of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 (hereinafter referred as BNSS) and the Criminal Procedure Code (CrPC), 1973 (hereinafter referred as CRPC) focus in gon their legal provisions and procedural changes. The study explores how the BNSS, 2023, introduces significant modifications to India's criminal justice framework, particularly regarding the rights of the accused, arrest and detention procedures, and law enforcement practices. In comparison, the CrPC, 1973, which has long governed criminal procedure in India, is analyzed to assess how it has evolved in response to the new provisions in the BNSS. The paper examines the scope of these reforms in light of constitutional principles, human rights, and the role of the judiciary. The analysis highlights the tension between national security concerns and individual liberties, offering a critical evaluation of the BNSS's potential implications for legal

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fairness and procedural justice. The comparative study aims to contribute to ongoing discussions about legal reform and the balance between security and justice in India's evolving legal landscape.

Keywords: BNSS, CRPC, Constitutional, Human rights, Accused.

1. Introduction

The evolution of criminal procedure in India began under British rule, transitioning from Mohammedan law to a structured legal framework due to the system's limitations. Early reforms focused on substantive law, with procedural laws being fragmented until efforts toward uniformity began with the Criminal Procedure Acts of the mid-19th century. A significant milestone was the Criminal Procedure Code (CrPC) of 1898, which remained in effect for nearly 75 years and was amended to streamline legal processes. In response to Law Commission reports (1958–1968), which emphasized fair trials, reducing delays, and procedural accessibility, the CrPC, 1973 was enacted and came into force on April 1, 1974. This Code primarily provides procedural mechanisms for enforcing criminal law while also including some substantive provisions.[1] Its procedures are mandatory, with irregularities categorized under Sections 460 and 461. Where the Code is silent, courts may adopt fair procedures not expressly barred by law.[2]

2. Need For BNSS?

> *"A legal system that does not evolve with the times is like a map of a country that no longer exists."*

The Criminal Procedure Code (CrPC), which governs the procedures for the investigation, prosecution, and trial of criminal offenses in India, has been subject to significant scrutiny and critic is mover the years. Various Law

[1] For instance, Chapters VIII, X and XI deal with prevention of offences and chapter IX of the Code deals with the maintenance proceedings.
[2] *State vs Sohan Lal* AIR1960 Raj 44.

Commission and Committee reports have pointed out its deficiencies and proposed amendments to address emerging challenges and improve the efficiency and fairness of the criminal justice system. The Committee on Reforms of Criminal Justice System in its report pointed out that "It is the duty of the State to protect fundamental rights of the citizens as well as the right to property. The State has constituted the Criminal Justice System to protect the rights of the innocent and punish the guilty. The system devised more than a century back, has become in effective; a large number of guilty go unpunished in a large number of cases; the system takes years to bring the guilty to justice; and has ceased to deter criminals. Crime is increasing rapidly every day and types of crimes are proliferating. The citizens live in constant fear."[3]

Below are some of the major criticisms of the CrPC as outlined in various Law Commission reports:

Firstly, the Criminal Procedure Code (CrPC) has been widely criticized for contributing to *delays and inefficiencies in India's justice system*. The Law Commission's 14th Report (1958) and 48th Report (1972) emphasized chronic procedural delays, poor court management, and a rising backlog of cases. The 277th Report (2018) presented alarming statistics: 25.1% of under trials (70,616 individuals) had been in prison for over a year, 17.8% (50,176) up to one year, 21.9% (61,886) for 3–6 months, and 35.2% (99,398) for up to 3 months. These Figures highlight a systemic failure, where the number of under trials consistently exceeds that of convicts, often leading to prolonged detention without trial—especially troubling when wrongful arrests are involved.[4]Criticisms include prolonged trials due to repeated adjournments and overburdened courts hindered by procedural rigidity. To address this, the

[3] Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India, Report Vol. I, March 2003 (Chairman: Dr. Justice V.S. Malimath).
[4]Law Commission of India, *Law Commission Report No. 277: Data and Analysis* (Chapter2), August 2018, pp. 10-15.

154th Report (1996) recommended imposing strict time limits on investigations and trials, while the 77th Report (1978) proposed setting up fast-track courts for expedited handling of urgent cases.

Further, the next two major criticisms of the Criminal Procedure Code (CrPC) concern the *inadequate protection of witnesses and unchecked police discretion.* The 48th Law Commission Report (1972) highlighted the vulnerability of witnesses to threats and intimidation, which often deterred them from testifying, thereby compromising trial integrity. The CrPC lacked adequate provisions for witness protection, especially in high-profile cases. The 154th Report (1996) recommended enacting a formal witness protection law, which was partially implemented through the Witness Protection Scheme (2018) introduced by the Supreme Court. Additionally, the 48th Report also criticized the CrPC for granting excessive discretionary powers to police, enabling arbitrary arrests, extended detention, and custodial abuse without sufficient oversight. Confessions obtained under duress and lack of external account ability were noted as serious concerns. The 154th Report (1996) proposed stricter legal controls, improved over sight mechanisms, and safeguards to ensure police conduct aligns with constitutional protections of liberty and justice. It emphasized the need for clear accountability frameworks to prevent misuse of state power and uphold individual rights.[5]

The Criminal Procedure Code (CrPC) has also been criticized for its *excessive procedural formalities and vague legal provisions.* The 41st Law Commission Report (1969) highlighted that overemphasis on complex procedures and formalities caused unnecessary delays in investigations and trials, hindering effective justice delivery. It recommended simplifying procedures to reduce redundancies and allow quicker resolution of cases, particularly simpler ones. Additionally, the 154th Report (1996) pointed out vagueness and ambiguity in key provisions related to detention without charge, bail, and preventive

[5]Law Commission of India, *Report No. 154*, 1996.

detention. The lack of clear definitions led to inconsistent interpretations and potential misuse by authorities. To address this, the report called for clearer statutory definitions and guidelines to protect the rights of the accused and victims, enhancing clarity and fairness in criminal proceedings.

The *inadequate safeguards for women and children*, particularly regarding sexual offenses and exploitation are another ground for criticism. The 41st Law Commission Report (1969) identified a lack of gender sensitivity, noting insufficient procedural mechanisms to effectively address sexual assault, human trafficking, and domestic violence. Building on this, the 172nd Law Commission Report (2000), prompted by the Supreme Court case *Sakshi vs. Union of India*[6] and advocacy by the women's organization Sakshi, recommended substantive amendments to enhance the legal framework. These included the establishment of specialized courts and revised sentencing norms for gender-based crimes. The report integrated recommendations from the National Commission for Women and superseded earlier Law Commission proposals, reflecting an evolving judicial and legislative response to gender justice and child protection concerns. Furthermore, this Reports supersedes the 154th report of the Law Commission on the same issue, in response to the Supreme Court's instructions and in accordance with Sakshi's request.[7]

The 48th Law Commission Report (1972) criticized *preventive detention provisions under the Criminal Procedure Code (CrPC) for violating fundamental rights*, particularly the constitutional guarantee of personal liberty under Article 21 and protections under Article 22. The report highlighted that preventive detention lowed the state to detain individuals without charge or adequate judicial oversight, often for prolonged periods, undermining the rule of law. Despite judicial frameworks governing bail, the

[6]AIR 2004 SC 3566

[7] Press Information Bureau, Law Commission Recommends Stringent Laws to Prevent Sexual Abuse Against Youngsters, *available at:* https://archive.pib.gov.in/archive/releases98/lyr2002/rjan2002/04012002/r040120023.html (Last visited on 29th December, 2024)

process remains perceived as unpredictable and insufficiently protective.[8] To address these issues, the Law Commission recommended narrowly defining preventive detention and instituting stringent judicial oversight to prevent misuse, especially for political or arbitrary purposes, thereby safe guarding constitutional rights.

In summing up, The Law Commission reports consistently pointed to issues within the CrPC that hindered the efficiency, fairness, and transparency of the criminal justice system in India. The major criticisms cantered around delays, police abuse, lack of witness protection, ambiguous provisions, and insufficient protection for marginalized groups like women and children. These reports have led to a series of amendments and reforms aimed at addressing these concerns, though challenges persist in ensuring the full and effective implementation of these recommendations.

3. Changes Introduced by BNSS

After over seventy years of democratic experience, it was necessary to conduct a thorough review of our criminal laws, including the Code of Criminal Procedure, and update them to align with the current demands and aspirations of the people. To address these concerns, it is proposed to repeal the Code of Criminal Procedure, 1973 and replace it with a new law. This proposed law would incorporate modern technologies and forensic sciences in criminal investigations, as well as facilitate electronic communication for the submission and processing of information, including the service of summons. Clear timelines would be set for investigations, trials, and the delivery of judgments. The approach would be more citizen-centric, ensuring that justice is delivered promptly and fairly. As part of these reforms, the Bhartiya Nagarik Suraksha Sanhita, 2023 Bill was introduced in the Lok Sabha on11August 2023. It was then referred to the Department-related

[8] Law Commission of India, *Law Commission Report No. 268 : Introduction* (Chapter1), May 2017, pp. 4-10.

Parliamentary Standing Committee on Home Affairs for examination and recommendations. After thorough discussions, the Committee presented its report on 10 November 2023, offering various suggestions. The Government carefully reviewed these recommendations and decided to withdraw the previously pending Bill in the Lok Sabha. A revised version of the Bill will now be introduced, reflecting those suggestions accepted by the Government.

The Bhartiya Nagarik Suraksha Sanhita, 2023 was passed by both Houses of Parliament and received the President's assent on 25 December 2023. It was formally enacted as THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (46 of 2023), which came into effect on 1 July 2024, with the exception of the provisions related to section 106(2) of the Bhartiya Nyaya Sanhita, 2023, listed in the First Schedule.[9]

The *Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023* largely retains the provisions of the existing Criminal Procedure Code (CRPC), but it introduces several reforms aimed at simplifying the criminal procedure, reducing trial durations, strengthening the investigatory

Powers of the police, and implementing clear timelines for various processes. The key changes brought about by the BNSS, 2023 are as follows:[10]

The Bhartiya Nagarik Suraksha Sanhita, 2023 introduces significant procedural and structural reforms to modernize India’s criminal justice framework. It incorporates updated definitions in Section 2, such as 'audio-video electronic means' [2(1)(a)], 'bail' [2(1)(b)], and 'victim' [2(1)(y)], reflecting the increasing role of technology and ensuring earlier recognition of victims. Electronic communication is now central to court procedures (Sections 63, 64, 70, 193(3)(i), 210, 227, 230, 231, 254, 265), including

[9] *Statement of Objects and Reasons*, Bhartiya Nagarik Suraksha Sanhita, 2023, Bill No.76 of 2023, introduced in Lok Sabha on 11 August 2023.
[10] Key Highlights of the three new criminal laws introduced in 2023, SCC Online Blog Op Ed 161(2023)

summons and witness depositions. A new District Directorate of Prosecution is established under Section 20, and Section 23 enhances magistrates' powers by raising fine limits and introducing community service as a sentence.

Transparency and accountability are furthered through Section 37(b), which mandates public display of arrest details, and Section 43(3) permits handcuffing in specified serious offenses. Confiscation of weapons during arrest is covered under Section 50, while medical procedures are streamlined in Sections 51(3) and 53. Mandatory videography of searches (Section 105) and forensic evidence collection in serious crimes (Section 176(3)) are introduced. Arrest notifications must be sent as per Section 82, and Section 179 exempts vulnerable individuals (e.g., women, elderly) from compulsory police station visits.

The FIR process is modernized: Zero FIR and e-FIR are formalized in Section 173, with provisions for preliminary enquiry [173(3)], FIR application to magistrates [173(4)], and free FIR copy to victims [173(2)]. For non-cognizable offenses, reporting to the magistrate e is outlined in Section 174, while Section 175 addresses magistrates' role in cognizable offenses and public servant protections [175(4)]. Statements of rape victims must be video recorded (Section 176(1)) and by a female magistrate when possible [183(6)(a)]. Medical reports must be submitted within 7days (Section 184(6)), and safeguards for police searches are re-inforced under Section 185.

Procedural timelines are emphasized throughout: charge sheet submission deadlines (Section 193(9)), commitment proceedings (Section 232), framing of charges (Section 251), and judgment delivery (Sections 258, 392(1)). Plea bargaining is streamlined under Section 290, and summary trials for minor offenses are expedited (Section 283). Witness protections are Bolstered under Section 398, and Section 360 mandates victim consultation before prosecution withdrawal. Mercy petition processing timelines are defined in Section 472.

Among deletions, the positions of Metropolitan Magistrate sand Assistant Sessions Judges are abolished through changes to Sections 8, 11, 12, 14, 17, 22, 29, 113, 196, 214, 320, 321, 415, 422, and 436, ensuring uniformity. Courts now have discretion on concurrent or consecutive sentences (Section 25), and gender neutrality is introduced in Section 66. The scope of proclaimed offenders expands under Section 84(4) to include any offense punishable with ≥ 10 years imprisonment. Maintenance proceedings for parents are facilitated via Section 145, and Section 190 removes the custody prerequisite for filing a charge sheet. Vulnerable individuals receive protections in Section 195, while Section 346 limits adjournments to two. Sentence commutation rules in Section 474 allow flexibility without convict consent, and Section 479 liberalizes bail for under trials, empowering jail superintendents to initiate bail in certain cases.

Overall, the BNSS, 2023 replaces the CrPC with a tech-enabled, victim-sensitive, and rights- conscious framework that seeks to deliver justice more efficiently while protecting the procedural and constitutional rights of all stakeholders.

4. Comparison of Both the Laws

This discussion will compare the CrPC and BNSS, focusing on significant changes in criminal procedure law. Minor changes, such as section renumbering, amendments integration, and increased fines, will be briefly mentioned but not explored in detail. The discussion is divided into 3 sections: Positive Changes, Inadvertent Errors and Negative Changes.[11]

4.1. Positive changes

Contrary to common belief, the newly enacted BNSS introduces several

[11]*An Exhaustive Comparative Analysis of Code of Criminal Procedure, 1973 and Bhartiya Nagarik Suraksha Sanhita, 2023 available at*: https://www.barandbench.com/columns/ccpa-and-coaching-institutions-two-sides-of-a-noble-endeavor (Last visited Dec 28,2024).

positive changes. These changes can be listed into five main areas, although some provisions may fit into more than one category.

The *Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023* marks a significant departure from the colonial legacy of the Criminal Procedure Code (CrPC), introducing reforms that reflect Contemporary social values, technological advancements, and the need for a more efficient and inclusive criminal justice system.

One of the most visible reforms in the BNSS is the deliberate *removal of archaic and stigmatizing terminology.* Termssuchas "lunaticperson" and "person of unsound mind" have been replaced with the more humane and medically appropriate "person with intellectual disability" or "person with mental illness", in line with the Mental Healthcare Act, 2017. These changes are evident in provisions such as Section 219(1)(a) and throughout Chapter XXV. Similarly, the term "lunatic asylum" has been updated to "mental health establishment". The BNSS also discontinues the use of colonial-era designations like "pleader" in favor of "advocate", and omits obsolete terms like "thugs". Additionally, *structural changes are made to judicial designations,* notably the removal of "Assistant Sessions Judges" and the abolition of the "Metropolitan Magistrate" category that was previously applicable under Section 8 of the CrPC to cities like Bombay, Calcutta, Madras, and Ahmedabad. All magistrates across India are now uniformly referred to as Judicial Magistrates. Further, Section 153 of the CrPC, which permitted warrantless police searches to inspect weights and measures, has been eliminated, signaling a move towards more regulated police authority. The BNSS also *makes the law more gender-neutral* by amending provisions like Section 64 and Section 432 of the CrPC. In the BNSS, these now appear as Sections 66 and 474, removing the term “male” and ensuring equal treatment of all individuals regardless of gender.

In terms of *procedural clarity,* the BNSS addresses long-standing ambiguities regarding proclaimed offenders. Section 82(4) of the CrPC limited such designation to a fixed list of nineteen offenses. The BNSS removes this restriction, allowing anyone accused of an offense punishable with more than ten years' imprisonment or any special law offense to be declared a proclaimed offender. In support of this reform, the newly inserted Section 356 provides a structured procedure for the conduct of trials in the absence of such individuals. Other clarificatory reforms include Section 516, which defines the computation of limitation periods, and Section 462(1), which governs the conditions for coercive recovery of unpaid fines. Chapter XXXV introduces Section 479, which clearly defines important legal terms such as "bail" and" bail bond", thereby ensuring consistency across proceedings. A table addition is Section 473, which standardizes the procedure for handling mercy petitions in death sentence cases. This is a significant development in light of India's continued retention of capital punishment and the ongoing debate surrounding its procedural fairness. A major progressive stride in the BNSS lies in its *focus on vulnerable populations, victims, and fair process.* The *use of technology* is strongly encouraged in procedural conduct. Sections 254 and 265 enable examination of witnesses via audio-visual electronic means during sessions trials and warrant trials, respectively. This digital expansion ensures continuity of proceedings and broadens access to justice. Section 473 not only outlines the mercy petition process but also reiterates the importance of procedural clarity in capital punishment cases. Section 398 is particularly significant, as it mandates the establishment of witness protection schemes by all states, though the absence of national interim guidelines may lead to uneven implementation. This echoes the guidance issued by the Ministry of Home Affairs and the Supreme Court's ruling in *Mahender Chawla v. Union of India*.[12]

A more inclusive, *victim-centric approach* is evident in several provisions.

[12] (2019) 14 SCC 615

Section 360 provides victims an opportunity to be heard when the prosecution seeks to withdraw from a case, while Section 232 allows victims to participate in committal proceedings. In Section 190(1), a critical shift is introduced by elaminating the requirement for police to arrest accused individuals solely to ensure their presence before a magistrate post-investigation. This reform reduces unnecessary arrests and aligns with the Supreme Court's reasoning in *Satender Kumar Antil v. CBI*[13]. Section 483 requires that accused individuals execute a bond to secure their appearance in future court proceedings, further reducing pre-trial detentions. Section 484 simplifies anticipatory bail by eliminating the mandatory involvement of public prosecutors and the accused's physical presence, which was previously mandated under Sections 438(1A) and 438(1B) of the CrPC. Section 481 reduces the bail eligibility threshold from one-half to one-third of the sentence term for under trial prisoners, especially benefiting first-time offenders, while Subsection 3 places a duty on jail superintendents to initiate release applications for eligible prisoners.

Additional safeguards include the requirement under Section 105 that police record search proceedings electronically. Section 185(5) stipulates that such recordings be submitted to magistrates within 48 hours. Section 195(1) allows vulnerable individuals to be summoned without long-distance travel. Legal aid, previously confined to trial-level sessions courts under CrPC Section 304(1), is broadened in BNSS Section 341(1) to encompass appeals as well. Although this is a step forward, the reform remains partial, as noted by legal reformers like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer. Moreover, Section 293 (corresponding to CrPC Section 265E) *introduces the possibility of reduced sentences for first-time offenders through plea bargaining.*

A significant digital transformation is also embedded in the BNSS. Section 532 enables electronic trials, inquiries, recording of evidence, party

[13] (2022) 10 SCC 51

examination, and digital service of summons and warrants. Related provisions reinforce this shift: Section 64(2) allows for electronic service of summons; Section 227 facilitates digital issuance of summons and warrants; Section 153 authorizes electronic notices by Executive Magistrates; Section 412 enables electronic death sentence confirmations; and Section 251(2) allows for digital reading of charges. These reforms align with the broader goals of the Digital India initiative and promote increased judicial accessibility and efficiency.

In addition to digital modernization, the BNSS *introduces several time-bound processes to reduce delays in the justice system*. Section 336 facilitates faster deposition by allowing success or officers to testify in place of unavailable public servants or investigators. Section 274 empowers magistrates to discharge the accused at an early stage if charges appear groundless. Section 303(2) allows both central and state governments to issue notifications regarding prisoners. Section 249 enables special judges under laws such as the NDPS Act and POCSO Act to try cases directly. Moreover, Sections 418 and 419 expand the scope of state authority to include agencies under any central legislation.

The BNSS introduces statutory timelines across various stages of the criminal process. Section152 requires nuisance removal proceedings to be completed within 90 days. Non-cognizable offenses must be reported within 15 days under Section 174. Section 184(6) mandates that medical examinations for rape victims be conducted within 7days. Section 193(9) requires that investigations be completed within 90 days, and Section 194 stipulates that inquest reports must be submitted within 24 hours. Under Section 232, committal proceedings must be concluded within 90 days, extendable to 180 with justifications. Section 230 provides that documents for the accused must be supplied within 14days of charges being filed. Additional timelines include filing for discharge within 60 days post-committal under Section 250, and framing of charges within 60 days of the first hearing under Sections

251(1)(b) and 263(1). Judgments must be delivered within 30 days of trial completion, with a permissible extension to 60 days under Section 258. Section 269 allows for closure of prosecution evidence if witnesses repeatedly fail to appear. Section 346(2) limits trial adjournments to two, with written reasons. Judgments must also be uploaded online within 7 days under Section 392(1). Section 499 mandates that decisions on the disposal of perishable property be made within 30 days, while Section 501 ensures compensation to innocent purchasers of stolen goods within six months.

In conclusion, the BNSS brings the Indian criminal procedural law into closer alignment with contemporary democratic values by eliminating outdated provisions, incorporating technological solutions, ensuring procedural clarity, promoting victim and witness rights, and enforcing time-bound justice. While not without limitations, particularly in areas like national witness protection norms and access to legal aid, the BNSS reflects a substantial modernization of the criminal justice framework.

4.2. Inadvertent Errors

The Bhartiya Nagarik Suraksha Sanhita (BNSS) contains several drafting inconsistencies that may hinder its interpretation and application. One major error appears in Section 482(2), which mistakenly refers to offences under the *Bhartiya Nagarik Suraksha Sanhita* instead of the correct *Bhartiya Nyaya Sanhita*. The chapter references and titles in this section are outdated and misaligned with the current structure of the substantive law.

In Section 65, the definition of “corporation” relies on the outdated *Societies Registration Act, 1860*, missing an opportunity to reference modern legislation like the *Companies Act, 2013*. Similarly, Section 262 introduces a 60-day deadline for discharge applications post charge- framing, which misaligns with legal practice allowing such applications before charges are framed. Section 250 could have clarified this timeline better.

Section 290 sets a 30-day limit for plea bargaining after charges are framed, contradicting case law (e.g., *Gaurav Aggarwal v. State*) that allows it before charge framing. Section 175(3) includes a confusing cross-reference to Section 173(4)(b), which lacks clear subdivision. Further, Sections 43(1) & 43(5) on arrest of women could have been merged for clarity. Inconsistencies in terminology appear in Section 532, where "code" is used instead of "Sanhita." A typographical error is found in Section 187(5) with "Policy custody" instead of "Police custody."

Critics also highlight Section 150 as a potential substitute for repealed sedition law (Section 124A IPC), raising concerns of overreach despite a change in terminology. Lastly, Section 283(2) expands summary trials to offences punishable up to 3 years, but the definition of "warrant case" in Section 2 (y) still refers to offences over 2 years, causing ambiguity in categorization of offences between 2–3 years. These errors are not fatal but need correction or clarification to ensure effective and consistent legal implementation.

4.3. Negative Changes

The *Bhartiya Nagarik Suraksha Sanhita (BNSS),2023*, marks a significant departure from the procedural framework of the Code of Criminal Procedure (CrPC), 1973, introducing several notable reforms in India's criminal justice system. While some provisions reflect progressive changes aimed at improving efficiency, transparency, and technological integration, others have sparked serious concerns regarding civil liberties, due process, and federal autonomy.

A pivotal amendment appears in Section 349 (analogous to Section 311A of CrPC), which authorizes magistrates to direct individuals—even those not arrested—to provide forensic evidence like fingerprints or voice samples. Though this may reduce unnecessary arrests, it *raises critical privacy issues* and demands strong safeguards to prevent abuse. Similarly, Section 43(3)

liberalizes arrest procedures in the name of flexibility but could lead to misuse without regulatory oversight.

Another major shift concerns the *reintroduction of handcuffs,* which, although limited to serious offences, conflicts with established judicial precedents like *Sunil Batra v. Delhi Administration*[14], that emphasized human dignity. Additionally, Section 107 provides broad powers to police for property seizure, necessitating strict judicial supervision to prevent arbitrary action. In the sphere of federal relations, Section 478 transforms the previous requirement of "consultation" between state and central governments regarding sentence remission to mandatory "concurrence," thereby *curtailing state autonomy and risking intergovernmental tensions.*

Chapter XII introduces Section 172, enhancing preventive police powers by allowing detention of individuals who disobey police directives. However, the *lack of explicit procedural safeguards,* such as mandatory appearance before a magistrate within 24 hours, *poses a threat to personal liberty.* The BNSS also restricts sentence commutation under Section 475 by allowing only limited reductions in punishments, especially for life and death sentences. Similarly, Section 481, by excluding under trials facing multiple proceedings from release eligibility, risks denying justice to a broad section of accused persons.

Moreover, the *law makes prosecution of public servants more difficult,* creating legal shields through amended Sections 151, 175, 210, and 223, which could *hinder accountability.* The anticipatory bail provision under Section 484 (1) removes previously guiding criteria for judicial decision-making, opening the door to arbitrariness. Furthermore, Section 173 introduces a provision for preliminary inquiry before FIR registration in certain cases, threatening to dilute the impact of the landmark *Lalita Kumari vs. Govt. of Uttar Pradesh*[15] ruling that mandated prompt FIRs in cognizable

[14] AIR 1980 SC 1579
[15] AIR 2014 SC 187

cases.

Transparency in investigation is further undermined by the omission of the requirement to inform complainants when police decline to investigate, a principle previously upheld in *Bhagwant Singh v. Commissioner of Police*[16].This change *reduces accountability and could exclude victims from the process.*

A particularly contentious reform lies in Section 187, which redefines custodial remand by enabling detention in parts within the broader investigation period of 60 or 90 days. The absence of a clear prohibition against prolonged police custody throughout this period, as opposed to the earlier restriction after the initial 15 days, *deviates from the precedent set* in *CBI v. Anupam J. Kulkarni*[17].Instead, it aligns with the 2023 ruling in *V. Senthil Balaji vs. State*[18], *raising concerns about potential custodial abuse,* particularly for marginalized individuals. The provision also precludes alternative forms of detention, such as house arrest, in response to interpretations stemming from the *Gautam Navlakha v. NIA*[19] case.

While the law retains the spirit of modernization and seeks to streamline procedural aspects such as bail and investigation timelines, several provisions appear to empower state machinery without adequate checks. The introduction of advanced tools like electronic summons and digital evidence collection reflects an effort to enhance accessibility, especially in remote areas. However, the lack of detailed safe guards—such as timelines for magistrate oversight or witness protection mechanisms—limits the progressive potential of the law.

[16] AIR 1985 SC 141
[17] (1992) 3 SCC 141
[18] *V. Senthil Balaji vs. State*, decided on 28-02-2024, High Court of Judicatureat Madras
[19] Criminal Appeal No. 510 of 2021 [Arising Out of SLP (Criminal) No. 1796/2021].

5. Conclusion

In conclusion, the BNSS represents a significant advancement in India's criminal justice system, introducing reforms aimed at improving fairness, efficiency, and inclusivity. These changes modernize legal procedures and align them with evolving ideals of justice and equality. The BNSS enhances procedural clarity, streamlines processes like bail and trials in absentia, and prioritizes the rights of victims, witnesses, and the accused. Technological advancements like electronic summons and evidence recording improve accessibility, especially for remote areas, and clear timelines aim to reduce delays. While the BNSS marks a positive shift, certain areas still need refinement, such as guidelines for nationwide witness protection and the application of new technologies. However, these issues don't detract from its overall positive impact. The BNSS is a forward-thinking step toward a more modern and just legal frame work in India.

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Traditional Water Management Systems in the Context of Global Water Scarcity: Legal and Policy Insights

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"Water must be seen as a common that belongs to all, not as a commodity for the few."

-Vandana Shiva (Environmental Activist)

Abstract

The global water crisis, characterized by diminishing freshwater resources and increasing demand, poses a critical challenge to sustainable development. Traditional water conservation practices, rooted in centuries-old wisdom, offer innovative, community-driven, and cost-effective solutions to address these challenges

This paper explores exemplary practices such as step wells in India, qanats in the Middle East, and rainwater harvesting systems in ancient Rome and Africa, emphasizing their adaptability and sustainability. The study analyzes the legal frameworks that support or hinder the integration of these practices into modern water management systems, highlighting the need for inclusive policies that bridge traditional knowledge with contemporary scientific advancements. Drawing on case studies and policy analyses, the paper provides actionable recommendations for harmonizing traditional practices with modern conservation strategies to ensure equitable and sustainable water management.

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The findings underscore the relevance of traditional methods in mitigating the global water crisis and call for urgent legal and policy reforms to institutionalize their use.

Keywords: *Global Water Crisis, Traditional Water Conservation, Step-wells, Qanats, Sustainable Development, Water Management, Rainwater Harvesting, Community-Led Approaches.*

1. Introduction

1.1. Background

The global water crisis is one of the most pressing challenges of the 21st century, with far-reaching implications for human life, agriculture, industry, and ecosystems. According to the United Nations, around 2.2 billion people worldwide lack access to safe drinking water, and by 2025, half of the world's population is projected to live in water-stressed areas.[1] Factors contributing to this crisis include population growth, urbanization, climate change, unsustainable water use, and pollution of water bodies.[2] The situation is further exacerbated by inefficient water management practices and the over-extraction of groundwater resources, leading to depletion and environmental degradation.[3]

Water is a critical resource for sustainable development. The United Nations' Sustainable Development Goal 6 (SDG 6) emphasizes the importance of ensuring the availability and sustainable management of water and sanitation for all.[4] However, achieving this goal requires a multi-faceted approach that

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[1]United Nations**,** *The United Nations Water Report 2019: Leaving No One Behind* 18 (UN Water 2019).

[2]World Health Organization**,** *Drinking-Water, Sanitation and Health* (WHO 2020), *available at*: https://www.who.int/water_sanitation_health (Last visited on 5th January, 2025).

[3]Food and Agriculture Organization**,** *The State of the World's Water Resources for Food and Agriculture* 22 (FAO 2017).

[4]United Nations**,** *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (UN 2015).

combines modern technological advancements with traditional wisdom. Traditional water conservation practices, deeply rooted in local customs and cultures, offer time-tested, environmentally sustainable methods to address water scarcity. These practices emphasize community involvement, resource-sharing, and ecological harmony, principles that align with the ethos of sustainable development.[5]

1.2. Objectives of the Research

The research aims to bridge the gap between traditional and modern approaches to water conservation by analyzing the relevance of age-old practices in addressing today's water challenges. Specifically, the objectives are

- To examine the historical development and key features of traditional water management systems across different regions.
- To assess the effectiveness of traditional water practices in addressing current issues of global water scarcity and climate change.
- To analyze the compatibility of traditional water systems with existing legal and regulatory frameworks at national and international levels.
- To identify the challenges and opportunities in integrating traditional methods into contemporary water governance models.
- To evaluate the role of communities, customary laws, and local knowledge in the preservation and implementation of traditional water practices.
- To recommend legal and policy reforms that support the revival and integration of traditional water management systems into modern water management strategies.

[5]K. T. Shrestha**, "**Traditional Water Management Systems in Nepal" 10 *Journal of Himalayan Ecology and Development* 34 (2008).

1.3. Research Questions

The research will focus on addressing the following key questions

- How do traditional practices contribute to water conservation?
- What legal frameworks support or hinder their revival?
- What policies can harmonize traditional practices with modern conservation strategies?

1.4. Scope and Methodology

The research adopts a multi-disciplinary approach, combining insights from environmental science, law, and policy studies. The scope of the research includes:

1.4.1. Analysis of Case Studies

The research will examine successful examples of traditional water conservation practices, such as Johads in Rajasthan, India, and Qanats in Iran, to understand their effectiveness and scalability. It will also study instances where the neglect of traditional systems has led to water-related crises.

1.4.2. Review of Legal Frameworks

The study will analyze international conventions, national laws, and local regulations related to water conservation. It will focus on identifying gaps in these frameworks and exploring opportunities for the legal protection of traditional practices. For instance, the recognition of indigenous water rights and community-led water management systems will be examined.

1.4.3. Examination of Policy Documents

Government and NGO policy documents on water management will be reviewed to identify best practices and innovative strategies. Special attention will be given to policies that incentivize the revival of traditional practices, such as subsidies for rainwater harvesting or community-driven water projects.

1.4.4. Comparative Analysis

The study will compare traditional practices with modern water conservation techniques, evaluating their effectiveness, scalability, and legal recognition. This comparative analysis will highlight the strengths and limitations of each approach, paving the way for integrated solutions.

By combining these methodologies, the research aims to provide a comprehensive understanding of the role of traditional water conservation practices in the global water crisis and offer actionable recommendations for policymakers and stakeholders.

2. Traditional Water Conservation Practices

2.1 Overview of Traditional Practices

Traditional water conservation practices, developed over centuries, are deeply rooted in local ecological, cultural, and social contexts. These systems are not only efficient but also sustainable, often leveraging natural topography and climatic conditions. Below are examples of traditional practices from various regions:

2.1.1. Stepwells in India

Stepwells, locally known as Baoris or Baolis, are ancient subterranean structures designed to store water. These were primarily built in arid and semi-arid regions of India, particularly in states like Rajasthan and Gujarat. Stepwells are marvels of engineering and architecture, featuring deep stone reservoirs accessible through intricately carved steps. They serve as reliable sources of water during dry seasons and also as social and cultural spaces.[6] The Rani ki Vav, a UNESCO World Heritage Site in Gujarat, is a prime example of a stepwell. Beyond water storage, stepwells helped replenish

[6]S. K. Sharma, "Traditional Water Harvesting in Rajasthan: Stepwells" 35 *Journal of Water Resources and Management* 89 (2012).

groundwater, making them a vital part of India's traditional water management system. These structures were built with community participation, fostering a collective sense of ownership and responsibility.[7]

2.1.2. Qanats in the Middle East

The Qanat system, developed in ancient Persia (modern-day Iran), is one of the oldest methods of water conservation and distribution. Qanats are underground tunnels that channel water from aquifers in the mountains to arid plains for agricultural and domestic use. This technique allowed water to flow naturally due to gravity, minimizing evaporation and ensuring a sustainable supply. The Qanat system is still operational in countries like Iran, Oman, and Morocco, demonstrating its long-lasting utility. These systems required communal effort for maintenance, and their design reflects deep knowledge of geology and hydrology. In many cases, access to Qanats was regulated by customary laws, ensuring equitable distribution of water resources.[8]

2.1.3. Terracing and Contour Farming in Asia

Terracing and contour farming are traditional agricultural practices used extensively in hilly and mountainous regions of Asia, particularly in countries like China, Nepal, and the Philippines. These practices involve carving the landscape into stepped fields or following the natural contours of the land to reduce soil erosion and retain water. The rice terraces of Banaue in the Philippines often referred to as the "Eighth Wonder of the World," is a striking example of this practice.[9] These terraces are not only visually stunning but also vital for water management, as they capture and slow down rainwater, allowing it to seep into the soil and replenish groundwater. Such methods are

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[7] *Ibid.*
[8] M. S. Shahraki, "The Qanat System: An Ancient Hydraulic Tradition" 3 *Water History* 45 (2011).
[9] E. F. Hamilton, "Terracing in the Philippines: A Sustainable Water Management Practice" 17 *Asian Journal of Water Management* 122 (2017).

adaptive to local climatic and geographic conditions and ensure the efficient use of water resources.[10]

2.1.4. Rainwater Harvesting in Africa and Ancient Rome

Rainwater harvesting has been practiced for centuries in Africa and ancient civilizations like Rome. In Africa, traditional rainwater harvesting systems, such as hafirs (man-made ponds), were used in Sudan to collect and store rainwater for agriculture and livestock. These systems were simple yet effective, allowing communities in arid regions to survive prolonged dry periods. In ancient Rome, cisterns were widely used to collect rainwater from rooftops and public spaces. Roman aqueducts, though designed to transport water over long distances, often worked in tandem with rainwater harvesting systems, demonstrating a sophisticated understanding of integrated water management. These practices were particularly efficient in regions with irregular rainfall patterns.[11]

2.2 Strengths of Traditional Practices

Traditional water conservation practices possess several advantages that make them highly relevant, even in the context of modern water scarcity challenges:

2.2.1. Community-Led Approaches

Traditional water conservation methods were inherently community-driven. For example, the maintenance of stepwells in India and Qanats in the Middle East required collective effort. These practices fostered a sense of shared responsibility and ensured equitable access to water resources. Community involvement also helped transmit knowledge about these systems across generations, preserving their utility and cultural significance. In many cases, customary laws governed the use and maintenance of these systems,

[10] *Ibid.*
[11] J. M. Kettering, "Rainwater Harvesting in Ancient Rome and Africa" 1 *Water History* 178 (2016).

preventing over-extraction and misuse. For instance, traditional water-sharing agreements in the Qanat systems ensured fair distribution among farmers, reducing conflicts and fostering cooperation.[12]

2.2.2. Sustainability and Adaptability to Local Conditions

Traditional systems were designed with a deep understanding of local geography, climate, and ecological conditions. For example, terracing in Asia minimized soil erosion and improved water retention, making it highly effective in regions with heavy rainfall. Similarly, stepwells in India were tailored to arid climates, where water scarcity was a recurring challenge. These systems often relied on natural materials and processes, making them environmentally sustainable. Unlike modern infrastructure, which can disrupt ecosystems, traditional methods often worked in harmony with nature, preserving biodiversity and enhancing ecosystem services.[13]

2.2.3. Cost-Effectiveness Compared to Modern Infrastructure

One of the key strengths of traditional water conservation practices is their cost-effectiveness. Building and maintaining stepwells, Qanats, or rainwater harvesting systems required fewer resources compared to modern dams and reservoirs. The reliance on local materials and labor further reduced costs. Moreover, traditional systems were designed for long-term use, often lasting for centuries with minimal maintenance. This durability contrasts with many modern water infrastructure projects, which require significant investments for repairs and upgrades. For example, Qanats built over 2,000 years ago are still functional in some parts of Iran, demonstrating their resilience and cost efficiency.[14]

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[12]A. G. Ghazian, "Community Management of Qanats in Iran: A Model for Sustainable Water Use" 28 *International Journal of Water Resources Development* 389 (2012).
[13]R. S. Chauhan**,** "Sustainability in Traditional Water Conservation Practices: An Asian Perspective" 46 *Environmental Management* 218 (2017).
[14]D. P. Patel**,** "Cost-Efficiency of Ancient Water Systems: A Comparison with Modern Practices" 24 *Journal of Sustainable Water Resources* 34 (2014).

3. Challenges in Adopting Traditional Practices

3.1 Declines in Use

Urbanization and the loss of traditional knowledge have significantly contributed to the decline in the use of traditional water conservation practices. As cities expand and populations become more urbanized, the historical reliance on local and community-based water systems, such as stepwells and Qanats, has diminished. Furthermore, modern reliance on centralized water systems, such as large reservoirs and piped water, has led to a gradual shift away from decentralized, locally managed water systems. This trend is further compounded by the decreasing transmission of knowledge about these traditional methods to younger generations, making it increasingly difficult to maintain and revitalize these practices.[15]

3.2 Socio-Economic and Cultural Barriers

There are several socio-economic and cultural barriers to the adoption of traditional water conservation methods. One significant challenge is the lack of community involvement in modern water policies. Traditional water management systems thrived due to strong community participation and local governance, but with the centralization of water policies, these systems have often been neglected. In many instances, indigenous knowledge is overlooked or undervalued by policymakers, who prioritize large-scale infrastructure projects over sustainable, community-based solutions. This lack of recognition for traditional knowledge can prevent effective integration of age-old practices into modern water management strategies, reducing their relevance and effectiveness.[16]

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[15]M. S. Woodhouse**,** "The Decline of Traditional Water Systems in Urban Areas" 28 *Water Policy Journal* 145 (2021).

[16]K. P. Thompson, "Cultural and Socio-Economic Barriers in Water Conservation" 33 *Environmental Sociology* 212 (2020).

3.3 Climate Change Impact

Climate change has had a profound impact on the viability of traditional water conservation practices. Changing rainfall patterns, more erratic and unpredictable precipitation, and prolonged dry spells affect methods such as rainwater harvesting, which depend on predictable seasonal rainfall. For example, the hafir systems in Sudan or the terracing practices in Asia may be rendered less effective in regions facing altered rainfall regimes or more severe droughts. Such shifts in climate make it challenging for traditional practices to adapt quickly enough to ensure the continued availability of water resources, especially in already vulnerable regions.[17]

4. Legal Implications of Reviving Traditional Practices

4.1 Existing Legal Frameworks

The revival and integration of traditional water conservation practices into modern water management systems is influenced by both international and national legal frameworks. Internationally, the United Nations (UN) has recognized the importance of traditional knowledge and practices in achieving sustainable development, particularly through the Sustainable Development Goals (SDGs). For instance, SDG 6 emphasizes the need for sustainable management of water resources, which can benefit from the integration of indigenous and traditional practices.[18]

Nationally, several countries have developed water conservation laws that either directly or indirectly supports traditional water practices. In India, for example, the concept of "community-managed water systems" is embedded in water management policies. The legal protection for structures such as stepwells (Baoris) is enshrined in various heritage conservation laws. For

[17]J. R. Lewis, "Impact of Climate Change on Traditional Water Harvesting Methods" 45 *Climate Change and Water Resources* 87 (2019).
[18]United Nations, *Sustainable Development Goal 6: Ensure Availability and Sustainable Management of Water and Sanitation for All* (UN 2015).

example, the *Ancient Monuments and Archaeological Sites and Remains Act, 1958* provides for the preservation of stepwells as cultural heritage, indirectly contributing to the protection of traditional water practices.[19] Additionally, some countries, such as Morocco and Iran, have enacted laws protecting Qanats as part of their heritage and water management systems, recognizing their historical and contemporary significance.[20]

The Qanat system, which has been operational for more than two millennia in the Middle East, continues to be supported by national heritage laws. In Iran, Qanats are legally protected by the *Cultural Heritage, Handicrafts and Tourism Organization of Iran (ICHHTO)*, which ensures their maintenance and restoration.[21]The recognition of Qanats as part of the country's cultural heritage is a testament to the importance of legal protection for traditional water practices.

4.2 Gaps in Current Laws

Despite the legal frameworks in place, there are significant gaps when it comes to recognizing and supporting community-driven water conservation practices. Current laws often focus on modern infrastructure solutions, such as large reservoirs and industrial water treatment plants, neglecting the importance of smaller-scale, community-managed systems that are integral to traditional practices. For instance, in India, while stepwells are recognized as heritage sites, there is no comprehensive legal framework that encourages their active use for water conservation in rural areas or integrates them into

[19]Government of India**, "***Ancient Monuments and Archaeological Sites and Remains Act, 1958"*, s.3 (Ministry of Culture, 1958).
[20]A. R. Ibrahimi**,** "The Role of Qanats in Water Management in Iran: A Legal and Cultural Perspective" 16 *International Journal of Water Resources* 56 (2020).
[21]Iranian Cultural Heritage, Handicrafts and Tourism Organization**,** "Cultural Heritage Protection of Qanats in Iran" *Cultural Heritage Protection Report* (2019).

modern water policies. This gap in legal recognition makes it difficult for these practices to thrive in a modern context.[22]

Furthermore, there is a lack of incentives for the revival of traditional water conservation methods. Water management policies in many countries fail to provide adequate financial support or tax benefits for communities to restore and maintain traditional systems, such as terracing or rainwater harvesting. These systems often require low-cost maintenance but do not benefit from the same government subsidies or funding as large-scale water infrastructure projects. The absence of legal mechanisms that provide incentives for communities to adopt or revive traditional methods leaves these practices sidelined in the face of modern, centralized water systems.[23]

Additionally, many indigenous and traditional water rights are not formally recognized under national water laws. In countries like Australia and Canada, Indigenous communities have fought legal battles to secure water rights for traditional conservation practices such as rainwater harvesting and groundwater management. However, these practices are still often overlooked in national water legislation, creating barriers to their wider adoption.[24]

5. Policy Recommendations

5.1 Integration of Traditional and Modern Practices

To achieve sustainable water management, it is essential to integrate traditional water conservation practices with modern technologies and infrastructure. Hybrid models that combine the best of both systems can enhance water conservation efforts while preserving cultural heritage. For instance, traditional methods of rainwater harvesting, such as rooftop

[22]N. S. Khanna, "Legal Gaps in the Recognition and Protection of Traditional Water Practices in India" 24 *Environmental Law Review* 134 (2019).
[23]P. R. Rao, "Challenges in Reviving Traditional Water Management Systems in India" 12 *Indian Journal of Environmental Law* 45 (2018).
[24]T. D. L. Korten, "Legal Recognition of Indigenous Water Rights: A Case Study of Australia and Canada" 10 *Environmental Policy Journal* 89 (2020).

rainwater collection systems, can be augmented with modern filtration and storage techniques to make the water more accessible and usable in urban and rural areas. This integrated approach not only ensures the effective use of traditional knowledge but also helps address the demands of growing urban populations by supplementing centralized water systems.[25]

Moreover, traditional systems such as stepwells (baoris) or check dams can be complemented with modern water management technologies like automated water-level monitoring and efficient water distribution systems. These hybrid models can help mitigate the impact of seasonal water shortages, especially in drought-prone regions. Furthermore, integrating traditional agricultural irrigation techniques, such as those used in terracing or water-efficient crops, with modern irrigation methods like drip or sprinkler systems can increase water-use efficiency in agriculture, reducing the dependency on unsustainable water extraction practices.[26]

Internationally, hybrid models have shown success. In Australia, the integration of Aboriginal water management techniques, such as managing wetland ecosystems, with modern environmental science has contributed to better water conservation strategies in areas like the Murray-Darling Basin.[27] The success of such hybrid systems demonstrates the potential of blending traditional knowledge with modern practices for enhanced water security.

5.2 Legal Recognition of Traditional Practices

One of the key challenges in promoting traditional water practices is the lack of formal legal recognition. Governments should codify traditional water conservation methods in national water policies and legal frameworks. By

[25]M. T. S. Ryan, "Hybrid Water Management: Combining Traditional Knowledge with Modern Technology" 11 *Journal of Sustainable Water Resources* 87 (2021).
[26]A. S. Gupta**,** "Integrating Traditional Water Management with Modern Irrigation Methods" 32 *Indian Journal of Environmental Management* 56 (2019).
[27]S. L. Watson, "Aboriginal Water Management Practices: Integrating Indigenous Knowledge with Modern Environmental Science" 22 *Environmental Science Journal* 150 (2020).

officially recognizing these practices, governments can ensure their protection and promotion as integral parts of water management strategies. In India, for example, water management policies could include provisions that protect community-managed water systems, including stepwells, rainwater harvesting, and traditional irrigation methods.[28]

Legal recognition would also pave the way for the formal inclusion of indigenous water rights in national water laws. Indigenous communities often possess valuable traditional knowledge about local water sources, and their customary water rights should be legally acknowledged and protected. Recognizing indigenous water rights can help resolve conflicts over water distribution and ensure fair access for marginalized communities. Countries like New Zealand have already taken steps in this direction by recognizing the legal rights of rivers and water bodies, as seen in the Whanganui River case, where the river was granted legal personhood, which could inspire similar models for recognizing traditional water practices.[29]

5.3 Financial and Technological Support

To encourage the revival and maintenance of traditional water conservation methods, financial and technological support is essential. Governments should provide subsidies or financial incentives for communities that wish to restore or implement traditional water systems. For example, rural communities could receive subsidies for the construction or rehabilitation of traditional rainwater harvesting structures or stepwells, reducing the financial burden on local communities. Additionally, governments can provide tax benefits or low-interest loans for businesses or non-profits involved in promoting traditional water practices.[30]

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[28] Government of India, "*National Water Policy, 2012"* 16 (Ministry of Jal Shakti**,** 2012).
[29]N. J. Smith, "Whanganui River Case and the Legal Recognition of Water Rights in Indigenous Communities" 24 *International Journal of Environmental Law* 104 (2018).
[30]P. S. Joshi**,** "Financial Support for Reviving Traditional Water Practices" 27 *Water Policy and Management Review* 39 (2018).

Technological support can also play a significant role in optimizing traditional practices. For instance, Geographic Information System (GIS) mapping and data analytics can be employed to identify potential sites for rainwater harvesting and assess the feasibility of restoring traditional water management systems such as qanats or ponds. By combining traditional knowledge with

modern technologies, it is possible to optimize the design and operation of traditional water systems, ensuring their sustainability in the long term.[31]

Furthermore, the use of modern technologies like solar-powered pumps, remote sensing for water-level monitoring, and low-cost filtration systems can improve the efficiency of traditional water conservation practices, especially in areas with limited access to advanced infrastructure.

5.4 Community Participation

The success of any water conservation initiative relies heavily on the active involvement of local communities. Therefore, community participation should be a cornerstone of water management policies. Local communities, who possess valuable indigenous knowledge and experience, should be included in decision-making processes regarding water resources management. This can be achieved by creating platforms for dialogue between local stakeholders, policymakers, and experts to ensure that traditional water conservation practices are included in national water management strategies.[32]

Additionally, awareness programs should be conducted to promote the value and importance of traditional water practices. These programs can be designed to educate both urban and rural populations about the benefits of traditional water management techniques, such as rainwater harvesting and check dams. In many cases, communities may be unaware of the value of their own

[31]K. A. Stevens, "Optimizing Traditional Water Practices with GIS and Remote Sensing" 12 *Journal of Geospatial Water Management* 125 (2020).
[32]N. R. Sharma, "Community Participation in Water Management: A Case Study of the Jal Sahyog Project" 15 *Indian Journal of Rural Development* 22 (2019).

traditional knowledge. Awareness campaigns can help bridge the knowledge gap and encourage the revival of these practices, particularly among younger generations.[33]

Community-based water management initiatives, such as the *Jal Sahyog* project in India, have demonstrated the potential of involving local communities in water management. In these initiatives, local people are empowered to make decisions, manage resources, and restore traditional water systems, leading to more effective and sustainable water conservation outcomes.[34]

Moreover, local communities should be incentivized to adopt traditional practices through the provision of capacity-building programs, training on sustainable practices and participatory water management frameworks that acknowledge and promote community leadership in water governance.

6. Conclusion

The global water crisis is one of the most pressing challenges of our time, threatening lives, ecosystems, and economies across the globe. In this context, traditional water conservation practices provide a valuable yet often overlooked solution. Rooted in centuries of indigenous knowledge and cultural traditions, these methods offer cost-effective, sustainable, and community-driven approaches to managing water resources.[35] Practices like the *Johads* of Rajasthan, the *Qanats* of Iran, and traditional rainwater harvesting systems in Africa have proven their resilience and relevance even in modern times.[36]

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[33]R. K. Saxena, "Awareness Programs for Reviving Traditional Water Practices" 13 *Water Conservation and Management Journal* 15 (2021).
[34]P. K. Mishra, "Community-Based Water Management: Lessons from the Jal Sahyog Initiative" 19 *Water Policy and Governance Review* 58 (2020).
[35]S. Bhatia, *Environmental Jurisprudence in India: Landmark Cases and Their Implications* 145–147 (Oxford University Press, New Delhi 2020).
[36]P. Rawat, "Reviving Traditional Water Practices: A Case Study of Rajasthan's Johads" 37 *International Journal of Water Resources Development* 45 (2021).

Their revival underscores the need for a holistic approach to water management that values local knowledge and community participation.[37]

Legal frameworks and policy interventions play a critical role in ensuring the sustainability of these practices. Existing laws often fail to provide adequate recognition, support, or protection for traditional water conservation systems, leaving them vulnerable to neglect, encroachment, or misuse.[38] Bridging this gap requires integrating traditional practices into modern legal and policy frameworks, offering incentives for communities to adopt and maintain them, and fostering public awareness about their benefits.[39.] Courts and environmental jurisprudence also have an essential role in upholding the importance of such practices, as seen in landmark cases like *Narmada Bachao Andolan*, which emphasized the need for sustainable water management.[40]

Looking forward, global action is required to create hybrid water management models that combine the strengths of traditional practices with modern technologies.[41] Governments, NGOs, and international organizations must collaborate to codify traditional practices into national water policies, provide financial and technical support for their implementation, and leverage technology such as GIS mapping and data analytics to optimize their efficiency.[4243] A community-centric approach, supported by robust legal and

[37]M. Kumar and N. Singh**,** "The Role of Community Participation in Traditional Water Management Systems" 10 *Journal of Sustainable Development Studies* 81 (2022).
[38]A. Mishra**,** *Water Laws and Policy in India: A Comprehensive Analysis* 193–200 (Sage Publications, New Delhi 2019).
[39]J. Patel**,** "Integrating Traditional Water Practices into Modern Legal Frameworks: Challenges and Opportunities" 9 *Asian Water Policy Review* 35 (2020).
[40]T. Desai**,** "Narmada Bachao Andolan and Environmental Jurisprudence in India" 12 *Indian Law Journal* 121 (2019).
[41]R. Gupta**,** "Hybrid Water Management Systems: Lessons from Traditional and Modern Practices" 8 *Journal of Water Governance* 101 (2022).
[42]T. Zhang, "The Use of GIS in Optimizing Water Harvesting Systems" 14 *Water Resource Management Quarterly* 77 (2020).
[43]N. Ahmed and P. Bose, "Financial Incentives for Reviving Traditional Water Systems: Policy Insights" 6 *Global Water Policy Studies* 91 (2021).

policy measures, is essential for ensuring water security in the face of climate change and increasing water demand.[44]

The urgency of the global water crisis demands that we revisit and integrate traditional water practices as a core component of sustainable development.[45] The fusion of time-tested, indigenous methods with contemporary innovations offers a powerful solution to achieving water security and preserving this precious resource for future generations.[4647] By taking decisive action today, we can ensure a sustainable and equitable water future for all.[48]

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[44]D. Verma, *Climate Change and Water Security: Challenges and Policy Responses* 128–136 (Routledge, London 2020).
[45]A. Chaturvedi, "Traditional Practices in Water Management and Their Modern Relevance" 18 *Sustainability and Development* 89 (2022).
[46]P. Singh and K. Tiwari**,** "Integrating Indigenous Water Knowledge with Modern Technologies" 3 *Journal of Indigenous Knowledge Studies* 53 (2021).
[47]H. Morales, "Global Perspectives on Traditional Water Management Systems" 7 *Water Conservation Review* 45 (2020).
[48]A. Sharma, "Reviving Ancient Wisdom for Water Security in the 21st Century" 5 *Global Journal of Sustainable Development* 67 (2021).

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Modern Slavery: Unveiling the Dark Trade in Disposable Humans

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Abstract

This article examines the multifaceted issue of human trafficking, portrayed as a contemporary form of slavery centered on the exploitation of 'disposable humans.' It examines the intricate relationship between home and humanity, highlighting how human trafficking targets vulnerable individuals for exploitation in areas like forced labor and sexual abuse. One particularly alarming aspect is child trafficking, which is often associated with pornography and prostitution, emphasizing the urgent need for comprehensive investigative measures and stronger enforcement of anti-trafficking laws. The article defines critical terms such as "victim" and "survivor," offering a deeper insight into the experiences of individuals impacted by trafficking. It also evaluates the public awareness regarding human trafficking and highlights key strategies to increase awareness and better education on this burning issue. The article also examines the factors contributing to the growth and continuance of human trafficking, emphasizing how the quest for profit fuels this horrific crime. Furthermore, the article compares modern slavery with traditional forms of slavery, highlighting the brutality and inhumanity present in both of them. Despite increasing awareness of its brutality, human trafficking remains prevalent, leading to concerns about societal complicity and the effectiveness of existing measures. This article clarifies the differences between human trafficking and human smuggling, highlighting the

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significance of these definitions in the fight against trafficking. By providing a thorough analysis, this article emphasizes the critical need for unified efforts to combat human trafficking and uphold human rights, ultimately urging a global commitment to eradicate this atrocity. The article uses Doctrinal approach to legal research, focusing on systematic analysis and interpretation of legal statutes and case laws.

Keywords: *Human Trafficking; Modern Slavery; Child Exploitation; Public Awareness; Victims and Survivors.*

1. Introduction: The Connection Between Home and Humanity

Home or exile? King or subject? Master or slave? Dictator or citizens? Rule of absolute majority in democracy or oppression by opposition of dissent? All these examples reveal complexities of power and authority in human life. But no solution to it has ever been found. Throughout history, each generation has suffered and asserted itself with these dynamics, resisting and asserting themselves against various forms of control. This struggle reflects a deeper nature of human sufferings, tied to our attachment of home and belongings. Every creature, including humans, yearn for home - whether it is their birthplace or the place they currently decide. Home represents our place of origin, a fundamental connection for all species. Not only the humans, but even the pair of looms return back to their home from distant travels, calling out as they approach their cove. Similarly, green turtles, travel thousands of miles across the ocean for many years, but when it's time to lay their eggs, they travel back to the very same beach, where they were born. Some birds undertake incredible journeys, flying thousands of miles and losing half of their body weight, so that they could mate in their birthplace. Similarly, creatures like bees, butterflies and others build their nests in trees, lakes, hills, shores, and hollows at their native birthplace. This deep attachment to the place where their life has flourished, is what we call *home*.

In the 'Odyssey', Homer conveys the deep longing for home experienced by those who have been absent from home for years or held captive against their will. He portrays a character weeping on Calypso Island, overwhelmed with tears, trapped and unable to return home. this poignant image emphasizes the significance that home plays in our life.[1]

After every journey, both humans and creatures instinctively seek to return home. The desire for a home is a fundamental aspect of our nature. Everyone experiences a deep yearning to revisit familiar surroundings, or to discover a new home, where their future dreams can flourish. However, returning to the exact location once called home, isn't always feasible or preferable. Home is not merely defined by a specific location. For many, it represents a space where they feel acknowledged, cherished and connected with their loved ones. Home embodies relationships and provides a sanctuary. Those familiar with the 'travels of Odysseus' can appreciate the immense struggles faced in the journey back to the familiar shores and entering the gates of their home. Losing that connection ignites an intense longing in those who have been displaced from their homes. The Portuguese term '*saudade'* beautifully conveys the deep sense of homesickness and longing of separation from home felt by emigrants, migrants, and trafficked individuals. Any massive disruption from one's home brings about the similar anxieties and feelings of dislocation. This shared pain resonates with anyone who has experienced displacement.[2]Human trafficking, often referred to as modern slavery, evokes a similar sense of pain linked to 'saudade' for one's homeland.

2. Human Trafficking: A Form of Modern Slavery

It's difficult to accept that human slavery still exists, even with the

[1] Homer, "The Odyssey" in Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Public Affairs, New York, 2019).
[2] Joao Leal, *The Making of Saudade: National Identity and Ethnic Psychology in Portugal* (2000).

Universal Declaration of Human Rights in place. Nonetheless, human trafficking continues to be a global crime, being committed in every country and often within our own neighborhood without realizing the gravity of this crime, as it has significant impact on our families, children, and society at large. Despite the Universal Declaration of Human Rights adopted in 1948, which states that:

- all individuals are born free,
- no one should be subjected to slavery or servitude;
- all individuals have a right to freedom of movement, and
- individuals have a right to choose their employment freely,

yet, these principles are still not consistently respected worldwide. The trade and trafficking of humans, along with human slavery, not only exists but continues to thrive in its most cruel form and is rapidly flourishing. Human trafficking or modern slavery not only represents a severe violation of the most basic human rights, but also stands as one of the most serious abuses of those rights.

Human trafficking serves as a source of supplying cheap labor (modern slaves) for various trades, industries, and professions, facilitating the production of low-cost products. Currently, the number of individuals enslaved are far greater than the era when slavery was legally accepted. This phenomenon highlights the dark side of globalization, which is causing catastrophic effects on society. It entails the ruthless exploitation of the weak, poor, and vulnerable by those who are strong, powerful and rich human predators. This international crime and its tentacles are expanding across numerous sectors that depend upon human labor and services. Trafficking in men, women and children is taking place in almost every industry, whether it is agriculture, construction, business, garment manufacturing, technology

companies, carpet industry, or hospitality industry. One of the most alarming aspects of human trafficking is its prevalence in private households, where many domestic workers, including maids and servants fall victims to trafficking.

Human trafficking involves the ruthless exploitation of vulnerable individuals by traffickers, employers, or their buyers. This heinous crime is carried out by individuals who are emotionally detached and devoid of empathy. In stark contrast, those with compassion and sensitivity have no place in this grim business of humans trafficking, All the participants involved in trafficking whether they are traffickers, their agents or security guards exhibit a hardened emotional resilience, while their innocent victims are precious gems, tragically caught in this dark world. Human traffickers often exhibit sociopathic and narcissistic traits. Narcissists are characterized by their lack of empathy and show a blatant disregard for the sufferings caused by them on others. In fact, they often derive pleasure and deep satisfaction in their sadistic fantasies of domination, maiming, torturing, killing and destruction. This disturbing behavior targets the most vulnerable individuals. Moreover, trafficking victims are not confined only to impoverished people in poor and developing countries; but their numbers are rapidly rising even in the rich and developed countries as well.

This international crime is occurring locally, nationally and on international levels. It is often referred to as modern slavery because it involves the extreme exploitation of the vulnerable by the powerful. Slavery is characterized by the control or ownership of one person by another, similar to the same way one might control an object. This control is exerted through verbal, physical, or psychological means, and it may or may not require the geographical movement of the individual being controlled. Some victims find themselves enslaved within their own countries, while others are forced to work in foreign countries. Similar to how industrial civilization has flourished at the expense

of environment, human trafficking is thriving at the cost of human nature, by undermining human dignity, posing a growing threat to our collective humanity.[3]

3. Human Trafficking for Exploitative Purposes

Human traffickers and predators show no compassion or fear of law in any country. They are willing to commit any crime for financial gains. Unfortunately, even majority of educated people either remain unaware of this crime or knowingly choose to ignore it. Many people remain indifferent to human trafficking because they also enjoy the benefit from low price of goods and services that often comes at the expense of others. They are aware that the products which they are buying are made by trafficked labor. Many inexpensive goods and services depend upon exploitation of enslaved individuals. Another harsh reality that many people ignore is that pornography and prostitution services are heavily populated by trafficking victims. Sadly, human trafficking is only associated with the labor industry. Even individuals who are aware about trafficking in prostitution, often perceive it as a victimless crime. While they may consider it morally questionable, they believe that the men who engage the services of these sex-workers are merely paying for their enjoyment or to gain experience. They do not categories these men as rapists, contending that the interactions occur with the consent of the sex-workers.

However, they overlook the fact that many women do not choose prostitution willingly but rather see it as a last resort for survival. Once a woman is trapped by a trafficker, then escaping this grim situation becomes nearly impossible. Only those with compassion can truly understand the sufferings of a trafficked woman, who is compelled to engage in sexual acts with multiple clients daily,

[3] Queen's University Belfast School of Law, *The Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* (2012), *available at:* https://glc.yale.edu/sites/default/files/pdf/the_bellagio-_harvard_guidelines_on_the_legal_parameters_of_slavery.pdf (Last visited on 3rd October, 2024).

often under the constant threat to her life and without any breaks. Prostitution is a painful profession that inflicts both physical and emotional sufferings, making it difficult to understand the severe degradation faced by woman, who work to enrich exploitative pimps, while earning little for themselves. These who are trapped in the web of prostitution are essentially human prisoners or slaves. In the realms of pornography and prostitution, young girls are frequently lured by misleading them into an illusion that they can earn huge fortunes by entering into this profession. But, once they become involved, they find themselves trapped, facing severe consequences for refusing clients, which can include severe violence, torture, starvation and threats against their family or friends who may also end up in web of human trafficking.[4]

The lives of women who are pushed by traffickers into prostitution is far worse than those who choose the profession voluntarily. Trafficked individuals, regardless of gender are treated as modern slaves. In many strip clubs across the world, it is likely that significant numbers of performers are victims of trafficking rather than being voluntary participants. The recruitment of these individuals often involves misleading promises of huge earnings and a lavish lifestyle in cities or abroad. Young women are lured with the prospect of earning lot of money as strip dancers, along with the opportunity to earn significant tips and commissions in this exploitative sector.[5]

4. Atrocious Crime of Child Trafficking for Pornography and Prostitution

Currently, there are more individuals enslaved worldwide than during the time when slavery was morally and legally accepted. Many of these modern slaves are children, who are forced to engage in various illegal and unethical work. Many are compelled to participate in sexual exploitation in dangerous settings,

[4] Marc Cameron, *Tom Clancy's Power and Empire* 185 (G.P Putnam & Sons, New Tork, 2017).
[5] *Ibid.*

including vehicles, to serve a long queue of migrant workers. Children are also increasingly sought after for webcam sexual exploitation. One of the most disturbing aspects of child trafficking is that many traffickers are parents themselves. Even though they have their own children, these individuals often exhibit shocking cruelty and a disturbing mindset.[6]

One tactic used by child predators to lure victims is to disguise themselves as children during online chats with them or to present themselves as wealthy executives while enticing young girls for exploitative purposes. According to the National Center for Missing and Exploited children, approximately 75,000 human traffickers are currently operating in the realm of online child pornography. The easy availability and access to online pornography have gone to such an extent that one can easily view it anywhere, including schools, colleges, offices and even in streets or in public transport. Most of the trafficked children in pornography or prostitution are enlisted as missing children. In India, lakhs of children are reported missing every year, but only a fraction is successfully recovered. The seriousness of child trafficking necessitates that law enforcement agencies must prioritize the cases of missing children; otherwise, these children are at the risk of becoming an easy target for the traffickers. Additionally, enforcement agencies should closely monitor predators and traffickers, utilizing informers to aid in their efforts.[7]

5. Investigation and Enforcement of Human Trafficking Issues

Heinous acts of human trafficking often go inadequately investigated in many countries. A contributing factor is the slow progress in the understanding, methods, and processes related to this crime amongst the enforcement authorities and the legal system. Although trafficking is acknowledged as a global crime, but there is still an absence of mandatory regulations governing the placement agencies. Additionally, there is notable deficiency in the

[6] *Ibid.*
[7] *Ibid.*

cooperation and coordination amongst various enforcement agencies at the district, national and international levels. To effectively combat this crime, it is essential for these agencies to collaborate with NGOs and other stakeholders, in order to identify and apprehend the predators and perverts hidden amongst our society. Additionally, the lack of political will and persuasive corruption significantly contributes to the traffickers evading arrest and prosecution, thus enabling them to operate without the fear of law. When traffickers are arrested for child trafficking or child pornography, their defense lawyers frequently claim that their clients are respectable and caring individuals, who themselves being parent would never harm a child. Consequently, despite an alarming increase in child trafficking, those who are arrested represent just a tip of an iceberg, with prison conditions being too comfortable for them.[8]Significant financial resources and strenuous efforts are the need of the hour to combat and curb this crime effectively, because existing laws and enforcement strategies have made only a minimal impact on human trafficking.

Another factor contributing to the rapid increase in trafficking is the growing demand and greed of rich and affluent individuals. Trafficked individuals are being exploited in almost every sector, from goods production to services, including prostitution and pornography. In certain industries, a significant portion of the workforce consists of trafficked men, women, and children. Almost ninety percent of prostitution and pornography relies upon trafficked children and young women. Male victims are frequently trafficked as labour in agriculture or industry, but their involvement in immoral activities is also common. Children are also trafficked for various purposes, including illegal adoptions, soldiering, camel jockeying, forced marriages, begging, organs transplantation, sex-tourism and for other illegal uses.[9]

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[8] Marc Cameron, *Tom Clancy's Power and Empire* 198 (G.P Putnam & Sons, New Tork, 2017).
[9] Kevin Bales, *Disposable People* 8 (University of California Press, 1999).

The crime of human trafficking generates trillions of dollars by exploiting trafficked victims.[10] Also, the crime of human trafficking or modern slavery, affects every country, every family, and every individual. No family is immune from the threats posed by the human predators. Addressing the issue of human trafficking requires prioritizing human rights over political and economic considerations.[11]

6. Meaning Of Human Trafficking

Human trafficking is a crime that involves the exploitation of individuals as modern-day slaves. These victims are often used, reused multiple times and discarded when worn out and no longer deemed useful. The abuse and exploitation of these slaves by traffickers and their buyers**,** not only harms the body but also devastates the soul. Human trafficking has become a multi-billion-dollar industry, with men, women, and children being traded as slaves in various locations across the world. Many people are still oblivious to the realities of human trafficking and modern slavery to such an extent, that when asked about slavery, they typically believe that it has been abolished and was a thing of past. While slavery is viewed as primitive concept, the harsh reality is that slavery not only thrives today, but it is more widespread and crueller than the slavery that was sanctioned in earlier times. In its new form, it is referred to as modern slavery and has emerged as a global crisis. This problem is expanding rapidly at an unimaginable scale in developed, developing, and even amongst the world's wealthiest nations.

The term '*trafficking*' implies movement. However, in the context of human trafficking, physical movement is not always necessary. In the context of human trafficking, movement signifies the shifting of the victims from place

[10] Nita Belles, *In Our Backyard: Human Trafficking in America and what we can do to stop it* (Baker Pub Group, 2015).

[11] Biswajit Ghosh, "Trafficking in women and children in India: nature, dimensions, and strategies for prevention", 13(5) IJHR 716 (2009), *available at:* https://www.shram.org/uploadFiles/20140828012338.pdf (Last visited on October 29, 2024).

of safety into a trafficking network, as well as the exploitation of their vulnerabilities. In human trafficking, victims are confined both physically and emotionally, enduring various type of abuses, including physical, verbal, psychological and sexual violence. They are frequently coerced to work for long hours in an inhumane condition with minimal or no pay. In human trafficking, both the trafficker and the victim are humans, but one is a criminal who exploits and torture others, while the other is an innocent and vulnerable victim. Human trafficking is referred to as modern slavery because traffickers treat their victims as slaves, subjecting them to various forms of atrocity and stripping them of their freedom. The other party involved is a victim or survivor, who in addition to being rescued, requires special medical care and rehabilitation. In many cases, traffickers are individuals who once were the victims of human trafficking themselves.

6.1. Meaning of Terms 'Victim' and 'Survivor' in Context of Human Trafficking

In the context of human trafficking, the terms 'victim' and 'survivor' are frequently used in legal discussions. The term '*victim*' carries legal significance within the criminal justice system. It refers to an individual who has suffered harm as a result of criminal conduct. Victim has granted particular rights within the criminal justice system. However, the term '*survivor*' refers to individuals are on the path of healing following traumatic experiences. Both the terms denote someone who has suffered and still continues to endure the consequences of being trafficked.

7. How Aware is the Public About Human Trafficking?

Every person, government, international humanitarian organization must recognize the heinous crime of human trafficking, which represents two troubling realities. First, human trafficking ranks amongst the largest illegal trade globally, alongside arms and drugs trafficking. Second, it contributes to

disappearance of millions of children and young girls every year, who are reported as 'missing persons' by the law enforcement authorities. Law enforcement agencies often exhibit a lukewarm response, when it comes to finding missing persons, resulting in few recoveries only. Later on, such missing person's case files are closed with the label 'untraceable'. It's a harsh reality, that most of these missing children and girls are targeted by traffickers and compelled to work in various types of illegal activities. It is a truth that, out of every three minors who run away from the protection of their homes, at least one is likely to be coerced into trafficking for unethical purposes, or organ trade, or other forms of exploitation. Victims of trafficking are not limited to children who flee from their homes; but also include even children from safe and supportive families who may be lured, kidnapped or coerced into trafficking by the human predators. These human predators actively target vulnerable children and are experts in luring children, young girls and boys even from the safe custody of homes. The rise of online child pornography is another reality that has created significant risks for children and young girls. The growing issue of trafficking has left every child -whether a boy or a girl, totally vulnerable to these predators.

Human trafficking is a serious crime against humanity and necessitates a multi-dimensional approach at both national and international levels for its effective combat or eradication. Raising public awareness about this horrific crime is crucial to save the lives of millions of children, women, and men from this atrocity and from the horrors of modern slavery. The proverb '*an ounce of prevention is better than a pound of cure*' serves as one of the proactive solutions to control human trafficking. In addition to legal measures, implementing preventive measures to control trafficking are necessary to save countless lives of vulnerable young children from being destroyed. Increasing awareness about the severity of trafficking is crucial, as many individuals remain passive in addressing this heinous crime either because of ignorance or

fear. Media coverage on raids and arrest of the traffickers and their networks is often lacking. Consequently, people often do not realize how seriously this crime of human trafficking has infiltrated into our neighborhood and even to their own homes. These factors contribute to the alarming increase in human trafficking. The media, law enforcement agencies, political leaders, government and the general public, each have a role to play in combating these traffickers. One possible solution could be the implementation of death penalty for repeated offenders of trafficking.

8. Essential Measures for Promoting Public Awareness

Raising public awareness is one of the most effective ways to identify, confront and curb this cruel and heinous crime of human trafficking. In addition, a combination of societal, administrative, legal and legislative measures is also crucial to eliminate the evil of trafficking and modern slavery. Possible measures include:

8.1. Educating the general public about the causes and effects of human trafficking, as well as their duties in responding to this crime against humanity.

8.2. Providing comprehensive education, training and sensitization for all law enforcement officials and judicial officers on how to handle trafficking cases and supporting victims and survivors. It's also essential to conduct joint training initiatives for improving collaboration between different enforcement agencies, legal bodies and NGOs, because poor coordination between poses as a major challenge to effectively control trafficking.

8.3. Educating public about the processes and resources available for offering immediate support for the victims and survivors of

human trafficking, including trauma counselling by specialists, immediate financial assistance, and rehabilitation programs aimed at promoting self-sufficiency.

8.4. Enacting a unified, comprehensive law is crucial to address all aspects of human trafficking. This legislation should include stringent punishment to traffickers, their agents, buyers of trafficked individuals, transporters, those who hold human slaves, owners of establishment where slaves are exploited and forced to work, any corrupt officials found involved in human trafficking and all others who assist in human trafficking activities.

8.5. Media should play a key role in increasing public awareness of human trafficking by publicizing the names and details of individuals who have been found guilty of this crime by the Court. This strategy can aid in the fight against human trafficking.

8.6. Society should distance itself from those who have accumulated wealth by illegal or unethical activities, including human trafficking.

9. Factors Contributing to the Rise and Persistence of Human Trafficking

Human trafficking and modern slavery transcend national boundaries, making this crime truly global. However the situation is truly alarming in India, which is increasingly emerging as both a source and transit hub for trafficking, as well as a safe refuge for traffickers. The U.S. Department of State's Trafficking-in-Persons Report classifies India as a tier-2 nation because of its failure due to insufficient measures to combat human trafficking. The report

identifies India as a trafficking hub and criticizes the government for failing to fully comply with the minimum standards for eliminating trafficking.[12]

The primary reason for the rapid international growth of human trafficking is that crime of human trafficking has been given only a lip service or low priority by the national governments, its law enforcement agencies and also by the justice delivery system. Many cases of human trafficking or sale of humans are either not registered at all or if registered, they are registered as missing persons reports, which are later closed as untraced. The situation is similar across many countries, despite various international accords encouraging the governments to take swift action in controlling human trafficking. This increase in trafficking is attributed to lack of political will on part of politicians, governments and legislators. Furthermore, lack of cooperation and coordination between enforcement agencies, judicial systems, NGOs, survivors and other public-spirited persons also play a significant role in the rise of trafficking. Such lack of coordination results in delayed investigations, low rates of prosecutions, fewer convictions, threat to victims and their families when accused individuals are released. Consecutively, this results in incorrect statistics and data regarding the prevalence of this crime in society.

Former U.S. President George W. Bush high lighting the gravity of human trafficking urged a renewed commitment to fight this enduring evil. He pointed out that "*about crime of human trafficking, we must show new energy in fighting back an old evil. Nearly two centuries after the abolition of slave trade, and more than a century after slavery was officially ended, trade in human beings for any purpose must not be allowed to thrive. Founding documents of the United Nations and founding documents of America asserts*

[12] United States Department of State, "Trafficking in Persons Report", (2008), *available at*: https://2009-2017.state.gov/documents/organization/105501.pdf (Last 20th visited November, 2024).

that human beings should never be reduced to objects of power or commerce, because their dignity is inherent."[13]

Former U.S. President Barack Obama has also observed that: *"Human trafficking ought to concern every person because it is a debasement of our common humanity. It ought to concern every community because it tears at the social fabric. It ought to concern every business because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I am talking about the injustice, the outrage of human trafficking, which must be called by its true name the modern slavery."*[14]

10. The Pursuit of Profit Fuels Human Trafficking

Despite being officially abolished nearly a century ago, human slavery not only continues to exist, but has escalated with both exploitation and cruelty. It is now termed as modern slavery, which ranks amongst the worst horrific atrocities since the holocaust. Governments play a crucial role for continued growth and flourishing of human trafficking which is evident in every city and town all over the world. The lack of effective measures to address such a troubling increase in human trafficking reflects poorly on both governments and humanity as a whole. Human trafficking is flourishing because it has become one of the biggest money-spinning crimes, surpassed only by arms and drugs trafficking. Victims can be exploited across various sectors industry, agriculture, factories, shops, resorts, clubs, hotels, restaurants or in the

[13] The White House: President George W. Bush, "President Bush Addresses United Nations General Assembly"(2000), *available at:* https://georgewbush-whitehouse.archives.gov/news/releases/2008/09/20080923-5.html (Last visited 20th November, 2024).

[14] The White House: President Barack Obama, *Fact Sheet: The Obama Administration Announces Efforts to Combat Human Trafficking at Home and Abroad* (Sept. 25, 2012), *available at*: https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki (Last visited 29th November, 2024).

entertainment industry. Additionally, modern slavery often exists in our neighborhoods, in the form of maids, servants or as domestic help.

The global prostitution and pornography industry, along with various other sex-related businesses, as well as the businesses of begging and organ trade totally depends on trafficked individuals. Human trafficking is flourishing because there is an increasing demand for cost-effective labor and services in various industries and countries. Consumers, despite being aware that such low-cost labor or services often involve exploitation of trafficked humans, yet they are willing to utilize these services. Many consumers are aware that low-cost products and services are often provided to them by trafficked humans. However, traffickers skillfully convince them that they individuals are not trafficked but are in search for jobs. Human traffickers are experts, competent and resourceful, capable of supplying victims anywhere in the world, wherever there is a high demand and profitable opportunities. Human traffickers often disguise themselves as placement or recruitment agencies, or travel and visa agents, tourism operators, or as immigration consultants. Many celebrities are also linked to human trafficking. Thus, a significant contributing factor for the massive rise in modern slavery is the greed exhibited by traffickers and some celebrities, who relentlessly pursue financial gain. They operate under the belief that society respects only the wealthy, often ignoring the sources of that wealth. As a result, these individuals give more value to money over human pain or sufferings, or human emotions and human lives, reaping substantial profits from the exploitation of others.

Therefore, the key factors contributing to the rapid increase in human trafficking include:

First, there is an increasing demand for cheap labor in all areas of economic activity, including factories, businesses, and a range of unethical services, including commercial sex, pornography and online exploitation;

Second, traffickers or perpetrators require only a small initial investment to engage in the lucrative human trafficking industry, which offers low risks and high financial returns;

Third, the enforcement and legal systems are weak, ineffective and often plagued by corruption. Further the political system shows little concern or commitment. There is a prevalent belief that human trafficking primarily affects only poor families;

Fourth, a significant number of individuals are either ignorant or deliberately overlook this crime, largely because they fear the traffickers and their unlawful connections with influential figures;

Fifth, the business of human trafficking is now more profitable than trading in arms or smuggling or drugs trafficking, offering lower risks and higher returns. These factors have contributed to its rapid growth in comparison to other forms of organized crime. The International Labor Organization estimates that human trafficking generates around $150 billion in profits each year, with $99 billion derived from sex trafficking and $51 billion from other sectors.[15]

11. Comparing Modern Slavery and Traditional Slavery

The key distinction between modern and traditional slavery is that modern slavery is often more brutal than the traditional slavery. In the past, traditional slaveholders often treated their slaves with some level of care, as the investment in slaves was significant. During the era, when slavery was legally and socially accepted, slaves were limited in number and were expensive, leading in greater concern for their welfare as compared to the captors of modern slaves. Conversely, modern slaves are easily accessible and

[15] International Labor Organization, *ILO Says Forced Labor Generates Annual Profits Of US$ 150 Billion* (MAY 20, 2014), *available at:* https://www.ilo.org/resource/news/ilo-says-forced-labour-generates-annual-profits-us-150-billion (Last visited 21st October, 2024).

inexpensive. Consequently, slaveholders find it more economic to replace the sick slaves, rather than investing too much on their care, health and well-being.

Modern slaveholders often refrain from investing in the health, maintenance and care of their slaves due to fundamental economic principle. This principle suggests that, when a person has to buy a thing at a very high cost, then he will always spend money on its care and maintenance, as they intend to use it for an extended period. On the other hand, if the same thing is readily available or easily replaceable at a relatively lower cost, then buyer will prefer to replace it rather than spending much on its care and maintenance. Thus, when an item is scarce and costly, it motivates the owner to prioritize its care to safeguard their investment for a longer duration. Conversely, when an item is easily available and offered at lower prices, buyers prefer to dispose of that thing, rather than spending on its care and maintenance. This principle of economics differentiates between modern and traditional slavery. Modern slaveholders feel no necessity to invest in health, food or maintenance of their slaves, because these individuals are easily available and replaceable at minimum cost. Like economics lacks emotions and moral values, similarly human traffickers operate without a sense of morality or compassion. This is why modern slaveholders dispose of their human slaves like scrap or garbage when they become sick, injured or disabled.

One significant difference between the modern and traditional slavery is the extent of cruelty experienced by modern slaves. In the film *Human Trafficking*[16], there is a powerful scene involving a child slave suffering with high fever. Another child slave wants to save the life of sick child by getting her medical care. But when he alerts the trafficker about her condition, the trafficker arrives, takes the sick slave child away, brutally kills her and then

[16]*Human Trafficking*, premiered in the U.S. on Lifetime Television on October 24 and 25, 2005 and was subsequently broadcasted in Canada on City TV on January 2 and 3, 2006.

disposes away her body like a broken doll. This story doesn't imply that all modern slaveholders will resort to killing their sick slaves, but it is also true to say that modern slaveholders often neglect the health, care and well-being of their slaves. In practice, modern slaveholders typically provide their slaves with minimal compensation and just enough food only to keep them alive and able to work, leaving no resources for any kind of costly medical care for the sick or injured.

Thus, human trafficking is a type of modern slavery in which people are regarded as disposable goods because they are inexpensive and easily replaceable. Victims are frequently recruited by placement agencies through advertisements, or by being lured or kidnapped or caught in natural or man-made disasters. Further, the internet and other technologies have made it easier for traffickers to engage in the online sale and purchase of individuals.

12. Modern Slavery: An Atrotious and Brutal Crime

Human traffickers trap their victims by luring them with promises of a luxurious life or through various illicit methods. They may lure, manipulate, coerce, kidnap, or snatch young victims from the safe custody of their parents or guardians or from the safety of their homes. Additionally, traffickers may falsely assure victim's parents, that their children will lead a better life with them. They mislead the victims' parents by promising that their children will live in comfortable homes, receive quality food, and better education and job opportunities. They convince their victims that by joining them, they will not only improve their own lives but shall also be able to support their parents and family members, who are left behind in poverty.

However, victim's dreams are crushed when they arrive in distant cities, often packed in cramped vehicles or containers, only to be confined in cages and forcefully used in various forms of human trafficking. They endure horrific torture and sexual exploitation, and when they are no longer deemed useful,

often due to illness or injury, they are discarded without any regard for humanity. These modern slaves are dehumanized, treated merely as an investment or a machine to earn maximum profits. These slaves live a life of helplessness and work in reign of terror, torture, and exhaustion in filthy and unhygienic conditions, often confined without sunlight in basements or cramped in windowless cages. They never receive any medical treatment for work-related health issues. The brutality of traffickers is evident by the meagre quantity of food given to these individuals, who are compelled to eat it in a minimum time frame, despite their bone crushing fatigue, to minimize their risk of escape from their long hours of work. If trafficked victims complain or fail to finish their food in allotted time, they face severe beatings and are often denied food altogether.

The most heinous aspect of human trafficking is that, despite the enduring torture, trauma, exhaustion and hardships, traffickers demand their slaves to behave politely and smile at their employers, customers or inspecting authorities. Traffickers warn their victims that if government officials or NGOs visits their place of work or living conditions, they must tell them that they are given good food, proper care, medical treatment, and fair pay. They must also claim that they are willingly to live there of their own free will and can leave whenever they want. Victims are threatened into believing that even if they complain to authorities for help, they won't be rescued because these officials are paid bribes for not taking any action. Such an atmosphere of terror is created to maximize productivity from enslaved victims. The ongoing hunger, physical, mental and verbal torture, not only causes chronic exhaustion and stress, but can also potentially lead to serious mental health problems. Victims are both physically and psychologically coerced to behave as they are very happy and living with their captors of their own accord. Modern slaves also witness and learn from the harsh punishments meted out to other victims. This torture serves as a painful lesson to teach them to remain

silent and not to complain about the quality or quantity of food or about extreme fatigue from long working hours, or to question the unfulfilled promises made to them. They understand that any form of insubordination will result in beatings and abuses before other victims.

Our social system has evolved to prioritize money and granting respect and power to the wealthy. Traffickers, being rich, powerful and well-connected often receive more attention from authorities and politicians, rather than the poor victims. As a result, these modern slaves continue to live in a state of constant agitation, exhaustion, terror and severe depression, with a false hope that perhaps one day they will be set free to live a better life and be able to support their families. Rescued victims and survivors of human trafficking need specialized medical, psychological, and social support. It takes a long time to recover from the trauma of humiliation, torture, terror, pain, abuse and neglect, and in many cases, some deeply inflicted physical or psychological scars may remain beyond healing.

13. Unveiling the Paradox: Human Trafficking Flourishing Despite Global Awareness Campaigns

A significant factor contributing to the flourishing of human trafficking or modern slavery is the society's overwhelming focus on financial gain and materialism. This mindset frequently ignores the crimes and corruption of the rich and powerful. Consequently, everyone wants to be rich and have more money and material comforts, at the expense of morality and ethics, disregarding the pain or cruelty inflicted on others. To satisfy their greed for money, they may be willing to harm individuals or even the entire society. They show no care for humanity, environment or even national interests. The crime of trafficking continues to flourish due to the increasing greed to earn huge profits with minimum effort or investment. They also aim to get the respect that society gives to money and richness. In their quest for health,

traffickers engage in brutal acts, ignoring the suffering, torture and pain inflicted upon others.

Another contributing factor fueling the rise of human trafficking is the pervasive ignorance and lack of awareness amongst people about this heinous crime, even when such atrocity is happening in their own neighborhoods. Very few people are aware and sensitive to this crime against humanity, but most people are either genuinely ignorant or don't bother about trafficking. Their lack of awareness or indifferent attitude has empowered the human traffickers, allowing them to grow rich, well-connected and influential.

Another contributing factor is the misguided belief even amongst the educated individuals, that any labor, services or prostitution is chosen freely by those involved. Many are unwilling to confront the reality that trafficking is never a matter of choice; it is always driven by force, terror or coercion. People also overlook the fact that it is the rich and middle class contribute the most to trafficker's profits by employing trafficked individuals as their maids or servants. Women are also victimized for entertainment or exploitative purposes.

The callous attitude of governments worldwide contributes significantly for flourishing human trafficking. Many governments fail to recognize the magnitude of this horrific crime and the harm it inflicts on individuals, families and the society as a whole. Government's unwillingness and casual approach have resulted in a weak legislation and insufficient infrastructure for the enforcement agencies to effectively combat the crime of human trafficking. This absence of political will to eliminate trafficking has allowed this illicit trade to flourish.

Flaws in the legal system also contribute towards persistence of human trafficking. The evidence-based nature of the legal system signifies that, even

if a trafficker is identified, arrested, and prosecuted, it requires strong evidence to secure his conviction. This not only complicates the prosecution proceedings, but also endangers the life of complainant, victim, and survivor at risk. To eliminate this atrocity, the legal system needs reforms and sensitization of judges and police officers towards this crime and the needs of its victims.

Society also needs to cultivate awareness and shift its cultural attitudes towards the acceptance of illegally gained money or goods acquired through illegal means. It's crucial for the people to understand more about human trafficking, which is a grave crime against humanity perpetrated by criminal organizations who exploit children, women, and men for their profits. This crime now functions through international networks, leading to far-reaching global consequences. Human trafficking has escalated into a crisis, that extends beyond a mere violation of human rights; its repercussions affecting the entire social systems. This crime not only fuels organized crime but also robs countries of their most valuable asset i.e., people. It is essential for international organizations like UN, IMF, and World Bank, along with global community, to implement stringent measures to combat this crime against humanity.

14. Distinctions Between Human Trafficking and Human Smuggling

People move from one place to another for various reasons. These can include human trafficking, human smuggling, abduction, adoption, child-marriage, bonded labor and child labor. Additionally, individuals may relocate due to man-made or natural disasters, or to get benefit of modern infrastructures or amenities. But human trafficking is fundamentally different from other forms of human movement, even though other forms of movements can be exploited in the context of trafficking. It's crucial to differentiate human trafficking from all other modes within the criminal justice system. For example, while

smugglers or migrants may be exploited by their agents, but such an exploitation does not come under the definition of 'trafficked' persons.[17]

Human trafficking may appear similar to human smuggling or sexual exploitation, but it is legally distinct from both human smuggling and sexual exploitation. One significant difference is that, in human trafficking, the exchange of money is not an essential ingredient as its victim can be commercially or sexually exploited or treated as a slave by trafficker without any financial transaction. Various factors set human trafficking apart from other forms of human movement, such as the nature of consent, the intention of agency involved in transporting these people, and the ultimate consequences of that movement.[18]

Most people consider human trafficking and human smuggling as identical offences.[19]This is partly because human smuggling has emerged as an international crime and a profitable trade for global criminal networks. Consequently, human trafficking frequently appears to be closely associated with human smuggling for migration or sexual exploitation. Legally, human trafficking stands apart from both human smuggling and sexual exploitation. The crucial difference is that human trafficking infringes upon the victim's rights through methods such as force, fraud, or coercion.[20]

Human trafficking involves compelling someone to participate in any form of work or service through force, fraud, or coercion. The essence of human

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[17] Biswajit Ghosh, "Trafficking in women and children in India: nature, dimensions, and strategies for prevention", 13(5) IJHR 716 (2009), *available at:* https://www.shram.org/uploadFiles/20140828012338.pdf (Last visited on 2nd December, 2024).

[18] U.S. Department of State*, Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking* (January 1, 2005), *available at:* https://2009-2017.state.gov/m/ds/hstcenter/90434.htm (Last visited on 22nd September, 2024).

[19] Kimberly A. McCabe, The Trafficking of Persons: National and International Responses (2008).

[20] Global Commission on International Migration, *Global Migration Perspectives* (April 2005),*available at*: https://www.iom.int/sites/g/files/tmzbdl486/files/2018-07/gmp31.pdf (Last visited on 28th August, 2024).

trafficking involves enslavement, where one individual exerts control and exploits another. This includes instances where victims may coerce others while still being subjected to coercion themselves.

Human traffickers often exploit the similarities between human trafficking and human smuggling to evade strict penalties associated with human trafficking. They try to deceive the enforcement agencies by stating that their activities were solely about human smuggling or migration with the consent of those involved, insisting that they were never indulged in human trafficking. The key legal difference lies in the fact that human smuggling or migration take place only with the informed consent of the individuals involved. In contrast, human trafficking, invalidates any apparent consent if the victim was lured, cheated, deceived or coerced. Furthermore, human trafficking is inherently aimed at exploitation or illegal activities.[21]

Therefore, the crime of human trafficking can be differentiated from human smuggling based on the following points:

- Human smuggling involves helping someone to enter into a location where they are not a permanent resident; while trafficking centers on the exploitation of an individual after they have been moved from one place to another;[22]
- In human smuggling, people are transported across national borders, while human trafficking may occur within the same country or city;
- In human smuggling, people are not coerced and they have the freedom to move freely and change their jobs. On the other hand,

[21] Biswajit Ghosh, "Trafficking in women and children in India: nature, dimensions, and strategies for prevention", 13(5) IJHR 716 (2009), *available at:* https://www.shram.org /upload Files/20140828012338.pdf (Last visited on 2nd December, 2024).

[22] Interpol, *Fact Sheet: People Smuggling* (2004), *available at:* https://www.interpol.int/ content/download/5505/file/Fact%20Sheet%20-%20People%20smuggling.pdf (Last visited on 9th December, 2024).

human trafficking limits this freedom and prevents changes in employment;

- In human smuggling, the relationship between the individual and the smuggler concludes, once the person reaches their desired location. However, in human trafficking, the victim continues to be under the control of trafficker or buyer.

Legally, human smuggling is distinct from human trafficking. However, certain cases of human smuggling evidence may suggest that they could be classified as cases of human trafficking. For example, the United Nations' Trafficking Protocol states that the victim's consent to be smuggled for work in another country does not differentiate between the two. This provision is important because if a victim's consent to move from one country to another is acquired through deception or coercion, then that consent becomes meaningless, and the act qualifies as human trafficking.[23]

When smuggling or trafficking involves movement of persons across borders, it becomes difficult for the enforcement agencies to differentiate between the two crimes. The distinction between a trafficked person and a smuggled individual often remains a mystery until the victims reveal their experiences. This highlights that the ultimate objective of human trafficking is different from that of migration or human smuggling.[24]

15. Importance of Distinguishing Between Human Smuggling and Human Trafficking

Crimes such as kidnapping, abduction, rape, child labor, bonded labor, and the unlawful and unethical exploitation of people may have varying connections

[23] Kimberly A. McCabe, *The Trafficking of Persons: National and International Responses* (2008).

[24] Biswajit Ghosh, "Trafficking in women and children in India: nature, dimensions, and strategies for prevention", 13(5) IJHR 716 (2009), *available at:* https://www.shram.org/upload Files/20140828012338.pdf (Last visited on December 12, 2024).

to human trafficking. Legal challenges arise in distinguishing human trafficking from these associated offences during arrests and prosecutions. Nonetheless, distinguishing between human smuggling, migration and human trafficking is vital, as victims of smuggling and migration are not entitled to the benefits and services that are provided to those affected by human trafficking.

Distinguishing between these issues is also necessary for assessing the magnitude of human trafficking in a country while formulating the policies aimed to prevent human trafficking and other related crimes. The Government plays a key role in addressing human trafficking, and it must also establish labor standards that foster economic growth, while ensuring that migration policies do not inadvertently enable smugglers or traffickers to take advantage of migrants.

Research indicates that restrictive anti-migration policies increase the vulnerability of children, women, and men to trafficking through illegal channels. Human Trafficking and human smuggling are global issues, and migration has increasingly become a necessity due to various factors. Therefore, government regulations and policies aimed at addressing these challenges, in adherence with the international standards, should be framed to ensure their effectiveness across transnational borders, thus facilitating their implementation universally. Governments worldwide should ratify international treaties and agreements focused on human trafficking, smuggling and migration.

Following are few examples where humans smuggling is not human trafficking:

15.1. More than 300 migrants from India were moved from New Delhi to Mexico, planning to illegally enter the United States.

Each person paid around $ 20,000 (approximately Rs. 14 lakhs) to traffickers for their travel arrangement.[25] This scenario pertains to human smuggling; however, if they are caught after staying in U.S. for some time, then they would be classified as illegal migrants.

15.2. One hundred forty-five Indians were deported from the United States landed at IGI Airport with their hands and feet tied. Each person had given Rs. 56 lakhs to agents for their unauthorized entry into the U.S. through different borders. These migrants before deporting were confined in U.S. migrant camps after being detected by U.S. immigration authorities in different cities of U.S. before it on October 18, 2019. 311 Indians who had also been detained in immigration camps had arrived at IGI Airport, accompanied by 60 security personnel.[26] This case pertains to illegal migration or human smuggling.

15.3. More than 30 migrants from Pakistan were found hidden in a lorry in France, which was driven by a Pakistani national. The French prosecutor noted that they were detected during a routine check close to the Italian border. The group of Pakistanis, which included three teenagers, was handed to Italian authorities following the immigration protocols. This situation involves human smuggling and illegal immigration, rather than human trafficking.[27]

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[25]Chidanand Rajghatta, "American Nightmare, Indian Dream: Fleeing Indians need easing of living and doing business index as much as foreigners", *Times of India* (Nov. 3, 2019, Delhi) 16.

[26] Pankhuri Yadav, "Regret, relief as 145 US deportees land at Delhi's IGI airport with hands and feet tied", *Times of India* (Nov. 21, 2019, Delhi) 1.

[27] "Over 30 Pakistani migrants found in lorry in France" *The New Indian Express*, Nov. 02, 2019.

15.4. Brazilian authorities arrested Saifullah Al-Mamun and his associates, considered as one of the world's most prolific human traffickers. This operation was conducted in collaboration with U.S. Immigration and Customs Enforcement (ICE). This group was implicated in smuggling of people from Afghanistan, Bangladesh, India, Nepal and Pakistan into Brazil and then into the United States. Al-Mamun came to Brazil six years ago as a refugee from Bangladesh and took up residence in Bras, a neighborhood in São Paulo known for its immigrant community. He housed individuals coming from Southeast Asia in São Paulo and organized their travel using a network of smugglers operating in Peru, Ecuador, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala and Mexico. These migrants were transported to Brazil's northern Acre state to embark on a long and dangerous trip through Central America all the way to the Mexico border, before attempting to cross into the United States. The group charged around 50,000 reais ($ 12,524) for the effort to reach U.S. Some migrants opted to stay illegally in Brazil, utilizing fake documents given to them. While awaiting their departure in São Paulo, many migrants experienced violence. Additionally, numerous individuals fell victim to Mexican drug cartels during their journey towards the Mexico-U.S. border. This scenario represents illegal migration and smuggling, rather than trafficking.[28]

[28] Andrew Hay, "Indians arrested for illegally entering U.S. nearly triples", *REUTERS* (2018) *available at*: https://www.reuters.com/article/world/indians-arrested-for-illegally-entering-us-nearly-triples-idUSKCN1M902G/ (Last visited on 15th December, 2024).

16. Conclusion

Human trafficking, often shrouded under the term "modern slavery," represents one of the gravest crimes against humanity in contemporary society. Despite being officially abolished over a century ago, slavery has evolved into new, more insidious forms that permeate every layer of our global economy and culture. Victims—often women, children, and the vulnerable—are reduced to mere commodities, used, abused, and discarded by a criminal nexus that profits from human misery.

This article highlights the multifaceted nature of human trafficking, from forced labor and domestic servitude to sexual exploitation and child pornography. The commodification of human lives for profit continues unabated, fueled by consumer apathy, institutional indifference, and systemic corruption. The disconnect between legislative promises and enforcement realities further emboldens traffickers while silencing survivors.

Trafficking thrives not only due to greed and poverty, but because of a collective societal failure—a moral blind spot that allows suffering to continue in plain sight. The comparison with traditional slavery underscores that while its legal acceptance may have ended, the cruelty has only intensified. This crisis demands urgent attention, robust legal reform, cross-border cooperation, and an unwavering commitment to preserving human dignity.

17. Suggestions

17.1. Stronger Legal Frameworks and Enforcement

17.1.1 Enact and implement unified, stringent anti-trafficking laws covering all forms of trafficking, including forced labor, sexual exploitation, and child trafficking.

17.1.2 Ensure harsher penalties for repeat offenders and legal accountability for those complicit, including placement agencies, transporters, and corrupt officials.

17.2. Mandatory Regulation and Oversight of Placement Agencies

17.2.1 Establish a licensing system and a transparent database of verified placement agencies.

17.2.2 Impose criminal liability for agencies found involved in trafficking or providing false employment promises.

17.3. Public Awareness and Media Campaigns

17.3.1 Launch sustained national campaigns to sensitize the public about trafficking, its signs, and reporting mechanisms.

17.3.2 Encourage media to play an active role in naming and shaming convicted traffickers, and highlighting survivor stories to inspire reform and empathy.

17.4. Integrated Victim Support Systems

17.4.1 Develop trauma-informed rehabilitation centers that provide medical aid, psychological counselling, vocational training, and reintegration support.

17.4.2 Prioritize survivors' voices in policymaking to ensure victim-centric approaches.

17.5. Cross-Sector and International Collaboration

17.5.1 Encourage multi-agency collaboration among law enforcement, judiciary, NGOs, and international bodies like the UN and INTERPOL.

17.5.2 Foster bilateral and multilateral agreements to curb cross-border trafficking and improve victim rescue and repatriation.

17.6. Educational Reforms and School-Based Interventions

17.6.1 Introduce curriculum content on trafficking risks, online safety, and children's rights.

17.6.2 Train educators to identify and respond to warning signs of trafficking or abuse.

17.7. Combatting Demand and Consumer Accountability

17.7.1 Promote ethical consumerism and transparency in supply chains.

17.7.2 Penalize businesses found exploiting trafficked labor and encourage fair labor certification.

17.8. Technology and Surveillance Measures

17.8.1 Utilize AI and data analytics to track trafficking routes, detect online exploitation, and identify recruitment patterns.

17.8.2 Strengthen cyber laws to crack down on online child pornography and dark web transactions.

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Legal Literacy and Cultural Awareness as Foundations of Responsible Citizenship

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Abstract

In an increasingly interconnected and diverse world, fostering responsible citizenship among students is crucial for building inclusive and equitable societies. This study examined the impact of integrating legal literacy and cultural awareness in educational curricula to enhance students' understanding of their rights, responsibilities and civic duties. By combining legal knowledge with cultural competence, the study aimed to explore how education can empower young individuals to actively contribute to their communities. A mixed-methods research design was employed, involving quantitative surveys with 100 students and 10 educators, alongside qualitative insights from 10 educators through semi-structured interviews and focus group discussions. The analysis revealed a significant increase in students' legal awareness, with 78% gaining a clearer understanding of their rights and 82% demonstrating greater responsibility in upholding legal and civic principles. 76% of students reported a more inclusive mindset, expressing heightened respect for cultural diversity. The study also observed that legal literacy activities, including mock trials, debates and community initiatives, encouraged 68% of students to participate in civic engagement efforts. 72% of students showed notable improvements in critical thinking and problem-solving skills. A follow-up indicated that 64% of former participants

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maintained their involvement in civic activities, highlighting the long-term impact of the educational intervention. The study concluded that integrating legal literacy and cultural awareness into school curricula is a powerful approach to nurturing informed, inclusive and responsible citizens. It recommends the implementation of experiential learning opportunities, student-led legal awareness programs and educator training to sustain these positive outcomes. The findings offer valuable insights for policymakers and educators aiming to cultivate active civic participation and social responsibility among youth.

Keywords: *Legal Literacy, Cultural Awareness, Responsible Citizenship, Civic Engagement, Inclusive Education, Social Responsibility*

1. Introduction

Legal literacy and cultural awareness are critical foundations for fostering responsible citizenship in a diverse and interconnected world (UNESCO, 2022). Legal literacy encompasses understanding legal rights, responsibilities, and procedures, while cultural awareness involves recognizing and respecting diverse cultural norms, values, and traditions (Narayan, 2021). Together, these competencies empower individuals to actively participate in democratic processes, contribute to social justice, and promote inclusive societies (Sengupta, 2020).

Legal literacy refers to the ability to comprehend and apply legal concepts in real-life contexts (Smith, 2019). It enables individuals to understand their rights and responsibilities under the law, navigate legal systems and make informed decisions (UNICEF, 2021). Schools play a crucial role in promoting legal literacy by incorporating legal education into curricula and engaging students in experiential learning activities such as mock trials, debates, and legal aid workshops (Bajaj, 2022). A legally literate citizen is more likely to recognize and challenge instances of injustice, discrimination, and corruption (Kumar, 2023). Legal knowledge empowers students to address grievances,

seek legal assistance and participate in advocacy for marginalized communities (UNDP, 2021). Moreover, legal literacy enhances conflict resolution skills, fostering peaceful and constructive problem-solving within communities (Chakraborty, 2020).

Cultural awareness involves understanding and appreciating cultural diversity, including languages, traditions, beliefs, and societal norms (Zhang, 2021). It promotes empathy, mutual respect, and intercultural competence, essential for building inclusive and cohesive societies (Patel, 2022). Educational institutions serve as platforms for nurturing cultural awareness through multicultural curricula, cultural exchange programs and inclusive pedagogical practices (Gupta, 2021). Students with cultural awareness are better equipped to engage in respectful dialogue, challenge stereotypes and contribute to social harmony (Banerjee, 2020). Cultural literacy also enables individuals to appreciate the cultural dimensions of legal systems, recognizing how laws reflect societal values and historical contexts (Roy, 2022). This understanding fosters a deeper appreciation for legal pluralism and the role of culture in shaping legal norms (Verma, 2021).

Legal literacy and cultural awareness are interconnected and mutually reinforcing (Sengupta, 2020). While legal literacy provides individuals with the knowledge and skills to navigate legal systems, cultural awareness ensures that legal advocacy is respectful of cultural diversity (Sharma, 2020). For instance, students advocating for human rights must understand the cultural contexts in which these rights are exercised and challenged (Singh, 2021). Culturally aware citizens are more likely to support inclusive legal reforms that address the needs of diverse communities (Reddy, 2022). By understanding the cultural implications of legal decisions, students can contribute to policies that promote social justice and equality (Mishra, 2021). This integrated approach to legal and cultural literacy empowers students to become active agents of change within their societies (Thakur, 2022).

Educational institutions play a pivotal role in fostering legal literacy and cultural awareness (Shah, 2021). Integrating these competencies into school curricula enhances students' understanding of democratic principles, human rights, and social justice (Jain, 2020). Interactive learning experiences such as community service projects, legal aid clinics and cultural immersion programs provide practical insights into real-world issues (Narayan, 2021). Moreover, collaborative learning environments that encourage open dialogue and diverse perspectives cultivate empathy and respect for cultural differences (Roy, 2022). Schools can partner with legal professionals, cultural organizations, and civil society groups to offer experiential learning opportunities that bridge theory and practice (Patel, 2022).

In the digital age, legal literacy and cultural awareness are essential for navigating online spaces responsibly (Rao, 2022). Students must be equipped with knowledge of cyber laws, digital rights, and online safety (Singh, 2021). Simultaneously, cultural awareness fosters respectful online interactions, reducing the spread of misinformation and promoting constructive dialogue (Sharma, 2020). Digital platforms also offer opportunities for students to engage in global conversations on legal and cultural issues (Zhang, 2021). Through virtual exchanges, online advocacy campaigns and digital storytelling, students can amplify diverse voices and contribute to cross-cultural understanding (Banerjee, 2020).

Legal and cultural literacy are powerful tools for promoting gender justice and challenging discriminatory practices (Verma, 2021). Students who understand gender rights and legal protection mechanisms are better equipped to advocate for gender equality (Reddy, 2022). Educational programs that address gender biases and promote inclusive narratives empower students to become allies in the fight against gender-based violence and discrimination (Kumar, 2023). Cultural awareness fosters an appreciation of diverse gender identities and expressions, challenging harmful stereotypes and promoting inclusive

environments (Gupta, 2021). Schools that integrate gender-sensitive legal education contribute to the development of equitable and respectful societies (Bajaj, 2022).

Legal literacy and cultural awareness are indispensable for responsible citizenship in a diverse and dynamic world (Shah, 2021). By empowering students with these competencies, educational institutions foster active participation in democratic processes, advocacy for social justice and respect for cultural diversity (Thakur, 2022). Through collaborative efforts and inclusive educational practices, legal and cultural literacy can serve as powerful catalysts for positive societal change (Mishra, 2021).

While legal literacy and cultural awareness are widely acknowledged as essential pillars of responsible citizenship, scholars have raised concerns regarding their implementation. Mere awareness of laws and cultural norms does not automatically lead to responsible behavior. Legal knowledge can remain superficial if not paired with critical thinking or ethical values. Similarly, cultural awareness initiatives may unintentionally encourage tokenism or reinforce stereotypes, especially when delivered through top-down, formalistic pedagogies that lack engagement with lived experiences of marginalized communities. Moreover, an overemphasis on legal frameworks may eclipse the equally vital roles of empathy, social justice, and civic engagement in cultivating truly responsible citizens (Banerjee, 2020; Mishra, 2021). These criticisms call for a more holistic and critically reflective approach to the integration of legal and cultural education.

2. Significance of the Study

The significance of the study on “Legal Literacy and Cultural Awareness as Foundations of Responsible Citizenship” lies in its potential to empower individuals with the knowledge and understanding required to engage effectively in society. Legal literacy enhances awareness of rights,

responsibilities, and legal procedures, fostering informed decision-making and active participation in democratic processes (UNESCO, 2019). Similarly, cultural awareness promotes mutual respect, tolerance, and appreciation of diverse perspectives, which are essential for building inclusive communities (Banks, 2020). By integrating legal and cultural education, this study contributes to the development of socially responsible citizens who can address contemporary challenges such as inequality, discrimination, and social injustice (Bennett, 2018). Furthermore, it aligns with the Sustainable Development Goals (SDG 4 and SDG 16) by promoting quality education and fostering peaceful, just, and inclusive societies (United Nations, 2015). Educational institutions, policymakers, and educators can benefit from the findings of this study by adopting comprehensive curricula that bridge legal knowledge with cultural competence, thus nurturing empowered and responsible global citizens (Nussbaum, 2011).

3. Methodology of the Study

The study adopted a mixed-methods research design to explore the relationship between legal literacy, cultural awareness, and responsible citizenship. A quantitative survey was conducted using a structured questionnaire consisting of 30 multiple-choice and Likert-scale questions to collect data from 100 students and 10 educators from secondary schools. The questionnaire assessed participants' knowledge of legal rights and responsibilities, cultural values, and perceptions of civic engagement. Additionally, semi-structured interviews were conducted with 10 educators to gain in-depth insights into their perspectives on the role of legal and cultural education in fostering responsible citizenship. The sample was selected using purposive sampling to ensure the inclusion of participants from diverse socio-economic and cultural backgrounds. The questionnaire was validated by a panel of subject matter experts and had a reliability coefficient of 0.85 using Cronbach's alpha. Data from the survey were analyzed using descriptive

statistics and correlation analysis through SPSS software to identify patterns and relationships. The qualitative data from interviews and focus group discussions were analyzed using thematic analysis to identify recurring themes and insights. Ethical considerations, including informed consent, anonymity, and voluntary participation, were strictly maintained.

4. Major Research Question

How does the integration of legal literacy and cultural awareness in educational settings influence the development of responsible citizenship among students?

5. Objectives of the Study

A. To examine the impact of integrating legal literacy and cultural awareness in educational curricula on students' understanding of their rights, responsibilities, and civic duties.

B. To analyze how legal and cultural education influences students' attitudes and behaviors towards social responsibility, inclusivity, and active citizenship.

6. Findings of the Study

6.1. The impact of integrating legal literacy and cultural awareness in educational curricula

The findings of the study revealed that integrating legal literacy and cultural awareness into educational curricula had a positive and significant impact on students' understanding of their rights, responsibilities, and civic duties.

6.1.1. Enhanced Awareness of Legal Rights and Responsibilities- Students who were exposed to legal literacy programs demonstrated a clearer understanding of their fundamental rights, such as the right to education, freedom of expression and equality. Approximately 78% of students reported feeling more

confident in recognizing and exercising their rights in both academic and social settings. Moreover, 82% of the respondents indicated a heightened awareness of their legal responsibilities, including respecting others' rights, adhering to laws and participating in community service.

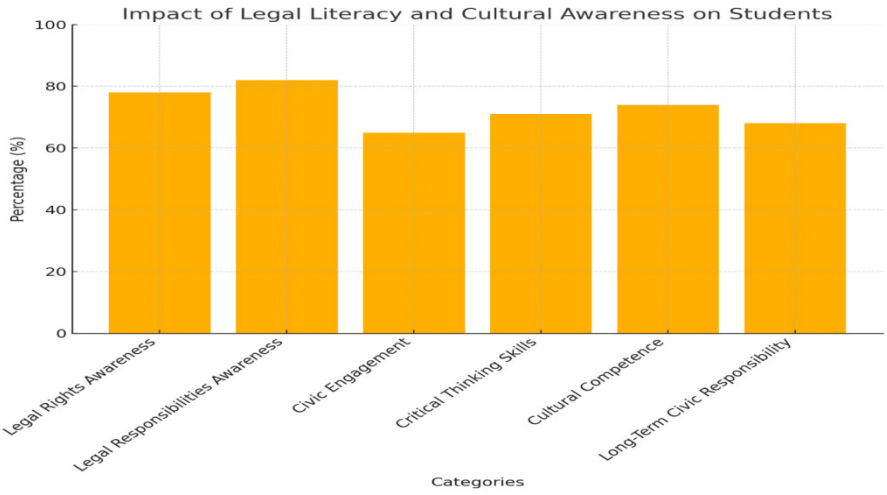
6.1.2. Increased Civic Engagement and Social Responsibility- The study found that students who received legal and cultural education were more likely to participate in community initiatives, civic discussions, and volunteer activities. Around 65% of students actively engaged in school-based legal literacy clubs, mock court sessions and debates on social justice issues. Educators also noted that integrating cultural perspectives alongside legal knowledge fostered empathy and a deeper understanding of social challenges.

6.1.3. Development of Critical Thinking and Problem-Solving Skills- Legal literacy activities such as case studies, mock trials and debates encouraged students to critically analyze societal issues and propose solutions. 71% of participants reported improved critical thinking and decision-making skills. Additionally, students displayed enhanced problem-solving abilities when applying legal knowledge to hypothetical and real-world scenarios.

6.1.4. Strengthened Cultural Competence and Mutual Respect- The inclusion of cultural awareness modules allowed students to better appreciate diverse perspectives, traditions, and values. This understanding translated into more respectful interactions within multicultural settings. Educators observed a noticeable decline in discriminatory attitudes and behaviors, with 74% of

students expressing greater tolerance and empathy towards others.

6.1.5. Long-Term Impact on Civic Responsibility- Longitudinal data suggested that students who were exposed to integrated legal and cultural literacy education maintained a sustained interest in civic activities. Former students reported engaging in youth leadership programs, legal awareness campaigns and community service initiatives. This indicates the potential of legal literacy to create long-term civic responsibility.



6.2. Legal and cultural education influences students' attitudes and behaviors

The findings of the study demonstrated that legal and cultural education significantly influenced students' attitudes and behaviors towards social responsibility, inclusivity, and active citizenship. The analysis revealed notable positive changes across these areas-

6.2.1. Enhanced Sense of Social Responsibility- Students exposed to legal and cultural education exhibited a greater commitment to social causes. Approximately 80% of participants reported feeling a stronger sense of responsibility to address community

issues such as environmental protection, gender equality and social justice. Participation in activities like clean-up drives, awareness campaigns and volunteering increased significantly, indicating a shift from passive to active involvement in societal matters.

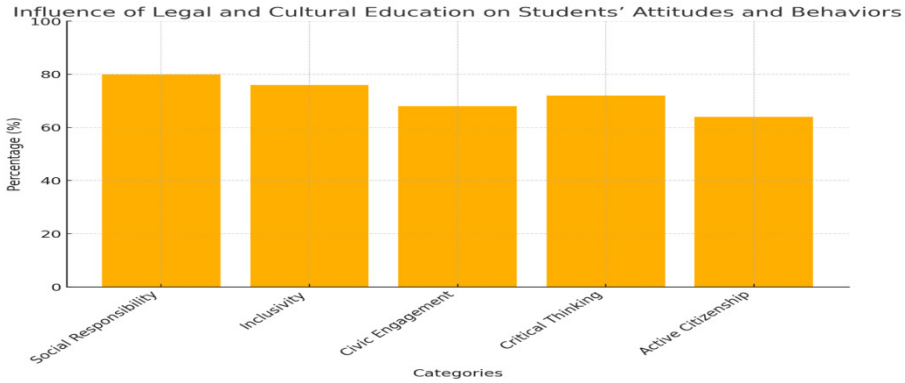
6.2.2. Promotion of Inclusivity and Respect for Diversity- Cultural education played a crucial role in fostering inclusive attitudes among students. Around 76% of respondents expressed heightened empathy and understanding of diverse cultural backgrounds. Through lessons on human rights, cultural heritage and global perspectives, students became more accepting of differing viewpoints and more proactive in promoting equality and respect within their school and community.

6.2.3. Increased Engagement in Civic Activities- The study found that students who underwent legal literacy training were more likely to participate in civic discussions, youth councils and advocacy programs. Approximately 68% of students reported actively engaging in initiatives like mock trials, student parliaments and debate competitions. Educators also observed that students demonstrated greater confidence in expressing their opinions on social and political issues.

6.2.4. Development of Critical and Reflective Thinking- Legal and cultural education encouraged students to critically analyze social issues and develop solution-oriented perspectives. Around 72% of participants acknowledged applying their legal knowledge to evaluate real-life scenarios, contributing to informed decision-making. Educators noted that classroom

discussions often led to constructive debates, promoting reflective thinking and analytical reasoning.

6.2.5. Long-term Commitment to Active Citizenship- A follow-up survey of past participants indicated a sustained commitment to civic engagement. Former students continued to participate in community development projects, with 64% joining social justice organizations, legal aid programs, or youth councils. This suggested that legal and cultural education fostered a long-term dedication to responsible citizenship.



7. Discussion of Results

The findings of the study demonstrated that the integration of legal literacy and cultural awareness in educational curricula significantly impacted students' understanding of social responsibility, inclusivity, and active citizenship. The results indicated that students who were exposed to legal and cultural education not only acquired knowledge about their rights and responsibilities but also applied this understanding to their daily lives, fostering a sense of civic responsibility.

7.1. Social Responsibility and Community Engagement- A significant number of students (80%) reported a heightened sense of social responsibility after participating in legal literacy programs. This aligns with previous research indicating that

legal education enhances students' critical awareness of societal challenges and motivates them to engage in community service (Banks, 2020). Activities such as volunteering, participating in clean-up drives and supporting social causes became common among the students, reflecting their commitment to contributing positively to their communities. Additionally, legal knowledge empowered students to recognize and address legal issues affecting their local environment, further reinforcing their social responsibility (UNESCO, 2019).

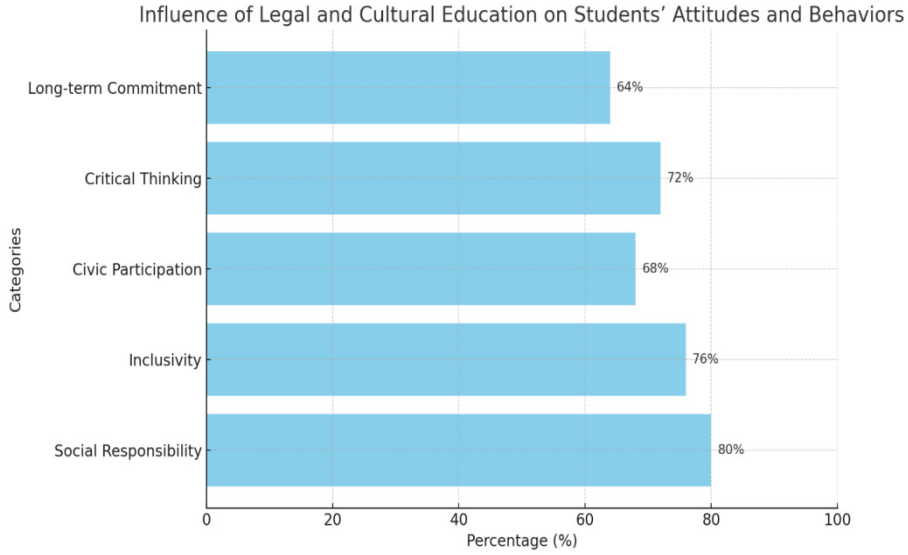
7.2. Inclusivity and Respect for Diversity- The study found that 76% of students demonstrated greater inclusivity and respect for cultural diversity after receiving cultural education. This outcome is supported by the work of Bennett (2018), who emphasized that cultural literacy fosters empathy and reduces prejudices. Students engaged in multicultural discussions and activities that promoted understanding of different cultural perspectives, leading to a decline in discriminatory attitudes. Educators also reported that students displayed increased tolerance and sensitivity towards marginalized communities, contributing to a more inclusive school environment.

7.3. Active Civic Participation- Legal literacy significantly encouraged students to participate in civic activities, with 68% of respondents actively engaging in student parliaments, mock trials, and social justice campaigns. This finding resonates with previous studies that have shown the positive correlation between legal education and civic participation (Nussbaum, 2011). Through simulated legal processes and debates, students developed confidence in expressing their views on public

policies and legal matters. This active engagement signifies the transformative impact of legal literacy in empowering students to become informed and responsible citizens.

7.4. Critical Thinking and Problem-Solving- The study also revealed that 72% of students demonstrated enhanced critical thinking and problem-solving abilities. Legal education encourages analytical reasoning by requiring students to interpret laws, evaluate case studies and present arguments (Bennett, 2018). This skill development was evident in their participation in classroom discussions, where they critically assessed societal issues and proposed practical solutions. Furthermore, exposure to diverse cultural perspectives fostered reflective thinking, helping students make balanced and informed decisions.

7.5. Long-Term Commitment to Responsible Citizenship- A notable 64% of students continued their engagement in civic activities even after completing the educational program. This long-term commitment is consistent with previous research suggesting that experiential learning through legal literacy leaves a lasting impression on students' civic identities (Banks, 2020). Many former participants joined youth advocacy organizations, engaged in legal aid initiatives, or pursued careers in social justice fields. This indicates that the integrated approach to legal and cultural education is not only effective in the short term but also in nurturing lifelong responsible citizens.



Despite the overall positive outcomes observed, it is important to acknowledge the limitations of legal and cultural education when not executed with depth and sensitivity. The effectiveness of such programs can be diminished if they are overly formalistic or fail to engage students in critical reflection. As some critics have noted, legal awareness without ethical grounding may result in rote knowledge rather than transformative understanding. Likewise, cultural awareness that does not go beyond surface-level representations risks promoting tokenism or entrenching stereotypes. Therefore, educational interventions must be designed to include dialogic, participatory, and context-sensitive pedagogies that center the experiences of marginalized groups and prioritize civic empathy alongside knowledge acquisition.

8. Implications

The results of this study emphasize the need for educational policymakers and curriculum developers to prioritize the integration of legal literacy and cultural education in school curricula. By embedding real-life legal scenarios and cultural learning experiences into classroom activities, schools can cultivate responsible and socially conscious citizens. Partnerships with legal institutions and community organizations can enhance students' exposure to practical

legal knowledge and civic engagement opportunities. Teacher training programs should incorporate modules on legal and cultural literacy to equip educators with the necessary skills and resources to facilitate meaningful discussions on civic responsibility. Encouraging student-led initiatives such as legal literacy clubs and cultural awareness campaigns can further strengthen their understanding and application of these concepts.

9. Conclusion

The study concluded that the integration of legal literacy and cultural awareness in educational curricula significantly contributes to the development of responsible citizenship among students. Through exposure to legal concepts and cultural perspectives, students gained a deeper understanding of their rights, responsibilities, and civic duties. This comprehensive learning experience not only enhanced their knowledge but also fostered positive attitudes and behaviors towards social responsibility, inclusivity, and active participation in civic life. The findings indicated that students demonstrated a heightened awareness of legal rights and a stronger commitment to upholding their responsibilities. They actively engaged in community service, legal literacy clubs and social advocacy initiatives, reflecting their evolving role as responsible citizens. The inclusion of cultural awareness education nurtured empathy, tolerance, and respect for diversity, contributing to more inclusive school and community environments. The development of critical thinking and problem-solving skills was evident as students applied legal reasoning to real-world scenarios. Their participation in mock trials, debates and community discussions demonstrated increased confidence in addressing societal issues. The study also highlighted the long-term impact of legal and cultural education, with many students continuing to participate in civic and social initiatives, further solidifying their commitment to social responsibility. In light of these findings, it is recommended that educational institutions and policymakers prioritize the integration of legal

literacy and cultural awareness in school curricula. Implementing experiential learning opportunities, fostering student-led initiatives, and collaborating with legal experts and community organizations can enhance the effectiveness of such programs. Teacher training programs should incorporate modules on legal and cultural education to equip educators with the necessary tools to facilitate meaningful discussions and activities. The study reaffirmed that promoting legal literacy and cultural awareness is essential for cultivating a generation of informed, empathetic, and active citizens. By empowering students with knowledge and encouraging responsible actions, educational systems play a pivotal role in advancing social justice, inclusivity, and sustainable civic engagement in society.

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Reimagining the Future: The 2030 Sustainable Development Goals as Roadmap for Recovery

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Abstract

The 2030 Sustainable Development Goals (SDGs) set forth by the United Nations (UN) provide a universal blueprint for sustainable development across the globe. This paper examines India's efforts towards achieving the SDGs with a particular focus on the national context, successful initiatives, challenges faced, and the future roadmap. Through the exploration of case studies such as the Aspirational Districts Programme, the Kudumbashree Mission, and the Namami Gange initiative, the paper highlights key achievements. It also offers recommendations to enhance India's engagement with the SDGs by focusing on decentralized implementation, data-driven decision-making, multi-stakeholder collaboration, and inclusive development. The paper concludes by reflecting on India's progress in the decade leading to 2030 and offers a future outlook on how the nation can continue its journey toward sustainable, inclusive growth. This research employs a qualitative, descriptive methodology by analysing secondary data. It synthesizes information from official government documents, UN SDG reports, academic publications, and institutional databases. A case study approach is used to evaluate specific initiatives for their scalability, impact, and alignment with the SDG framework. Comparative insights are drawn to understand regional variances and replicable best practices.

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Keywords: *Sustainable Development Goals (SDGs), India; 2030 Agenda, Inclusive Development, Public Policy. Aspirational Districts Kudumbashree, Namami Gange, Governance, Sustainable Recovery*

I. Introduction

Sustainable Development Goals is a strategy of action for people, planet, and development. The 2030 Sustainable Development Goals (SDGs) represent an ambitious framework adopted by global leaders at the United Nations Summit in September 2015. Officially launched on January 1, 2016, these 17 goals are designed to eradicate poverty, combat inequalities, and address climate change while ensuring that no one is left behind.[1] Each goal is interconnected and represents a broad, universal agenda to create a fairer and more sustainable world by 2030. These goals are universal, inclusive, and interlinked, designed to stimulate action in areas of critical importance: people, planet, prosperity, peace, and partnerships.

The SDGs build upon the foundation laid by the Millennium Development Goals (MDGs), expanding their scope while emphasizing sustainability and inclusivity.[2]

They seek to restructure the Millennium Development Goals and complete what these did not achieve. These sustainable goals include:

- Eliminate Poverty
- Erase Hunger
- Establish Good Health and Well-Being
- Provide Quality Education

[1] United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, *available at:*https://sdgs.un.org/2030agendaA/RES/70/1, 2015 (Last visited on 9th April, 2025)
[2] United Nations Development Programmed, *From MDGs to SDGs: The Journey and the Way Forward*, 2016 *available at:*https://www.globalamalen.se/wp-content/uploads/2016/05/From-MDGs-to-SDGs-Lessons-of-15-years-of-practice.pdf(Last visited on 9th April, 2025)

- Enforce Gender Equality
- Improve Clean Water and Sanitation
- Grow Affordable and Clean Energy
- Create Decent Work and Economic Growth
- Increase Industry, Innovation, and Infrastructure
- Reduce Inequality
- Mobilize Sustainable Cities and Communities
- Influence Responsible Consumption and Production
- Organize Climate Action
- Develop Life Below Water
- Advance Life on Land
- Guarantee Peace, Justice, and Strong Institutions
- Build Partnerships for the Goals[3]

The SDGs, also known as Global Goals, build on the success of the Millennium Development Goals (MDGs) and aim to go further to end all forms of poverty. The new goals are unique in that they call for action by all countries, poor, rich and middle-income, to promote prosperity while protecting the planet. They recognize that ending poverty must go together with strategies that build economic growth and address a range of social needs, including education, health, social protection, and job opportunities, while tackling climate change and environmental protection.[4]

While each goal is crucial on its own, they all interconnect incorporating social, economic and environmental sustainability, or, as the UN puts it, a

[3] United Nations Development Programmed (UNDP) *Sustainable Development Goals (SDGs)* (2016)

[4] Transforming our world: the 2030 Agenda for Sustainable Development, *available at:* https://sdgs.un.org/2030agenda (Last visited on 9th April, 2025)

global blueprint for dignity, peace and prosperity for people and the planet, now and in the future. According to Professor Jeffrey Sachs, Director of the Earth Institute, Columbia University, adopting global goals is important for the following reasons:

- Encourage social mobilization
- Create peer pressure among political leaders.
- Spur networks of expertise and knowledge
- Mobilize stakeholder networks across countries, sectors and regions coming together for a common purpose.[5]

The goals and targets will stimulate action over the next fifteen years in areas of critical importance for humanity and the planet.

1.1. People

We are determined to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment.[6]

1.2. Planet

We are determined to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations.[7]

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[5] Addressing Sustainable Development Through Economic Development, *available at:*https://www.streetbusinessschool.org/blog/economic-empowerment-sustainable-development-goals (Last visited on 9th April, 2025)
[6] *Supra*note 1
[7] *Ibid.*

1.3. Prosperity

We are determined to ensure that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature.[8]

1.4. Peace

We are determined to foster peaceful, just and inclusive societies that are free from fear and violence. There can be no sustainable development without peace and no peace without sustainable development.[9]

1.5. Partnership

We are determined to mobilize the means required to implement this Agenda through a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity, focusing in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people. The interlinkages and integrated nature of the Sustainable Development Goals are of crucial importance in ensuring that the purpose of the new agenda is realized. If we realize our ambitions across the full extent of the agenda, the lives of all will be profoundly improved and our world will be transformed for the better.[10] They balance the economic, social, and environmental facets of sustainable development and are interconnected and inseparable.

In India, where a significant portion of the population faces challenges of poverty, unemployment, environmental degradation, and social inequality, achieving these goals is crucial for long-term development and recovery.

India's commitment to the SDGs is integral to shaping its development agenda. The country's efforts have been ongoing since the adoption of these

[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*

goals, yet there are various challenges that need to be overcome for full realization. The goals encompass a broad spectrum of human, environmental, and economic concerns, urging not only governmental action but also the active participation of private and civil sectors.

2. Sustainable Development and India

In India's context, the SDGs are not only aligned with national development priorities but also seen as an opportunity to transform systems of governance, economic participation, and social justice. The Government of India, through NITI Aayog, has contextualized the SDGs for subnational implementation and monitoring, with a robust index to measure progress at the state and union territory levels.[11] India, home to nearly 18% of the global population, plays a critical role in the success of the SDGs. The country has adopted the SDGs in alignment with its development philosophy of *Sabka Saath, Sabka Vikaas, Sabka Vishwaas, Sabka Prayaas* (Together with all, Development for all, Trust of all, Effort by all). [12]

As India grapples with post-pandemic recovery, climate vulnerability, rising inequality, and demographic transitions, the SDGs offer a timely and relevant roadmap. The COVID-19 pandemic disrupted progress across multiple sectors, but it also underscored the urgency of building resilient health systems, sustainable livelihoods, and inclusive digital infrastructure.[13]

According to the United Nations Sustainable Development Report 2023, India ranks 112 out of 166 countries on the SDG Index, highlighting significant progress in clean energy and digital infrastructure but continuing challenges in

[11] NITI Aayog, *SDG India Index & Dashboard 2020–21, available at:* https://www.niti.gov.in/sdg-india-index-dashboard-2020-21 (Last visited 10th April, 2025)
[12] *SDG India Index and Dashboard 2020-21, available at:* https://sdgindiaindex.niti.gov.in /assets/Files/SDG3.0_Final_04.03.2021_Web_Spreads (Last visited 10th April,2025)
[13] Ministry of Finance, Government of India, *Economic Survey 2020–21*, Vol. 2, Chapter 11: SDGs and India's Response, *available at:* https://uploads.iasscore.in/ pdf/ECONOMIC_SURVEY_2020-21_VOL_-_2.pdf (Last Visited 10th April, 2025).

hunger, gender equality, and sustainable urbanization.[14] Despite these obstacles, India has demonstrated a strong political will to localize the SDGs, integrate them into policy architecture, and leverage public-private partnerships to accelerate outcomes.

Sustainable development in India has become an essential strategy to reduce poverty and inequality while ensuring environmental sustainability. Sustainable livelihoods, emphasizing social, economic, and environmental equity, form the core of India's development approach. Agriculture and Rural Livelihoods: Despite employing over 42% of the population, agriculture contributes only 18% to India's GDP.[15] Low productivity, fragmented landholdings, and climate vulnerability have impeded rural incomes. Market reforms, especially the repeal of the contentious 2020 farm laws, have renewed the focus on creating inclusive and sustainable rural economies. Productivity is low in the agricultural sector, though agriculture employs 64 percent of the total rural workforce, it produces only 39 percent of the total monetary rural output. Farmers are unable to negotiate fair, self-sustaining prices—largely due to India's antiquated agricultural market system, which is juxtaposed with high input costs (seeds, labour, equipment, transportation, and so on).

2.1. Skill Development and Employment

India faces a dual challenge: a burgeoning youth population and a widening skills gap. The unemployment rate among urban youth (15-29 years) touched 17.4% in 2023.[16] Government schemes like PMKVY (Pradhan Mantri Kaushal

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[14] Sustainable Development Report 2023, *SDG Index Rankings*, *available at:*https:// dashboards.sdgindex.org/rankings (Last Visited 10th April, 2025).

[15] India's Agricultural Reforms," PRS Legislative Research, 2021, *available at:*https://prsindia.org/budgets/parliament/demand-for-grants-2021-22-analysis-agriculture-and-farmers-welfare (Last visited 10th April,2025)

[16] Ministry of Labor and Employment, 2023, *available at:*https://pib.gov.in/ PressRelease Page.aspx?PRID=2057970 Periodic Labor Force Survey (PLFS), (Last visited 10th April,2025)

Vikas Yojana) aim to bridge this divide, yet the quality and relevance of training remain under scrutiny.[17]

India's growing emphasis on agriculture, skill development, and innovation is a vital response to its pressing employment needs, with estimates indicating that 103 million new jobs are required. However, challenges persist, particularly in the agricultural sector, which still employs 64% of the rural workforce but produces only 39% of rural income. This can be attributed to a lack of training, inadequate infrastructure, disorganized frameworks for employment engagement, and other factors.

India faces a severe shortage of skilled labour, and further, the skilled labour ecosystem is constrained by inadequate training infrastructure, out-of-date curricula, and other limitations.

2.2. Inequality and Inclusion

Despite notable improvements in digital and financial inclusion, social and economic inequalities remain entrenched. Disparities in income, education, and healthcare persist—particularly across gender and caste lines. The Multidimensional Poverty Index (MPI) 2023 estimates that over 230 million Indians still live in multidimensional poverty.[18]

India’s overall SDG performance, measured through the SDG India Index, showed a score of 66 out of 100, signalling that while progress has been made, significant hurdles remain, particularly in areas such as zero hunger, health, gender equality, and quality education. The report also highlighted state-wise disparities in SDG preparedness, with Kerala emerging as a leader in SDG implementation, while states like Jharkhand and Bihar lagged behind.

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[17] NSDC Annual Report, 2022-23. 2021, *available at:*https://nsdcindia.org/ (Last visited 10th April,2025)

[18] UNDP Multi-dimensional Poverty Index Report, 2023, *available at:*https:// hdr.undp.org /content/2023-global-multidimensional-poverty-index-mpi (Last visited 10th April,2025)

Sectors like services and construction are growing, but worker productivity is not increasing.

Increasingly, the Indian government recognizes that successful entrepreneurs not only innovate and bring new products and concepts to the market but also create jobs, build wealth, and improve market efficiency. The Report of the Expert Committee on Innovation and Entrepreneurship recommends focusing on young and innovative technology firms, upcoming manufacturing businesses, and innovator companies. Achieving impact in livelihoods needs long-term engagement. Program funding support—particularly for nonprofits—for short durations of one to two years is counterproductive. Not only do long-term partnerships allow for more impactful implementation, they also allow for systems for sustainability to be set in place.

As indicated above, the composite score for India improved from 57 in 2018 to 66 in 2020-21 and further to 71 in 2023-24.[19]

2.3. Limitation and Way Forward

According to the Centre for Science and Environment's State of India's Environment Report, India's rank dropped primarily because of major challenges in 11 SDGs, including zero hunger, good health and well-being, gender equality, and sustainable cities and communities. India also performed poorly in dealing with quality education and life on land aspects, the report stated.[20]

On the state-wise preparedness, the report said Jharkhand and Bihar are the least prepared to meet the SDGs by the target year 2030. Kerala ranked first,

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[19] Release of SDG India Index 2023-24, *available at:*https://pib.gov.in/ Press ReleasePage.aspx?PRID=2032857#:~:text=Overall%20SDG%20score%20for%20the,range%20of%2042%20to%2069, (Last visited 10th April,2025)

[20] India Slips 3 Spots to Rank 120 on 17 SDG goals adopted as 2030 Agenda: Report, *available at:*https://economictimes.indiatimes.com/news/economy/indicators/india-slips-3-spots-to-rank-120-on-17-sdg-goals-adopted-as-2030-agenda-report/articleshow/ 89924013. cms, (Last visited on 10th April, 2025).

followed by Tamil Nadu and Himachal Pradesh in the second and third positions.[21]

India's engagement with the Sustainable Development Goals reflects both political commitment and institutional innovation. However, despite measurable progress in select sectors such as renewable energy, financial inclusion, and digital governance, the country continues to grapple with systemic and structural limitations. The centralized policy-making framework, while efficient for agenda-setting, often hinders context-specific implementation at the grassroots level. The diverse socioeconomic fabric of Indian states demands greater fiscal and administrative decentralization to enable tailored SDG strategies.

The widening disparity between high-performing states (such as Kerala and Tamil Nadu) and lagging counterparts (such as Bihar and Jharkhand) underscores the absence of equity in policy outcomes. The SDG India Index, while valuable for tracking aggregate progress, masks inter- and intra-state inequalities that affect marginalized populations the most. The lack of real-time, disaggregated data—especially on gender, caste, and region—continues to weaken evidence-based planning and targeted delivery.[22]

India's policy push for digital inclusion and entrepreneurship is commendable, yet insufficiently attuned to the needs of rural and informal economies. The overwhelming emphasis on start-ups and urban innovation ecosystems risks excluding low-tech, labor-intensive sectors critical to inclusive development.[23] Furthermore, flagship skill development schemes suffer from a disconnect between training content and evolving market needs, resulting in

[21] NITI Aayog Release SDG India Index and Dashboard 2020-21, *available at:*https:// pib.gov.in/PressReleasePage.aspx?PRID=1723952 (Last visited on 10th April, 2025)
[22] NITI Aayog, *SDG India Index & Dashboard 2023–24*, Government of India, p. 22.
[23] Report of the Expert Committee on Innovation and Entrepreneurship, NITI Aayog, 2020.

underemployment and skill underutilization.[24] A paradigm shift from short-term programmatic funding to long-term systemic investment is essential to ensure sustainability and impact.

The post-pandemic recovery phase has exposed the fragility of India's social infrastructure. Health systems, education, and livelihoods require substantial reform to ensure resilience against future shocks. Yet, budgetary allocations for key social sectors remain inadequate, often falling short of global benchmarks.[25] Public-private partnerships, though increasingly visible in infrastructure and digital domains, have limited penetration in health, education, and community-led development—precisely were state capacity needs reinforcement.[26]

Finally, the philosophical orientation of India's development narrative—"*Sabka Saath, Sabka Vikas, Sabka Vishwas, Sabka Prayas"*—offers a unifying vision. However, operationalizing this vision demands inclusive governance, multi-stakeholder dialogue, and institutional accountability at every level. As the 2030 deadline draws near, India must adopt a "whole-of-society" approach that integrates state, market, and civil society efforts. Without this, the SDGs risk becoming aspirational ideals rather than transformative realities.

3. Government Endeavours

The Indian government has made substantial efforts to mainstream SDGs across its policies and development programs. The SDG India Index, introduced by NITI Aayog, serves as a critical tool to track and benchmark progress, encouraging competition among states and union territories.

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[24] Ministry of Skill Development and Entrepreneurship, *Annual Report 2022–23*, Government of India.

[25]Entre for Budget and Governance Accountability (CBGA), *Union Budget Analysis 2023–24*, New Delhi.

[26] Bhushan, A. and Kumar, R., "Public-Private Partnerships in India: Lessons and Challenges", *Economic & Political Weekly*, Vol. 55, No. 7, 2020.

3.1. SDG India Index 2023-24

Developed by NITI Aayog in collaboration with UN India, the SDG India Index 2023-24 ranks states and UTs on their progress. Kerala, Himachal Pradesh, and Tamil Nadu have consistently led, while Bihar, Jharkhand, and Uttar Pradesh lag behind.[27]

India's overall score has improved from 60 in 2019 to 67 in 2023-2024 report. The highest gains were observed in:

- **Goal 6 (Clean Water and Sanitation Swachh Bharat Abhiyan** achieved 100% rural sanitation coverage.[28]
- **Goal 7 (Affordable and Clean Energy)—**Over100 GW of solar capacity installed as of 2023.[29]

India has shown remarkable progress in certain areas, notably SDGs 6 (Clean Water and Sanitation) and 7 (Affordable and Clean Energy), but challenges remain in sectors like health, education, and infrastructure.

National programs such as Swachh Bharat (Clean India), Ayushman Bharat (Health Protection Scheme), and the National Nutrition Mission have significantly contributed to achieving various SDGs, particularly in the areas of health, sanitation, and poverty reduction. The government's commitment to SDGs is also visible through the widespread adoption of digital initiatives like the JAM trinity (Jan Dhan, Aadhaar, Mobile), which has enabled financial inclusion for millions.

3.2. SDG Localization

The NITI Aayog's initiative to localize SDGs at the district level—through district-specific indicators—is a major shift. The North Eastern Region

[27] NITI Aayog, SDG India Index 2023-24, *available at:*https://www.niti.gov.in /sites/ default/files/2024-07/SDG_India_Index_2023-24.pdf. (Last visited on 10th April, 2025).
[28] Ministry of Jal Shakti, Swachh Bharat Mission Progress Report, 2023.
[29] MNRE, Renewable Energy Statistics 2023.

District SDG Index is an example of region-focused planning that aligns with global frameworks.[30]

India has adopted a multifaceted framework to implement the SDGs. Private sector engagement is indispensable for achieving the SDGs in India. Businesses, especially large corporations, have a critical role to play in integrating sustainability into their operations. However, challenges persist in terms of aligning profit motives with the social and environmental goals of the SDGs. Several companies have adopted corporate social responsibility (CSR) initiatives aligned with the SDGs, particularly in education, health, and environmental protection. However, the scale of these efforts is often insufficient to meet national needs.

India's policy framework, while progressive, requires stronger incentives for the private sector to invest in sustainable development. Innovative financing models, such as impact investing, green bonds, and social enterprise incubators, are essential to support sustainable entrepreneurship and bridge the financing gap.

3.2.1. Sashakt Bharat—Sabal Bharat (Empowered India)

Between 2005 and 2023, India lifted over 415 million people out of multidimensional poverty.[31] Schemes like PM Awas Yojana and Jal Jeevan Mission are transforming rural lives. Investments in health, nutrition, housing, and sanitation have yielded measurable improvements in human development.

3.2.2. Swachh Bharat—Swasth Bharat (Clean and Healthy India)

The Ayushman Bharat PM-JAY scheme now covers more than 500 million people, offering annual health coverage of □5 lakh per family.[32] India's

[30] UNDP India. "Localizing the SDGs: Tools and Case Studies," 2021
[31] OPHI and UNDP, 2023 Global MPI.
[32] National Health Authority, Ayushman Bharat Dashboard, 2023.

COVID-19 response, with over 2 billion vaccine doses administered, was hailed as one of the largest immunizations drives globally.

3.2.3. Samagra Bharat—Saksham Bharat (Inclusive India)

The JAM trinity—Jan Dhan Yojana, Aadhaar, and Mobile—has enabled Direct Benefit Transfers (DBT) to more than 700 million individuals, reducing leakages and improving service delivery.[33] Over 460 million beneficiaries have bank accounts under Jan Dhan Yojana.[34]

3.2.4. Satat Bharat—Sanatan Bharat (Sustainable India)

India has emerged as a global leader in renewable energy. As of 2023, it ranks third in renewable power capacity, with a target of 500 GW by 2030.[35] The International Solar Alliance and the Coalition for Disaster Resilient Infrastructure underscore India's climate leadership. India has committed to net-zero carbon emissions by 2070. Major renewable energy targets include:[36]

- 500 GW non-fossil fuel capacity by 2030
- Restoring 26 million hectares of degraded land
- Doubling farmers' income through sustainable farming.[37]

3.2.5. Sampanna Bharat – Samriddh Bharat (Prosperous India)

India aims to become a $5 trillion economy by 2027–28, focusing on industrial expansion, innovation, and infrastructure development.[38] The country's vibrant start-up ecosystem—home to over 100 unicorns—has been instrumental in driving SDG-aligned innovation. India's commitment to global cooperation is visible through its $150 million UN-India Development

[33] Ministry of Finance, Economic Survey 2022-23
[34] Press Information Bureau (PIB), GoI. (2023). *PM Jan Dhan Yojana Achievements*.
[35] Ministry of New and Renewable Energy (MNRE), GoI
[36] India's National Statement at COP26, Glasgow, 2021
[37] Ministry of Environment, Forest and Climate Change, India's NDCs
[38] Economic Survey 2023-24. Ministry of Finance, GoI.

Partnership Fund, supporting SDG efforts in fellow developing nations.[39] With a $3.7 trillion economy, India is on course to becoming the third-largest economy by 2030.[40] Startups, MSMEs, and green enterprises are key drivers of this growth.

4. SDG Implementation

India has made notable progress through several flagship programs and initiatives that align closely with the Sustainable Development Goals (SDGs). These programs have not only addressed core development challenges but also exemplified how targeted interventions, stakeholder engagement, and data-driven governance can catalyse transformative change. [41]

4.1. Aspirational Districts Programme (ADP)— Launched by NITI Aayog, the ADP targets 112 underdeveloped districts across India and has become a globally recognized model for SDG localization.[42] Through data-driven governance and a focus on health, nutrition, education, agriculture, water resources, financial inclusion, and skill development, the program has seen marked improvement in maternal and child health indicators, school dropout rates, and access to basic infrastructure. As of 2025, more than 85 districts have shown above-average growth in core human development indices.[43]

4.2. Kudumbashree Mission, Kerala— A long-standing initiative that continues to evolve, Kudumbashree now supports over 5 million women through self-help groups (SHGs), microenterprises, and collective farming

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[39] India-UN Development Partnership Fund, UN Office for South-South Cooperation.
[40] IMF World Economic Outlook, 2024.
[41] *SDG Progress Report 2024: Accelerating Transformative Action*. New Delhi: United Nations Development Program. *available at:*https://www.undp.org/india/publications/sdg-india-index-2023-2024, (Last visited 11th April 2025)
[42] *Aspirational Districts Program Dashboard & Data Compendium*. Government of India, *available at:*https://www.niti.gov.in/aspirational-districts-programme, (Last visited 11th April 2025)
[43] World Bank India. *Human Capital and District Development in India: An SDG Evaluation*. Washington, D.C. (2025).

units.[44] It directly contributes to SDG 1 (No Poverty), SDG 5 (Gender Equality), and SDG 8 (Decent Work and Economic Growth). In 2024–25, the mission reported a 25% increase in women-owned micro-businesses, with several cooperative groups winning national awards for innovation and sustainability.[45]

4.3. Solar Mamas, Rajasthan— As part of the Barefoot College International's initiative, Solar Mamas has expanded its training program in renewable energy to women across 15 Indian states and multiple countries in the Global South.[46] In 2025, the initiative was recognized by the UNESCO Prize for Girls' and Women's Education for its role in combining clean energy access (SDG 7) with female empowerment (SDG 5). Trained "solar engineers" have electrified over 1,200 remote villages, reducing dependence on fossil fuels and increasing school attendance rates in those communities.[47]

4.4. Clean Ganga Mission (Namami Gange)— As of 2025, the Namami Gange Programme has completed over 400 sewage treatment infrastructure projects and significantly improved water quality across several stretches of the river.[48] Satellite data from ISRO and CPCB water monitoring reports show a substantial reduction in biological oxygen demand (BOD) in major river segments.[49] The mission also supports biodiversity through the conservation of aquatic species such as the Gangetic dolphin and integrates community-based

[44] Kudumbashree Mission. *Empowerment and Inclusion Report 2025*. Government of Kerala. (2025).
[45] Ministry of Rural Development. (2025). *Report on National Rural Livelihood Mission (NRLM) and SHG-led Models*. Government of India.
[46]Barefoot College International. (2025): *Solar Mamas Impact Report, available at:* https://www.barefootcollege.org (Last visited 11th April 2025)
[47] UNESCO. (2025). *UNESCO Prize for Girls' and Women's Education – 2025 Winners*. Paris: UNESCO.
[48] Ministry of Jal Shakti. (2025). *Namami Gange Annual Report*. Government of India.
[49] Central Pollution Control Board (CPCB). (2025). *Water Quality Status of River Ganga 2024–25*.

river stewardship programs, linking to SDG 6 (Clean Water and Sanitation) and SDG 14 (Life Below Water).[50]

It can, however, be stated that while India's integration of the SDGs into national development policy has been commendable, its performance reveals a mixed picture marked by ambitious institutional frameworks, uneven regional progress, and persistent sectoral disparities. The SDG India Index, developed by NITI Aayog, represents a significant step in quantifying and encouraging state-level accountability. However, the index remains largely aggregative in nature, often overlooking intra-state disparities, especially among vulnerable populations in aspirational districts and tribal regions.[51]

India's gains in SDGs 6 and 7—evident through the success of Swachh Bharat and the expansion of clean energy infrastructure—underscore the efficacy of centrally sponsored flagship missions. Yet, progress in key social sectors such as health, education, and gender equality remains fragmented and insufficient to meet 2030 targets.[52] Programs like Ayushman Bharat and PM Awas Yojana have expanded coverage, but their depth and quality of delivery vary considerably across regions and income groups.[53]

The localization of SDGs—particularly through district-level initiatives and regional indices—reflects a critical decentralizing shift. However, such efforts require capacity-building at local levels, along with greater fiscal autonomy to translate district-level indicators into actionable

[50] Wildlife Institute of India. (2025). *Ganga Biodiversity Conservation Action Plan*. Ministry of Environment, Forest and Climate Change.
[51] NITI Aayog, SDG India Index & Dashboard 2023-24: Partnerships in the Decade of Action, Government of India, New Delhi, 2024, at 12.
[52] United Nations Sustainable Development Solutions Network, *Sustainable Development Report 2023*, Cambridge University Press, 2023, at 143.
[53] Ministry of Health and Family Welfare, Ayushman Bharat Progress Report 2023, Government of India, *available at*: https://abdm.gov.in (Last visited 9th July, 2025).

strategies.[54] The private sector's engagement, while growing through CSR and sustainability initiatives, remains largely voluntary and inconsistent. Without regulatory incentives or outcome-based mandates, its role in achieving SDG milestones will remain limited in scale and impact.

Moreover, while the government has adopted innovative digital frameworks such as the JAM trinity and DBT mechanisms to enhance inclusion, digital divides and infrastructural gaps still affect last-mile delivery, particularly among women, the elderly, and remote communities.[55]

India's SDG journey showcases policy innovation, global leadership in renewable energy, and significant poverty reduction, yet its trajectory remains hindered by institutional bottlenecks, financing gaps, and social inequities. The challenge now lies not in vision, but in implementation—requiring integrated planning, evidence-based decision-making, and robust state-centre-local coordination to ensure that the promise of "Sashakt, Samagra, Satat Bharat" becomes a lived reality.

5. Future Roadmap and Suggestions

To achieve the SDGs by 2030, India must intensify efforts in the following areas:

5.1. Strengthen SDG Localization—Empower state and local governments to implement and monitor SDGs through tailored action plans and decentralized resources. States like Kerala and Tamil Nadu have already established SDG cells, while NITI Aayog continues to

[54] NITI Aayog & UNDP India, *Localizing SDGs: Early Lessons from Implementation*, 2022, at 9–10.
[55] Reserve Bank of India, *Report on Financial Inclusion and JAM Framework*, 2023, at 28; see also Ministry of Electronics and Information Technology, *Digital India Progress Report*, 2023.

promote localization through State Indicator Frameworks (SIFs) and District SDG Indices.[56]

5.2. Enhance Data Systems—Establish a national SDG data infrastructure to track progress in real-time, ensuring effective policymaking and transparent reporting. The MOSPI (Ministry of Statistics and Programme Implementation) and the UN in India are jointly working on integrating disaggregated data, yet many sectors—such as informal labour, rural health, and environmental sustainability—remain under-reported.[57]

5.3. Foster Public-Private Partnerships (PPPs)— Create stronger policy frameworks to incentivize private sector involvement in SDG-aligned initiatives, focusing on sustainable investments and social impact bonds. The private sector remains underutilized in SDG financing,[58] Robust PPP frameworks, including green finance instruments, ESG-based incentives, and social impact bonds, are needed to attract capital and innovation into climate action, healthcare, and digital inclusion sectors.[59] Programs like the National Infrastructure Pipeline (NIP) and SDG Investor Map (UNDP-India) demonstrate the potential of coordinated efforts.[60]

5.4. Invest in Climate Resilience—Mainstream climate adaptation in all sectors, focusing on disaster-resistant infrastructure and the promotion of renewable energy is required. With climate risks intensifying, India must mainstream climate adaptation and resilience

[56] NITI Aayog. *State and District SDG Index Report 2024–25*. Government of India.
[57] United Nations Data Collaborative. (2024). *Bridging the Data Gap in India's Development*.
[58] Invest India. (2025). *Unlocking Private Finance for SDGs: India's Progress and Challenges*.
[59] SEBI. (2024). *Environmental, Social and Governance (ESG) Reporting Guidelines for Indian Companies*.
[60] UNDP India. (2024). *SDG Investor Map – Opportunities for Private Sector Participation*.

planning in urban design, agriculture, and energy sectors.[61] This includes disaster-resilient infrastructure, ecosystem restoration, and promotion of renewables and green jobs aligned with India's 2070 Net-Zero target.[62]

5.5. Promote Inclusive Development—Ensure marginalized communities are at the center of SDG strategies through inclusive social policies, equal access to services, and gender-responsive programs. Marginalized communities—including Scheduled Castes, Scheduled Tribes, minorities, and persons with disabilities—must be prioritized in all SDG interventions.[63] Inclusive policies should guarantee universal access to education, health, clean water, digital connectivity, and livelihood support, alongside gender-responsive budgeting.[64] Intersectionality should guide policy design and evaluation.

5.6. Empower the Youth—Expand youth engagement programs to integrate SDGs into education systems and promote innovation-driven entrepreneurship. With over 65% of India's population under 35, integrating SDGs into curricula, skill-building programs, and entrepreneurial ecosystems will harness demographic dividends.[65] Youth-led innovation hubs, startup incubators, and initiatives like the Atal Innovation Mission and Yuwaah (UNICEF India) should be expanded with stronger institutional support.[66]

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[61] Ministry of Environment, Forest and Climate Change (MoEFCC). (2025). *National Adaptation Framework and Climate Action Tracker*

[62] *India Energy Outlook 2025* International Energy Agency (IEA). (2025).

[63] Ministry of Social Justice and Empowerment. (2024). *Inclusive India: A Framework for Empowerment of Marginalized Communities*.

[64] UN Women India. (2025). *Gender Responsive Budgeting and SDG Alignment in India*.

[65] Ministry of Youth Affairs & Sports. (2025). *National Youth Policy Review 2024–25*.

[66] UNICEF India & NITI Aayog. (2025). *Yuwaah and Youth-Led Innovation for the SDGs*.

6. Conclusion

India's experience thus far offers valuable lessons in combining ambition with action. By learning from past successes and challenges, the nation can chart a clear course towards a sustainable, inclusive, and prosperous future for all its citizens.

India's engagement with the 2030 Sustainable Development Goals reflects both promise and paradox. On one hand, the nation has demonstrated global leadership in clean energy, poverty alleviation, digital inclusion, and innovative policy design. Initiatives such as the Aspirational Districts Programme, Kudumbashree Mission, and Namami Gange have illustrated the power of targeted, scalable, and community-oriented interventions. The government's proactive stance—exemplified through frameworks like the SDG India Index and programs such as Ayushman Bharat and the JAM trinity—has institutionalized the SDGs into national and subnational policy structures.

On the other hand, significant gaps remain in implementation, equity, and outcomes. Inter-state and intra-state disparities continue to limit the inclusivity of development efforts. Structural bottlenecks—ranging from data deficits and weak local governance capacity to underfunded social sectors and limited private sector accountability—hinder the realization of the goals in their entirety. Climate vulnerability, gender inequality, and unemployment further exacerbate the fragility of progress, especially among marginalized communities.

To transition from aspiration to achievement, India must reimagine its development paradigm by embedding sustainability, decentralization, and inclusion at the core of governance. Strengthening the synergy between policy design and ground-level execution, investing in climate resilience and human capital, and institutionalizing multi-stakeholder partnerships will be critical.

Most importantly, India must embrace a "whole-of-society" approach—leveraging the energy of its youth, the strength of its institutions, and the innovation of its private sector.

As the global community approaches the 2030 deadline, India's role will be pivotal—not only in achieving its own targets but in shaping global outcomes. The journey toward sustainable development is as much about systems transformation as it is about meeting indicators. In this endeavour, India has the opportunity to redefine recovery—not as a return to the pre-pandemic status quo, but as a leap toward a just, resilient, and inclusive future.

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Artificial Intelligence in the Context of Ethical and Legal Issues: A Critical Analysis with Special Reference to the Right to Privacy

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Abstract:

The "right to privacy" is an essential component of numerous legal systems worldwide, designed to limit the actions of both state and non-state actors that may infringe upon an individual's personal space and information. According to The Oxford Dictionary of Law, privacy is defined as the "right to be left alone… the right to a private life." Interpreting this, one can assert that the "right to privacy" involves the ability to keep one's personal information protected from unwanted exposure or intrusion. Such information may include electronic communications, professional engagements, emotional states, and intellectual expressions. The data collection methods employed by Artificial Intelligence ('AI') raise significant privacy concerns. Technologies such as facial recognition software and surveillance systems can lead to serious breaches of privacy. These intrusions may result in identity theft, violations of informed consent, discriminatory profiling, and the unauthorized secondary use of data without the individual's knowledge or approval. Recognizing these risks, international conventions—such as the "Universal Declaration of Human Rights" and the "International Covenant on Civil and Political Rights" affirm the "right to privacy" as a fundamental human right. These instruments 'AI' aims to protect individuals from unlawful access to their personal data and activities, thereby upholding human dignity and autonomy

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in the digital age. Through a thoughtful and inclusive examination, the article emphasizes the need for a unified, well-regulated model one that not only leverages 'AI's transformative potential but also implements strong protections against threats to privacy. This article employs 'Doctrinal Research methodology', analysing legal texts, landmark judgment, and policy documents related to AI and privacy. It critically examines constitutional principles, especially the Indian Supreme Court's interpretation of the right to privacy. The study incorporates legal insights from global instruments such as the EU's GDPR etc. Secondary sources include scholarly articles, government reports, and 'AI' ethics guidelines to evaluate current gaps and propose regulatory solutions.

Keywords: *Right to Privacy, Artificial Intelligence, Ethical and Legal Issues, Intrusion on personal Data*

1. Introduction

To ensure that advancements in Artificial Intelligence uphold individuals' right to privacy, it is essential to implement robust checks and balances, along with a high degree of transparency and accountability. [1] The rapid amalgamation of Artificial Intelligence ('AI')[2] across diverse sectors ranging from healthcare to national security has not only catalysed unparalleled advancements but also forced to the forefront a host of ethical-legal issues, with privacy concerns being particularly prominent. The pursuit of artificial intelligence has spanned over 65 years, driven by the belief that machines, beyond performing manual tasks, can achieve cognitive capabilities similar to humans. Whether we realize it or not, 'AI' has developed a fragment of our everyday existence, prompting key domains such as healthcare, education, industry, and transport. It is increasingly recognized as a powerful force reshaping society and driving

[1] Radoslav Polčák, *Human Rights in the Age of Information and Communication Technologies*, Masaryk University Journal of Law and Technology, 2017.
[2] From Hereafter the word" Artificial Intelligence" will be referred as 'AI'

economic and technological progress. Yet, 'AI' rise has not been without obstacles—it has gone through multiple phases of slowed progress, commonly referred to as "AI winters." Given this complex journey, it is timely to reflect on its past achievements, current status, and future direction and certain other aspects, issues like ethical, legal issues involved with it. [3]The rapid integration of Artificial Intelligence ('AI') into diverse sectors such as healthcare, finance, and national security has led to significant technological advancements. Yet, this accelerated growth has also exposed critical ethical and legal challenges, with privacy concerns becoming particularly pressing. It offers a critical analysis of the ethical ambiguities and legal intricacies posed by the increasing influence of 'AI', advocating for a responsible and ethically grounded deployment that upholds individual rights alongside innovation. There is an urgent necessity for robust ethical standards and well-defined legal structures to guide the responsible evolution and use of 'AI' schemes. It also brings attention to ongoing industry and regulatory efforts, especially emphasizing the work of leading companies like Ericsson in embedding ethical principles and privacy safeguards into their 'AI' frameworks. Ultimately, the analysis calls for collective collaboration among developers, ethicists, lawmakers, and the broader public to shape an 'AI'-driven future rooted in innovation, yet firmly grounded in the values of privacy, human dignity, and fundamental rights.[4] Artificial Intelligence ('AI') stands as a revolutionary technology, offering immense potential for progress while also raising critical concerns about privacy violations. As 'AI' systems driven by machine learning and deep learning become deeply embedded in daily life, they challenge

[3] Yuchen Jiang, Xiang Li, Hao Luo, Shen Yin and Okyay Kaynak, *Quo Vadis Artificial Intelligence?* Discover Artificial Intelligence Review, (Received: 12 December 2021 / Accepted: 28 February 2022), *available at:*https://link.springer.com/article/10.1007/s44163-022-00022-8(Last visited 22nd March, 2025).

[4] Juris Centre, *Artificial Intelligence: Impact on Right to Privacy*, Sep. 12, 2023,*available at*:*https://juriscentre.com/2023/09/12/artificial-intelligence-impact-on-right-to privacy/#:~:text=The%20ways%20'AI'%20uses%20to,of%20data%20without%20user%20knowledge*(Last visited 18th March, 2025).

established ideas of privacy, autonomy, and ethical responsibility. The discussion highlights the risks of 'AI' encroaching on personal spaces and sensitive data, highlighting the urgent need for strong ethical and legal outlines to regulate its use. The integration of 'AI' into sectors like healthcare and surveillance has intensified concerns over consent, data security, and algorithmic bias, prompting a reassessment of current privacy safeguards. The discussion argues for the development of comprehensive strategies that balance technological innovation with the protection of individual privacy rights. It calls for ethical guidelines and legal standards that ensure 'AI' evolves responsibly respecting human dignity and maintaining a harmonious relationship between technological advancement and ethical principles.[5]

1.1. Ethical -Legal Conceptual Analysis of Right to Privacy Vis A Vis Artificial Intelligence

The ethical and legal dimensions of Artificial Intelligence ('AI') and privacy present a highly complex and evolving landscape. Key ethical concerns revolve around the risk of 'AI' reinforcing societal biases, making non-transparent decisions, and threatening human autonomy. This highlights the need for 'AI' schemes that are not only efficient but also fair, transparent, and accountable. On the legal front, these ethical challenges intersect with crucial issues such as liability, consent, data privacy, and the acknowledgment of privacy as a fundamental human right. A significant legal milestone in this context is the "European Union's General Data Protection Regulation (GDPR)", which provides a robust framework to regulate 'AI'. The GDPR emphasizes transparency, data minimization, and individuals' control over their personal data effectively addressing many ethical concerns through legal provisions. Furthermore, GDPR's requirements for human oversight in

[5] Office of the Victorian Information Commissioner (OVIC), *Artificial Intelligence and Privacy – Issues and Challenges*, *available at: https://ovic.vic.gov.au/privacy/resources-for-organisations/artificial-intelligence-and-privacy-issues-and-challenges/*(Last visited 18th March, 2025).

automated decisions and the right to explanation reflect broader ethical demands for accountability and openness in 'AI' operations. Together, these legal and ethical frameworks 'Aim to ensure that 'AI' development respects human dignity and operates within responsible boundaries.[6] Global human rights agreements like the "Universal Declaration of Human Rights" and the "International Covenant on Civil and Political Rights" emphasize privacy as a core human right. These principles shape 'AI' regulations, ensuring that technological advancements do not violate fundamental freedoms. This international outlook calls for a unified approach to 'AI' governance that safeguards privacy and other rights, highlighting the deep connection between ethics and legal structures in today's 'AI'-driven world. Ericsson's commitment to building trustworthy 'AI' systems serves as a concrete example of how ethical and legal values can be embedded into the development of new technologies.[7] The convergence of law as well as ethics in the realm of 'AI' and privacy is a continuously developing area that requires sustained collaboration among technologists, legal professionals, ethicists, and policymakers. As 'AI' technology progresses, it is essential that our ethical standards and legal frameworks also adapt to guarantee that these advancements serve the public good while upholding individual privacy and fundamental human rights.[8] In today's era of digitalisation, the swift advancement of Artificial Intelligence ('AI') technologies has raised critical concerns about privacy, as these systems are capable of processing, analysing, and making decisions using extensive personal data. Tools such as facial

[6] Paul Voigt and Axel, von dem Bussche, *The EU General Data Protection Regulation (GDPR): A Practical Guide*, 1st ed. 2017, Springer International Publishing, Cham, *available at*: *https://doi.org/10.1007/978-3-319-57959-7 (*Last visited 15th March, 2025).

[7] Dario Casella and Laurence Lawson, *AI and Privacy: Everything You Need to Know About Trust and Technology*, Ericsson Blog, Aug. 1, 2022, *available at:https://www.ericsson.com/en/blog/2022/8/ai-and-privacy-everything-you-need-to-know* (Last visited 15thmarch, 2025).

[8] Bryce Goodman and Seth Flaxman, *European Union Regulations on Algorithmic Decision-Making and a "Right to Explanation"*, AI Magazine, Vol. 38, No. 3, 2017, pp. 50–57, *available at:https://onlinelibrary.wiley.com/doi/full/10.1609/aimag.v38i3.2741*(Last visited 22nd March, 2025).

recognition, predictive analytics, and automated decision-making provide remarkable advantages, yet they also present significant threats to individual privacy. These risks are heightened by 'AI' ability to monitor, identify, and even anticipate personal behaviours frequently occurring without clear consent or user awareness.[9]The convergence of 'AI' and privacy requires a careful balance that preserves both the advantages of technological invention and the shield of rights of the individuals. Ethical and legal structures, such as those embraced by companies like Ericsson and outlined in frameworks like the GDPR, are vital in addressing privacy challenges posed by 'AI'. Ongoing vigilance, openness, and cooperation among all stakeholders are crucial to ensure that 'AI' developments promote the public interest while maintaining strong safeguards for personal privacy.

Ethical and privacy issues surrounding Artificial Intelligence ('AI') are vast and complex, touching upon various aspects of society, technology, and human rights.[10] Some of the most significant ethical and privacy concerns include:

1.1.1. Privacy and Data Protection[11]: AI systems typically rely on large volumes of personal data to operate efficiently, which brings significant concerns about the methods of data collection, storage, and usage. The potential for unauthorized access or exploitation of this information poses a threat to individual privacy rights. These concerns are further intensified by AI's capacity to monitor and anticipate behaviour often without explicit user consent. As a result, ensuring informed consent, implementing effective data

[9] Margot E. Kaminski, *The Right to Explanation, Explained*, 34 Berkeley Tech. L.J. 189 (2019), *available at:https://doi.org/10.15779/Z38TD9N83H* (Last visited 22nd March, 2025)
[10] Office of the Victorian Information Commissioner (OVIC), *Artificial Intelligence and Privacy – Issues and Challenges*, *available at:https://ovic.vic.gov.au/privacy/resour2ces-for-organisations/artificial-intelligence-and-privacy-issues-and-challenges/*(Last visited 22nd March, 2025).
[11] *Ibid.*

anonymization techniques, and securing sensitive personal data become essential components in the ethical deployment of AI technologies. 'AI 'powered surveillance systems, such as facial recognition technologies, can track and monitor individuals in public and private spaces, potentially leading to invasions of privacy and authoritarian control if not properly regulated.

1.1.2. Bias and Fairness:[12] 'AI' algorithms can inherit biases present in the data they are trained on, leading to discriminatory outcomes. These biases can perpetuate existing inequalities in areas like hiring, criminal justice, healthcare, and finance. Ensuring fairness and mitigating bias in 'AI' systems is a major ethical challenge. When historical or societal biases are embedded in training data, these biases can be perpetuated or even amplified by 'AI' systems, leading to discriminatory outcomes in areas like hiring, lending, or law enforcement Even with "neutral" data, the design of algorithms and the choices made during development can introduce or exacerbate bias, resulting in unfair treatment of specific groups.

1.1.3. Accountability, Impartiality and Transparency:[13] Many 'AI' systems function as "black boxes," where it is unclear how decisions are made, especially with complex algorithms like deep learning. This lack of transparency complicates efforts to hold 'AI' systems accountable, especially in critical areas such as healthcare, criminal justice, or This lack of transparency creates challenges in understanding, diagnosing, or contesting the

[12] Joy Buolamwini, *Artificial Intelligence Has a Problem with Gender and Racial Bias. Here's How to Solve It*, *Time*, Feb. 7, 2019, *available at:https://time.com/5520558/artificial-intelligence-racial-gender-bias/* (Last visited 22nd Feb, 2025).

[13] Victoria Reed, *Explainability in AI Accountability: From Black Boxes to Glass Boxes*, AICompetence.org, Nov. 16, 2024, *available at: https://aicompetence.org/explainability-in-ai-accountability/*(Last visited 22nd Feb, 2025).

outcomes generated by these systems. There is a growing need for methods and practices that can elucidate how 'AI' algorithms arrive at particular decisions, ensuring that stakeholders understand and can trust these outcomes

1.1.4. Job Shift and Economic Disparity:[14] 'AI' potential toward automate a wide range of jobs poses a risk of significant job displacement, especially in industries that rely on routine or manual labour. This could lead to greater economic inequality and societal unrest if workers are not adequately supported through retraining or social safety nets. The automation of tasks previously performed by humans raises concerns about job loss and economic inequality. The development and control of advanced 'AI' technologies are often concentrated in the hands of a few large corporations, potentially exacerbating economic disparities and limiting broader societal benefits.

1.1.5. Autonomous Arms or weapons or Military Use: The development of 'AI 'powered autonomous weapons systems raises ethical concerns about the use of 'AI' in warfare. These systems could make life-and-death decisions without human intervention, leading to accountability issues and the potential for misuse in conflict scenarios.[15]

1.1.6. 'AI' and Human Agency: As 'AI' becomes more integrated into daily life, there are concerns about the erosion of human agency. 'AI' systems, especially in the form of decision-making tools or

[14] Janan Jama, *Comprehensive Social Safety Nets Required to Combat AI Upheaval*, OMFIF, Apr. 11, 2024, *available at:https://www.omfif.org/2024/04/comprehensive-social-safety-nets-required-to-combat-ai-upheaval/* (Last visited 22nd Mar, 2025).

[15] The Ethics of Automated Warfare and Artificial Intelligence, *available at:*https://www.cigionline.org/the-ethics-of-automated-warfare-and-artificial-intelligence/?utm_source=chatgpt.com(Last visited 2nd Feb, 2025).

personal assistants, could influence or manipulate human behaviour, leading to questions about autonomy and free will.

1.1.7. Biometric Data: The integration of biometric data into AI systems—such as those utilizing facial recognition poses serious privacy challenges. Because biometric identifiers are uniquely personal and typically unchangeable, they demand heightened protection. Any unauthorized access, storage, or processing of this information can lead to profound breaches of privacy and misuse. Organizations deploying biometric AI technologies must implement strong safeguards to protect user data, uphold public trust, and adhere to strict legal regulations surrounding the use of biometric information.[16]

1.1.8. Surveillance and Control: 'AI'-powered surveillance technologies, for example facial recognition as well as tracking arrangements, are gradually used by governments and private companies.

1.1.9. 'Artificial intelligence in Healthcare: 'AI' has the potential to transform healthcare, but ethical issues rise concerning the use of 'AI' in medical diagnoses, treatment references, and privacy of the patient. There is also the concern of 'AI' replacing human professionals, potentially leading to a loss of personal connection and empathy in patient care.

1.1.10. Intellectual Property and Creativity: As 'AI' systems become capable of creating art, music, literature, and even inventions, the question of ownership and intellectual property rights becomes increasingly important. Who owns the work created by an 'AI'? Should the 'AI''s creators, or the 'AI' itself, hold the rights?

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[16] Digital Ocean, *AI and Privacy: The Use of Biometric Information*, *available at:https://www.digitalocean.com/resources/articles/ai-and-privacy#the-use-of-biometric-information* (Last visited 22nd Feb, 2025).

1.1.11. Long-Term Impact on Human Identity: As 'AI' endures to advance, certain apprehensions about its long-term influence on human The possibility of 'AI' surpassing human intelligence (referred to as the singularity) raises existential questions about human purpose, ethics, and the future of humanity.

1.1.12. Legal and Ethical Responses: GDPR (General Data Protection Regulation): The EU's GDPR enshrines rights like data minimization, informed consent, and the right to be forgotten i.e. "*portion as a model for privacy-respecting 'AI' regulation*".

1.1.13. Experts urge international collaboration to develop coherent policies on 'AI' and privacy, balancing innovation with human rights protection.

The swift evolution of Artificial Intelligence ('AI') has highlighted the critical need to safeguard privacy while embracing technological innovation. Striking this balance goes beyond technical feasibility it is a core ethical and legal necessity. At the heart of this discourse lies the principle of "privacy by design," which emphasizes embedding privacy measures at every stage of 'AI' development. Rather than treating privacy as an add-on, this approach integrates it as an initial element in the architecture and functioning of 'AI' machineries.[17]

Consent is a vital component in the governance of personal data within 'AI' frameworks. It empowers individuals to maintain authority over their own information by allowing them to define how their data can be used and to what extent. The "European Union's General Data Protection Regulation (GDPR)" serves as a key legal model in this context, mandating explicit and informed

[17] High-Level Expert Group on Artificial Intelligence, *Ethics Guidelines for Trustworthy AI*, European Commission, Apr. 8, 2019, *available at:https://digital-strategy.ec.europa.eu/en /library/ethics-guidelines-trustworthy-ai* (Last visited 24th Feb, 2025)..

consent for any data processing. It also grants individuals important rights, including the "ability to access", "correct", and "delete their personal data (Regulation (EU) 2016/679)".[18]In conclusion, achieving a balance between the progress of 'AI' and the protection of privacy demands a comprehensive approach. This includes embedding privacy considerations from the outset through "privacy by design," following established ethical frameworks for 'AI', and safeguarding that consent processes are translucent and meaningful. As 'AI' technologies advance, these guiding principles are essential to safeguarding personal privacy and promoting a digital ecosystem rooted in human rights and ethical responsibility.[19]

William J. Brennan once captured the core of privacy with the assertion: "*If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion*." This powerful declaration highlights privacy as the individual's control over personal information and space an essential element acknowledged by international human rights conventions. Though often absent from explicit constitutional language, the intricacies of privacy rights are revealed in the widespread lack of awareness and access among individuals. Recognizing its vital role, India has affirmed "*privacy as a fundamental right under Article 21 of the Constitution"*, connecting it to the wider values of individual dignity and an expressive as well as meaningful life.[20]

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[18] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 Apr. 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88, *available at*: *https://eur-lex.europa.eu/eli/reg/2016/679/oj*(Last visited 22nd Feb, 2025).

[19] Ann Cavoukian, *Privacy by Design: The 7 Foundational Principles*, Information and Privacy Commissioner of Ontario, Canada, 2009, *available at:https://www.ipc.on.ca/wp-content/uploads/Resources/7foundationalprinciples.pdf*(last visited 22nd Feb, 2025).

[20] Ankur Chatterjee, *A Closer Look at Education Policies in India and the United States*, Times of India Readers' Blog, Jun. 11, 2023, *available at:https://timesofindia. indiatimes.com /readersblog/ankur-chatterjee-opines/a-closer-look-at-education-policies-in-india-and-the-united-states-55046/* (Last visited 24th Feb, 2025).

2. The Evolution of Privacy Rights in India: Legal Shifts in a Digital Age

India's recognition of privacy as a fundamental right marks a significant legal and social transformation shaped by evolving technology and jurisprudence. The journey from denial to affirmation of this right illustrates a dynamic interplay between legal interpretations, societal needs, and technological change. In the early years, the Indian judiciary was divided on whether privacy was constitutionally protected. While the majority initially rejected this notion, Justice Subba Rao's influential dissent highlighted privacy as a core component of personal liberty. Landmark rulings in cases such as *R. Rajagopal v. State of Tamil Nadu*[21]and *Govind v. State of M.P.*[22]progressively expanded the scope of privacy in areas ranging from personal life to surveillance. With the rise of digital technologies, concerns over data misuse, surveillance, and cybercrime became increasingly prominent. Controversies surrounding the Aadhaar project further intensified debates about individual rights, state control, and data security. India's legal architecture still reveals critical gaps in ensuring comprehensive privacy protections. The ongoing discourse emphasizes the urgent need for stronger laws, greater public awareness, and transparent regulatory mechanisms to uphold privacy in an increasingly interconnected and data-driven world.[23]

2.1. Digital Personal Data Protection Act (DOPA), 2023

"The Digital Personal Data Protection Act (DOPA)", 2023, marks a landmark step in the journey of India toward comprehensive protection of data. Enacted to regulate the use of personal data in the digital realm, the Act 'Aims to strike a balance between safeguarding individual privacy and enabling the lawful processing of data for legitimate purposes. "Data protection laws like the

[21] (1994) 4SCR 353
[22] AIR 1975 SC 1378
[23]Lobal Internet Liberty Campaign (GILC), *Privacy and Human Rights – Overview*, *available at:https://gilc.org/privacy/survey/intro.html* (Last visited 22nd March,2025).

Digital Personal Data Protection Act (DPDP Act)" in India 'Aim to safeguard individual privacy, but they may not completely talk about the exclusive challenges posed by 'AI', such as "algorithmic bias", "lack of transparency", and "accountability in automated decision-making".[24] Until the enactment of the "Digital Personal Data Protection Act (DPDP), 2023", India lacked a dedicated law for personal data protection. Formerly, "data privacy" was governed primarily under the "Information Technology Act, 2000", and its accompanying "Privacy Rules of 2011", which offered restricted protections for complex personal data. A major rotating point came in 2017, when the Supreme Court of India, in the landmark case of "*Justice K.S. Puttaswamy (Retd.) v. Union of India*", declared *"privacy a fundamental right under Article 21 of the Constitution*". This ruling set the stage for a comprehensive data protection framework.

In reply, the government introduced any draft forms of a data protection bill. After public consultations and revisions, the "Ministry of Electronics and Information Technology (MeitY)" revealed the "Digital Personal Data Protection Bill" in 2022. The final version, integrating key changes, was passed by Parliament and officially notified on "August 11, 2023", as the "Digital Personal Data Protection Act, 2023". The "DPDP Act" outlines regulatory requirements for collecting, processing, storing, and transferring digital personal data. However, for the law to be fully operational, the government must still notify its provisions, repeal the outdated Privacy Rules, and issue detailed rules for implementation. Notably, the "DPDP Act" is limited to personal data in "digital form". It does not cover non-digital or non-personal data, leaving such areas currently unregulated in India. In the interim,

[24] Ministry of Electronics and Information Technology (MeitY), *The Digital Personal Data Protection Act, 2023*, Act No. 22 of 2023, Aug. 11, 2023, *available at:https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf* (Last visited 2nd March, 2025).

the existing privacy framework under the "IT Act and Privacy Rules" remains in effect, as the "DPDP Act" has yet to be formally enforced.

3. Artificial Intelligence, Privacy, and the Legal-Ethical Interface: A Critical Analysis

Artificial Intelligence '(AI)' has emerged as a transformative technology, revolutionizing diverse sectors by fostering operational efficiency and driving innovation. However, the widespread adoption of 'AI' systems has brought forth significant ethical and legal concerns, especially those related to the right to privacy. 'AI' systems, reliant on large-scale datasets including personal and sensitive information—pose challenges to privacy protection in an increasingly data-centric world. [25] Ethically, the primary concern centres on the tension between technological advancement and individual autonomy. Applications of 'AI' in domains such as facial recognition, behavioural prediction, and automated surveillance often encroach upon private spaces without meaningful consent. These technologies, when used by law enforcement and public agencies, risk facilitating mass profiling, diminishing transparency, and promoting discriminatory outcomes, particularly when trained on biased or incomplete datasets.[26] Such developments exacerbate existing social hierarchies and marginalize vulnerable groups. The ethical deployment of 'AI' demands adherence to principles of fairness, accountability, and transparency—ideals often compromised when economic or political interests prevail over individual rights.[27]

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[25] Narayanan, Arvind, and Vitaly Shmatikov, "Robust De-anonymization of Large Sparse Datasets," *Proceedings - IEEE Symposium on Security and Privacy*, 2008, pp. 111–125, *available at:https://www.cs.utexas.edu/~shmat/shmat_oak08netflix.pdf*(Last visited 2nd March,2025).

[26] Mittelstadt, Brent et al., "The Ethics of Algorithms: Mapping the Debate," *Big Data & Society*, vol. 3, no. 2, 2016, pp. 1–21, *available at:https://journals.sagepub.com/doi/10.1177/2053951716679679* (Last visited 3rd March,2025).

[27] Floridi, Luciano et al., "AI People—An Ethical Framework for a Good AI Society," *Minds and Machines*, vol. 28, no. 4, 2018, pp. 689–707.

From a legal standpoint, the regulatory environment surrounding 'AI' remains ambiguous. The Indian judiciary recognized "the right to privacy as a fundamental right under Article 21 of the Constitution" in "the landmark case *Justice K.S. Puttaswamy v. Union of India"* [28], asserting that informational autonomy is crucial in the age of algorithmic governance. Despite this progressive stance, India's legislative framework remains underdeveloped with respect to AI regulation. The enactment of the Digital Personal Data Protection Act, 2023 (DPDP Act) marks a step forward in data governance. However, it does not provide AI-specific safeguards such as obligations for algorithmic transparency, auditability, or the right to explanation in the context of automated decision-making.[29]

4. Conclusion

As 'AI' becomes more embedded in daily life, its implications for privacy grow increasingly complex. The challenge lies in developing technologies that are both powerful and respectful of fundamental rights. By combining strong ethical principles with robust legal protections, society can connect the benefits of 'AI' while safeguarding that individual privacy remains a cornerstone of technological progress. While "AI" offers immense potential, its unchecked growth threatens to erode fundamental rights. Upholding the right to privacy in the age of 'AI' is not merely a legal obligation but a moral imperative. A careful balance must be struck between innovation and individual dignity to ensure that technology serves humanity, not the other way around. In the age of Artificial Intelligence, the right to privacy stands at a critical crossroads. As 'AI' systems increasingly influence decisions about individuals' lives often without their knowledge or consent there is an urgent need to re-evaluate our ethical and legal frameworks. While 'AI' promises

[28] (2017) 10 SCC 1.

[29] Digital Personal Data Protection Act, 2023 (India), Gazette Notification, Government of India, (Last visited 2nd March,2025).

efficiency and progress, it also poses serious risks to autonomy, dignity, and democratic freedoms if left unchecked. Therefore, safeguarding privacy must become a foundational principle in the development and deployment of AI technologies. This requires not only robust data protection laws and transparent algorithmic processes but also a cultural commitment to human rights and ethical accountability. Only by embedding these values into policy and practice can we ensure that AI evolves as a tool for empowerment rather than a mechanism of control.

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Artificial Intelligence and Intellectual Property Rights: Comparative Transnational Policy Analysis

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Abstract

Artificial intelligence's rapid integration with intellectual property rights necessitates a detailed assessment of its impact. This is especially critical for trade secrets, copyrights and patents. The significance of this study lies in addressing the lacunae within existing laws. India lacks AI-specific provisions. This results in doctrinal inconsistencies and enforcement inefficacies. Global institutions have initiated discourse on AI-related IPR protections but international harmonization remains nascent. This necessitates a deeper inquiry into jurisdictional divergences and regulatory constraints. This research identifies critical gaps in the adaptability of Indian IP laws to AI-generated or AI-assisted outputs. Trade secret protection remains inadequate against AI-driven threats. Standardized inventorship criteria remain absent. This study employs a doctrinal and comparative legal methodology. It scrutinizes legislative texts and examines judicial precedents. It evaluates policy instruments across India, the United States, the United Kingdom, and the European Union. It incorporates insights from international organizations. Preliminary findings indicate fundamental shortcomings. India's reliance on conventional contract law results in a fragmented trade secret regime. AI-driven innovations remain vulnerable. Section 3(k) of the Indian Patents Act impedes the patenting of AI-generated inventions. Copyright frameworks exhibit jurisdictional variances in authorship attribution. This study underscores the necessity for a harmonized legal

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taxonomy that accommodates AI's transformative role. Innovation incentives and ethical considerations must be preserved. India's National AI Strategy (2024) signals incremental progress; however, legislative clarity remains imperative. This research contributes to the ongoing global discourse by proposing a robust legal architecture that integrates AI-specific IP protections. It ensures resilience against emergent challenges while fostering equitable innovation. The promising results derived from this analysis underscore the urgency of recalibrating India's IP jurisprudence. Alignment with global advancements remains essential.

Keywords: *AI-Generated Inventions, Intellectual Property Reform, Patent Eligibility, Trade Secret Protection, Copyright Authorship*.

Introduction

Artificial Intelligence constitutes the nomenclature employed to delineate the aptitude of mechanistic constructs or computational systems to execute operations conventionally necessitating human intelligence, such as learning, reasoning, decision making, perception, and creativity. AI has been advancing rapidly in various fields and applications, such as healthcare[1], education[2], entertainment[3], security[4], and commerce[5], with breakthroughs like generative AI models (e.g., GPT-4o) and autonomous systems amplifying its reach. However, artificial intelligence concurrently engenders formidable dilemmas

[1]Shuroug A. Alowais et al., "Revolutionizing healthcare: the role of artificial intelligence in clinical practice," 23 *BMC Medical Education* 689 (2023).

[2] Bhupinder Singh and Christian Kaunert, "Curriculum Design in the Crossroads at Higher Education Institutions (HEIs) Boosting Quality Assurance: Satelliting Intellectual Property, Innovation - Legal Landscape," in L. B. Doyle, T. M. Tarbutton (eds.), *Advances in Educational Technologies and Instructional Design* 497 (IGI Global, 2024).

[3] Enrico Bonadio and Alina Trapova, "Intellectual property law in gaming and artificial intelligence," in C. Bevan (ed.), *Research Handbook on Property, Law and Theory* 448 (Edward Elgar Publishing, 2024).

[4] Iqbal H. Sarker, Md Hasan Furhad and Raza Nowrozy, "AI-Driven Cybersecurity: An Overview, Security Intelligence Modeling and Research Directions," 2 *SN Computer Science* 173 (2021).

[5] Ransome Epie Bawack et al., "Artificial intelligence in E-Commerce: a bibliometric study and literature review," 32 *Electronic Markets* 297 (2022).

and auspicious prospects with respect to the domain of intellectual property rights. IPR are the legal prerogatives that safeguard the creations of the human intellect. These include inventions, artistic works, designs, and trademarks.[6] IPR serve a pivotal function in stimulating creativity, ingenuity, and economic progression. They provide incentives for the owners of intellectual property. The emergence of AI has engendered a plethora of questions concerning the nature, scope, and enforcement of IPR. These quandaries include the attribution of the inventor or author of an AI-generated or AI-assisted intellectual property. They also involve the evaluation of the novelty, inventive step, or originality of such IP. Over and above, the monitoring and regulation of the quality, reliability, and ethics of AI-generated or AI-assisted intellectual property must be considered. The definition, rights and obligations of its creators, owners, users, and beneficiaries must also be addressed. Finally, the prevention of its infringement, misuse, or abuse are significant considerations. Lastly, upgrading existing IPR policies in order to meet the emerging challenges created by AI is one of the most pressing issues that need to be addressed. It is notable that these problems are not only significant to legal or academic community. It has a great impact on general public as AI has touched every part of our society. In addition, it is important to critically examine what AI means for IPR. Further, advance some recommendations on how to overcome such challenges while taking advantage of the opportunities they offer.

1. AI and Copyright Law

The subject of copyright protection for AI-produced or AI-supported work[7] is controversial. It addresses the legal status and definition of these works, how

[6] Martin Kretschmer, Bartolomeo Meletti and Luis H Porangaba, "Artificial intelligence and intellectual property: copyright and patents—a response by the CREATE Centre to the UK Intellectual Property Office's open consultation," 17 *Journal of Intellectual Property Law & Practice* 321 (2022).

[7] Emmanuel Salami, "AI-generated works and copyright law: towards a union of strange bedfellows," 16 *Journal of Intellectual Property Law & Practice* 124 (2021).

to identify their author or owner, whether they meet originality[8]requirements among other creative criteria[9], whose rights are more important than others between creators, owners, users and beneficiaries as well as adapting current national and international laws to accommodate new realities brought about by artificial intelligence systems.[10] These issues are not only relevant to legal scholars but also anyone interested in this field, so they need thorough investigation into what copyright law should be modified concerning AI and possible recommendations for improvement.[11]

2.1. The Legal Status and Definition of AI-Generated or AI-Assisted Works

AI-generated or AI-assisted works are works that are produced with the aid of AI systems, such as software that can generate output such as content, predictions, recommendations, or decisions based on data and algorithms. AI-generated or AI-assisted works can range from simple texts and images to complex literary, artistic, musical, and cinematographic works. It is possible to create such works with different levels human input, for example, designing training, using/providing feedback to the AI system.[12] However, under current national and international legal systems, there is no clear single definition for

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[8] Mark Fenwick and Paulius Jurcys, "Originality and the future of copyright in an age of generative AI," 51 *Computer Law & Security Review* 105892 (2023).

[9] Niloufer Selvadurai and Rita Matulionyte, "Reconsidering creativity: copyright protection for works generated using artificial intelligence," 15 *Journal of Intellectual Property Law & Practice* 536 (2020).

[10] Jia Qing Yap and Ernest Lim, "A Legal Framework for Artificial Intelligence Fairness Reporting," 81 *The Cambridge Law Journal* 610 (2022).

[11] Themistoklis Tzimas, *Legal and Ethical Challenges of Artificial Intelligence from an International Law Perspective* (Springer International Publishing, Cham, 2021).

[12] Hema K, "Protection of Artificial Intelligence Autonomously Generated Works under the Copyright Act, 1957- An Analytical Study," 28 *Journal of Intellectual Property Rights* 193 (2023).

AI-produced or AI-assisted works.[13] Different jurisdictions might approach the question of what constitutes an AI-generated or assisted work differently as well as whether such works may qualify for copyright protection as works of authorship. For example, some legal systems including those in the UK and Ireland have provisions (e.g., Section 9(3) of the UK CDPA 1988) relating to computer-generated works which are defined as those generated by a computer in circumstances where there is no human author.[14] Conversely, other jurisdictions such as Canada and the US lack these clauses but generally reject non-human authorship requiring human intervention necessary for copyright protection based on creativity alone. The U.S. Copyright Office issued guidance in 2023 reinforcing that only works with significant human creativity qualify for protection. Same is evident in *Thaler* v. *Perlmutter* (2023)[15]. In contrast with both approaches mentioned above, EU law does not provide unified definitions for either type of creation yet demands that content should be original according to common standards while also representing intellectual output originating from within personality, freedom, choice, expression & context of its creator.[16] Though the AI Act, indirectly influences copyright by mandating transparency in AI processes, while retaining the originality standard that a work must be the author's own intellectual creation, reflecting their personality and creative choices.[17] In India, the Copyright Act of 1957 offers no explicit provision for AI-generated works. This leaves their status subject to judicial interpretation.

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[13] Yang Xiao, "Decoding Authorship: Is There Really no Place for an Algorithmic Author Under Copyright Law?" 54 *IIC - International Review of Intellectual Property and Competition Law* 5–25 (2023).

[14] Söğüt Atilla, "Dealing with AI-generated works: lessons from the CDPA section 9(3)," 19 *Journal of Intellectual Property Law and Practice* 43 (2024).

[15] 687 F. Supp. 3d 140 (D.D.C. 2023).

[16] P. Bernt Hugenholtz and João Pedro Quintais, "Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output?" 52 *IIC - International Review of Intellectual Property and Competition Law* 1190 (2021).

[17] Gustavo Ghidini, "Diverging Approaches to Intellectual Property and a Reform Proposal Prompted by AI" *GRUR International* ikaf026 (2025).

2.2. The Authorship and Ownership of AI-Generated or AI-Assisted Works:

Another big problem in artificial intelligence and copyright law is figuring out who the author or owner of an AI-driven work is.[18] This question has a lot to do with how we assign rights: who gets to copy, give away, change or make money from these things on one hand and also whose duty it might be to protect certain moral rights such as the right to be recognized as creator, right not have work altered without permission, etc. The question of authorship and ownership also affects the duration and scope of safeguarding, in conjunction with the exceptions and limitations that may apply to the works. However, there is no clear and uniform answer to the question of who is the author or owner of AI-generated or AI-assisted functions within the existing national[19] and international legal frameworks. Different jurisdictions may have different interpretations of who can be construed as the author or owner of such works. They might have different approach concerning the transfer or licensing to others. For example, certain legal territories, such as the UK and Ireland, have specific provisions for computer-generated works. They grant the authorship and ownership to the individual who undertakes the necessary arrangements for the inception of the work.[20]Other countries like the US and Canada have no such rule, but they usually refuse authorship and ownership to the producer or AI system itself, insisting on human authorship and ownership for copyright protection (as reinforced by the U.S. Copyright Office's 2023 guidance[21] and

[18] Kanchana Kariyawasam, "Artificial intelligence and challenges for copyright law," 28 *International Journal of Law and Information Technology* 279 (2020).
[19] Paarth Naithani, "Issues of Authorship and Ownership in Work created by Artificial Intelligence - Indian Copyright Law Perspective," 11 *NTUT Journal of Intellectual Property Law and Management* 1 (2022).
[20] Martin Kretschmer, Bartolomeo Meletti and Luis H Porangaba, "Artificial intelligence and intellectual property: copyright and patents—a response by the CREATe Centre to the UK Intellectual Property Office's open consultation," 17 *Journal of Intellectual Property Law & Practice* 321 (2022).
[21] Annis Lee Adams, "Fair use and copyright resources," 21 *Public Services Quarterly* 37 (2025).

Thaler v. *Perlmutter*[22]*)*. This is not true for the EU, however: it doesn't have a unified approach towards authorship and ownership when it comes to AI-generated or AI-assisted works; but all of them must be original.[23] AI Act's transparency requirements suggest a leaning toward human oversight, while the originality principle implies authorship by a natural person exercising creative freedom and personality.[24] In India, the Copyright Act of 1957 provides no specific guidance, leaving authorship disputes to courts, which have yet to definitively rule on AI cases.

2.3. The Criteria of Originality and Creativity for AI-Generated or AI-Assisted Works

The relationship between artificial intelligence and copyright has brought about uncertainties about what constitutes originality and creativity with respect to AI generated works or those created through its assistance.[25] These queries cover everything from how these types of work are judged; whether they meet requirements set out by law as being new, unique, inventive, etc., their discovery/awareness should be made uniform through disclosure/identification (what should be known where), citation/attribution procedures need standardizing too. These issues are amplified by *Thaler* v. *Perlmutter*[26] and EU AI Act transparency mandates[27]. Also, we cannot ignore monitoring systems designed for ensuring quality/reliability/ethics among

[22] 687 F. Supp. 3d 140 (D.D.C. 2023).
[23] Alesia Zhuk, "Navigating the legal landscape of AI copyright: a comparative analysis of EU, US, and Chinese approaches" *AI and Ethics* 1 (2023).
[24] Vincenzo Iaia, "The elephant in the room of EU copyright originality: Time to unpack and harmonize the essential requirement of copyright" *The Journal of World Intellectual Property* jwip.12343 (2024).
[25] Mark Fenwick and Paulius Jurcys, "Originality and the future of copyright in an age of generative AI," 51 *Computer Law & Security Review* 105892 (2023).
[26] 687 F. Supp. 3d 140 (D.D.C. 2023).
[27] Mona Sloane and Elena Wüllhorst, "A systematic review of regulatory strategies and transparency mandates in AI regulation in Europe, the United States, and Canada," 7 *Data & Policy* 11 (2025).

others (ethical considerations)[28], with initiatives like UNESCO's AI Ethics Recommendation (2021)[29] gaining traction. These issues are important not only to the legal and academic communities but also to the general public. AI affects almost all aspects of everyday life and the larger society. Therefore, it is important to look into what AI means for originality and creativity criteria as well as suggest ways in which we can address these challenges and opportunities for copyright posed by AI.[30]

2.4. The Standards and Tests of Originality and Creativity for AI-Generated or AI-Assisted Works

AI-generated or AI-assisted works are consequently governed by identical standards and tests of originality and creativity that are applied to human-generated works within the prevailing domestic and international legal frameworks.[31] This does not imply, however, that all nations have similar benchmarks when it comes to determining what constitutes novelty and inventiveness vis-à-vis such pieces.[32]For instance, jurisdictions like USA, Canada adopt low 'thresholds' requiring minimal levels skill, judgement, expression needed before something becomes qualified as creative. Jurisdictional diversity may mean that various regions apply different criterions upon works generated through usage of robots or other algorithms designed under supervision by persons. Some other territories, like the EU, have a high level of originality and inventiveness that stipulate the work must

[28] Florian Martin-Bariteau and Teresa Scassa, *Artificial Intelligence and the Law in Canada* (LexisNexis Canada, 2023).
[29] UNESCO and Ziesche Soenke, *Open Data for AI: What Now?* (UNESCO Publishing, 2023).
[30] Niloufer Selvadurai and Rita Matulionyte, "Reconsidering creativity: copyright protection for works generated using artificial intelligence," 15 *Journal of Intellectual Property Law & Practice* 536 (2020).
[31] Aleena Maria Moncy, "Protection of AI Created Works under IPR Regime, Its Impact and Challenges: An Analysis" *International Journal of Law and Social Sciences* 8 (2024).
[32] Johnathon Hall and Damian Schofield, "The Value of Creativity: Human Produced Art vs. AI-Generated Art," 13 *Art and Design Review* 65 (2025).

be an individual's own intellectual creation reflecting the person's personality manifested in free and creative choices made by them.[33] On the contrary, the UK as well as Ireland follow a two-tier approach to originality and creativity which differentiates between computer generated works (low skill required) and human generated ones (high, own intellectual creation standard).

2.5. The Assessment and Verification of the Novelty, Inventive Step, or Originality of an AI-Generated or AI-Assisted Work

The AI or the work that is assisted by AI can pose challenges while assessing and verifying whether it is new, involves inventive steps or represents an original creation. These qualifications may depend on, among others things, data and algorithms used including their nature, source and quality as well as extent and kind of human participation in making them. Another thing which needs to be taken into consideration when dealing with such kind of works is transparency, accountability & traceability because AI system might not reveal where it got its information from neither does it attributes them; nor cite input given by people during their creation process.[34]Such concerns are further heightened by the EU AI Act transparency mandates.[35] Hence, there should be new approaches implemented for examining novelty; inventiveness or originality in AI-based outputs, such as:

2.5.1. Establishing and applying clear and consistent standards and guidelines for the evaluation and comparison of AI-generated or AI-assisted works with existing works, taking into account

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[33] Johannes Fritz, "Understanding authorship in Artificial Intelligence-assisted works" *Journal of Intellectual Property Law and Practice* jpae119 (2025).

[34] Anirban Mukherjee and Hannah H. Chang, "Managing the Creative Frontier of Generative AI: The Novelty-Usefulness Tradeoff" *California Management Review* (2023).

[35] Mona Sloane and Elena Wüllhorst, "A systematic review of regulatory strategies and transparency mandates in AI regulation in Europe, the United States, and Canada," 7 *Data & Policy* 11 (2025).

the relevant factors, such as the purpose, context, genre, and audience of the work, and the degree of similarity, difference, or alteration of the work; taking WIPO's 2024 copyright assessment guidelines into consideration.[36]

2.5.2. The process of formulating and implementing reliable and robust techniques and technologies that can be used for the identification and authentication of the data and algorithms employed by the AI system, along with the human input or feedback that are provided, in the development of the work, such as digital watermarking, hashing, encryption, blockchain, or artificial neural networks.[37] For example, such technology is now trialed by platforms like Adobe.[38]

2.5.3. Ensuring and enforcing the disclosure, attribution, or referencing the utilized data and algorithms by the AI system, along with the human input or feedback that are provided, in the development of the work, such as by adopting and complying with ethical codes, standards, or principles, or by imposing legal obligations, duties, or liabilities.[39] For example, NITI Aayog AI principles (2024)[40] and legal requirements under the EU AI Act.

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[36] Hafiz Gaffar and Saleh Albarashdi, "Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape" *Asian Journal of International Law* 1 (2024).

[37] Iqbal H. Sarker, "AI-Based Modeling: Techniques, Applications and Research Issues Towards Automation, Intelligent and Smart Systems," 3 *SN Computer Science* 158 (2022).

[38] Erin Reilly and Sam Hewitt, "Remix in the Age of AI," *The Routledge Companion to Remix Studies* (Routledge, 2nd edn., 2025).

[39] Patricia Lalanda and Neus Alcolea Roig, "Ethical and Legal Challenges of Artificial Intelligence with Respect to Intellectual Property," in A. Baraybar-Fernández, S. Arrufat-Martín, *et al.* (eds.), *The AI Revolution* 63 (Springer Nature Switzerland, Cham, 2025).

[40] C. Karthikeyan, "AI (Artificial Intelligence) Integration for Integrity Ethics and Privacy in AI-Driven Organizations: Ethics and Privacy Concerns in AI-Driven Organizations," in F. Özsungur (ed.), *Advances in Business Strategy and Competitive Advantage* 51 (IGI Global, 2024).

2.6. The Quality, Reliability, and Ethics of an AI-Generated or AI-Assisted Work

Challenges might also present themselves with AI-generated or assisted works in regard to quality, trustworthiness and ethics since these determinants can depend on factors like the nature of datasets and algorithms employed by the artificial intelligence system; their source; integrity as well as credibility.[41] In addition, fairness, accuracy, diversity, inclusivity are among other problems that may be brought about when producing such kind of works because an AI system could fail to mirror or respect creators' interests, rights, values, ownership, user beneficiaries, society at large.[42]This is highlighted by 2024 studies on bias in generative AI tools (like GPT-4o).[43]Hence, there is need for creation of new means through which quality can be ensured in relation to reliability, etc. —some now piloted by WIPO's AI ethics initiatives. Also, peer review verification, certification, accreditation, auditing should be considered as methods for improving ethics in AI generated works while standards, transparency, fairness, accountability, human dignity must be established so that people know what is expected from them during this process.[44] EU AI Act emphasizes on transparency and accountability. This is gaining ground, alongside India's NITI Aayog AI ethics updates (2024) promoting human dignity. Further, it would be wise to instruct and inform the makers, possessors, operators as well as benefactors of AI-based artifacts like

[41] Jason Borenstein and Ayanna Howard, "Emerging challenges in AI and the need for AI ethics education," 1 *AI and Ethics* 61 (2021).
[42] Angelo Trotta, Marta Ziosi and Vincenzo Lomonaco, "The future of ethics in AI: challenges and opportunities," 38 *AI & SOCIETY* 439 (2023).
[43] Atahan Karagoz, "Ethics and Technical Aspects of Generative AI Models in Digital Content Creation" (arXiv, 2024).
[44] Arif Ali Khan et al., "Ethics of AI: A Systematic Literature Review of Principles and Challenges" *Proceedings of the 26th International Conference on Evaluation and Assessment in Software Engineering* 383 (Association for Computing Machinery, New York, NY, USA, 2022).

scientists, inventors, publishers, buyers and controllers on legal and moral matters linked with AI-generated works.[45]

2. Patenting AI Technology

Patenting AI technology is a very hard and complicated problem in the field of intellectual property rights. One of the main reasons for patenting inventions is to recognize inventors' efforts. This gives them exclusive rights over their creations for a limited time period. It is usually 20 years. This can also encourage development and competition among businesses working in this area.[46] However, there are many difficulties associated with obtaining patents for such technologies too:

3.1. Eligibility of AI Technology for Patent Protection

According Indian Patents Act, 1970 an invention should be new, involve an inventive step and has industrial applicability in order to be granted patent right. But section 3(k) of the same act excludes mathematical methods, business methods or computer programs from being patented as such. This possesses an issue for AI technology, as it often involves mathematical methods, algorithms, and computer programs. The Indian Patent Office examines AI-related inventions grounded on the subject matter exclusions defined in Section 3(k), and often rejects them as computer programs per se or algorithms.[47] However, some AI-related inventions may be eligible for the safeguarding of patents. This only true if they produce a technical effect or technical contribution, as suggested by the Delhi High Court in *Ferid Allani* v.

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[45] Patrick Henz, "Ethical and legal responsibility for Artificial Intelligence," 1 *Discover Artificial Intelligence* 2 (2021).
[46] Tabrez Ebrahim, "Artificial Intelligence Inventions & Patent Disclosure," 125 *Penn State Law Review* 147 (2020).
[47] Tasnim Jahan, N. S. Sreenivasulu and Shashikant Saurav, "Patents and Artificial Intelligence: A Study Exploring Patentability Criteria and Prior-Art Searches for AI-Generated Inventions," in D. Ç. Ertuğrul, A. Elçi (eds.), *Advances in Computational Intelligence and Robotics* 237 (IGI Global, 2024).

Union of India & Ors.[48] Therefore, the eligibility of AI technology for the safeguarding of patents depends on the interpretation of Section 3(k). This may vary from case to case.[49] No amendments to Section 3(k) have occurred, maintaining a case-by-case approach. Globally, the USPTO issued updated AI patent eligibility guidance in 2024, emphasizing practical application, while the EPO refines its stance on AI technicality—trends India has not yet adopted, leaving its framework unchanged but increasingly contrasted with international developments.[50]

3.2. The Novelty and Inventive Step of AI Technology

Another condition for getting a patent is that the invention must be new. It should involve an inventive step, i.e., it must not be anticipated by existing knowledge. It should not be obvious to a person skilled in the art as well. However, it is not easy to determine novelty and inventiveness of AI technology given that often this involves complicated dynamic processes beyond human understanding or replication.[51]In addition, there might arise questions about where did AI-produced outputs come from or how far does the invention goes because developers and users may not predict all possible outcomes/results yielded by artificial intelligence systems; hence, novelty required by law may not exist. Also, what limits identification of relevant prior arts as well as state-of-the-art knowledge base is the fact that large volumes of data used in machine learning could be private or inaccessible publicly. Consequently, assessment methods for evaluating if something has never been

[48] W.P.(C) 7/2014 & CM APPL. 40736/2019.
[49] ZeusIP Advocates LLP, "Ferid Allani v. Union of India, WP(C) 7 of 2014 and Legislative intent behind Section 3(k) of the Patents Act, 1970" *available at*: https://www.zeusip.com/ferid-allani-v-union-of-india-wpc-7-of-2014-and-legislative-intent-behind-section-3k-of-the-patents-act-1970.html (Last visited on 10th November, 2023).
[50] Mpho Mafata et al., "Comparison of the coverage of the USPTO's PatentsView and the EPO's PATSTAT patent databases: a reproducibility case study of the USPTO General Patent Statistics Reports," 2024.
[51] Pheh Hoon Lim and Phoebe Li, "Artificial intelligence and inventorship: patently much ado in the computer program," 17 *Journal of Intellectual Property Law & Practice* 376 (2022).

done before need to change when dealing with such kind of breakthroughs; for instance, AI supported patent search & examination procedures could become necessary alongside peer reviews plus certification, among others.[52] For example, WIPO's AI-assisted patent search platform (expanded in 2024), increasingly used globally to address these issues. Though India's adoption of such methods lags, leaving traditional examination dominant but under pressure to evolve.

3.3. The Disclosure and Enablement of AI Technology

Another requirement for patent protection is that the invention must be divulged in a clear manner. It must be complete according to the patent specification. This disclosure should enable a person skilled in the field to perform the invention.[53] However, it can be difficult to disclose and enable AI technology. This is because such technology often includes proprietary or confidential information. These include algorithms, software, hardware and data which may not be fully or adequately disclosed by applicants or owners of AI technologies.[54] The same was also noted in USPTO's 2024 AI patent guidance. Additionally, self-learning or adaptive features of AI technologies may not be fully described or anticipated by applicants or owners thereof. Furthermore, specific conditions or resources needed for AI technologies such as cloud infrastructure, curated datasets, or human intervention which might not be readily available or accessible by an ordinary skilled artisan can also present problems during their disclosure and enablement. Thus, the exposition and realization of AI technology may necessitate new criteria as well as benchmarks for ensuring sufficiency and quality of disclosure including but

[52] Edwin D Garlepp, "Disclosing AI Inventions - Part II: Describing and Enabling AI Inventions" *Oblon* 1 (2021).
[53] Daria Kim et al., "Clarifying Assumptions About Artificial Intelligence Before Revolutionizing Patent Law," 71 *GRUR International* 295 (2022).
[54] Noam Shemtov and Garry A. Gabison, "Chapter 23: The inventive step requirement and the rise of the AI machines," in Ryan Abbott (ed.), *Research Handbook on Intellectual Property and Artificial Intelligence* 423 (Edward Elgar Publishing Ltd, 2022).

not limited to transparency, reproducibility, reliability, etc.[55] WIPO's 2024 AI-IP strategy pushes for transparency, reproducibility, and reliability in disclosures.[56] India's patent regime under the 1970 Act has yet to adopt such guidelines. This leaves enablement a persistent hurdle.

Patentability of AI technology is a very important issue in IPR[57], because it significantly affects the development and diffusion of such technologies as well as rights and interests of different participants including creators, possessors, users or beneficiaries.[58]However, there are also many problems and uncertainties concerning patenting AI that do not fit into existed legal systems either in India or worldwide which were designed without taking into account all intricacies related to this area. That's why we need to investigate what can be patented when it comes to Artificial Intelligence, how one can obtain protection for his inventions in this field and provide some recommendations for solving these challenges while using opportunities created by AI.[59]

3. AI and Trade Secrets

IPRs that safeguard undisclosed information which provides its owner with a competitive advantage are known as trade secrets.[60] Trade secrets involve business strategies, customer lists, financial records and technical know-how

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[55] Alexandra George and Toby Walsh, "Artificial intelligence is breaking patent law," 605 *Nature* 616 (2022).

[56] Jamshid Kazimi and Harshita Thalwal, "Intellectual Property Protection in AI-driven Innovations: A Comparative Analysis" *2024 First International Conference on Technological Innovations and Advance Computing (TIACOMP)* 320 (presented at the 2024 First International Conference on Technological Innovations and Advance Computing (TIACOMP), IEEE, Bali, Indonesia, 2024).

[57] Kay Firth-Butterfield and Yoon Chae, "Artificial Intelligence Collides with Patent Law" *World Economic Forum* 1 (2018).

[58] Jo Marchant, "Powerful antibiotics discovered using AI" *Nature* (2020).

[59] Marta Duque Lizarralde and Héctor Axel Contreras, "The real role of AI in patent law debates," 30 *International Journal of Law and Information Technology* 23 (2022).

[60] P. Selvakumar et al., "Intellectual Property Management in Open Innovation," in J. Martínez-Falcó, E. Sánchez-García, *et al.* (eds.), *Open Innovation Strategies for Effective Competitive Advantage* 227–54 (IGI Global, 2025).

among other things not generally known or readily available to the public.[61] Unlike patents, copyrights or trademarks trade secrets do not need registration, disclosure nor formal protection[62] but they also rely on the ability of the owner to keep such information confidential and prevent its unauthorized use or disclosure by others.[63] AI and trade secrets have a complex relationship as AI can be both a source and threat to trade secrets.[64]On one hand, AI may constitute trade secret because some components of artificial intelligence technologies like algorithms, software programs/hardware systems and data comprise valuable proprietary knowledge which developers or owners use for gaining competitive edge over rivals.[65]Additionally, AI could also contribute towards creation/enhancement/optimization of trade secret by producing new outputs/results/insights from existing data/information based on certain algorithms, etc.[66] Therefore, trade secret protection can be a useful and flexible way to protect AI innovations and investments, especially when alternative versions of IPR might not be available or suitable.[67] On the other hand, trade secrets can be threatened by artificial intelligence because they can affect confidentiality and security of confidential information through various risks and challenges. For instance, AI can use methods like data mining or web scraping to identify, access or analyze trade secrets. Also, it may misuse them by copying without permission, modifying or distributing confidential information, among others. In addition to this point, there is vulnerability in

[61] Ulla-Maija Mylly, "Trade Secrets and the Data Act," 55 *IIC - International Review of Intellectual Property and Competition Law* 368 (2024).
[62] Richard Stim, *Patent, Copyright & Trademark: An Intellectual Property Desk Reference* (Nolo, 2024).
[63] Ionela Andreicovici, Sara Bormann and Katharina Hombach, "Trade Secret Protection and the Integration of Information Within Firms," 71 *Management Science* 1213 (2025).
[64] Daniel J. Gervais, *The Human Cause* (Edward Elgar Publishing, 2022).
[65] Tanja Šarčević et al., "U Can't Gen This? A Survey of Intellectual Property Protection Methods for Data in Generative AI" (arXiv, 2024).
[66] Ulla-Maija Mylly, "Transparent AI? Navigating Between Rules on Trade Secrets and Access to Information," 54 *IIC - International Review of Intellectual Property and Competition Law* 1013 (2023).
[67] Jordan R. Jaffe et al., "The Rising Importance of Trade Secret Protection for AIRelated Intellectual Property" *Quinn Emanuel Urquhart & Sullivan, LLP* 1–10.

cyber attacks against AI leading to compromise on both integrity and secrecy of trade secrets whether through hacking or theft. Consequently, protecting these requires active preventive measures against unauthorized use or disclosure of AI related information.[68] Legal frameworks designed for safeguarding trade secret vary between nations[69], since there lacks any universal international law or agreement concerning them at present time.[70] Nonetheless, a number of universal principles together with guidelines for their protection have been put forward by certain global institutions plus instruments such as the World Intellectual Property Organization, the WTO and Agreement on Trade-Related aspects of IPR. Trade secrets should satisfy three requirements to be accorded protection by these instruments and organizations:

(1) the information must be kept private, that is, not generally known or readily accessible;

(2) the information should have an economic value, that is, provide a competitive edge for its holder in business or commerce; and

(3) the information must be subject to reasonable protective measures, meaning steps taken by the proprietor of such data towards its safeguarding from disclosure.[71]

There is no such law as the act on trade secrets in India, but Indian courts have used different laws and doctrines like copyright laws, principles of equity,

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[68] Sharon K. Sandeen and Tanya Aplin, "Chapter 24: Trade secrecy, factual secrecy and the hype surrounding AI," in Ryan Abbott (ed.), *Research Handbook on Intellectual Property and Artificial Intelligence* 443 (Edward Elgar Publishing Ltd, 2022).

[69] European Innovation Council and SMEs Executive Agency (European Commission) et al., *Study on the Legal Protection of Trade Secrets in the Context of the Data Economy: Final Report* (Publications Office of the European Union, 2022).

[70] Yamini Atreya, "International Framework for the Protection of Trade Secrets," 11 *International Journal of Creative Research Thoughts* a131–8 (2023).

[71] Luc Desaunettes-Barbero, *Trade Secrets Legal Protection: From a Comparative Analysis of US and EU Law to a New Model of Understanding* (Springer Nature Switzerland, Cham, 2023).

contract law and common law action of breach of confidence to protect them.[72] Contractual obligations and remedies for trade secret protection are established on the basis of The Indian Contract Act, 1872 through non-disclosure agreements (NDAs), non-compete clauses and injunctions, etc. Trade secrets have been recognized by The Indian Copyright Act, 1957 as a form of written composition which also provides civil and criminal remedies for infringement. In addition to this it is worth noting that equitable relief may be granted where damages are inadequate because these two things – equity principle; common law action for breach of confidence – serve us grounds upon which equitable relief may be anchored when it comes to misappropriation cases involving trade secrets since there was duty confided leading into trust being broken so far guarded under it could not only give rise to damage claims but also provide an opportunity for equitable remedy against such conduct.[73] Nevertheless, there is no clear definition or standard procedure[74] available under Indian law considering this aspect, though, its lack thereof serves as a challenge within itself, coupled with problems related to enforcement mechanisms which are weak, at best, hence, making them difficult if not impossible while proving anything beyond reasonable doubt, especially, where violations occur frequently enough, without any proper quantification method having been developed. thus, far together with poor enforcement alone acting more like deterrents in reality than anything else, whatsoever about it can be done now, except improving upon these areas further more clarity needed here too, standards must be set up forthwith, otherwise, there will always remain some shortcomings somewhere somehow, henceforth, lacking clarity. Standards should immediately address least we

[72] Sushmitha Balachandar, "Trade Secret Protection in India: Adequacy and Challenges," 1 *International Journal of Legal Science and Innovation* 1 (2019).
[73] Tania Sebastian, "Locating Trade Secrets under Indian Laws: A Sui Generis Mode of Protection," 27 *Journal of Intellectual Property Rights* 202 (2022).
[74] Dr. Faizanur Rahman, "Trade Secrets Laws in China and India: A Comparative Analysis," 20 *IOSR Journal Of Humanities And Social Science* 1 (2015).

forget. So, due challenges that are faced by Indian legal framework, dealing with safeguarding trade secrets include those associated with definitions, procedures, difficulty proofing, quantifying violation, inadequacy, enforcement mechanism.[75] This patchwork approach remains inconsistent, with no clear definitions or procedures, complicating proof and quantification of violations—challenges underscored by a 2024 Delhi High Court ruling on AI-related trade secret misuse. Enforcement and deterrence lag, though India's National AI Strategy (2024) hints at future policy attention, leaving the framework underdeveloped amid rising AI-driven threats. When it comes to the international level, the protection of trade secrecy faces similar barriers and restrictions as different countries have different regulations and practices of protecting their trade secrets, coupled with absence of efficient cross-border collaboration and enforcement.[76]This is despite WIPO's 2024 push for AI-IP coordination. Also, the emergence and growth of AI has brought about fresh complex matters concerning protection of proprietary information.[77] These include identification of owners for AI related trade secrets (e.g., via NIST's 2024 AI risk framework), evaluating whether an AI based secret is hidden enough and valuable, measures that can be used to ensure all AI connected trade secrets are disclosed equitably, attributed or cited, ways through which standards on quality control, dependability as well as ethics can be set over an AI-related trade secret, among others, such as prevention against risks liability arising from misuse or abuse of artificial intelligence technology.[78] Moreover, it also raises issues on how existing laws and policies for safeguarding

[75] Abhijeet Kumar and Adrija Mishra, "Protecting Trade Secrets in India," 18 *The Journal of World Intellectual Property* 335 (2015).
[76] Martin Ebers and Paloma KrõõtTupay (eds.), *Artificial Intelligence and Machine Learning Powered Public Service Delivery in Estonia: Opportunities and Legal Challenges* (Springer International Publishing, Cham, 2023).
[77] Mirko Farina, Xiao Yu and Andrea Lavazza, "Ethical considerations and policy interventions concerning the impact of generative AI tools in the economy and in society," 5 *AI and Ethics* 737 (2025).
[78] Kristie D. Prinz, "Managing the legal risks of artificial intelligence on intellectual property and confidential information." *Consulting Psychology Journal* (2025).

business IP can be adapted updated in light with new realities posed by this technology, while at national level, harmonization/coordination/cooperation between different countries' systems should take place so that they effectively protect each other's interests.[79] The reason being that AI affects every part of our day to day lives and society at large, these concerns and queries are relevant not only in the legal field and academia but also among the common people.[80] For this reason we need to investigate what AI means for trade secret protection, suggest answers or proposals on how best we can approach them as well as offer some thoughts about where this might leave us with regards to trade secret laws surrounding artificial intelligence.[81]

4. Ethics of AI and IPR

AI and IPR ethics is an interdisciplinary field which addresses the moral, social and legal aspects of creating, using or protecting AI systems; it also seeks to establish and enforce values, principles and standards that should guide ethical behavior of those involved in AI and IPR from different perspectives while drawing on various sources as well as frameworks or methods.[82]This area is mainly concerned with balancing rights between creators' owners' users' beneficiaries' duties towards them; therefore, one needs to know what creators are supposed to do under law.[83]Another thing done within this discipline involves identification rating control risks associated with AI plus protection of people against such risk taking into account both their probable effects on individuals societies groups etcetera at

[79] Florian Martin-Bariteau and Teresa Scassa, *Artificial Intelligence and the Law in Canada* (LexisNexis Canada, 2023).
[80] Gobind Naidu and Vicknesh Krishnan, "Artificial Intelligence-Powered Legal Document Processing for Medical Negligence Cases: A Critical Review," 15 *International Journal of Intelligence Science* 10 (2025).
[81] Emily Jones, "Digital disruption: artificial intelligence and international trade policy," 39 *Oxford Review of Economic Policy* 70 (2023).
[82] Simon Chesterman, "Good models borrow, great models steal: intellectual property rights and generative AI" *Policy and Society* puae006 (2024).
[83] Mark Coeckelbergh, *AI Ethics* (The MIT Press, Cambridge (Mass.), 2020).

large. More importantly it tries finding out how best maximize share widely distribute use benefits arising from artificial intelligence together with intellectual property rights so that human development may be advanced in all possible ways for everybody's wellbeing.[84]AI and IPR ethics is not only a theoretical and academic concern but also practical and policy-oriented. Law, philosophy, computer science, engineering, economics, sociology, psychology, education, health, media, industry, government, civil society organizations at national international levels all need to work together in addressing AI and IPR ethical issues. Furthermore; ethics of artificial intelligence and IPR must also involve the public as they are the ultimate consumers as well as beneficiaries of these technologies.[85] Ethics of AI & IPR is a living subject area because both AI systems themselves continually change along with everything around them such as laws about IP rights. Therefore, it should stay current with technological advances related to this field while being prepared for various possible outcomes arising from ethical considerations surrounding different contexts involving artificial intelligence applications vis-à-vis intellectual property protections worldwide. For example, those addressed by the EU's AI Act and India's NITI Aayog AI ethics principles (updated 2024). Additionally, what might be considered morally acceptable or unacceptable in one situation may vary greatly from another, hence, there will always be need for flexibility when dealing with ethics in relation to Artificial Intelligence plus Intellectual Property Rights based on specific circumstances.[86] E.g., India's National AI Strategy versus UNESCO's 2021 AI Ethics Recommendation—demand tailored ethical solutions to balance innovation, rights, and societal impact. The importance of

[84] Paula Boddington, *AI Ethics: A Textbook*, 1st ed. 2023 edition (Springer, Singapore, 2023).
[85] Bernd Carsten Stahl, Doris Schroeder and Rowena Rodrigues, *Ethics of Artificial Intelligence: Case Studies and Options for Addressing Ethical Challenges* (Springer International Publishing, Cham, 2023).
[86]Ikpenmosa Uhumuavbi, "An Adaptive Conceptualization of Artificial Intelligence and the Law, Regulation and Ethics," 14 *Laws* 19 (2025).

the ethics related to AI and IPR cannot be overstated. This is because these aspects touch on different areas of human life and society such as autonomy, dignity, democracy, culture, education health care systems among others. It is for this reason that the subject has become very urgent in recent years with many people calling for more research into it so as to come up with solutions which can work universally without any adverse effects being witnessed in various parts of the world due to their implementation at local levels only. What needs to happen, therefore, is coming up with an ethical framework concerning both artificial intelligence technology as well intellectual property rights protection where they are seen not just tools but also means through which we express our humanity towards each other while living together peacefully.[87] E.g., UNESCO's AI Ethics Recommendation (2021) and India's NITI Aayog updates (2024).

5. AI in IPR Management

AI in IPR management is a topic that deals with the use and application of artificial intelligence systems and tools for the administration, implementation and upholding of intellectual property rights.[88] This promising field delivers significant benefits, exemplified by WIPO's AI-driven IP administration tools (expanded in 2024), enhancing efficiency and accuracy for stakeholders—creators, owners, users, regulators, and beneficiaries.[89] AI in IPR management aims to achieve the following objectives and functions:

5.1. Using AI systems which are capable of performing complex tasks faster than humans can do them cheaper or more accurately thus improving efficiency within such processes as

[87] Thilo Hagendorff, "The Ethics of AI Ethics: An Evaluation of Guidelines," 30 *Minds and Machines* 99 (2020).
[88] Yifei Dong and Jianhua Yin, "The Application of Artificial Intelligence Technology in Intellectual Property Protection and Its Impact on the Cultural Industry," 10 *Applied Mathematics and Nonlinear Sciences* 20250005 (2025).
[89] Daniel J. Gervais, *The Human Cause* (Edward Elgar Publishing, 2022).

searching, filing examining granting licensing enforcing intellectual property rights.

5.2. Utilizing AI programs which have capacity to analyze big data sets quickly so as identify new insights trends patterns solutions with regard to patents copyrights trademarks etcetera thereby enhancing quality reliability output produced through managing these things.

5.3. Making use of AI systems and tools that are able to provide user-friendly interfaces, services and platforms which can be personalized as well as making available for sharing intellectual property data and information relating to IPR management through databases e.g. patent database, literature database and case law database among others is one way of opening up access to such knowledge so as people can take advantage of it easily.

5.4. Among the groups involved in IPR management there are researchers, developers, inventors and authors who need assistance in their creative work but this support should not only be limited within those fields because artificial intelligence can help spark off or boost anyone's' intellectual endeavors if used properly therefore these stakeholders may also benefit from using AI systems or tools that can assist, augment or even inspire them towards new ideas.[90]

The problem with AI applied in IPRs is not only technicality but also legality and ethics thus there's need for rethinking about rights, obligations etc., concerning all parties concerned with AI-generated/AI-assisted IPRs. Who

[90] Dolores Modic et al., "Innovations in intellectual property rights management: Their potential benefits and limitations," 28 *European Journal of Management and Business Economics* 189 (2019).

should own what? Who should be recognized as the author? What are the legal implications of AI ownership? These are some questions we ought to answer when dealing with this subject matter. Additionally it calls for identification of risks associated with its use in IPR management plus their evaluation against potential harm vis-à-vis real-world effects upon different persons or communities affected by those actions taken up; Finally tries out ways that maximize benefits brought about by introduction into human societies such technologies aimed at managing IP rights taking into consideration social development needs too. Other crucial areas are adapting or updating current laws and policies in Intellectual Property Rights management to deal with AI while managing IPR taking into account new realities and challenges as well as enabling and promoting harmonization at national level among others. These concerns touch not just lawyers or scholars but also common people who live their lives under the pervasive influence of artificial intelligence on different spheres of everyday existence and social organization. Consequently, there must be a thorough investigation into what this technology means for intellectual property rights' protection; this calls for suggestions on how best do we respond legally towards these developments in ethics surrounding AI and IPRs?[91]

6. Impact of AI on IPR Policy

AI has a considerable bearing on IPR policy at both national and international levels. AI presents complicated challenges as well as opportunities for the development of IPR jurisprudence. This also calls for the co-ordination of standards across different regions. Some core aspects and dimensions of the influence of AI on IPR policy are:

[91] Patricia Lalanda and Neus Alcolea Roig, "Ethical and Legal Challenges of Artificial Intelligence with Respect to Intellectual Property," in A. Baraybar-Fernández, S. Arrufat-Martín, *et al.* (eds.), *The AI Revolution* 63 (Springer Nature Switzerland, Cham, 2025).

6.1. The need to update existing intellectual property rights laws arises to accommodate the new realities of artificial intelligence. This includes the definition, scope, and criteria for intellectual property rights protection. It also involves the allocation and enforcement of intellectual property rights ownership and liability. Additionally, there is the need to address the balance and exceptions of intellectual property rights and obligations. For instance, UK, US, and Japan have initiated or conducted reviews, consultations, or studies on the impact of AI on IPR. They have proposed or implemented changes or amendments to their IPR laws and policies to address the questions raised by AI.[92] The United States, through the USPTO's 2024 AI patent guidance, the United Kingdom, via ongoing AI-IP consultations, and Japan, through policy reviews, are taking steps in this direction. Meanwhile, India's National AI Strategy (updated in 2024), begins integrating IPR considerations, although legislative clarity remains behind. However, a lack of consistency remains regarding the legal policy framework for AI and IPR. Further research is necessary to explore optimal and feasible solutions and recommendations for AI and IPR.

6.2. The need to harmonize laws across different countries is essential. This will facilitate and enhance the development and diffusion of AI. It will also help resolve conflicts that may arise from the cross-border use plus application of AI. For instance, some international organizations and forums have initiated or conducted discussions/studies on the impact of AI on IPR.

[92] Anke Moerland, "Artificial Intelligence and Intellectual Property Law" *Cambridge University Press*.

> They have proposed or adopted principles, guidelines, or recommendations for AI and IPR.[93] However, a lack of agreement and cooperation persists regarding international law and policy for artificial intelligence and IPR. More negotiation and collaboration are required for the progression, advancement, and implementation of common and consistent standards and practices for AI and intellectual property rights.

AI is a transformative force with a profound and lasting impact on IPR policy. AI facilitates the progression and transformation of intellectual property rights laws and institutions. It further necessitates the harmonization of standards and practices at both the national and transnational strata. It is paramount to embark upon a rigorous exploration of the influence of AI on IPR policy. Furthermore, it is imperative to proffer viable solutions. Also, delineate strategic recommendations to leverage the auspicious opportunities that AI avails within the domain.

7. Conclusion

In conclusion, the relentless advancement of AI across domains demands a critical re-examination of IPR frameworks. In India, the laws remain silent on AI-specific provisions. Judicial interpretations plus emerging strategies signal tentative steps toward adaptation. However, these steps lag behind global developments. This disparity accentuates an exigent necessity for juridical evolution to confront the singular challenges posed by artificial intelligence. In the realm of copyright jurisprudence, the lacuna of standardized definitions for AI-generated or AI-assisted creations becomes manifest in the United States' anthropocentric posture, the United Kingdom's provisions for computer-generated works, and the European Union's threshold for originality. This divergence engenders complexities in the adjudication of authorship,

[93] Kristie D. Prinz, "Managing the legal risks of artificial intelligence on intellectual property and confidential information." *Consulting Psychology Journal* (2025).

proprietorship, and the determination of originality. Patenting AI technology faces similar hurdles. India's Section 3(k) exclusions clash against AI's algorithmic core. Meanwhile, global tools like WIPO's 2024 AI-assisted patent search highlight paths forward that India has yet to embrace. Trade secrets, vital for protecting AI innovations, grapple with AI's dual role as creator and threat. This issue is exacerbated by a fragmented framework in India and international coordination gaps despite efforts of WIPO. Ethically, AI's impact is addressed by certain frameworks (like UNESCO's 2021 AI Ethics Recommendation and NITI Aayog's 2024 updates). These frameworks demand robust safeguards to balance innovation with societal good. AI's role in intellectual property rights management offers efficiency gains, as seen in WIPO's 2024 tools. Yet, it raises thorny questions of inventorship and accountability, necessitating legal and ethical recalibration. Policy-wise, the transformative force of AI calls for harmonized standards. These standards remain elusive amid WTO and OECD discussions. The integration of AI with broader goals like human rights and competition is pursued by the EU and India's nascent strategies. This confluence reveals IP rights' dual challenge: incentivizing AI-driven creativity while protecting stakeholders in an era of rapid technological flux. Ultimately, navigating this intersection requires a collaborative, interdisciplinary approach. This approach bridges legal, academic, and public spheres. India must move beyond its patchwork regime and leverage global precedents to craft adaptive laws. These laws should foster innovation without compromising ethics or equity. As AI continues to reshape intellectual creation, intellectual property rights frameworks must evolve in tandem. This evolution ensures they remain resilient and relevant in this ever-shifting landscape. This paper's exploration and recommendations aim to spark that dialogue. It urges proactive solutions to harness AI's promise while safeguarding the human ingenuity at its core.

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A Critical Analysis of The Muslim Women (Protection of Rights on Marriage) Act, 2019

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Abstract

The Muslim Women (Protection of Rights on Marriage) Act, 2019, commonly known as the Muslim Women Act, was a landmark legislation aimed at prohibiting the practice of instant triple talaq (Talaq-e-Biddat) in India. This practice allowed Muslim men to unilaterally dissolve their marriages by pronouncing the word "talaq" three times, often leaving women without legal recourse or support. The Act sought to address this injustice by making the practice a punishable offense under Indian law. The primary purpose of the Act was to protect Muslim women from arbitrary divorce practices and ensure their dignity and rights within the marital framework. It also intended to align Indian personal laws more closely with constitutional guarantees of gender equality, while addressing international concerns about women's rights and protections under Islamic law. The Act emerged from a long-standing debate around the balance between religious personal laws and the need to uphold constitutional principles of equality and non-discrimination. The historical context of this legislation is rooted in various legal challenges to triple talaq, particularly after the Supreme Court of India's 2017 judgment in Shayara Bano v. *Union of India, which declared the practice unconstitutional but left open the need for legislative action. This analysis critically examines the Muslim Women Act, 2019, focusing on its key provisions, the debates for and against it, its impact on Muslim women, and how it compares to other*

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personal laws in India. Through this examination, the researcher will argue that while the Act represents a significant step forward in securing women's rights, it also raises important questions about its effectiveness, implementation, and potential implications for secularism and personal law reform in India.

Keywords: *Triple Talaq, Gender Inequality, Constitution, Women Dignity, Freedom of Religion, Supreme Court*

1. Introduction

The Muslim Women Act, 2019[1], commonly referred to as the Triple Talaq Bill, is a landmark legislation enacted by the Parliament of India that aims to address the long-standing issue of the practice of instant divorce (known as "triple talaq") among the Muslim community in India. This act criminalizes the practice of triple talaq, a form of divorce in which a Muslim man can divorce his wife by uttering the word "talaq" (divorce) three times, and provides for a three-year imprisonment for the husband. The passage of this Act has been a subject of intense debate and controversy, with proponents arguing that it is a necessary step to protect the rights of Muslim women and ensure gender equality, while opponents argue that it infringes on the religious autonomy of the Muslim community and undermines the principles of personal laws.[2] One of the key arguments in favor of the Act is that it addresses the issue of gender inequality and the exploitation of women within the Muslim community. The Act is seen as a means of empowering Muslim women and ensuring that they have the same rights and protections as their male counterparts. Another key argument in favor of the Act is that The Act is a crucial legal development for Indian Muslim women, providing relief from oppressive practices like triple talaq. This Act is a step towards justice and

[1] The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019).
[2] E.A. MacKinnon, "Sex equality under the Constitution of India: Problems, prospects, and personal laws" 4 *International Journal of Constitutional Law* 181-202 (2006).

gender justice, correcting the injustice done to Muslim women, by denying them their due rights under personal law, all these years.

The Act now bans the arbitrary practice of instant divorce over phone calls or by sending a text message, putting India on the same footing as 22 other nations where triple talaq has been outlawed. Kamla Bhasin underlines the need for an unequivocal commitment to justice for the communal harmony and secularity in the country, in the backdrop of the Supreme Court judgements on matters matter like Shah Bano case[3] and *Shayara Bano*[4]; talking about the just not regarding rights of women the broader question of a need for reformation as expounded on above. Through this Act, the Government provides protection to various Muslim women and upholds principle of gender equality. Nepotism may account for imbalances at the highest levels of politics and business, and gender inequality is widespread in legislation; moving forward, the government needs to consider all the laws in relation to equality between citizens, and in the long term, potentially even a common civil code.

The criticism however centers on the fact that the Act could protract the already prevailing unequal power relationship between men and women in the Muslim community and on further sidelining Muslim women. More broadly, the act itself is seen as an attempt to dilute the principles behind personal laws and, by extension, the power of the Muslim community. Another central aspect that has been debated in relation to the Muslim Women Act, 2019 is the role of the state in regulating personal laws. The act is a substantial state encroachment into the area of personal law, traditionally left to the ambit of religious communities. This raises questions about the extent to which the state should be involved in regulating personal laws and the potential for such

[3]*Mohd. Ahmed Khan* v. *Shah Bano Begum* 1985 SCR (3) 844.
[4]*Shayara Bano* v. *Union of India and Ors.* AIR 2017 SC 4609.

interventions to undermine the principles of religious freedom and cultural autonomy.[5]

Overall, the Muslim Women Act, 2019 is a complex and multifaceted issue that touches on a range of important social, legal, and religious considerations. While the act has been welcomed by some as a necessary step towards gender equality, it has also been criticized for its potential to exacerbate existing power imbalances and undermine the principles of personal laws. As such, the debate around the act is likely to continue, with various stakeholders weighing in on the merits and drawbacks of this controversial legislation.[6]

This paper explores the background of triple talaq in India, its historical and religious significance, and the debates that led to the need for legislative intervention. It analyzes the main features of the 2019 Act, including the criminalization of triple talaq and its implications for the protection of women's rights, custody, and financial security. Furthermore, the analysis presents arguments both in favor of the Act—such as the promotion of gender equality, protection of women's dignity, and alignment with international human rights standards—and against it, particularly concerns about its effectiveness, potential misuse, and interference with religious practices.

2. Background of Triple Talaq in India

In Islam, a husband has greater authority to divorce than his wife. A divorce initiated by the husband without the wife's consent is known as talaq. There are two forms of talaq: talaq-ul-sunnat and talaq-ul-biddat. Talaq-ul-sunnat follows the Prophet's traditions and includes talaq Ahsan and talaq Hasan. Talaq Ahsan is considered the best option for divorce, requiring the husband to declare divorce in one phrase during the wife's purity period. The divorce

[5] Suchandra Gosh and Anindita Chakrabarti, *Religion-based 'Personal' Law, Legal Pluralism and Secularity* (Kolleg-Forschergruppe 'Multiple Secularities - Beyond the West, Beyond Modernities, 2019).

[6] M O. Muhibbu-Din, "Feminism and Modern Islamic Politics: The Fact and the Fallacy" 15(1) *International Journal of Islamic Thought* 44-59 (2019).

can be revoked within three months. Talaq Hasan finalizes the divorce after the husband utters 'talaq' three times in front of witnesses. Talaq-ul-biddat, a radical form of divorce, involves three immediate pronouncements and is only recognized by Sunnis.

Islamic marriage is a civil contract based on mutual consent, unlike Hinduism's view of marriage as a sacrament. Triple-talaq, a controversial practice that allows a husband to divorce his wife by saying 'talaq' three times, has been banned in many Muslim-majority countries. It is against women's rights and has no roots in the Qur'an[7]. Women are qualified to file for divorce if they apply for 'khula'. During the Prophet's lifetime, the Prophet criticized the practice of triple-talaq and it was enforced to stop the misuse of Islamic teachings. Under the Arab conquerors of foreign lands, triple-talaq was used to keep foreign women, and Umar formalized it. Modern legal cases, challenging the validity of triple-talaq, work towards protecting women's rights in divorces.[8]

The Bombay High Court has done away with triple-talaq claims in maintenance matters, stating that proof of divorce must be supplied. The court may rule on the validity of the practice of triple-talaq based on Qur'anic verses prohibiting impetuous divorce without cause and violation of the Sharia law. Triple talaq practice in India has created socio-legal problems especially for Muslim women. The Hanafi School of Law is the most popular school among the Sunnis. They lay an emphasis on Ijma or academic agreement. Hanafi law is practiced in Kingdom of Jordan, Pakistan, Turkey, and United Arab Emirates. Hanafi Sunnis in India, who make up over 90 percent of Sunnis, have been using triple-talaq for centuries. Arab women in pre-Islamic Arabia could not divorce their husbands as men had absolute power over divorce.

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[7] Asghar Ali Engineer, *The Rights of Women in Islam* (Sterling Publishers, 2008).
[8] Zoya Hasan "Triple Talaq and Muslim Women in India: Problems and Prospects" 52 *Economic and Political Weekly* (2017).

People could "divorce" one another using various forms like divorce, separation, talaq and khula. The man owns a woman as his property so he can just as easily divorce her too. Islamic teachings tried to fix the unfairness in divorce rights of men and women. During divorce, precipitation like ila, zihar, and halal negatively impacted women's rights. The restrictions placed on women's freedom after marriage needed to be reformed. This was keeping in mind issues like divorce and so on. Divorce in pre-Islamic Arabia consisted of a number of ways (like) talaq, ila, zihar, khula and the like. Women may remarry after divorce with an iddt period.[9]

Year	**Law / Event**	**Description**
1829	Bengal Sati Regulation	Abolished practice of Sati (widow burning).
1856	Hindu Widows Remarriage Act	Legalized widow remarriage, gave right to new husband's property, removed right to deceased husband's property, restored in 1956.
1872	Indian Christian Marriage Act & Indian Divorce Act	Act governing Christian marriages and divorces in India, except for Goan Christians.
1909	Anand Marriage Act	Marked validity of Sikh marriage, registration allowed after 2012 amendment.
1929	Child Marriage Restraint Act &	Set minimum marriage age; Muslim law allowed marriage without age limit with

[9] Tahir Mahmood, *Muslim Law in India and Abroad* (Lexis Nexis, 2012).

	Muslim Personal Law (Shariat) Application Act	guardian consent. Minimum age fixed at 21 for boys and 18 for girls by 2006 Act.
1937	Muslim Personal Law (Shariat) Application Act	Clarified Shariat (Islamic law) to govern Muslims across India.
1939	Dissolution of Muslim Marriages Act	Allowed Muslim women to obtain divorce and defined their rights after divorce.
1954	Special Marriage Act	Allowed civil (court) marriages between individuals of any or different religions.
1955	Hindu Marriage Act	Codified Hindu marriage laws, introduced divorce.
1956	Hindu Succession Act, Hindu Minority and Guardianship Act, Hindu Adoptions and Maintenance Act	Codified Hindu inheritance, guardianship, and adoption laws.
1976	Marriage Law Amendment Act	Broadened grounds for divorce, gave minor girls right to repudiate marriage.
1985	Shah Bano Case & Muslim Women (Protection of Rights on Divorce) Act	Supreme Court favored Shah Bano's right to alimony; Muslim protests led to new Act restricting alimony period.

2005	Hindu Succession (Amendment) Act	Gave equal property rights to daughters of Hindus, Sikhs, Jains, and Buddhists.
2012	Anand Marriage (Amendment) Act	Allowed registration of Sikh marriages under Anand Marriage Act.
2016	Shayara Bano Case (Triple Talaq Challenge)	Supreme Court declared instant triple talaq unconstitutional; criminalized by Parliament in 2019.
2019	Personal Law Amendment Bill	Removed leprosy as a ground for divorce across all major personal laws.
2019	Muslim Women (Protection of Rights on Marriage) Bill	Criminalized instant triple talaq, provided subsistence allowance to affected Muslim women.

Judiciary on Triple Talaq

Year	**Case Name**	**Court / Authority**	**Outcome / Decision**
1981	*Shamim Ara v. State of UP*	Allahabad High Court	The court ruled that Triple Talaq (instant divorce) must be "reasonable" and valid under the Quranic interpretation, rejecting the practice of arbitrary instant Triple Talaq. This was one of the first significant judgments against the practice.

2002	*Shamim Ara v. State of UP &Anr.*[10]	Supreme Court of India	The Supreme Court upheld the Allahabad High Court's decision, ruling that for a Talaq to be valid, it must be pronounced, and sufficient attempts at reconciliation must be made. The court strongly criticized the practice of instant Triple Talaq.
2016	*Shayara Bano v. Union of India*[11]	Supreme Court of India	Shayara Bano filed a petition challenging the practice of Triple Talaq, polygamy, and Nikah Halala. The court's decision was a landmark, as it led to the ruling of Triple Talaq as unconstitutional and invalid under Indian law.
2017	*Supreme Court Verdict on Triple Talaq*	Supreme Court of India	In a historic 3:2 majority decision, the Supreme Court declared instant Triple Talaq unconstitutional, observing that it violated fundamental rights, specifically Article 14 (right to equality) of the Constitution of India.
2018	*Sameena Begum v. Union of India*[12]	Supreme Court of India	The case reaffirmed the invalidity of instant Triple Talaq, strengthening the legal framework around protecting Muslim women's rights. The court emphasized the need for a formal

[10] (2002) SC 4726.
[11] (2017) 9 SCC 1.
[12] (2018) 16 SCC 458.

			process for divorce in line with Quranic principles.
2019	*Muslim Women (Protection of Rights on Marriage) Bill*	Parliament of India	The Indian Parliament passed the Triple Talaq Bill, making instant Triple Talaq a criminal offense with up to three years imprisonment for violators. The law also provided subsistence allowance and the right to seek custody of children for women affected by this practice.
2019	*Showkat Hussain v. Nazia Jeelani*[13]	The Jammu and Kashmir High Court	'triple talaq' was pronounced prior to passing of an apex court judgment in Shayara Bano case will be treated as invalid.
2020	*Rahna Jalal v. State of Kerala*[14]	Supreme Court	Family Members of Husband Not Liable for Alleged Crime Under Act for Triple Talaq
2024	*Aamir Karim v. State of Bihar and another*[15]	Patna High Court	The Patna High Court has recently held that the opinion that a Muslim husband has an arbitrary and unilateral right to effect instant divorce is not tenable and that giving a divorce to a Muslim wife by sending an e-mail her way amounts to a mental torture.

[13] 2019 SCC Online J&K 892.
[14] Criminal Appeal No 883 of 2020.
[15] 2024 LiveLaw (Pat) 131.

2024	*Mohd Abdul Samad v. The State of Telangana & Anr*[16]	Supreme Court	Supreme court said that a Muslim woman whose husband has pronounced triple talaq to divorce her illegally is entitled to get maintenance from her husband under Section 125 of Criminal Procedure Code.

3. Key Provisions of the Act

The Muslim Women (Protection of Rights on Marriage) Bill 2019 has become an Act following the President's approval, replacing an Ordinance on triple talaq. The Act deems all forms of talaq as void and illegal, specifically defining talaq-e-biddat as an instant and irrevocable divorce by a Muslim man. Declarations of talaq are punishable by up to three years in prison and fine, with bail at the Magistrate's discretion after hearing from the woman involved. Compounding the offense is possible through a compromise approved by the Magistrate. Women subjected to talaq can seek subsistence allowance and custody of their minor children, with terms determined by the Magistrate.

Section	**Provision**	**Description**
Section 3	Declaration of Instant Triple Talaq as Void and Illegal	Any pronouncement of Talaq by a Muslim husband in any form—whether spoken, written, or through electronic means like email or SMS—will be void and illegal. This applies specifically to "Talaq-e-Biddat" or instant Triple Talaq.
Section	Punishment for	A Muslim husband who pronounces Triple

[16]*Mohd Abdul Samad* v. *The State of Telangana & anr* Special Leave to Appeal (Crl) 1614/2024.

4	Pronouncing Instant Triple Talaq	Talaq will be punished with imprisonment for up to three years and a fine. The offense is classified as cognizable and non-bailable.
Section 5	Subsistence Allowance for Divorced Muslim Women	A Muslim woman against whom Talaq has been declared is entitled to receive a subsistence allowance from her husband for herself and her dependent children. The amount of the allowance will be determined by the magistrate.
Section 6	Custody of Minor Children	The divorced Muslim woman is entitled to custody of her minor children, as determined by the magistrate, in accordance with what is just and fair.
Section 7	Offense to be Cognizable and Non-bailable	The act makes the offense of pronouncing Triple Talaq cognizable (allowing police to arrest without a warrant) and non-bailable (requiring the accused to apply to a magistrate for bail).
Section 7 (2)	Compounding of Offense	The offense may be compounded, meaning the parties can settle the matter between themselves, but only with the permission of the magistrate.
Section 7 (3)	Hearing and Grant of Bail	A magistrate can only grant bail after hearing the Muslim woman against whom the Talaq was pronounced. This guarantees her rights will be protected during this.

4. Arguments in Favor & Against

Arguments in Favor	Arguments Against
Empowerment of Muslim Women: The legislation safeguards the rights of Muslim women by making triple talaq a legal illegality. It will empower them to seek the law which will make sure that they do not become victims of triple talaq.	**Criminalization of Civil Matter**: Some critics have suggested that since marriage and divorce are civil matters, they should not attract any criminal penalties, and hence imprisoning the husband is counter-productive for the welfare of the family.
Constitutional Equality: Supporters of the Act favor it on the ground that it would help in achieving gender empowerment. Also, it affirms Article 14 (right to equality) and Article 21 (right to life and dignity) of the Constitution.	**Misuse of Law**: Some say that the law can be misused by women to harass their husbands. Similar misuse concerns were raised regarding other gender-specific laws (e.g., dowry or domestic violence laws).
End of Arbitrary Practice: The instant Triple Talaq has been ruled as void by the law. Thus, it does away with a practice that has been under attack for being unjust and arbitrary. It allows no chance for the wife to be heard or to contest.	**Impact on Muslim Family System**: According to religious scholars and conservative groups, the Act interferes with Islamic personal laws and may disrupt the traditional Muslim family structure, which is governed by religious customs.
Protection from Abuse: The Act provides for the immediate	**No Focus on Reconciliation**: The opponents say that the law does not

financial and custodial provisions as subsistence allowance and child custody to ensure that divorced Muslim women and their children are not rendered indigent.	focus enough on reconciliation and resolution between the parties but rather proceeds to a crime where no bargaining takes place.
Judicial Endorsement: Following a 2017 judgment of the Supreme Court, which declared instant Triple Talaq unconstitutional, it received a legal footing and greater public acceptance through the law.	**Penalization Harms Family**: By putting the husband behind bars, the Act may aggravate the family's financial condition and add to the hardships of the wife and children since the husband will not be in a position to maintain the family while in prison.
Prevention of Repeated Talaq Incidents: By criminalizing Triple Talaq, the law is a deterrent as the practice was continuing in some cases despite it being declared unconstitutional.	**Targeting a Specific Community**: Some people who are critical of the Act think that it is targeted towards Muslim men. They think that it can be used for harassing them and making them feel like aliens.

5. Comparative Analysis with Other Personal Laws

In India, multiple personal laws govern divorce, such as the Hindu Marriage Act of 1955. This Act is applicable for Hindus, Buddhists, Jains, and Sikhs and mentions the grounds of divorce like adultery, cruelty, desertion, mental disorder, etc. Section 13A of the Act also provides for mutual consent divorce. Further grounds for wives to file for divorce include instances where the husband had married another woman prior to the commencement of the Act, if convicted of certain offenses or if the spouses have not resumed

cohabitation despite one spouse being awarded maintenance. Divorce for other reasons include renunciation, abandonment, venereal disease, etc. Either spouse can file for divorce if they have been married for a specified period, after a decree of judicial separation or of restitution of conjugal rights. It is clear that the Hindu Marriage Act has laid down sufficient ground rules for divorce proceedings between husband and wife to be conducted under its provisions.

For Muslims, divorce is governed by the Muslim Personal Law (Shariat) Application Act, 1937, under which is encompassed various modes of divorce, viz., talaq, ila, zihar, khula and mubaraat. A divorce may be filed for: by the husband, mutual consent and by the wife. It has provision for many forms of talaq, delegation of divorce power, and contingent divorce. Associative divorce practices like ila and zihar are also acknowledged. And if it is used for a well-defined intention, so will divorce against compulsion or voluntary intoxication. Divorce agreements before and after marriage are valid as long as they fall within public policy and are reasonable. Under the Dissolution of Muslim Marriages Act, the grounds for divorce are neglect of maintenance, imprisonment, failure in the marital obligations, impotence, insanity, cruelty, etc. Cruelty includes physical and mental abuse, discriminatory treatment and false charges of adultery.

Christians' divorce is governed the by the Indian Divorce Act, 1869. The Grounds for Divorce under this Act are Adultery, Cruelty, Desertion, Conversion to another religion and Incurable mental illness. Section 10A also allows divorce by mutual consent and the wife has the right to seek divorce if the husband commits rape, sodomy or bestiality after marriage.

Overall, the Acts present a structure under which a divorce can be obtained legally. Muslims can use the Muslim Personal Law (Shariat) Application Act and the Indian Divorce Act, 1869 can be used by Christians.

Parsi Marriage and Divorce Act, 1936 applies to Parsis seeking divorce and it contains various grounds of divorce. There are different reasons such as non-consummation of marriage, adultery, and desertion, etc. As long as conditions are satisfied, couples may file divorce together or alone. If one year has passed since the order was issued and there has not been a resumption of cohabitation or restitution of conjugal right, a party may file a suit for divorce. A person may not be granted a divorce if that person does not follow maintenance orders.

The Special Marriage Act which was enacted in 1954 on the other hand governs divorce by couples of all religions married in civil law. Grounds for divorce under this act are adultery, desertion, imprisonment, cruelty, a mental disorder, a venereal disease, presumed death, etc. Furthermore, a wife can file a divorce based on other reasons as well. There shall a petition be filed in the Court by either of the spouse seeking the divorce under the said Act. The same shall be decided by the Court after hearing the party. In addition, the Act allows divorced persons to remarry. Either one of the Acts contains enabling provisions relating to divorces and prescribes the grounds on which divorce may be granted. In India, landmark judgments have altered the legal landscape of divorce. The Shah Bano and Sarla Mudgal cases are of importance. Muslim women were granted rights for maintenance after divorce in 1985 through the Shah Bano case. Shah Bano case-Right to maintenance-Sec. 125 of Criminal Procedure Code 1973 The case created a lot of controversy and Muslim Women (Protection of Rights on Divorce) Act was enacted in 1986.

In the 1995 Sarla Mudgal case[17], the Supreme Court held that bigamy by Hindus who converted to Islam without first divorcing their wives is illegal and such marriage is void. Furthermore, it was also held that this act is an

[17]*Sarla Mudgal, & others*. v. *Union of India* 1995 SCC (3) 635.

offense under the Indian Penal Code. Marriage is a sacrosanct institution, while divorce must be the last option para-wise, which is something Indian courts stress on and prefer offering through counselling and reconciliation process rather than divorce. In a divorce, courts decide about property division, child custody, maintenance, etc. Even though divorce can be emotionally tolling, couples should still try mediating for a fair solution.

In India, divorce laws have become more liberal but intend to provide a hassle-free divorce, these also create problems for women at the same time. Efforts have been made to protect the rights of women through maintenance, alimony, and property rights. Furthermore, other reforms must be made to allow the mechanism to take over if another reform is not made.

In India, divorce is no longer considered a taboo, thanks to the supportive legal procedures in the country for mutual divorce. Going through any legal processes help women get justice and provide them peace of mind. Therefore, legislation aims at achieving it. Continued improvements in divorce laws are necessary to address the complexities of divorce cases and ensure gender equality and fairness throughout the process.[18]

Aspect	**Hindu Law (Hindu Marriage Act, 1955)**	**Muslim Law (Dissolution of Muslim Marriages Act, 1939)**	**Parsi Law (Parsi Marriage and Divorce Act, 1936)**	**Christian Law (Indian Divorce Act, 1869)**	**Special Marriage Act, 1954**
Grounds for Divorce	Adultery, cruelty, desertion, mental disorder, conversion, renunciation of the world, venereal disease, no	Desertion, cruelty, impotence, failure to provide maintenance, husband's imprisonment, husband's failure to treat	Adultery, cruelty, venereal disease, unsoundness of mind, desertion for more than two years,	Adultery, desertion, cruelty, conversion, unsoundness of mind, leprosy, no cohabitation for two years, failure to	Adultery, cruelty, desertion for more than two years, insanity, conversion, venereal disease, no cohabitation

[18] "A comparative study of Divorce Laws in India", *available at* https://thelegalaffair.com/a-comparative-study-of-divorce-laws-in-india/ (Last visited on 1st January, 2025).

Aspect	Hindu Law (Hindu Marriage Act, 1955)	Muslim Law (Dissolution of Muslim Marriages Act, 1939)	Parsi Law (Parsi Marriage and Divorce Act, 1936)	Christian Law (Indian Divorce Act, 1869)	Special Marriage Act, 1954
	cohabitation for one year or more.	wife equitably as per Quran, husband's insanity.	conversion.	comply with restitution of conjugal rights.	for one year or more.
Divorce by Mutual Consent	Yes, available if both parties have been living separately for at least one year and mutually agree that the marriage should be dissolved.	No formal provision in traditional Muslim law, but allowed through Mubarat (mutual divorce) or modern legal frameworks.	No provision for divorce by mutual consent.	Not originally included, but mutual consent divorces are recognized after amendments in 2001.	Yes, allowed under mutual consent if parties live separately for one year or more and agree to dissolve the marriage.
Role of Customary Law	Customary practices (e.g., tribal or caste practices) may have some influence, though codified law takes precedence.	Muslim personal law (Shariat) governs, allowing for Talaq (husband-initiated divorce), Khula (wife-initiated divorce), and Mubarat (mutual consent divorce). Customary practices often shape the process.	Governed by Parsi customary law; codified law through the Parsi Marriage and Divorce Act.	Christian personal law is codified in the Indian Divorce Act, influenced by English common law and canon law.	Uniform civil law applies, with no influence of personal or religious laws.
Alimony / Maintenance	Both men and women can claim maintenance,	Wife can claim maintenance during and	Either spouse can claim maintenance, but mostly	The wife is entitled to maintenance, but Indian	Both spouses are entitled to maintenance;

Aspect	Hindu Law (Hindu Marriage Act, 1955)	Muslim Law (Dissolution of Muslim Marriages Act, 1939)	Parsi Law (Parsi Marriage and Divorce Act, 1936)	Christian Law (Indian Divorce Act, 1869)	Special Marriage Act, 1954
	with the court determining the amount based on the needs of the spouse and children.	after marriage (through Iddat period), but traditionally, maintenance is only for three months after divorce. Modern cases allow longer support.	awarded to the wife. The amount is decided based on financial status.	Christian laws have traditionally lagged in providing adequate support compared to other laws.	generally, the economically weaker spouse receives it.
Custody of Children	Custody is usually granted based on the welfare of the child, with the mother typically favored for younger children.	Custody is decided by courts under the Guardians and Wards Act. Generally, the mother has a stronger claim, especially for young children.	Custody is decided based on the welfare of the child, with a tendency to favor mothers.	Custody is based on the child's welfare, with the mother generally favored for younger children.	Custody is granted in favor of the child's welfare, regardless of religious background, with either parent being eligible.
Waiting Period for Divorce	A cooling-off period of six months is mandatory after the filing of a petition for divorce by mutual consent. For other divorces, the waiting period depends on the grounds.	No formal waiting period for husband-initiated divorce (Talaq). However, Iddat (90 days) applies after divorce to ensure no pregnancy.	No specific waiting period; cases are handled based on the circumstances and evidence.	Generally requires a two-year separation for desertion. No waiting period for other grounds like adultery or cruelty.	A one-year separation period is required before a divorce petition can be filed.

Aspect	Hindu Law (Hindu Marriage Act, 1955)	Muslim Law (Dissolution of Muslim Marriages Act, 1939)	Parsi Law (Parsi Marriage and Divorce Act, 1936)	Christian Law (Indian Divorce Act, 1869)	Special Marriage Act, 1954
Irretrievable Breakdown of Marriage	Not recognized explicitly under the Hindu Marriage Act, though often used as a justification in modern cases.	Not part of Muslim law, but divorce is considered valid if the marriage is irretrievably broken due to conditions set by the law.	Not explicitly recognized, but cases of long-term separation are treated similarly.	Irretrievable breakdown is not a recognized ground, though long-term separation or non-cohabitation can lead to divorce.	Explicitly recognized as a ground for divorce.
Religious Requirements	Marriage must have been solemnized under Hindu law. Divorce follows legal provisions, but religious rites influence many cultural practices.	Divorce is governed by Shariat principles, with a strong emphasis on religious procedures like Talaq or Khula.	Must follow religious customs of the Parsi community. Divorce under secular law can be sought if not in accordance with religion.	Christian religious rites are important, though divorce is governed by civil law. Historically, divorce was difficult for Christians before legal reforms.	No religious requirements, since the Special Marriage Act is secular and meant for inter-religious marriages.
Recent Amendments / Trends	Marriage Law Amendment Bill (2013) includes irretrievable breakdown of marriage and allows the wife to oppose a divorce petition.	Criminalization of instant Triple Talaq under The Muslim Women (Protection of Rights on Marriage) Act, 2019. Expanded rights for women under modern interpretations of Islamic law.	Some reforms to make the Parsi divorce process simpler, including updating old legal provisions.	Amendments in 2001 brought in mutual consent divorce and more gender-equal provisions in maintenance and custody matters.	No major amendments, but uniform civil practices apply to all religions through this act.

6. Critical Analysis of Provisions of the Act

Provision	Description	Criticism/Issues	Positive Aspects
Prohibition of Instant Talaq (Triple Talaq)	Declares the pronouncement of instant triple talaq (*talaq-e-biddat*) as void and illegal.[19]	Focuses only on instant *talaq* and does not address other unilateral divorce practices that may still exist.	Protects Muslim women from an arbitrary, unconstitutional practice.
Punishment for Triple Talaq	Imposes up to 3 years of imprisonment and a fine for the husband.[20]	Criminalizes a civil matter, leading to concerns about imprisonment affecting financial support for the wife.	Acts as a strong deterrent to the misuse of divorce practices.
Non-Bailable and Cognizable Offense	Triple talaq is a non-bailable and cognizable offense, allowing arrest without a warrant.[21]	There is a risk that it could be misused which may lead to false arrests.	Guarantees prompt relief to shield wife from immediate danger or injury.
Maintenance for the Wife and Children	The magistrate will determine the amount of maintenance the wife is entitled to.[22]	The way to calculate maintenance is not specified and is left to judicial discretion.	Offers monetary aid to women who could otherwise be impoverished.

[19] The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 3.
[20] The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 4.
[21] The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 7.
[22] The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 5.

Custody of Minor Children	In the opinion of a magistrate, a woman is granted the custody of minor children.[23]	Child custody arrangement, no specifications leading to inconsistent judicial verdicts.	In case of an unjust divorce, the interests of the children will be protected by keeping them with the mother.
Compounding of Offense	The offense can be compounded at the wife's request, allowing for settlement.[24]	Risk of women being pressured into forgiving the husband, especially in conservative or patriarchal families.	Allows the wife to exercise agency and discretion in resolving the matter.
Bail Provisions	Bail can be granted by the magistrate, but only after hearing the wife and satisfying certain conditions.[25]	Limited scope for the husband to secure bail, raising concerns about fairness and potential misuse.	Ensures that the wife's perspective is considered before granting bail, protecting her rights.
Civil vs. Criminal Nature	Criminalizes the pronouncement of instant talaq, converting a civil issue into a criminal offense.	Criminalization of divorce-related issues may not be the best way to handle family disputes.	Elevates the seriousness of the issue, aligning it with constitutional values of gender equality and protection.

[23] The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 6.
[24] The Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act 20 of 2019), s. 7.
[25] *Ibid.*

Scope of Applicability	Applies only to Muslim men practicing *talaq-e-biddat*.	Creates a gender-specific criminal law applicable only to Muslim men, which may be seen as targeting the community.	Addresses a long-standing issue within the Muslim community, empowering Muslim women against arbitrary practices.
Absence of Mediation and Reconciliation	No provisions for mediation, counseling, or reconciliation are included.	Lacks a focus on alternative dispute resolution methods, which could help resolve marital issues amicably.	Focuses on empowering women and protecting them from an unjust practice.
Disproportionate Punishment	Provides for 3 years imprisonment for pronouncement of triple talaq, even when the divorce does not occur.	Imprisonment might be disproportionate for merely pronouncing *talaq* when the marriage remains intact.	The strong punishment reflects the seriousness of violating women's rights.

Section 4 of the Act mandates a punishment of up to three years and fine for anyone pronouncing triple talaq, and Section 7 categorizes it as a cognizable and non-bailable offence. Generally, marital disputes between a Muslim man and a Muslim woman are contractual, necessitating civil remedies, not criminal ones. Triple talaq, identified by the Supreme Court as an improper divorce form, challenges the distinction between civil and criminal law in this Act.

Section 7's classification of triple talaq as a cognizable offence allows police to arrest without a warrant, bypassing judicial oversight even if no complaint is made by the wife. This differs from non-cognizable offences, where a complaint is needed for action. Critics like Indira Jaising and the Bebaak Collective highlight that criminalizing triple talaq might deter reporting, as women may not want to risk their husbands' incarceration, especially given the economic challenges that could follow, like loss of income.

While existing laws like the Protection of Women from Domestic Violence Act and Section 498A of the Indian Penal Code (Now its Section 85 and 86 of BNS) already provide remedies against cruelty or violence, the Act introduces an unclear provision about subsistence allowance without specifying whether it is immediate or post-conviction. This uncertainty may lead to delays for affected women. Current laws, such as Section 125 of the RPC (Section 144, BNSS) already obligate husbands to support their wives and children.

The Act overlooks issues like polygamy and nikah halala, the latter requiring a woman to remarry before returning to her first husband, often without consent and involving fees. Disturbingly, the Act was crafted without consulting any Muslim organizations, reflecting poorly on the legislative process. Its quick passage in the Lok Sabha on the same day of its introduction raises concerns about the lack of thorough parliamentary deliberation on such critical issues. There's hope that the Rajya Sabha will scrutinize and amend this hastily drafted legislation for more comprehensive protection and reform.

The Act penalizes unauthorized talaq with up to three years in jail, but this impacts the family's finances negatively rather than helping the Muslim woman. The Act doesn't consider the support issues related to the husband's imprisonment. While the husband is in jail, the Muslim wife is left to live alone without the option to divorce or remarry since the Dissolution of Muslim

Marriages Act allows divorce only after seven years of imprisonment.[26] Thus, she'd remain in an unhappy marriage without financial security. Even though the Act invalidates unauthorized talaq, it can't force the husband into a committed marriage, limiting the woman's freedom and autonomy.

7. Triple Talaq and Political Context

The passing of 'The Muslim Women Protection of Rights on Marriage Act 2019' in India's Parliament has sparked debates on the impact it will have on Muslim women and the community as a whole. The Act aims to address the practice of triple-ṭalāq, an instant and irrevocable divorce method, by criminalizing its pronouncement. While some view this as a victory for Muslim women, critics argue that the Act lacks additional rights for women and may make them more vulnerable. Historically, Muslims in India have faced challenges in representation and legal rights despite being a significant minority. The passing of the Act raises questions about the prevalence of triple-ṭalāq, with minimal cases reported before the 2017 Supreme Court decision.

The All-India Muslim Personal Law Board works to promote Muslim personal laws from time to time, especially in the face of threats of a uniform civil code. Although not formally recognised by the state, the AIMPLB touches upon legal issues affecting Indian Muslims and often takes conservative stances upholding laws. Dispute resolution centers being shut down and other challenges to its authority have brought into focus the balance between reformation and the internal empirical religious practices of the Muslim community in India. The practice of triple-ṭalāq highlights the tension between religious laws and constitutional rights in India.

[26] Aravind Kurian Abraham, "Bill Criminalizing Triple Talaq a Hasty Legislation, Exposes Gap in Indian Lawmaking", *available at:* https://thewire.in/law/bill-criminalising-triple-talaq-a-hasty-legislation-exposes-gap-in-indian-lawmaking (Last visited on 27th March, 2025).

The All-India Muslim Personal Law Board (AIMPLB) threatened to "socially boycott" those who used triple-ṭalāq, but doubts remained about its effectiveness. The Supreme Court faced a tough legal challenge in the 2017 *Shayara Bano v. Union of India* case. The court had to determine if triple-ṭalāq was recognized by the 1937 Shariat Act and if uncodified law could have constitutional rights. The Court, with a 3-2 majority, ruled triple-ṭalāq unconstitutional, leaving legislative change in the government's hands. The divided opinions reflected societal tensions regarding Muslim personal status law reform. The minority opinion called for legislative reform within six months, while the majority urged legislative action to address the issue. However, the Supreme Court's decision lacked clarity on legislative change, leaving lawmakers facing opposition to reforming Muslim personal status laws. The AIMPLB's influence had weakened, but challenges to legislative reform remained possible. The road to legal and societal change regarding triple-ṭalāq was deemed uncertain and challenging.

In response to the Supreme Court decision, the Indian legislature took various actions until passing the Muslim Women Protection of Rights on Marriage Act. Despite resistance, the Act criminalizes triple-ṭalāq, aiming to protect women but raising concerns about potential consequences. The Act does not grant women rights to divorce or limit the husband's power to divorce, sparking debates on its impact on women's rights and gender equality. Prior to criminalizing triple-ṭalāq, courts had placed limits on one-sided divorces in cases like Shahmim Ara.[27]

8. Ground Reality and Case Studies (Post Act Scenario)

Rehana Parveen, residing in Delhi's Jasola Village, married Vakil Saifi at 20. She managed household chores while Vakil, an abusive alcoholic and drug

[27] "Triple Divorce and the Political Context of Islamic Law in India", *available at:*https://journalofislamiclaw.com/current/article/view/siddiqui (Last visited on 20th December, 2024).

addict, failed to care for her even during pregnancies, leaving her reliant on her parents. Vakil frequently accused her of infidelity and denied paternity of their children, Arish and Faraz, now five and two. Rehana hesitated to divorce him due to social fears and her parents' burdens. Her breaking point came when Vakil secretly, invalidly married another woman and then divorced Rehana via triple talaq, a crime in India. Vakil went missing, and Rehana, unaware of the illegality of triple talaq, filed an FIR later. Her father regrets not ensuring her financial independence before marriage.

Soman argues that governments prioritize politics over women's rights and emphasizes the need to change societal mindsets and educate women about their constitutional rights. She criticizes claims that a recent law targets Muslim men, noting that FIRs are rarely filed and Muslim women haven't seen much justice from it. Soman suggests that while there was a desire for the law among women, it has yet to deliver results. Mukhtar Abbas Naqvi, a Union Minister, mentioned an 82% decline in triple talaq cases post-law and indicated no arrests in some cases due to compounded FIRs.

Parwez, an advocate, notes that the law has instilled some fear among men about giving instant talaq, though in BJP-governed states, implementation has been better. She finds that political environment affects law enforcement's seriousness. In Delhi, Rehana, detached from the political aspects, wishes for justice as promised by the law.[28]

A 43-year-old engineer from Kalyan, Maharashtra, named Sohail Shaikh, has been charged by the police after allegedly giving his second wife, a 28-year-old, a triple talaq when she refused to have a physical relationship with his employer. The incident was reported on December 19, 2024, when the woman filed a complaint against him. She married Shaikh in January 2024, but the

[28] "A Year Later, Are Instant Triple Talaq Culprits Actually Going to Jail?", *available at:*https://thewire.in/religion/a-year-later-are-instant-triple-talaq-culprits-actually-landing-in-jail (Last visited on 27th March, 2025).

relationship soured as he began harassing her for money, demanding a dowry of Rs 15 lakh supposedly to divorce his first wife. She reported facing physical and mental abuse.

In July, the situation worsened at a party when Shaikh pressured her to sleep with his boss. Upon her refusal, he divorced her by uttering 'talaq' three times in front of relatives. The woman stated her husband then threw her out and continued demanding money. She reported the case to Sambhaji Nagar police, which was transferred to Bazarpeth police station in Kalyan for further investigation. [29]

A case was filed under several sections of *the Bharatiya Nyaya Sanhita and the Muslim Women (Protection of Rights on Marriage) Act, 2019,* which outlaws triple talaq. The investigation is ongoing, with no arrests yet made.

This is not the only recent case of triple talaq in Maharashtra or India, as other instances have been reported, raising concerns about the 2019 law's effectiveness and the misuse of traditional practices against women. The Kalyan case underscores women's challenges in enforcing legal protections against abuse and highlights the need for stronger measures to protect women's rights.

Shahul Hameed from Kerala is charged with divorcing his wife via phone using triple talaq, assault, and demanding dowry. The case was filed after his wife's report of abuse since 2021. The police registered the case under relevant laws, summoning Hameed. This incident follows another similar case

[29] "Software engineer demands wife sleep with boss, gives instant talaq after she refuses", *available at:* https://economictimes.indiatimes.com/news/new-updates/kalyan-software-engineer-demands-wife-sleep-with-boss-gives-instant-talaq-after-she-refuses/articleshow/116619094.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Last visited on 27th March, 2025).

in Kerala, highlighting ongoing issues with dowry demands and domestic abuse.[30]

In Uttarakhand's Haldwani, a woman accused her husband of dowry harassment, ending with a sudden WhatsApp divorce. This case highlights concerns about women's treatment and divorce law misuse. The woman, from Indranagar, Banbhulpura, married a local man on May 23, 2022. After marriage, her husband and in-laws were unhappy with the dowry, leading to her verbal and emotional abuse. They demanded more dowry, including a motorcycle, intensifying tensions. She claims her husband's neglect extended to denying her motherhood for unmet demands and accused him of unnatural relations, dismissed by her mother-in-law. On January 17, 2023, she was expelled from her home after failing to deliver a motorcycle and cash. After police involvement, a reconciliation led to them living separately. However, on September 26, her husband divorced her via WhatsApp by saying *"talaq"* three times. She filed a complaint; a case is registered, and an investigation is ongoing.[31]

Iram from Nainital claims persistent police negligence following her triple talaq experience despite strict laws against it. Married to Zahid Hussain on February 21, 2021, Iram faced harassment from in-laws and sought help in January 2023, which led to family counseling. Her husband divorced her during this period. Although she filed a complaint with HaldwaniKotwali police in April 2023, no action was taken, and an RTI request in January 2025 showed no application was received. She escalated the issue through the CM's portal, received misleading information, and sought a court order. Rajesh

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[30] "Kerala man booked for phone triple talaq, abuse", *available at:* https://www.newsminimalist.com/articles/kerala-man-booked-for-phone-triple-talaq-abuse-20aace09 (Last visited on 27th March, 2025).

[31] "Harassed For Dowry, Then Given Triple Talaq on Whats App, Haldwani Woman Goes To Cops", *available at:* https://www.news18.com/india/harassed-for-dowry-then-given-triple-talaq-on-whatsapp-haldwani-woman-goes-to-cops-9103561.html (Last visited on March 27, 2025).

Kumar Yadav, Kotwal of Haldwani, explained the incident occurred during counseling, with her husband abusing her and declaring triple talaq near a bus stand. Iram's complaint reached Haldwani Kotwali, but MallitalKotwali reportedly did not receive the report.[32]

In Pune, a woman reported to the police that her husband divorced her by saying "talaq" three times because she gave birth to daughters instead of a son. She was then forced out of her home with her daughters, only to learn her husband had remarried. She filed a complaint at Chandan Nagar Police Station, resulting in a case under the Muslim Women (Protection of Rights on Marriage) Act 2019 against her husband, his family, and his new wife. The complainant suffered dowry-related harassment and abuse for having daughters. Her in-laws also threatened her and destroyed her belongings. The police are investigating the case.[33]

A 21-year-old woman from Kasargod, Kerala, was shocked when her husband, Abdul Razzaq, sent a "talaq, talaq, talaq" message on WhatsApp to her father, ending their marriage. The message, received on February 21, highlighted concerns over the misuse of triple talaq, which is illegal in India since the Supreme Court voided it in 2017, and a criminal offense as per the 2019 Muslim Women (Protection of Rights on Marriage) Act. Married since August 2022, Razzaq, who works in the UAE, reportedly demanded money from her and once took her there. The woman plans to file a case, alleging Razzaq doubted her and wanted money. Her father confirmed sending money to Razzaq and having documents to prove it, calling the triple talaq message

[32] "Nainital woman alleges police negligence in triple talaq case", *available at:*https://timesofindia.indiatimes.com/city/dehradun/nainital-woman-alleges-police-negligence-in-triple-talaq-case/articleshow/118125117.cms (Last visited on 27th March, 2025).

[33] "Triple Talaq: Woman Files Police Complaint Against Husband Under Muslim Women Act", *available at:*https://www.thebridgechronicle.com/news/triple-talaq-woman-files-police-complaint-against-husband-under-muslim-women-act (Last visited on 27th March, 2025).

improper. The family sold gold to raise funds. A police complaint against Razzaq for cheating is under investigation.[34]

The enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, known as the triple talaq law (TTL), was intended to emancipate Muslim women in India. However, it may fail to meet its objectives and also increased patriarchal structures in the community. The law was passed in a politically charged environment, raising doubts among Muslim women about the intentions of the government. This skepticism may have led to a lack of proactive efforts from women's organizations regarding the issue of triple talaq cases.

Research involving ethnographic fieldwork in Delhi and Hyderabad highlighted the emergence of a new form of patriarchy among Sunni Muslims due to the TTL. Two significant issues were noted: the difficulty in getting First Information Reports (FIR) registered in TTL cases and the abandonment of wives without formal talaq. Victims' experiences with the police showed a bureaucratic reluctance and lack of information. An example is Farida, who was divorced in 2021 and faced domestic violence. Despite her hopes that the TTL would help, the police refused to register her complaint without a witness. Farida then had to file a case under the Domestic Violence Act (DVA) instead.

Farida's case illustrates that although TTL does not require a witness, yet the absence of one made it impossible for her to proceed. Her issue was registered in the Daily Diary and referred to the Women's Council, but her husband evaded legal action by bribing the police. With no resolution, Farida is now living with her parents, abandoning her hopes for maintenance. [35]

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[34] "21-year-old Kasargod woman shocked as UAE husband issues 'triple talaq' over WhatsApp", *available at:*https://www.daijiworld.com/news/newsDisplay?newsID=1274039 (Last visited on 27thMarch, 2025).

[35] "4 years of Triple Talaq Law: Why men are still abandoning wives", *available at:* https://www.indiatoday.in/news-analysis/story/triple-talaq-laws-supreme-court-muslim-wives-

Furthermore, the National Commission of Women (NCW), involved in processing women's complaints, often processes triple talaq cases under the DVA or Section 498(a) of the Criminal Procedure Code (CrPC). NCW's role is to expedite the process, but the police decide on charges based on available evidence. Therefore, NCW cannot compel police to file an FIR.

A social activist and local Municipal Council member, Tanveer, revealed the complexity surrounding TTL cases. Despite an increase in women seeking help post-enactment, few FIRs have been registered because the police demand witnesses, placing additional burdens on victims. Most triple talaq incidents occur during heated arguments when no outsiders are involved, making it hard for victims to produce witnesses. Tanveer often fails to register cases under TTL for victims and resorts to existing legal frameworks like the DVA and 498(a) of the CrPC instead.[36]

Overall, much like Farida's situation, TTL's implementation faces bureaucratic hurdles and leaves many women without recourse or justice. The reluctance to register cases without a witness and the subsequent reliance on alternative legal remedies signal significant gaps between the TTL's intent and reality in practice.

Khalida Parveen, a social activist in Hyderabad, criticizes the Triple Talaq Law (TTL), arguing it hasn't benefited Muslim women but rather provided a safe ground for men. Muslim men have reportedly used TTL as a new means to exert control over their wives. Victims testify about increased emotional, psychological, and physical abuse from husbands, who either compel women to remain in difficult marriages or leave without a defined marital status. For instance, Nafeesa, a 23-year-old, left her home due to persistent abuse and relocated to her father's house after her husband refused to communicate with

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polygamy-husband-abandoning-wives-2395694-2023-06-21 (Last visited on 27th March, 2025).

[36] *Ibid.*

her. Her husband suggested she either stay at her father's or seek divorce on her own terms.

Research by the Shaheen Women's Resource and Welfare Association (SWRWA) in Hyderabad reveals that of 2,106 households, 683 had women abandoned by their husbands. Jameela Nishat, founder member of Shaheen, notes a decline in triple talaq cases but a rise in desertions post-TTL. The law's criminalization made men aware of potential imprisonment for instant triple talaq, prompting them to desert wives instead of pursuing dignified marital resolutions. This issue is similar to what Hindu women faced post-Domestic Violence Act (DVA), as deserted wives live with unclear marital statuses. The growing number of deserted women underscores the need for conversations beyond political claims, particularly as there's a lack of comprehensive data on TTL cases, with only a few women's organizations documenting these incidents.[37]

8.1. Seek Ban on Polygamy and Nikah Halala

In 2017, the Supreme Court ruled the practice of triple talaq unconstitutional, stating it discriminated against Muslim women. This decision struck down part of the Muslim Personal Law (Shariat) Application Act, 1937 related to triple talaq, and suggested other Muslim marriage laws should be examined for gender equality. The Court explicitly mentioned that issues like polygamy and nikah halala need future attention.

The passing of the Muslim Women (Protection of Rights on Marriage), Act has been seen as a "new beginning" by several Muslim women who have fought against the practice of instant triple talaq in the Supreme Court. They expressed that this law will act as a deterrent for husbands considering saying

[37] "4 years of Triple Talaq Law: Why men are still abandoning wives", *available at:* https://www.indiatoday.in/news-analysis/story/triple-talaq-laws-supreme-court-muslim-wives-polygamy-husband-abandoning-wives-2395694-2023-06-21 (Last visited on 27th March, 2025).

talaq-e-biddat to their wives. However, they also highlighted the need for the law to address polygamy, which they consider a greater issue than triple talaq. Prominent figures in this movement, such as advocate Farah Faiz, Rizwana, and Razia, expressed satisfaction with the progress but noted past missed opportunities like the Shah Bano case in 1985.

Faiz and others viewed this as a protective measure against the immoral practice of nikah halala, a custom that complicates the remarriage process for divorced Muslim women. Rizwana and Razia underlined the inadequacy of the bill in not banning polygamy simultaneously, arguing that polygamy allows men to take undue advantage of the new law. Rizwana, a victim of polygamy, and Razia, who was divorced over the phone for having daughters, hope the bill will provide justice for women like them. Both women stress the need for a ban on polygamy to fully protect women's rights.[38]

Advocate Chandra Rajan, who represented the All-India Muslim Women Personal Law Board (AIMWPLB), praised the bill for its potential deterrent effect. She mentioned the board's long-standing demand for a law declaring instant triple talaq null, void, and punishable for husbands practicing it. However, Rajan criticized the absence of a defined Sharia in the law, fearing ongoing confusion and misuse. She also welcomed the provision granting child custody to mothers.

Rajan questioned why the All-India Muslim Personal Law Board (AIMPLB) was mentioned in the law, suggesting it gave the NGO undue importance. Faiz shared that the government should have also addressed polygamy, pointing out that this legislation marks the beginning of necessary legal reforms. She advocated for extending the punishment for talaq-e-biddat from three to seven years and emphasized the importance of police action against offenders,

[38] "After Triple Talaq, Muslim Women Seek Ban on Polygamy", *available at:* https://www.ndtv.com/india-news/after-triple-talaq-muslim-women-seek-ban-on-polygamy-1793719 (Last visited on 27th March, 2025).

anticipating that the new law will discourage misuse of the practice. Rizwana reiterated that the abolition of triple talaq alone is insufficient without addressing polygamy.

In response, several Muslim women filed Public Interest Litigations (PILs) challenging the constitutionality of polygamy, nikah halala, and similar practices, claiming these discriminate against women, violating Articles 14 and 15 of the Constitution and a woman's dignity under Article 21. They identified four marriage-related practices in their petitions: polygamy, nikah halala, nikah mut'ah, and nikah al-misyar. The PILs argue these are not protected by religious freedom under the Constitution, as such practices can be regulated like Sati in the interest of public order, morality, and health.

The petitioners ask the Court to declare certain sections of the Shariat Act unconstitutional and seek the criminalization of polygamy, nikah halala, and triple talaq under the Indian Penal Code. They also request a report on a Uniform Civil Code. On August 30, 2022, a 5-Judge Bench began hearing the case but will pause due to Justice Banerjee's upcoming retirement. Separately, the Union criminalized triple talaq in 2019, and this is currently under review for constitutionality.[39]

8.2. No Justice till today

Seven years after the Supreme Court ruled against instant triple talaq, the women petitioners live in a limbo technically married but practically divorced. They lack conjugal rights and do not receive regular maintenance from their estranged husbands. Unable to remarry without a legal divorce, they remain in ambiguous marital status. Law enforcement did not compel the men to reconcile with their wives, and no arrests occurred as the relevant law came into effect after the verdict. The Supreme Court's ruling in *Shayara Bano* v. *Union of India* invalidated instant triple talaq but did not directly address the

[39] *Sameena Begum* v. *Union of India* WP (C) 2018 222/2018 (Pending).

state of the women's marriages. Although the court voided Talaq-e-Biddat, many husbands have remarried and started new families. Despite having the right to divorce through khula, none of the women have chosen this option.

Shayara Bano, whose case was pivotal in the landmark ruling, stated that her husband never sought to restore their marriage post-judgment. Although still legally married, she is fighting for the custody of her children, whom she only sees during court hearings. Her husband has remarried, while she has not pursued khula for divorce.

Another petitioner, Ishrat Jahan, received no financial support after her husband's divorce declaration over the phone. Despite the Supreme Court's favorable judgment, she gains little beyond its symbolic value and declines to pursue khula. Her husband remarried, and she chose not to marry again, focusing instead on her children and political involvement as a BJP Minority Morcha national secretary.

Similarly, petitioners like Gulshan Parveen and Aafreen Rehman face unresolved marriages, although practically divorced. According to Zakia Soman from the Bharatiya Muslim Mahila Andolan, while their marriages linger, the duty to pursue khula to remarry rests on the women. Despite the battle's challenges, the landmark judgment has significantly reduced triple talaq cases, making the women historical figures in the fight for their rights.[40]

Nighar Fatima, a Bhopal-based victim of talaq-e-biddat, now works with Muslim women who have faced similar issues. She told The Federal that the Supreme Court verdict and central law have not reduced instant triple talaq

[40] "Five years after Supreme Court's triple talaq verdict, petitioners living life as 'half-divorcees", *available at:* https://www.thehindu.com/news/national/five-years-after-supreme-courts-triple-talaq-verdict-petitioners-living-life-as-half-divorcees/article65765026.ece#:~:text=Five%20years%20after%20the%20Supreme%20Court%27s%20five-judge%20Bench,petitioners%20continue%20to%20live%20a%20life%20of%20half-divorcees. (Last visited on 27thMarch, 2025).

cases. Husbands now abandon their wives instead, and police are unhelpful. If a wife approaches the police, the husband often denies the divorce and leaves her alone.[41]

8.3. Shifting of Muslim Women towards Khula

More Muslim marriages are ending through khhula, an immediate divorce right for women, rather than the widely perceived instant triple talaq, which was nullified by the Supreme Court in 2017, or talaq-e-hassan, initiated by men. Data from Imarat-e-Shariah's Darul Qaza, or Islamic arbitration centers, shows most divorces are filed by women opting for khhula. In khhula, the woman initiates the divorce and sacrifices her mehr, the wealth promised at marriage. Khhula can be verbal or documented through a 'Khhulnama', resulting in an instant divorce. If mehr is unpaid at the khhula's initiation, the woman cannot claim it, as the marriage ends at her request.

Few cases involve women complaining of talaq-e-hassan or mubarat, a mutual divorce. In the Islamic year 2021-22, Patna's Imarat-e-Shariah had 572 cases, mostly khhula, with few mubarat cases and none of triple talaq. Mr. Anzar Alam Qasmi from Imarat Shariah reported nearly 5,000 khhula cases in Bihar-Jharkhand in 2020-21, with similar increases in Delhi and Mumbai. From 2019 to 2021, three Darul Qazas in Mumbai resolved 300 khhula cases each year, some originating from Mira Road. Muzaffarnagar's Madrasa Islamia Arabia, receiving no khhula cases until 2017, now handles several monthly, with referrals to Deoband for arbitration.[42]

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[41] "Triple talaq ban: 5 years after SC verdict, fewer cases, 'new problems'", *available at:* https://thefederal.com/analysis/triple-talaq-ban-5-years-after-sc-verdict-fewer-cases-new-problems (Last visited on 27th March2, 2025).

[42] "More Muslim women are opting for khhula, their right to 'instant divorce", *available at*: https://www.thehindu.com/news/national/more-muslim-women-are-opting-for-khhula-their-right-to-instant-divorce/article65818394.ece#:~:text=More%20Muslim%20marriages%20end%20with%20khhula%2C%20the%20woman%E2%80%99s,or%20through%20talaq-e-hassan%2C%20divorce%20at%20the%20man%E2%80%99s%20initiative. (Last visited on 27th March, 2025).

Statistics from the TS Wakf Board reveal that divorces (talaq) given by Muslim men are decreasing in Hyderabad, while khula (separation initiated by women) is rising. Divorce certificates issued were 882 in 2016, 579 in 2017, and 385 last year. Khula certificates increased from 640 in 2016 to 688 in 2017 but decreased to 597 last year. Marriage certificates were 36,055 in 2016, 36,774 in 2017, and 39,769 in 2018. Khateeb Shahi Masjid Moulana Ahsan bin Mohammed Alhamoomi noted that separation in Muslim families is negligible.[43]

Most khhula cases arise within two years of marriage from online pairings, often ending amicably with half choosing reconciliation. Women wanting khhula are counseled initially, and if persistent, their husbands are consulted. For khhula, women must provide compensation to their husbands, termed *'*khhulabadlemaal*'*. The Kerala High Court granted extrajudicial khhula annulments for women in 2021, enhancing the role of Darul Qazas. These centers offer cost-effective solutions, resolving 70% of cases within two months, though some quazis require husband consent, challenging women*'*s rights in abusive marriages.

The Kerala HighCourt[44] addressed the rights of Muslim women to initiate extra-judicial divorce following the Dissolution of Muslim Marriages Act, 1939. Women sought validation of these divorces and faced societal opposition despite constitutional equality under Article 14. A key case was the 1972 *K.C. Moyin*v. *Nafeesa[45],* barring women from divorcing outside the 1939 Act. In the current case, a woman, *'*Y,*'* divorced her husband, *'*X,*'* due to his impotence and cruelty. While *'*X*'* contested the divorce*'*s validity, the court allowed *'*Y*'* to pronounce Khula, an extra-judicial divorce.

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[43] "Telangana: Talaq decreases but khula on rise Nation", *available at:*https://www.deccanchronicle.com/nation/current-affairs/120219/telangana-talaq-decreases-but-khula-on-rise.html (Last visited on 7th March, 2025).

[44]*X* v. *Y*, Mat. Appeal.No.89 of 2020, Decided On 09-04-2021.

[45] 1972 KLT 785.

The court recognized the Quran's guidance on family law but noted it allows procedural changes. The Prophet had accepted pre-Islamic divorce methods but with modifications. The 1939 Act limited extra-judicial divorces to court-intervened Faskh, conflicting with the 1937 Muslim Personal Law (Shariat) Application Act, which validated other forms. K.C. Moyin's ruling was challenged, as Section 2 of the Shariat Act recognized extra-judicial divorces except Faskh, which required court intervention.

Although the 1939 Act clarified dissolution terms, limiting Faskh to court decrees, it didn't abolish other extra-judicial forms. The court ruled that married Muslim women can invoke Khula like men with Talaq, without a husband's consent. The Amicus Curiae suggested no specific procedures are needed for Khula. Fairness is crucial, and husbands can reclaim marriage gifts if Khula is one-sided. The Supreme Court supported Khula's validity without consent, recommending reasonable negotiation. Reconciliation is vital before Khula, echoing the Supreme Court's Shayara Bano's decision on triple talaq. The court should only formally record a divorce's declaration. Y's Khula was legally valid, allowing X to seek consideration or dower in Family Court, concluding the case.

8.4. PIL against Criminalisation of Triple Talaq[46]

In August 2019, two Islamic scholar groups and the National President of the Rashtriya Ulema Council challenged the Act, and the Union Government was asked to respond. In July 2020, Noorbeena Rasheed filed a petition against it, arguing the Act violates fundamental rights under Articles 13, 14, 15, 21, and 25, and is excessive and stringent. All three petitions request that the Supreme Court declare the Act unconstitutional, arguing it violates fundamental rights under Articles 14, 15, and 21. The petitioners collectively claim the Act is redundant, excessive, disproportionate, irrational, arbitrary, and

[46] *Samastha Kerala Jamiathul Ulema* v. *Union of India* [Writ Petition (C) No. 994 of 2019].

discriminatory, thus violating Article 21 and by extension, Articles 14 and 15. The redundancy argument is based on the Supreme Court's prior judgment annulling triple talaq, making the Act unnecessary. Samastha Kerala's petition further claims that if triple talaq is ineffective, criminalizing its utterance is unjustifiable.

The Act's punishment is deemed excessive, without justifying the violation of fundamental rights it causes. The Jamiat Ulama petition states that the Act fails to facilitate reconciliation or preserve marriage, which supposedly undermines Muslim women's rights. It argues the severe punishment for Muslim husbands is irrational, lacking a logical connection to the objectives of the punishment. Additional comparison is drawn to lesser punitive measures for more severe crimes, suggesting the need for punishment to proportionately reflect the harm or societal revulsion.

The argument is bolstered by the Maneka Gandhi case, claiming any law curtailing Article 21 rights must be just, fair, and reasonable standards unmet by the Act. Samastha Kerala claims the Act infringes upon the right to substantive due process as recognized in Mohd Arif, and Mr. Madani argues that it strips Muslim couples of their dignity under Article 21.

Claims under Articles 14 and 15 focus on unequal treatment, as only Muslim husbands face criminalization for triple talaq, contrasting with civil treatments of other religions' marital issues. Samastha Kerala extends this argument by contending that S. 5 and 6 create an artificial classification, violating the rights of all Muslim women by attempting to reassign meaning to a legally nullified act, creating an illegitimate separate class.

The petitions emphasize that Muslim marriage, a civil contract, falls within civil law. Any punitive interference by criminalizing acts related to this contract disregards private law's respect. The Act's deference to sharia or civil law for marriage definitions affirms this matter's domain. Finally, Samastha

Kerala challenges Parliament's use of Article 123 powers for this Act, asserting this was unwarranted due to a lack of evidence justifying the continued practice.

The Jamiat Ulama acknowledges possible good faith in government actions, whereas Samastha Kerala questions the government's motives, suggesting the intent to arbitrarily punish Muslim husbands rather than protect women. Despite minor argument differences, all petitions argue the law's unreasonable rights infringement under Article 21, and its specific religious impact violates Articles 14 and 15.

The Supreme Court heard petitions on the constitutional validity of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalizes Triple Talaq. The Bench questioned why the act of pronouncing Triple Talaq is penalized if the divorce isn't legally recognized. The Court asked for written submissions and requested data from the government on the number of FIRs and pending cases, especially in rural areas. Solicitor General Tushar Mehta defended the law, arguing it protects Muslim women and should deter arbitrary abandonment. He claimed it was necessary due to the inhumane nature of Triple Talaq, which is not tolerated in any civilized society.

The petitioner's argued criminalization is disproportionate, as abandonment isn't a criminal offense in other communities. They pointed out that FIRs in these cases are filed quicker than in other matrimonial disputes. Chief Justice Khanna noted that if divorce isn't recognized, then penalizing the act of pronouncement maintains the relationship without separation. The Court sought details on cases across India and if similar challenges exist in High Courts, scheduling further consideration for March 2025.

In August 2024, the Ministry of Law and Justice filed an affidavit arguing the Act violated Articles 14, 15, 21, and 123 of the Constitution. The Act was a response to the Supreme Court's 2017 decision in the Shayara Bano case,

which deemed "talaq-e-biddat" unconstitutional. The Act, passed in 2019, was meant to protect rights as it declared Triple Talaq void and punishable, offering allowances and custody terms, though concerns were raised about its non-bailable nature.

The affidavit outlined the legislative history, noting the urgency for stringent measures due to ongoing Triple Talaq practices despite pending bills. Ordinances were promulgated to address the issue before the Act's enactment in July 2019. It asserted that the Court's role is to interpret law, not assess its wisdom, and the Legislature's authority to legislate for public welfare should be respected.

The affidavit further argued that the criminalization is justified since a lack of sanction would render prohibitions meaningless. It stressed that the enforcement of negative equality, comparing punishments across laws, isn't valid under Article 14. The petitioners' argument against criminalization based on its lack of legal effect was seen as overlooking the fundamental purpose of penal law. The affidavit emphasized that an unconstitutional practice like Talaq-e-biddat warranted standalone legislation, dismissing equivalence with other statutory violations as perpetuating illegality.

The Court asked the Union to produce a list and details of cases registered on January 29, 2025 since the MWA's enactment under Sections 3 and 4, which declare triple talaq void and prescribe punishment, focusing on rural regions. Mehta agreed to submit an affidavit, highlighting the importance of such data. Senior Advocate M. R. Shamshad recognized the data's relevance for petitioners' written submissions, with Justice Khanna urging them to file these soon.

Justice Khanna questioned why the entire MWA was contested rather than specific provisions. Petitioners claimed the provisions were interconnected since Shayra Bano ruled triple talaq doesn't cause divorce. Declaring the

utterance criminal while custody provisions under Section 6 remain was seen as contradictory. Petitioners argued criminalizing talaq-e-biddat paralleled punishing mere "utterance of words," already governed by the Protection of Women from Domestic Violence Act, 2005 (DVA). Chief Justice Khanna, unconvinced, distinguished name-calling from triple talaq, not covered by the DVA.

Advocate Nizam Pasha compared triple talaq's criminalization to how 'abandonment' isn't criminalized in other laws, suggesting post-Shayra Bano the criminalization pertains to actions following the utterance. Chief Justice Khanna noted statutory enactments for Hindus and Christians addressed similar issues. Shamshad highlighted non-immediate FIRs for Indian Penal Code offenses, contrasting with triple talaq's immediate imprisonability for utterance. Mehta and Shamshad debated the uncivilized nature of severing relationships and physical assault differently. The case is set for a hearing starting March 17, 2025.

9. Conclusion

The Muslim Women (Protection of Rights on Marriage) Act, 2019, commonly known as the Triple Talaq Bill, has been a topic of significant debate and discussion since its inception. The Act, which criminalizes the practice of instant triple talaq (talaq-e-biddat) among Muslims, has sparked diverse reactions from various sections of society. As we delve into a critical analysis of this legislation, it is important to consider its implications, controversies, and potential impact on the lives of Muslim women in India. One of the key arguments in favor of the Act is that it seeks to provide legal protection to Muslim women who have been victims of instantaneous and arbitrary divorce through the practice of triple talaq. By declaring triple talaq as illegal and void, the Act aims to empower women and safeguard their rights within the

institution of marriage. This move has been lauded as a progressive step towards gender justice and equality.

However, critics of the Act have raised several valid concerns. One of the primary contentions is regarding the criminalization of triple talaq, which has led to questions about the potential misuse of the law. Critics argue that by making triple talaq a cognizable offense with a provision for imprisonment, the Act may inadvertently exacerbate the vulnerability of Muslim men to false accusations and legal harassment. This aspect warrants careful consideration to ensure that the legislation does not lead to unintended injustices. Furthermore, some critics have pointed out that while the Act addresses the issue of triple talaq, it does not comprehensively address other concerns related to Muslim women's rights, such as maintenance and custody provisions post-divorce. A more comprehensive effort is needed to address the broad spectrum of issues confronting Muslim women in the context of personal laws. The other thing to notice is the social & cultural facets of single talaq triple talaq `practice. If the Act offers protection, real change requires complementing these provisions with visible awareness measures through key stakeholders in the community to alter social attitudes towards regressive traditions and customs. Better understanding of marital rights and obligations can be achieved by making more efforts for gender sensitization and legal literacy for both men and women. Beyond this, one must assess the practical effectiveness of the Act, in enabling timely relief to the concerned women. Beyond the mere existence of legal provisions, access to legal aid, support services and judicial mechanisms is crucial to understand the enforcement of the legislation and the protection of women's rights in practice.

Overall, the Muslim Women (Protection of Rights on Marriage) Act, 2019 is a landmark step towards eradicating triple talaq and providing protection to the rights of Muslim women. Nevertheless, a closer examination of the act

highlights the necessity of a balanced perspective that gives due consideration to the prospect of abuse of the act, the need of wider reforms in personal laws and cultural sensitisation, and having effective enforcement mechanisms. Based on dialogue and collaboration, India aims to reinforce the dignity and rights of citizens throughout the nation, regardless of gender or religion.

10. Suggestions

10.1. The foundational principle of criminal law is the presumption of innocence and as per Section 101 of Indian Evidence Act, 1872 prosecution bears the burden of proving the case beyond a reasonable doubt. Now question arises how can the poor wife prove instant triple divorce if declared orally with no witnesses' present? The husband will be entitled to acquittal by claiming the benefit of doubt. If the law obliges the husband to pay maintenance, how will he fulfill this obligation if he is incarcerated? And there is a possibility that husband will abandon the wife after imprisonment. This can lead to physical and mental abuse towards the wife. It will even have a deterrent effect on the wife and the wife will be afraid to lodge a complaint against the husband. It's a better option to opt for civil remedy instead of criminal remedy where the government has fixed minimum amount of compensation and fair division of marital property.

10.2. The Magistrate can require a husband to compensate his wife for mental suffering on her application. The Magistrate will determine the amount and timing of the payment. Mere declaring triple talaq does not have legal consequences. If the husband does not comply with the Magistrate's order, he may be punished with up to one year in prison and fined. Enforcing

triple talaq can also result in up to one year in prison and a fine. If the husband pays the compensation and does not enforce triple talaq, he faces no punishment. The practice of polygamy allows a husband to remarry, undermining protections for Muslim women. Legal measures against polygamy should be enacted, and triple talaq should be included in the DV Act as domestic violence, allowing for comprehensive legal remedies.

10.3. The Act should provide for compulsory inclusion of a condition prohibiting Triple Talaq in the Nikahnama (prenuptial contract, and Marriage is a civil contract) and it should also be included in nikahnama that second marriage can't be performed while first marriage is still in existence. If one does so, the amount of mehr will be increased five times and it will have to be paid within three months of pronouncing triple talaq or violating any of the conditions, except if the husband and wife are reconciled within prescribed period. If the husband does not pay the Mehr amount within the prescribed period, he can be punished with imprisonment of one year. This process will be repeated again and again until the amount is paid.

10.4. Alternative methods of dispute resolution such as arbitration and mediation are an integral part of our legal system. The Act should also include provisions for reconciliation by including three stages of reconciliation. First, if spouses have differences, they try to resolve them by talking and forgiving each other. Second, if that doesn't work, they might stay apart while living in the same house. If these steps fail, they should seek family reconciliation or appoint arbitrators to help. If arbitration doesn't work and the marriage seems broken, the husband can declare one divorce (talaq). After this, a three-month waiting period

(iddat) starts, or until birth if the wife is pregnant. If they reconcile during this period, the divorce is revoked. If not, it becomes final. This process, called Talaq-e-Ahsan, is seen as the best form of divorce.

10.5. There should be a provision in the Act that Triple Talaq will be counted as one revocable divorce and divorce should be taken only if there is a valid reason. Also, efforts should be made for reconciliation between the divorcing couple.

10.6. The real problem of Muslim women is education and employment. Case studies show that women do not complaint against their husbands because they are financially dependent on them. If they are financially capable and aware of their rights, they can raise their voice against discrimination against.

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Revisiting the Tribal Chieftainship Administrative system: A Socio-legal approach to Naga Customary Practices in North-East India

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Abstract

Chief predominantly governed the village either through democratic or meritocratic authority. The Naga patrilineal socio-cultural underscore the Grund norm of the customary practices. The different accounts, folklore, and songs labeled the myth of Naga origin are variedly diverse and one cannot conclude based upon one legend. The genius of the village administrative system is initiated at the onset of the its settlement. The Chief is exceedingly respected within their socio-cultural and political periphery. In the account of Hutton in his dairy that "at Tabu, also known as Tijing, there is said to be a high stone sitting place reserved for the Chief, and held during the minority of the present very old and autocratic Chief by his mother, a thing most unusual in these (the Naga) hills." The Chieftainship is a traditional model of holding power by appointment or succession which is intrinsically irreplaceable and not replicated. This paper employed an ethnographic study through qualitative approach, aims to portray and describe the legendary chieftainship among the Naga by telephonic interviews and partially doctrinal methods towards the practice of the Naga Customary Laws.

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Keyword: *Cultural materialism; Headhunting; Identity, Kilt Naga; Totemic ethnicity; Traditional governance*

1. Introduction

Naga is a Mongolian race pre-historically a dominant part of North-East India. Different scholars have opined that Naga migrated from Chindwin Valley South China to their present states in the process of civilization. The diverse Naga races have no common tradition concerning migrating into the hills.[1] However, the real aboriginal Naga civilization endured meagerly settled as aversely Indigenous legend informed the varied divine process of civilization. The Ao Naga myth says that their forefather emerged from the Stone, whereas Zeliangrong Naga came from the Cave. Even more than their customs the social constitution of several tribes suggests a diversity of origin classified by language, attires and social systems.[2] For example, the Kilt group and the non-kilt group of the Nagas are culturally categorized by their attires. The kilt ethnic group is assigned as *Tenyimia* or *Tenyimi* who were once said to live at *Maikhel* under one administration.

The aboriginal Naga tribal was never left behind in the well-known taunting exacerbated headhunting culture. But for once this embedded practice underscores a sense of belongingness in their guild. The pugnacious headhunting activity became strikingly popular and unconsciously turned it into a trophy for bravery and pride. The warriors militarized and conspired defensive strategy in secret without women's representation. They (women) were considered ritually unclean during their menstruation and thought to have brought bad luck to *Hetei-Heroi* (waging wars-headhunting) and *Hefuo-hezo*

[1]Nshoga, *Traditional Naga Village System and its Transformation* 26 (Ansha Publication House, Delhi, 2002).
[2] Hutton, *Diaries of Two Tours in the Administered Areas East of the Naga Hills* (Photographically reproduced in 2018) xxx (Mittal Publication, New Delhi, 1923).

(traditional games). This belief begets the origin of patrilineal *Morung*[3] which is allotted to their leader called *Hegwang-Ki* in the Zeme (Ze-Mnui village). The trophy from the battlefield is brought into the morung and paid homage by the winner called *Roi-hah*[4] and later the practice becomes a common ritual for men called *Heroi-kielie*[5] as seen in the Zeme. The commanding power gradually shifted to the *Chieftainship* title. Traditional Naga villages is a democratic type of government, where the *Chief* was the head of the village.[6] Archer added, His (*Manjhi*)position is that of a genial disciplinarian, a community custodian. Because of his vital role in the village's life, he commands general respect."[7] Amid the power transformation, the chief inherits the socio-cultural supremacy for various rituals and constituted an important element in their polity.[8] The rituals rheostat their social and cultural institutions with taboos and portents based on variable mythology which becomes the essence of the usage.

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[3]*Morung:*is a sociological term that refers to a dormitory type of house for men where a different part of the house is set apart with a long and huge flat wooden bed on the wall side and a circle or cubic benches around the hearth. It is a traditional institution where young minds are nurtured and promote their skills. The male members perform rituals for themselves and women are strictly prohibited.

[4]*Roi-hah* is in Zeme language and refers to the headhunting rite performed by the head collector/trophy winner. However, anyone could voluntarily join the rituals. But if one joined the *roi-hah* he shall abstain from work.

[5] The term *Heroi*means 'War' and '*Kielie*' means rituals in the Zeme language, in which the male members celebrate the winning war trophy against their enemies. During the headhunting era, this ritual is observed after a successful raid against his enemies. However, gradually after the wars are settled with peace treaties along with the former enemies the ritual becomes a *genna* in the village and menfolk go hunting wild animals for good omens replacing the head of his foes. In the early hours of the day, male assembled in their respective morungs and ate their breakfast together. On one occasion with a fowl and on another with a pig which has to be consumed by sunset. This ritual is initiated with proper homebrew by womenfolk on the day before the actual performance called *Heroi-Jau* which is a restricted *genna*.

[6]*Supra* note 1 at 71.

[7] W. G. Archer, *Tribal Law and Justice: A Report on the Santal* (in three volumes) 22 (Isha Book, New Delhi, 2013).

[8] N. Venuh, "Change of Political Institution of Naga Society", in N. Venuh (ed.), *Naga Society: Continuity and Change* 93 (Shipra Publication, Delhi, 2004).

Tribals live near the omnipresent spirits–benevolent and malevolent. The bad ones on calamities, whereas the good ones inside the house, on the field, etc. This benevolence is sometime categorized as *anuipaume*[9] and Supreme God called *Tingrangpui* in the Zeme language and *Menupi/Ukumunopru* in other. They believed a bad effect is under the control of the malevolent spirit who later considered it a taboo called *neyi or keneyi*[10] in Zeme. The chief homogenizes the social and cultural institution by religious observation through genna - *netneyi* and *Tingna*as seen in the Zeme.

The customary laws are primordial principles of *pro bono codes,* handed down by forebears. Bonded and strengthened by cultural festivals while possessing a strong dwindling condemning power reproving the alleged perpetrators by word-of-mouth, viz., '*whui*' and '*tuii*' as seen in the Zeme.[11] The *Chieftainship* represented natural justice of ancient origins, but it was rendered flexible and mutual for social and administrative dynamics.[12] It also highlights the role of contemporary governance intensifying the administrative mechanism.

2. The Naga Village

The Naga settled in the mountainous region of the North Eastern parts of the country. Naturally, the first parties who settled enjoyed the highest priority of

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[9]Anuipaume literally referred to forefather – which means the spirit of the death of their forefathers as seen in the Ze-Mnui village Indigeneity.

[10]*Neyi*, *Keneyi,* or *Teineyi* are Zeme phrases with the same meaning and refer to desisting action on forbidden custom as it absorbed the blessings and bring dwindling displeasure cursed by infirmity, misfortunes, or death.

[11]*Whui* is one of the deathliest dreaded curses from Zeme of Ze-Mnui village. If a person survives after seven years of *whui* upon him by the villagers, he meets misfortunes. That person either met unnatural or accidental death or even severed his offspring. In every echoic howling-chanting roar called *Nruoh* of man, they start and conclude with a prolonged *whui* to ward off and curse the alleged malevolent spirit present in the surroundings. The only occasion when the howling-chanting roar is not concluded by *whui* is on *Helarutu* ritual night meal (a birthday party-type rite performed for firstborn babies). *Tuii* means to spit saliva and pronounce certain words to curse against the intended person[s] and curse upon the person.

[12] Asoka Kumar Sen, *From Village Elder to British Judge: Custom, Customary Law and Tribal Society* 21 (Orient Blackswan, New Delhi, 2012).

rights and privileges over the others.[13] To ascertain the site of the village, the chief/priest or the elder members perform religious ceremonies by sacrificing the animals.[14] Every Naga adhered to variations of ceremonies such as putting up fire/smoke, the spleen of the sacrificed animal being examined with omens and dreams. The ancient Naga did not maintain any standard size of the village, but they established a grandeur village with majestic fortresses at the entrance.[15] The erection of this fortress' door and megalithic monuments is done with proper rituals. A village has autonomy in its governance, while an urban community only serves as an administrative entity for the *Kabupaten* (Regency) or *Kota* (City).[16] Each village is a sort of miniature republic, the safety of which all acknowledge to depend upon the strict observance of the natural laws of personal rights and property.[17] As Mills[18] stated:

> *A Village was not founded by one man. It was quite common for two men of different clans to join in founding a new village, each bringing his quota of families. Each clan would supply wives for the other, and the inconveniences of marriage outside the village were thus avoided.*

The demarcation of the inter-village boundary is defined with the consent of the two villages, performing a ritual, whoever violated the boundary would entail curse or death.[19] The nomenclature of the village is ascribed to anything about the particular site but for prosperity alone. For example, *Zere /Zie're/*, the then Ze-Mnui Village, signifies 'haven', and Chakhesang village *Koza*

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[13]Akang Ao, "Change and Continuity in Naga Customary Law", in N. Venuh (ed.), *Naga Society: Continuity and Change* 38 (Shipra Publication, Delhi, 2004).
[14]*Supra* note 1 at 57.
[15] Joseph S. Thong, *Headhunting Culture: Historic Culture of Nagas* 121 (Jos Compilation and Translation Chamber, Tseminyu, 2022).
[16]Kushandajani, "Village Authority Base on Indigenous Right and Local Scale Authority: Implications of Law" 6 *Toward Village Authority* 2 (2019).
[17] George Watt, "The Aboriginal Tribes of Manipur" 16 *The Journal of the Anthropological Institute of Great Britain and Ireland* 254 (1887).
[18] J. P. Mills, *The Lhotha Naga* (UK: Macmillan, 1922) 5 (Spectrum Publications, Indian 1st reprint, Guwahati, 2003).
[19]*Supra* note 1 at 62.

after the name of *Chief Koza* to *Kozabhomi* which means 'the last men of *Koza'*.[20] For the Nagas, the village was and is still the center of all social, cultural and political activity and hence the village council occupies the prime position.[21] A sense of 'us'- belongingness, as a sacred whole lay behind these ideas; the village remained autonomous of any model of order that might be imposed through the law, even internally-generated laws.[22] In every Naga village, sovereignty is vested in the village-state, whose authority is symbolical but, no Naga village will part with or give away to another village authority unless the entire population of the latter is destroyed.[23]

2.1. Rapport of the Naga through cultural artifacts

The Nagas can also be identified by kilt and non-kilt ethnicity. Many scholars and writers are of the view that *Tenyimia* is a kilt Naga group and *vice versa*. Colonel R. C. Woodthorpe has divided the Nagas of Naga Hills and the country to the north of the Angamis into *kilted* and *Non-Kilted* Nagas.[24] This group is found to be using a similar pattern to their Indigenous attires, decorated with cowries, colorful (black, white, red and green) woven clothes and beautiful & endangered plumages. They both wear a type of *Taang* (bowyangs) but the kilt groups wore strings made of *herui* (cane). The *Tenyimia* kilt group wore a weaved piece of cloth wrapping around the waste in black-color decorated with cowries, wrapped by a white color weaved-belt. Whereas other groups wore a similar kilt but left open or uncovered their back. The kilt group is fond of plumage like *Herie* (hornbill feathers) for headgear,

[20] *Id.* at p. 27.
[21] Moatoshi Ao, *A Treatise on Customary and Fundamental Laws of the Nagas in Nagaland* 1 (Notion Press, Chennai, 2019).
[22] Fernanda Pirie, *The Anthropology of Law* (Clarendon Law series ed., Paul Craig) 35 (Oxford University Press, United Kingdom, 2013).
[23] *Supra* note 1 at 110-111.
[24] *Supra* note 17 at 354.

Mzai[25] for earning, *teizokfui* (shiny beetle) for necklace with multiple colorful orchid earing, and elephant tusk for arm bracelets while other prefer wild boar's fangs/tusks and tattoos around their bodies.

3. The Chief

The chief of the village is a traditional model of holding the power amongst the community either directly elected by republic through democracy and meritocracy or inherited as a legacy from the founder. It is not the *static* conditions of 'community' or 'heterogeneity' that matter most, but rather the *dynamics* of patterns of interaction over time, reflecting how various forms of heterogeneity intensify and coincide and create motives for action among influential groups.[26] The Chief of the village is supposed to be wealthy or has a high personal reputation for sports or deeds of daring.[27] The Village Chief is the country's highest government unit responsible for the welfare of the villagers.[28] But it is not surprising that the in Naga patrilineal custom there is no history of female village chief. Such customary practices and usages, sanctified by society for their prolonged use, came to represent a culture, a traditional pre-legal social order.[29] The chief has the power to declare the gennas to enthrone ritual observation and regulate the manual works. As per American aborigines, *HaislaChief* 'gives orders only in matters directly concerned with feasts and potlatches,' – not in cases of quarrels, theft, or

[25] It is said that *Mzaimai* (bird feathers) can be worn as an earring only by a person who achieves or collects heads in the headhunting wars. But now it has become a general tradition of cultural artifacts attached to attires.
[26] T. Vedeld, "Village Politics: Heterogeneity, Leadership and Collective Action" 36:5 *The Journal of Development Studies* 105 – 134 (2000).
[27] *Id.* At 17.
[28] Luffi Rumkel, Balinda Sam and M. ChairulBasrun Umanailo, "Village Head Partnership, Village Consultative Body and Customary Institution in Village Development" 8:8 *International Journal of Scientific & Technology Research* 1058 (2019).
[29] *Supra* note 12 at 11.

murder; the *Tsimshian* equivalent was responsible for his followers' safety in battle and indemnified the mourners if kindred had been killed.[30]

The Naga kilt group does not have an authoritative chief in the center, unlike the non-kilt group Konyak and Sumi tribes from Nagaland. As seen in the Sumi Naga tribe, the village is usually named after the great leader of the group and is the principal symbol of the village, therefore he held the ultimate authority over the village.[31] The chiefs are known differently in each tribe. It is *Angh* in Konyak, *Kukami*or *Akaku* in Sema, *Tatar* or *Unger* or *Sungba* in Ao, *Hegwang* or *Tingnapei/Nampou* in Zeme, *Thevo* or *Peyumia* in Angami, *Nokpao* in Khiamniungan, *Pvuti* in Lhotha, *Repvugu* or *Keqhekepi* in Rengma, *Ong* in Phom, *KhulongZopuh* in Yimchungru, *Sanggledou* or *Ngakobou* in Chang, *Thevo* or *Kumuvo* in Chakre, *Mawu* in Kheza, *Yangziba* or *Tsupuru* in Sangtam. Angami, Lotha, Chakesang, and Zeliangrong practice a particular type of democracy with little variation in its composition.[32] However, they are also inherited based on meritocracy as asserted by Nshoga:[33]

> *According to the custom and tradition of the Naga, the founder of the village became the Chief of the village, whose office is hereditary, based on primogeniture, though the normal procedure of succession was selection based on his intelligence, wealth, warrior, physical superiority, mogul, au fait, wisdom, the skill of judgment, influential person and the leadership quality. As a tradition, the eldest son of a chief was a legitimate heir to the throne, but sometime it goes according to his capability on merit*

[30]Robebrt H. Lowie, "Some Aspects of Political Organization Among the American Aborigines" (Husxley Memorial Lecture for 1948) 78 *The Journal of the Anthropological Institute of Great Britain and Ireland* 15 (1948).
[31] N. Venuh, *People, Heritage and Oral Heritage of the Naga* 633 (Papyrus Publication, Guwahati, 2014).
[32]*Supra* note 15 at 124.
[33]*Supra* note 1 at 115.

basis. Based on this tradition, it is summarized that in the remote past, the Naga had a meritocracy government.

The chief of the Kilt group is seemingly rather a religious priest who holds no other political power, whereas, the chief in the other group absorbs strong administrative powers. The preconditions for this are linked with the progressive functional differentiation and party-system specification in a very complicated and multiple mediated manner.[34] For example, the chief at Ze-Mnui called *Tingnapei* is popularly known for his religious duties appointed to the oldest man. Romadhan asserted that as a local strongman, gait *Bhijingan* in the selection of the head of the village or the selection of the *Klebum* like sugar and ants, where there is the village Chief election there must be *bhijingan*.[35] However, women are not allowed to participate in the socio-cultural decision-making process and in the election of the village Chief. Even the Matrilineal Khasi society reserved some rights exclusively for their man. Das & Sasikumar[36] further elaborates "Khasi women have a unique position in matters of descent and inheritance of property. But they have no role in the institutions of the Khasi *Syiemship* and in the *Syiem's Durbar*."

He is also the head of the executive, legislative, judiciary, administrative and military but he is selected by the people, therefore, he is expected to act according to the wishes of the people.[37] However, these powers are variably delegated to other members in some Naga villages. For example, *Hegwang*[*pei*] (King/Headman) and *tingnapei*(Chief priest) position in Ze-

[34] Niklas Luhmann, *A Sociological Theory of Law* (Translated by Elizabeth King-Utz and Martin Albrow) Albrow (ed.), 155 (Routledge, 2nd ed., New York, 2014).

[35] Ach ApriyantoRomadhan, "The Role of Bhijingan in the Selection of Village Chief" 1:2 *Logos Journal* (2018).

[36] M. Sasikumar, 'Can Culture Contribute to Women's Empowerment? Gender Equality and Women's Right in a Matrilineal Society', in Melvil Pereira, R. P. Anthporia, et. al., (eds.), Gender *Implications of Tribal Customary Law: The Case of North-East India* 64, 179 (Rawat Publications, Jaipur, 2017).

[37] *Id.* at 118.

Mnui village is separately empowered by the people, where *Hegwangpei* has his amicable duties toward his people, and *chief* head the religious institution. Similarly, Passah[38] elaborated that:

> *Different families and clans elected a Chief called U WahehChnong or the village headman for secular matters. A person so elected was very often an able warrior. The villages also elected U LangdohChnong or a village priest for religious functions.*

The position of chief in Mizo was a different case. In ancient times it was to the war but later on became a hereditary post turn to administer the well-being of his subjects with the help of his council of elders called *Upas* selected by him. The chief at the same time, became the supreme administrator, judge, protector and guardian of his village.[39] The Ao do not have the system of Chiefship or Kingship, but a village council called *Tatar menden* or *Putu mende,* without a women representative, takes charge of the village as the highest administrative machinery.[40] Some Naga *Chiefs* also received gifts and labor in reciprocity for his service to their subjects for protection.[41] The village *Chief Priest* is presented with a shawl on excelling in an explorative extemporal sports like catching pig, mithun, etc., for cultural events as seen in Zeme custom in return the *Tingnapei* praise and bless him.

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[38] P. M. Passah, "Gender Implication Jaintia Customary Practices", in Melvil Pereira, R. P. Anthporia, et. al., (eds.), Gender *Implications of Tribal Customary Law: The Case of North-East India* 172 (Rawat Publications, Jaipur, 2017).

[39]Lalneihzovi, "Status of Mizo Women and Land Related Customary Laws", in Melvil Pereira, R. P. Anthporia, et. al., (eds.), Gender *Implications of Tribal Customary Law: The Case of North-East India* 199 (Rawat Publications, Jaipur, 2017).

[40]Limatula Longkumer, "Ao Women and Village Politics: Gender Implication of Tribal Customary Laws", in Melvil Pereira, R. P. Anthporia, et. al., (eds.), Gender *Implications of Tribal Customary Law: The Case of North-East India* 218 (Rawat Publications, Jaipur, 2017).

[41] T. Katiry, "Customary Laws and traditional Practices of the Pochury Tribes of Nagaland", in Melvil Pereira, R. P. Anthporia, et. al., (eds.), Gender *Implications of Tribal Customary Law: The Case of North-East India* 225 (Rawat Publications, Jaipur, 2017).

4.Socio-Religious Culture

The aboriginal Naga patrilineal endorsed clannism. Every such society had its codes of ethics and morality; tradition defined the relationship between the community and its head; the position and status of women and the relationship between them and men and so on.[42] These social systems inculcated to preserve the designated material and pay tribute by animal sacrifices from time to time, especially to *Tsusom*(silhouette) *duiko* (pond) and *renei*(cairn) and keep as a *totem* of the predecessors for mystic benevolence.[43] Within the village premises various megalithic structures are found such as cairns over pit graves and public stone platforms with stone seats, dolmen, and dolmen over cairn.[44] Each village has its special numbers and its stars, and their merits are discussed as technically, and with much more practical knowledge.[45] As seen in the Ze-Mnui village it is the memory of a wealthy individual, a trophy for his achievements. On totemic culture, Nshoga[46] added that:

> *Preservation of animal skulls and teeth was considered a pride, honor, and adornment of the house. This trophy is also displayed widely over the grave of the warrior and a good hunter, it is also believed that the display of animal skulls in the house would ward off evil spirits…….. decoration of the house varies from tribe*

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[42] A. K. Ray. "Change: The Law of Life", in N. Venuh, (ed.), *Naga Society: Continuity and Change* 17 (Shipra Publication, Delhi, 2004).

[43] It is symbolic and the sizes of the totem do not matter except for the shape of the *Renei*(Cairn) normally rectangular and circle shape. Regularly in square or rectangular and rarely in circular shape. This is because the circular shape can only be constructed after all other procedures are completed. Thus, it is the final achievement accomplishing the complete procedure of the feast of merit by a prosperous individual, and they are rarely constructed. There are only two circle *renei* within the Ze-Mnui village.

[44] *Supra* note 36 at p. 188.

[45] Ursala G. Bower, *Naga Path* (Readers Union/John Murray (1952) 49 (Spectrum Publications, 1st Indian reprint, Guwahati, 2002).

[46] *Supra* note 1 at 93.

to tribe but a Naga from any tribe, ostensibly can tell by a glance at a house, how many feasts the house owner has given through the preservation of those relics.

This totemism is rather an accomplishment of rituals with highest religious observations. They also venerate the individuals who excel in war and indigenous competitive events.

4.1. Deviant beliefs and exoneration

It is not easy to attributed with any specific religious practice to their faith. Zeliangrong, particularly Zeme follow either *Paupai-rennet* (forefather's religion) or *Heraka* (propounded by Rani Gaidhinliu). Nevertheless, existence of deities is the central idea. God and goddesses are harmless but all other spirits are malevolent.[47] Thus, many scholars and writers concluded that Naga practices animism based on ditheism.

The ritual processions and procedures passed through the Chief priest and his presence is *sine quo non*. Depending on the density of the situation, domestic fowl, porcine, or cattle were slaughtered to perform a ritual.[48] People perform rites and rituals mainly for two reasons, "to invoke a blessing, fortune, and good health to the family; and to outcast evil spirits possessing their land or human body resulting in sickness."[49] So, whenever a person falls ill, they consulted a soothsayer, masseur, and quake practitioner for healing, and priestess or sorcerer (*Mimeireket*) are consulted to perform ritual.[50]

4.2. Extra-legal connotation of social custom

The genius of the aboriginal village custom is instituted at the onset of the settlement. The rule of law may be our tradition, but it is rooted substantially in Enlightenment beliefs about the place of reason in structuring a political

[47] *Supra* note 31 at 464.
[48] *Ibid*.
[49] *Ibid.*
[50] *Id.* (footnote 46) at 109.

association.[51] There is no prescribed format and procedure for adjudicative system but justice is served through wise men's consensus. In *Adi* of Arunachal Pradesh, a tribal council is instituted as a forum under *Kaban* as Pathak[52] writes:

> *The institution of Kabang is a part and partial of Adi society – popular and uniformly subjected to its forum, authority and rules. This social institution is of primitive origin and has come down through generations since time immaterial. It is a body of local self-government, administering the overall affairs of its own jurisdiction or its own administrative areas.*

They love maintaining peace and tranquility within their circle and beyond without boundaries. Quoting James Fallows' work, Berman added that, unlike the modernists, they purport not to be saying what is 'really' going on beneath the surface because they believe that the interpretations are no more real than the surface behavior.[53] The customary laws are framed according to the lores, mores, customs, culture, traditions, and the local environment of the people it varies from place to place and from tribe to tribe.[54]

Village Court: The village court is the highest customary court of the Naga's customary practices. Individual circumstances, safeguards, and compensations under which this may occur are fairly different.[55] Every allegation before the

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[51] Paul W. Kahn, "Freedom, Autonomy, and the Culture," in Austin and Simon Jonathan, (eds.), *Cultural Analysis, Cultural Studies, and The Law*: *Moving Beyond Legal Realism* 157 (Duke University Press, London, 2003).

[52] M. Pathak, *Tribal Customs, Law and Justice* 136 (Mittal Publication, New Delhi, 1991).

[53] P. Schif Berman, "Telling a Less Suspicious Story: Footnotes toward a Nonskeptical Approach to Legal/Cultural Analysis", in Austin Sarat and Simon Jonathan, (eds.),*Cultural Analysis, Cultural Studies, and The Law*: *Moving Beyond Legal Realism* 125 (Duke University Press, London, 2003).

[54] *Supra* note 34 at 170.

[55] *Supra* note 34 at 191.

village authority is seated at the King's Courtyard called *Hegwang-Ki* in the Zeme dialect and settled with consensual compensation. Taye[56] stated that:

> *The traditional political life of the Mishing is centered on the Kabang which is the village council consisting of the elders. The Kabang is supreme within the village and controls all aspects of the life of the villagers.*

Earlier wealthy people and warriors were considered important in the villages and those who found the village occupied the highest position in the village-*Chief*.[57] But in other Naga tribes, the chief took a major decision an indefinite expulsion of a person from the village for an act of non-compliance to the verdict issued by the Chief.[58] No females or other young male folk are members of any of the traditional village councils or courts. Thus, as Barua[59] writes:

> *The King of a particular area has control over socio-cultural and religious activities and over issues related to land within his jurisdiction. Under the king is the Bangthe (village Chief), who along with some selected elderly members from the village, constitutes the traditional court. ……Women cannot be members of the village council; all the members are males, generally known as Mei.*

When the parties could not be reconciled and counter the decree, they resorted to oath ordeal procedures of adjudication *resei-reset or setak-senyi* in Zeme custom. In the oath-taking ceremony, as seen in the *Sangtam* tribe, they are asked to eat the soil, for land dispute, followed by pronouncing the words,

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[56]Jyotshman Taye, "Political Power, Culture and Mishing Women: A Descriptive Review", in Melvil Pereira, R. P. Anthporia, et. al., (eds.), Gender *Implications of Tribal Customary Law: The Case of North-East India* 149–150 (Rawat Publications, Jaipur, 2017).
[57]*Supra* note 31 at 560.
[58]*Id.* at 375.
[59] Pinky Barua, "Women's Status and Customary Law in Amri Karbi Society: Observations from the Field", in Melvil Pereira, R. P. Anthporia, et. al., (eds.), Gender *Implications of Tribal Customary Law: The Case of North-East India* 159 (Rawat Publications, Jaipur, 2017).

"God of heaven and earth, watch over me, if you find me guilty, destroy the whole of my generation", … the party who met with such an accident is proved guilty and is liable to receive the punishment.[60] The ordeal adjudication is the last resort of the inconsolable contention process of settlement beyond the wisdom of the council is judged by God.

5. Conclusion

The kilt group seems to have been inclined to a kingship rather than the chieftain system. The other groups like the Sumi and Konyak tribes of Nagaland have some powerful authoritative village chiefs. The village is led by the chief, as the supreme leader who must master the development activities.[61] In the olden days, only the successful warrior controlled the movement of the group. The ability to govern his community entitles him to the position of kinship as *chieftainship*, as the title suggests, –who is authorized by his community to obey his strategic command for peace and to defend themselves. The appealing ability to govern his community entitled him to the position of chieftainship. But in recent times, the customary laws have lost this sense of 'sacredness' because of factors like modernization and globalization.[62] In the contemporary political institution council chairman is the head of the administrative mechanism. However, there is no record of women chieftainship or chairman in the Naga society. This implies the sacred customary code sanctified by its community. The assertion for equity administrative system in Naga customary practice would distort the aesthetic ancient Naga traditions.

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[60] *Id.* (footnote 58) at 561 – 562.
[61] Galib Y. Berthu, Jamaluddin S., "The Role of the Village Chief in Governance of Siron Olong Village, Kalimantan Province, Indonesia" 3:1 *European Journal of Political Science Studies* 130 (2019). doi:10.5281/zenodo.3558661
[62] S. Hati Baruah, "Locating Women in Customary Laws: A study of three Tribes of North-East India" in Melvil Pereira, R. P. Anthporia, et. al., (eds.), *GenderImplications of Tribal Customary Law: The Case of North-East India* 85 (Rawat Publications, Jaipur 2017).

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From Policy Vision to Practice: The Pedagogical and Political Dynamics of PM SHRI Implementation

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Abstract

This paper critically explores the pedagogical and political dimensions of the PM SHRI Schools for Rising India (PM SHRI) initiative, launched as a flagship implementation arm of the National Education Policy (NEP) 2020. It investigates how the initiative aims to modernize school infrastructure, foster digital integration, and promote inclusive, skill-oriented learning, while also navigating complex federal governance structures and political agendas. Grounded in a thematic analysis of policy documents, stakeholder responses, limited primary interviews with school principals (n=5), and teacher feedback (n=15), the study addresses one major research question and six sub-questions focused on educational outcomes, governance challenges, and regional disparities. The findings reveal a dual narrative: PM SHRI schools demonstrate promising advances in infrastructure and pedagogy, yet are simultaneously constrained by political misalignment, funding dependencies, and uneven state participation. The study identifies critical gaps in the decentralization of authority, state-level adaptation, and alignment with NEP 2020's vision across diverse socio-political contexts. It emphasizes that while the initiative holds transformative potential, its long-term success depends on resolving structural inequities and depoliticizing implementation mechanisms. By contributing to the discourse on education reform in India, this research underscores the importance of aligning pedagogical innovation with inclusive

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and transparent implementation mechanisms, and advocates for a collaborative governance model rooted in equity, flexibility, and context-sensitive policymaking.

Keywords: *PM SHRI, education policy, political influence, school infrastructure, NEP 2020.*

1. Introduction

Education is a cornerstone of national development, shaping the intellectual and socio-economic progress of a country. In India, school education has undergone significant transformations over the decades, with various policy interventions aimed at improving quality, access, and equity. Despite these efforts, government schools continue to face challenges related to infrastructure, teacher training, digital access, and learning outcomes (Saluja, 2023). Recognizing these persistent gaps, the Indian government introduced the National Education Policy (NEP) 2020, a landmark reform that envisions a student-centric, skill-based, and technology-driven education system (Kumar & Chandra, 2025). NEP 2020 emphasizes universal foundational literacy, holistic multidisciplinary learning, vocational education, and the integration of digital technology into classrooms, thereby redefining the country's educational landscape (Sharma et al., 2021). Building on NEP 2020's vision, the government launched the PM Schools for Rising India (PM SHRI) initiative to modernize existing government schools into model institutions that exemplify the principles of the new policy (Press Information Bureau, 2022). The centrally sponsored scheme aims to develop 14,500 PM SHRI schools across India, transforming them into exemplar schools equipped with smart classrooms, experiential learning modules, sustainability-focused infrastructure, and skill-based education (Financial Express, 2024). These schools are expected to serve as lighthouse institutions, providing quality

education and best practices that can be replicated across the broader school system.

Government Schools and the Role of PM SHRI: India's government school network includes KendriyaVidyalayas (KVs), Navodaya Vidyalayas (NVS), and state-run schools, which cater to millions of students, particularly those from economically disadvantaged backgrounds (NDTV, 2024). While KVs and NVS have gained recognition for their standardized curriculum and better infrastructure, state-run schools often struggle with inadequate resources, high dropout rates, and poor teacher-student ratios (Sharma, 2016). PM SHRI aims to address these disparities by enhancing infrastructure, digital resources, teacher training, and curriculum reform to align with global best practices in education (The Hindu, 2022). The implementation of PM SHRI is not without challenges. The scheme requires state governments to sign a Memorandum of Understanding (MoU) with the central government, outlining their commitment to adopting NEP-aligned reforms (PM SHRI Dashboard, 2025). This has led to political resistance from some states, particularly concerning funding models, governance structures, and the contentious three-language policy, which has sparked debates over linguistic imposition (The New Indian Express, 2024). Additionally, concerns remain regarding whether the initiative can successfully bridge gaps in educational quality across urban and rural regions.

Political Dimensions of PM SHRI: Education policies in India often reflect political agendas and governance priorities (Panagariya, 2025). The rollout of PM SHRI has been perceived by some as a strategic initiative to bolster the central government’s influence over state-run education systems. Critics argue that while the scheme promotes holistic education, it may also serve political objectives by centralizing education policy decisions and showcasing a governance model linked to electoral gains (Saluja, 2023). In addition, with varying levels of state participation and resource allocation disparities, there is

a need to examine whether PM SHRI is an equitable reform or a politically motivated scheme.

This study seeks to critically analyse how the PM SHRI initiative balances educational advancement with political interests. The impact of PM SHRI on school infrastructure, pedagogy, and student learning outcomes. The challenges in governance and implementation across different states. The role of political decision-making in shaping the funding, expansion, and priorities of the initiative. By evaluating policy frameworks, governance mechanisms, and stakeholder perspectives, this research aims to assess whether PM SHRI is a transformative educational reform or a politically influenced agenda.

2. Review of Literature

Educational reforms in India have frequently faced the dual challenge of addressing infrastructural deficits and navigating political complexities. Scholars such as Saluja (2023) and Sharma (2016) highlight that government schools in India, despite repeated interventions, continue to struggle with issues like underfunding, inadequate facilities, and inconsistent learning outcomes. The National Education Policy (NEP) 2020 has been praised for its futuristic vision emphasizing technology, vocational education, and foundational literacy (Kumar & Chandra, 2025), yet concerns regarding implementation disparities remain prevalent (Sharma &Pattanayak, 2022). International models of school transformation indicate that successful reforms require both top-down policy frameworks and bottom-up stakeholder engagement (Shashidharan et al., 2021). Within India, the varying success of institutions like KendriyaVidyalayas and Navodaya Vidyalayas has often been attributed to centralized governance and robust infrastructure. However, extending similar outcomes to state-run schools poses a unique challenge, especially given the diverse political landscapes and fiscal capacities of Indian states.

Literature suggests that education policy in India is not isolated from political agendas (Panagariya, 2025). The rollout of centrally sponsored schemes has often led to federal tensions, as states perceive these efforts either as support or as intrusion, depending on political alignment (The New Indian Express, 2024). While PM SHRI is seen as a promising initiative that aligns with NEP 2020, little empirical analysis exists on how it mediates between pedagogical reform and political interests especially in light of resistance from several states on issues like the three-language policy.

3. Research Gaps

While existing literature extensively discusses the goals of the National Education Policy (NEP) 2020 and the structural challenges of India's public schooling system, limited research critically examines how centrally sponsored schemes like PM SHRI translate these visions into practice. Much of the available scholarship focuses either on the policy's aspirational features or broad systemic weaknesses, but seldom on the implementation process at the intersection of pedagogy and politics.

The following gaps emerge:

3.1 Limited evaluation of PM SHRI as a policy instrument that operates within India's federal framework where education is a concurrent subject creating friction between central vision and state-level execution.

3.2 Insufficient analysis of how political decision-making and governance structures influence implementation outcomes, particularly in states with varying levels of participation or resistance to the scheme.

3.3 A lack of empirical synthesis on the pedagogical impact of PM SHRI schools, especially with respect to digital integration, teacher preparedness, and alignment with NEP 2020 goals in diverse socio-political contexts.

1. Rationale of the Study

The PM Schools for Rising India (PM SHRI) initiative represents a significant policy intervention aimed at transforming India's public education system. With 14,500 schools designated to serve as model institutions, the initiative aligns with the National Education Policy (NEP) 2020, which envisions a holistic, technology-driven, and inclusive education system (Press Information Bureau, 2022). Given the historical disparities in government school infrastructure, teacher quality, and learning outcomes, it becomes crucial to examine whether PM SHRI can bridge these gaps and serve as a scalable model for nationwide educational reform. Despite its ambitious goals, the implementation of PM SHRI has been met with governance challenges and political debates. Some states have expressed reservations about funding mechanisms, curriculum policies, and the centralization of educational governance, raising concerns about federal-state conflicts in policy execution (The New Indian Express, 2024). Moreover, questions remain about whether the initiative prioritizes long-term educational reforms or serves as a politically driven showcase project (NDTV, 2024). Understanding the intersection of politics and pedagogy is therefore essential to assessing the effectiveness, equity, and sustainability of PM SHRI.

This study is relevant for policymakers, educators, and researchers as it provides a critical analysis of how large-scale education reforms unfold in a politically complex landscape. By exploring the successes, limitations, and governance dynamics of PM SHRI, the research aims to contribute valuable insights into best practices for implementing educational policies that balance political interests with genuine pedagogical advancements.

2. Objectives

5.1. To critically analyse the PM SHRI initiative's impact on school infrastructure, digital integration, and learning outcomes in line with NEP 2020.

5.2. To evaluate the influence of political and governance structures on the implementation and effectiveness of the initiative.

5.3. To identify patterns of state participation, resistance, and adaptation based on regional governance dynamics

3. Major Research Question

6.1. How does the implementation of PM SHRI reflect the convergence of pedagogical goals and political dynamics in the Indian education system?

This central question encapsulates the study's overarching inquiry into how educational reform is shaped and redefined by political, structural, and policy-level factors.

6.2. Minor Research Questions

6.2.1. To what extent has PM SHRI improved school infrastructure, digital learning environments, and educational outcomes as envisioned in NEP 2020?

6.2.2. How do PM SHRI schools differ from other government school models in terms of pedagogical practices and student learning experiences?

6.2.3. What political and administrative factors influence state-level adoption, adaptation, or resistance to the PM SHRI initiative?

6.2.4. How does the central-state funding model affect the equitable and effective implementation of PM SHRI?

6.2.5. What governance patterns emerge from states with high engagement versus low participation in PM SHRI implementation?

6.2.6. How do regional political contexts shape the localization and interpretation of PM SHRI objectives and practices?

7. Research Methodology and Design

This study adopts a systematic review of literature and policy documents to assess the effectiveness, governance, and socio-political dimensions of the PM SHRI initiative. Following a thematic analysis framework, the research categorizes key findings under major themes aligned with the research questions. The secondary data collection process includes an extensive review of policy documents and government reports, such as NEP 2020, PM SHRI policy guidelines, Ministry of Education reports, and state-level education policies, to evaluate the policy framework and implementation strategies. Also, media reports, scholarly literature, and case studies are analysed to understand state responses, governance challenges, and political influences in the initiative's execution. In addition, limited primary data was collected through brief telephonic interviews with school principals (n=5) and interview- based feedback from teachers (n=15) in PM SHRI schools to corroborate and illustrate findings from secondary sources. This primary evidence was used illustratively and not for statistical generalization.

A comparative study approach is also employed to examine PM SHRI schools in relation to other government schooling models like KendriyaVidyalayas (KVs), Navodaya Vidyalayas (NVS), and state-run schools, identifying similarities, unique features, and gaps in implementation. The thematic analysis framework categorizes findings into four key dimensions. Under educational impact, the study explores infrastructure improvements, learning resource availability, changes in teaching methodologies, digital integration, and student outcomes. The governance and challenges in implementation theme investigate federal-state coordination, funding models, state participation, and bureaucratic hurdles affecting PM SHRI's execution. The political influence and policy implications section assesses the political motivations behind the initiative, state-level resistance, and its alignment with national educational goals. Lastly, the comparative effectiveness theme

contrasts PM SHRI schools with other government school models and includes global comparisons with similar school modernization initiatives to evaluate their relative success and scalability. This structured methodology ensures a comprehensive and critical analysis of PM SHRI's role in India's evolving education landscape**.**

8. Findings and Results

This study presents its findings and results through a thematic analysis of policy documents, media reports, government data, scholarly literature, and limited primary feedback from PM SHRI school principals and teachers. The findings are organized around the major and minor research questions, reflecting the study's objectives to evaluate the initiative's impact, governance challenges, and political dynamics. The inclusion of stakeholder perspectives serves to illustrate and contextualize patterns observed in secondary sources, offering a more grounded understanding of the PM SHRI implementation experience.

8.1 The findings indicate that the PM SHRI initiative has produced tangible improvements in school infrastructure, particularly through the development of smart classrooms, updated science and computer laboratories, improved sanitation, and green technologies like solar panels and rainwater harvesting (PM SHRI Dashboard, 2025; Press Information Bureau, 2022). These efforts align well with the infrastructure goals outlined in NEP 2020. As one PM SHRI school principal in Himachal Pradesh stated, "Digital tools are available, but we lack consistent internet connectivity to fully utilize them." Teacher feedback from Punjab echoed similar challenges, with comments noting that while training sessions are organized, follow-up support remains inconsistent. These

primary insights support secondary reports highlighting rural connectivity gaps and training deficiencies.

In addition, schools under PM SHRI are gradually shifting from rote learning to experiential, interdisciplinary, and skill-based models (Shashidharan et al., 2021). Schools in urban or well-resourced areas have integrated digital technologies and modern pedagogy more effectively than their rural counterparts, which still face challenges such as inadequate teacher training, limited internet access, and infrastructural delays (Sharma & Pattanayak, 2022).

8.2 Teacher feedback in Chandigarh PM SHRI schools suggested that competency-based assessments have increased student engagement, though some faculty still rely on rote methods. These comments reinforce secondary findings that pedagogical innovation is uneven across states. PM SHRI schools aim to act as exemplars by embodying NEP 2020's vision of holistic, student-centric education. Unlike traditional government schools, they prioritize multilingual instruction, vocational training, and competency-based assessment frameworks. Compared to KendriyaVidyalayas or state-run schools, PM SHRI institutions have placed greater emphasis on digital tools, teacher professional development, and integration of sustainability in learning (Kumar & Chandra, 2025). While some schools show signs of pedagogical innovation, others continue to struggle with transitioning from conventional to progressive teaching methods due to inconsistent state-level support (Saluja, 2023).

8.3 The study finds that political alignment significantly shapes the adoption of PM SHRI. States led by parties opposing the central government often express reservations due to concerns over loss of autonomy and curricular imposition, particularly with respect to the contentious three-language formula (The New Indian Express, 2024). Resistance is further compounded by the need for states to sign Memorandums of Understanding (MoUs), which some perceive as instruments of central oversight. One principal from Punjab highlighted reluctance to adopt certain curricular changes due to perceived central imposition, mirroring literature on state-level resistance. Such first-hand accounts validate secondary evidence of political alignment shaping adoption rates. As a result, uneven participation and varied levels of enthusiasm for implementation are evident across the country (NDTV, 2024).

8.4 A respondent principal from a financially constrained state noted delays in receiving co-funding, resulting in stalled smart classroom projects. This aligns with secondary data on funding disparities affecting equity. The requirement for state co-financing presents both logistical and political hurdles. Financially weaker or reluctant states struggle to commit to long-term resource allocation, leading to delays in infrastructure development and inadequate digital integration (Financial Express, 2024). The disparities in resource mobilization widen the gap between states that actively embrace PM SHRI and those that are hesitant, resulting in inequitable implementation and outcomes.

8.5 Proactive states like Haryana and Gujarat, which aligned politically and administratively with the centre, demonstrated

quicker onboarding and policy adoption, often publicized as success stories in media and government reports (Hindustan Times, 2024). Feedback from principals in Haryana praised streamlined implementation support from the state education department, contrasting with reports from low-participation states where bureaucratic delays were common. In contrast, states that questioned the scheme's governance model or its ideological leanings displayed slow or fragmented rollout. This contrast reveals the role of political will and administrative readiness in determining reform success.

8.6 Local political ideologies and governance models play a crucial role in interpreting PM SHRI's mandates. In linguistically diverse and culturally sensitive states, the NEP's three-language policy met resistance, complicating policy translation at the school level (The New Indian Express, 2024). Teachers from linguistically diverse states expressed concern about rigid language policy enforcement. These perspectives provide a direct lens into how local contexts mediate policy application, complementing existing literature. Political opposition also influenced the pace and nature of pedagogical reforms, with some states adopting only selected features of the PM SHRI framework while avoiding full compliance. These findings illustrate how regional dynamics can significantly mediate the effectiveness and authenticity of national-level educational reform.

9. Suggestions and Recommendations

Based on the findings of this study, several key recommendations are proposed to ensure the successful implementation, sustainability, and effectiveness of the PM SHRI initiative. These recommendations focus on policy

enhancements, governance improvements, and equitable educational opportunities while addressing political and administrative challenges.

9.1. Strengthening Federal-State Collaboration

The requirement for states to sign MoUs with the central government should be more flexible, allowing states greater autonomy in customizing the initiative based on local educational needs (The New Indian Express, 2024). A collaborative federal-state model should be developed where states have more say in curriculum adaptation, funding priorities, and teacher training programs while maintaining alignment with NEP 2020 goals. A transparent and decentralized funding mechanism should be implemented, ensuring timely disbursement of funds without bureaucratic delays (PM SHRI Dashboard, 2025).

9.2. Enhancing Infrastructure and Digital Accessibility

PM SHRI schools should be expanded beyond urban areas, prioritizing rural and underprivileged regions where access to quality education, digital infrastructure, and trained educators remains limited (Shashidharan et al., 2021). Investments in technology-driven classrooms should be accompanied by teacher training programs, ensuring that digital tools are used effectively to enhance learning (Sharma &Pattanayak, 2022). A public-private partnership (PPP) model can be explored to leverage corporate investments in school infrastructure, digitalization, and vocational training programs.

9.3. Addressing Political and Governance Challenges

The politicization of the PM SHRI initiative should be minimized by establishing independent regulatory bodies that oversee funding allocations, implementation progress, and policy adherence across states (NDTV, 2024). Education policy decisions should prioritize long-term impact over short-term political gains, ensuring that school modernization efforts are sustained across electoral cycles (Panagariya, 2025). An inclusive governance model, involving

educators, policymakers, and community representatives, should be developed to foster more participatory decision-making processes.

9.4. Strengthening Teacher Training and Capacity Building

Continuous professional development programs should be designed to equip teachers with skills for experiential learning, interdisciplinary education, and digital pedagogy (Saluja, 2023). Performance-based incentives should be introduced for educators in PM SHRI schools to enhance motivation and teaching effectiveness (Kumar & Chandra, 2025). Teacher recruitment policies should address regional shortages, ensuring that PM SHRI schools, especially in rural areas, have access to highly qualified educators (Sharma, 2016).

9.5. Ensuring Equitable Access and Socio-Cultural Sensitivity

The three-language policy under NEP 2020 should be implemented with flexibility, allowing states to preserve regional linguistic diversity while promoting multilingual competency (The New Indian Express, 2024). The initiative should prioritize gender-inclusive education by ensuring safe school environments, targeted scholarships for girls, and awareness programs on gender equality (Financial Express, 2024). Special support mechanisms should be developed for marginalized communities, including reserved seats, financial aid, and skill-based learning pathways to bridge socio-economic gaps in education (Shashidharan et al., 2021).

10. Educational, Economical and Societal Impact of the Study

This study reveals the complex relationship between education policy, governance, and social development, underscoring the need for holistic and politically conscious implementation of school reform. PM SHRI emerges not just as a school modernization scheme but as a litmus test for India's ability to transform educational vision into practical outcomes across varied political and administrative contexts. The study's impacts are articulated across three interconnected dimensions: educational, economic, and social.

10.1. Educational Impact: Modernizing school environments has led to pedagogical improvements such as experiential learning, digital integration, and vocational preparedness. These practices are consistent with NEP 2020's goals and global educational standards (PM SHRI Dashboard, 2025). Notably, improvements in infrastructure and digital resources have the potential to reduce dropout rates and enhance engagement, particularly in underserved regions (Sharma &Pattanayak, 2022). The study also shows that without systemic teacher training and administrative support, these benefits remain unevenly distributed (Shashidharan et al., 2021).

10.2. Economic Impact: Educational reforms such as PM SHRI have economic implications far beyond the classroom. By equipping students with digital and vocational skills, the initiative contributes to building a future-ready workforce aligned with India's industrial and digital growth ambitions (Panagariya, 2025). Enabling upward mobility through access to quality education, especially for marginalized populations, promotes economic equity and reduces regional development gaps (Financial Express, 2024).

10.3. Social Impact: Education acts as a catalyst for broader societal transformation. The implementation of gender-sensitive policies, inclusive curricula, and safer school environments promotes equity and participation in civic life (Saluja, 2023). The study also suggests that revitalizing rural education through PM SHRI can mitigate urban migration and build local resilience (Shashidharan et al., 2021). By encouraging critical thinking and digital literacy, the initiative lays the foundation for a more informed and participatory democracy (Sharma, 2016).

This research affirms that educational policy must be viewed not only through administrative efficiency but also through the lens of equity, inclusion, and long-term societal transformation. Effective implementation of initiatives like

PM SHRI requires a combination of political will, community ownership, and a commitment to decentralization.

11. Scope and Limitations:

The study is limited to available secondary data, supplemented with limited primary insights from a small set of principals and teachers. These inputs serve to illustrate trends rather than produce statistically representative findings. State-wise variations in implementation may result in incomplete or region-specific findings. Given the political nature of education policy, sources may reflect biases based on affiliations or ideological perspectives.

12. Conclusion:

The findings of this study reveal that while the PM SHRI initiative has made notable strides in enhancing school infrastructure, digital learning, and educational quality, it faces governance challenges, political resistance, and disparities in state-level implementation. The initiative aligns with the National Education Policy (NEP) 2020's vision of transforming government schools into centers of excellence, yet its full realization is hindered by political influences, financial dependencies, and federal-state tensions. Equitable fund distribution, transparent governance mechanisms, and depoliticized implementation strategies are crucial to overcoming these obstacles and ensuring that PM SHRI serves as a genuinely inclusive and sustainable educational reform rather than a selective modernization project. For PM SHRI to reach its full potential, a student-centric, collaborative, and equitable approach must be prioritized. If effectively implemented, the initiative has the power to revolutionize school education, bridge socio-economic gaps, enhance skill-based learning, drive economic growth, and foster a more inclusive society. This requires sustained efforts in strengthening teacher training, addressing rural-urban disparities, and ensuring long-term policy commitment beyond political cycles. By focusing on inclusivity,

accessibility, and innovation-driven education, PM SHRI can truly emerge as a model for educational excellence in India, setting a global benchmark for public school transformation.

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Antibody Patenting in the Intellectual Property Law Domain of India – A New Challenge

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Abstract

The domain of patenting does not restrict itself to inanimate technology and innovations only; instead, it has embraced new ideas in the living world as well. Patents represent an identity with monopolistic connotations that make it exclusive to its owner. Hence, natural processes or the living world have been kept beyond its reach and coverage precisely because no one can restrict god's or nature's creation to themselves. Regulation of patent policies reached an international standardization with the instrument of TRIPS, which specifically prohibits patenting of life forms and "essentially biological processes". Hence, the subject matter of antibodies quite easily falls under that exemption, but there is something more to it. The aspect of human intervention changes the entire conceptualization of a natural process. Human genius or intellect deserves protection; one of intellectual property's founding theories and justifications says that, hence the issue at hand. While building immunity through the creation of antibodies is a natural process implicit in everyone, systematically extracting and creating antibodies is again a human effort that deserves intellectual protection. Patent laws have one rationale – justification and demarcation of the monopoly rights that are granted by virtue. When issues like antibodies, stem cells, and other biotechnological components come into the picture, the technical point lies in understanding the degree of natural occurrence and human interference in the same, leading to a

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discourse of patenting styles as evident in the emerging trends as discussed in the paper. The researcher has adopted a doctrinal analytical methodology to compare jurisdictions and their takes on the subject matter.

Keywords*: Biotechnology, patents, innovation, antibody, and intellectual property.*

1. Introduction

Antibody patenting occupies a complex and fascinating crossroad within intellectual property law, particularly as advances in biotechnology continue to challenge established legal frameworks. This paper undertakes a doctrinal analysis of antibody patenting with its main focus on the Indian jurisdiction, while also drawing comparative insights from the United States and European Union. The evolution of India's patent law, especially under the shadow of TRIPS, manifests both opportunities and obstacles for biotechnology innovators. The confluence of statutory exclusions, judicial interpretations, and international obligations has resulted in a regime where patent eligibility is not simply a technical judgment, but a nuanced legal inquiry into novelty, inventive step, and the degree of human intervention. By examining major legislative provisions and notable decisions, the study illuminates the shifting landscape through which antibody inventions must navigate. The phenomenon is not merely of academic interest; it carries profound implications for pharmaceutical innovation, public health, and policy-making. As antibody-based therapies gain prominence in global healthcare, clarity and predictability in patent law become essential for attracting investment and encouraging research. At its heart, this inquiry asks how legal doctrine can reconcile the ethical imperative to keep nature's creations in the commons with the practical necessity of rewarding human ingenuity. The answers lie in a delicate balance—one that this paper seeks to explore with rigor, empathy, and critical insight drawn from comparative legal experience.

The scope of the present research extends to encompass the concept of patenting in biotechnology, from an international perspective – TRIPS agreement, EU cases and USPTO decisions, but its main focus will be on India. Indian patent regime, legislation, rules and available judicial decisions will be investigated in the course of this study.

The research is surrounded along the lines of dual research questions. Firstly, how far is patenting of antibodies, as artificially produced by biotechnological processes, permissible under the Indian Patent Regime? And secondly, to what extent does the bar of TRIPS on patenting essential biological processes disqualify an "antibody patent", and Indian Jurisprudence has granted clarity on the subject matter of antibody patenting?

The research hypothesis is that antibody patenting is sustainable in law due to the significant human intervention in the natural process of doing the same. Along the lines of research design, the methodology for the research is doctrinal. In this exercise, an analytical approach to understand the case laws of *India, the EU, USA* was adopted. As part of primary doctrinal study, *Statutes and International instruments* were studied together with a comparative analysis of jurisdictions as mentioned above.

However, the limitations around the ambit of this research is that it is entirely on doctrinal sources, analytical and case study materials and hence, due to paucity of time, empirical perspectives cannot be added. Moreover, only three jurisdictions have been selected for the feasibility of this research.

2. The New Form of Patents – Antibody Patents

The Patent Act in India has undergone some tremendous changes in the course of its legislative history, the most significant of which is the TRIPS impact.[1]

[1] World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights,*available at:*https://www.wto.org/english/docs_e/legal_e/27-trips.pdf(Last visited 10th April, 2025).

While this agreement changed the way intellectual property was viewed and classified, it had some very significant impacts on the patent domain, particularly. One major change was the transformation from a product to a process patenting regime[2] by which India had to now grant the monopoly protection on the product and not on the various processes through which the same can be achieved, in line with WTO obligations imposed on the nations and revising their patent legislations. While this affected the generic medicine market and pharmaceutical sector the hardest, other patent exclusions also complicated the biotechnological sector. As per the Patents Act-

> "*Section 3(c): 'The mere discovery of any living thing or non-living substance occurring in nature.'"*
>
> *"Section 3(j): Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals*."[3]

The Act, in line with international obligations of TRIPS, makes it abundantly clear that living or natural organisms and processes cannot be granted patents. It seems logical and correct from the point of view of monopoly and its exploitation by the patent holders, but there is a problem with the biotechnological inventions and their interface with patents. The problem begins when an inventive step or the new application of intellectual minds rests on the use of natural products or substances like enzymes, amino acids and other naturally occurring substances of a biochemical origin and nature. The fine line of interaction between a natural product acting as the input, and the investment of human intellect making it stand out as "novelty" and industrially applicable, is a grey area for any form of biotechnological invention.

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[2] The Patents Act, 1970, § 5 (India) (omitted by Patents (Amendment) Act, 2005).
[3] The Patents Act, 1970

Indian Patent Office did not grant patents to such inventions that contained – *"(a) living entities of natural or artificial origin, (b) biological materials or other materials having replicating properties, (c) substances derived from such materials and (d) any processes for the production of living substances/ entities, including nucleic acids*."[4]

The stance changed with judicial interference later, and the discussion of this chapter would be mainly focused on antibody patenting – the dimensions of it and how one would go about it through the obstacles of the current patent scenario.

2.1. Antibody Patents

The rapid and steady rise in innovations fueled by the desire for better healthcare and treatment facilities has led to inventions in the area of biological processes that are conventionally considered to be predominantly natural and not artificial at all. One example is antibodies, which is the scope of our study. Antibodies are naturally occurring substances in the human body, which are immunoglobulin protein compounds, which are produced by the body and released to combat any foreign substance that the body considers harmful, like antigens. These antibodies latch onto these antigens and help the body to ward them off.[5] Hence, it is pretty clear how the entire mechanism is a natural process and, hence, definitely gets barred by limitations on patenting as enforced by the Act.

A different point of view emerges as these antibodies have been awarded with several patents from different jurisdictions in order to promote advancement in the area and further research incentives, too. In India, the first development towards recognizing this protection came with the 2005 amendment to the

[4] Jha, M. R., "Antibody Patenting," Chapter 19, 321, *available at:*https://www. inttladvocare. com/articles/antibody-patenting-india-chapter-2019-1.pdf. (Last visited 10th April, 2025)
[5] Britannica. (n.d.). Antibody. In *Britannica online*, *available at:*https://www.britannica.com/ science/antibody(Last visited 11th April, 2025)

Patent Act. The new Patent regime allowed for inventions to be patentable only after the fulfilment of the "novelty", "industrial use", and "inventive step" criteria, and subsequently, a natural product like an antibody's patenting took another backseat in the light of the contemporary changes.

2.2.The Approach towards an Antibody patent

The bars of patentability as envisaged under the Act complicated the situation. As per section 3c, which prohibits natural or biological matter from being granted a patent, examiners in the patent office's tend to evaluate applications pertaining to antibody patenting strictly. In case of prosecuting such a patent[6], any similarity of the purported "antibody" with the naturally occurring antibodies refutes the claims to get protection. It is hence important to show the "novelty" aspect by establishing adequate human intervention in the process, differentiating it from the naturally occurring substance.

To combat these challenges, particularly in the case of monoclonal antibodies[7]its existence as independent of any naturally occurring antibody of the same nature needs to be proved, that sufficient human intervention was required to produce it, and that the composition or combinations of substances forming a part of it are also unnaturally constructed.

The next bar comes with section 3d of the Patent Act that seeks to prohibit evergreening or patenting of a new form of a known or already patented, existing substance, as interpreted by the Supreme Court in *Novartis v. UOI & Ors.*[8]. Hence, to deal with this, antibody patent claims have to be not just humanly interfered versions, but also peculiar to their efficacy and establish no

[6] Prosecution history of Patent No. 302196 [Application No. 5040/CHENP/2012], "Antibody Binding to Human CSF-IR", *available at:*www.ipindia.nic.in. (Last visited 12th April, 2025).
[7] Prosecution history of Patent No. 297285 [Application No. 797/DELNP/2012], "Human Monoclonal Antibody Against S. Aureus Derived Alpha-Toxin and its Use in Treating or Preventing Abscess Formation," *available at*: www.ipindia.nic.in. (Last visited 12th April, 2025).
[8]*Novartis AG v. Union of India & Ors.*, AIR 2013 SC 1311.

similarity with the existing patents, or naturally occurring efficiency of the same. In case there is some sort of similarity, and the bar of section 3d applies.[9], then it is incumbent upon the applicant to prove how and in what ways the efficacy or the utility of the applicant's antibody is better than the existing ones with which the comparison has been drawn.

The most important step is the drafting of the complete set of specifications in the patent application that can help the applicant overcome the hurdle of this bar. Extrinsic evidence[10] has to be submitted to show the increased efficiency, how the applicant's antibody outperforms any prior art in its field. Evidence can be in the form of known test results about the performance of the product, or clinical test data as to how it suits the description. This gives important leverage to the applicant to face the opposition stage.

In this context, some definite properties of antibodies need a careful discussion, which becomes grounds of both scrutiny and defense in arguing for an antibody patent.[11] –

a. Antibody with the property of getting tied up with the antigen or the foreign substance it wishes to eliminate

b. The amino acid sequence of the antibody describes the fundamental nature of the antibody.

c. The property of antibodies when they only act on some specific antigen or disease

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[9] Prosecution history of Patent No. 291864 [Application No. 4132/KOLNP/2009], "Polypeptides, Antibody Variable Domains and Antagonists"; Prosecution history of Patent No. 302148 [Application No. 2884/CHENP/2011], "High Affinity Human Antibodies to Human IL-4 Receptor," both *available at*: www.ipindia.nic.in. (Last visited 12th April, 2025).

[10] Kumar, S. (2008). Patentability of Biological Material(s) – Essentially, Therapeutic Antibodies – In India. *SCRIPT-ed*, 5(3), *available at:*https://ssrn.com/abstract=1578224 (Last visited 12th April, 2025).

[11] Patentability of Antibodies: Indian Perspective, Krishna &Saurastri Associates LLP,*available at:*https://www.lexology.com/library/detail.aspx?g=cf5dfa85-4df6-482f-a526-04eda6eee269 (Last visited 12 March, 2025).

The next challenge comes with determining the compositions present in the antibody – usually, antibodies target a particular foreign substance or the harmful antigen on which it acts and neutralizes its effect.[12], but with new techniques like "hybridoma", scientists have enabled the production of a large number of antibodies that react to a particular antigen. Hence, it is a human interference with a natural process, resulting in a novel invention in biological processes. The problem lies with section 3e of the Act.[13] whereby any admix Turing or combination of known properties cannot be considered new enough to be granted protection. It becomes a big hurdle when the recombinant technologies and fusing of substances become the definition of the application. Lastly, section 3(i) and (j)[14] which specifically confront a medicinal treatment and living organisms from the patent field. Here, the issue is with antibody treatment as it is basically developed to be a cure- the entire technology of rationale behind antibody protection is to make it a form of treatment.

3. Tracing The Route of Antibody Patent Applications

3.1. International Development

US Patent jurisprudence, in this case, largely relies on how reasoning was shaped through cases like *Ass'n for Molecular Pathology v. Myriad Genetics.*[15] and *Mayo Collaborative Services. v. Prometheus Labs, Inc*.[16]

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[12] Grubb, P. W., & Thomsen, P. R. (2010). *Patents for Chemicals, Pharmaceuticals, and Biotechnology: Fundamentals of Global Law, Practice, and Strategy*. Oxford: Oxford University Press.

[13] The Patents Act, 1970, § 3(e) (India) – "*a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance*".

[14] The Patents Act, 1970, § 3(i) (India) – *any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.*

The Patents Act, 1970, § 3(j) (India) *-plants and animals in whole or any part thereof other than micro- organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals*;

[15] *Association for Molecular Pathology v. Myriad Genetics*, 569 U.S. 576 (2013).

[16] *Mayo Collaborative Services v. Prometheus Labs, Inc*., 566 U.S. 66 (2012).

where the main concerns are how far the antibody purported to be patented is an artificial product, how it is not a natural therapeutic mechanism on which the invention is based, and rather some peculiar distinction which gives it the identity to claim not just novelty but an edge over any related prior art scrutiny. In order to save the application from getting cancelled owing to the conventional natural process exemption, the application has to show certain new features, for example, how a specific antibody reacts to a particular antigen or maybe binds to it, to render it patent eligible.

The stance of the USPTO has somewhat changed with *Amgen Inc. v. Sanofi.*[17] where the antigen-binding capacity of antibodies has been put to scrutiny again. While it was settled that antibodies could seek protection by relying on emphasis on the antigens with which their use can be described, this case deemed this to be a flouting of legal principles as the antigen is not a part of the invention but an extraneous factor on which the antibody is supposed to work. Hence, the importance is more on the structural viability of the product seeking a patent than its functional description mechanisms.

Quite on similar lines, the EU[18] also emphasizes specification and proper disclosures when dealing with antibody patent filings. It needs applicants to elaborate on the functional capacity and action of antibodies in being able to bind with specific antigens properly. The trick in securing antibody patents is the skill in writing on the same, and hence, patent specifications play a very important role in this.

Indian situation has been a very strict analysis of the bar of section 3(c) of the Patent Act, by which naturally occurring substances are excluded from patentability, while patents can be considered on substances which can be directly isolated from nature, on the other hand. Cases and litigation have been very less in this area, with the Patent Office dealing with the issue more, and

[17] *Amgen Inc. v. Sanofi*, 872 F.3d 1367 (Fed. Cir. 2017).
[18] European Patent Office. (1996). T0542/95

hence all examples relevant for this study can be obtained in the patent prosecution rather than litigation.

With reference to application *2880/DEL/2011*, a monoclonal antibody sought patent protection for an antigen (rEA1-C), with the claim that it could act against any strain of the same antigen, but the written description and material were unable to describe this quality properly, and hence the claim was rejected, patent not granted. Application *1298/CHENP/2010* suffered from the same problem and got rejected as it was not properly described, especially the structural and functional features with reference to antigen binding capacity and production of antibody chains. The next example of patent rejection is *3327/CHENP/2010* , where again, due to the inability of sufficient evidence and description, Controller contended that even though an isolated antibody, the techniques of hybridoma were nothing significantly different so as to get novelty-based patent protection, and that the process relied upon was entirely dependent on a naturally occurring sequence.[19] The next development was in application *3349/CHENP/2005*, where The Controller made an interesting observation: The structural features in the description of this antibody could not demarcate or distinguish itself from a naturally occurring antibody, and it is a natural occurrence. The applicant had claimed that antibodies are not universally present and are specific immune responses in mammals and humans separately, to which no proper documented proof was submitted. It was also reasoned that the mere artificial creation of a natural substance could not make it patent-eligible, and with the same reasoning, application 1161/KOLNP/2011 was rejected, too.[20]

Applications 3411/DELNP/2006 and 6845/CHENP/2010 claimed patents for a

[19]Official Journal of the Patent Office, 1 July 2011, *available at*: https://ipindia.gov.in /ipr/patent/journal_archieve/journal_2011/pat_arch_072011/official_journal_01072011_part_i .pdf. (Last visited 14th April, 2025).

[20] Indian Patent Journal, *available at*: https://ipindia.gov.in/journal.htm. (Last visited 14th April, 2025).

specific sequence of antibodies and hence were rejected. A sequence[21] refers to the typical arrangement of amino acids which form a chain, and that is a structural indication of the antibody. It becomes an important criterion when judging the degree of novelty and human involvement in synthesizing the same.

It's not entirely bleak, however, with the patent applications[22] *2581/ KOLNP/2006* and *2809/DELNP/2008* by ELI LILLY AND COMPANY[23] refer to "anti-myostatin antibodies". In these cases, the grant of patents depended on the novelty in the efficacy of the functions of these antibodies, the brilliant depiction of structural and functional elements in the writing and description, also the unique binding capacity of the antibodies with the concerned epitopes to produce the desired results. Next, in the case of 4482/CHENP/2010, the description depended on sequences, but there were separate dependent and independent claims which made out a case for novelty, as they show a capacity to specifically and selectively bin with epitopes of the antigen -*Clostridium difficile (C. difficile).*Hence, the quality that the Patent seeks gets its justification in antibodies, albeit through heightened scrutiny.

The next important development comes with a recently decided case, *Immunas Pharma, Inc v. Assistant Controller of Patents and Design (T)*[24] . Here, the patents office had rejected an antibody, having the claim that it can bind specifically to a particular "A-beta Oligomer". The rejection was based on section 3(c) of the act, and the applicant had responded that the invention was

[21] Biomatik. (2022, November). The Beginner's Guide to Antibody Sequencing, *available at:*https://www.biomatik.com/blog/beginner-guide-antibody-sequencing (Last visited 14th April, 2025).
[22] Official Journal of the Patent Office, 43/2009, *available at:*https://ipindia.gov.in/ipr/patent/journal_archieve/journal_2009/pat_arch_102009/official_journal_23102009_part_i.pdf. (Last visited 14th April, 2025).
[23] Indian Patents. (n.d.). Anti-myostatin antibodies*, available at:*https://www.allindianpatents.com/patents/258218-anti-myostatin-antibodies (Last visited 14th April, 2025).
[24] *Immunas Pharma, Inc. v. Assistant Controller of Patents and Design*, CMA (PT) No. 118 of 2023 (OA/22/2018/PT/CHN).

not a naturally occurring antibody but was artificially synthesized and hence overcomes the bar of patent ineligibility. The issue went up in appeal to the Madras high Court. The court, upholding the patent eligibility, explained that the expression "mere" to discovery does not impose an absolute ban on the living creatures or organisms but just adds one level of scrutiny to the patent investigation, a that the expression is just a qualifier in interpretation. Court placed reliance on *Sidney A. Diamond v. Ananda M. Chakrabarty*[25] where the bacterium was granted protection when it exhibited characteristics as specifically induced and created in it, an in the case of *Association for Molecular Pathology et al v. Myriad Genetics et al*[26]where a synthesis of DNA was held to be patent eligible.

A profound judicial reasoning is observed in this case, which has paved the way for antibody patenting in the times to come. With respect to section 3(c) of the Act, it has to be understood that the mere discovery of any living or non-living substance clause cannot become a redundancy being imputed to parliament by interpreting in such a way so as to rob it off all context and purpose. Further, the bar of section 3c simply acts as a filter and not a decision on final patentability, which rests more on the technical expertise, innovativeness and quality of the product patent sought. The real test would be in the inspection of the claims so that they are not broad enough and establishing the unique character of the antibody. The antibody thus being claimed, had specific qualities, even though the process of hybridoma as not novel and the applicant had made proper disclosures as mandated by WIPO, hence Court directed for the grant of patent.[27]

4. Realizing The Potential of Drafting Antibody Claims

Drafting plays a significant role in the entire patenting process, from the

[25] *Diamond v. Chakrabarty,* 1980 SCC Online US SC 128.
[26] *Association for Molecular Pathology et al v. Myriad Genetics et al*., 133 S.Ct. 2107 (2013).
[27]*Immunas Pharma, Inc. v. Assistant Controller of Patents and Design*, (T) CMA (PT) No. 118 of 2023 (OA/22/2018/PT/CHN).

presentation of the application to piloting it through examination and objection stages and making a strong case for the grant of patents. In the case of antibody patenting claims, as evident from the evaluation of patent prosecutions, there is a decisive role in drafting. In biotechnological inventions, the technical aspects of describing the material correctly creates a practical problem, and hence the system of depositing the matter has been accepted[28] which even if not conclusive, still helps in completing the description of the invention sought to be patented.

The characterization of the genus has to be extremely specific and detailed, and a relationship has to be drawn out of the particular antibody, its structural features, functional efficiency and how it binds with the antigen , in accurate details.[29] These details help in refuting the patent ineligibility clauses in many jurisdictions and keep a differentiating mark for the antibody to be artificial, synthesized and of its own kind. In pursuance of this, a description of antibody-antigen combinations like binding with epitopes, the way of binding, intensity, genetic makeup, and avidity of interacting with antigen are all important in establishing a strong claim for a patent.[30]

The ambit of claims and intended writing style is the next most important consideration, the mastery of which has led to successful grants in both the United States and Europe. In some cases, a description of the unique amino acid sequencing, together with the functional capacities, makes the description proper enough to get a patent grant. Mere information on the isolated and artificially synthesized protein qualifying as an antibody is not enough, with increasing research, grants and specialization, and the description of antigen-antibody interaction also demands some more peculiar details to it in order to

[28] Levy, D., & Wendt, L. B. (n.d.). Microbiology and a Standard Format for Infra-Red Absorption Spectra in Antibiotic Patent Applications, 37 J. Pat. Off. Soc'y 855, 857–59.
[29] Centocor Ortho Biotech, Inc. v. Abbott Laboratories, 636 F.3d 1341, 1352 (Fed. Cir. 2011).
[30] Lemley, M. A., &Sherkow, J. S. (2023). The Antibody Patent Paradox. *Yale Law Journal*, 132, 994–1064.

help the application succeed. The next problem arises when a broad scheme of protection is wanted for the antibody, but the description fails to justify it, rendering it vulnerable to any post-grant opposition or even revocation proceedings. Hence, if a broad claim is made in the application, it must be supported by independent, concisely defined claims either as a divisional application or separately listed in the claims section so that the applicant gets an advantage. description and style should also suit the area that is the subject of a patent application – whether the invention resides in the body of the protein (structural) or in the working capacity and in the working style of the protein(functional), and accordingly, process claims may be attached with the product claims.[31]

Antibodies have become an important part of driving pharmaceutical growth in the medicines of the new age, and the profitability margins have demonstrated a trend. Therapeutic antibodies offer a revolutionary treatment mechanism, and that's the reason big pharma giants target this with patents. US and EU[32] experience shows that the production of antibodies on the new antigens renders a relatively easy route towards patent protection as the antigen is not part of the prior art and is not exploited as well, if the creatures are described well, no further enablement requirement is usually necessary [33]

There is an evident two-pronged impact of this unconventional patenting – firstly, with every successive antibody patent granted, the degree of novelty increases and invented technology becomes prior art; secondly, as per the "ant commons" paradox, there is depletion of technique-based patent grants and the motivation to ramp up the quality of these antibody patent applications. So, the patent system gives a push to this constant development by making the

[31]Lahrtz, F. (2015). How to successfully patent therapeutic antibodies. *Journal of Biomolecular Screening*, 20, 484–491.
[32] European Patent Office Technical Board of Appeal, T 0542/95
[33]*Noelle v. Lederman, Federal Circuit*, 355 F.3d 1343 (Fed. Cir. 2004).

industry a victim of its own success.[34]

5. Conclusion and Suggestions

The body of research culminates with the moot point being -human intervention is indeed the key to deciding a patent claim on antibodies, and it is undoubtedly in favor of patent protection, but on clearly defined grounds. The development of an idea of human interventionism cannot be an umbrella doctrine to serve the dynamism and evolution of biotechnology. The world is witnessing a technological shock in *Schumpeter's* terms, and the legal frameworks need to evolve as well. Judicial interpretation can mend the holes for the time being, but we need dedicated legislation or rules to tackle biotechnology at the conjunction of natural and artificial.

It is pertinent to have more specific and transparent examination guidelines on antibody patents from Indian authorities, addressing recurring ambiguities and inconsistent IPO practices that inhibit innovation and clarity for applicants, along with the establishment of fast- track or expert panels—possibly under the *Biotechnology Patent Facilitation Cell* (BPFC)—that could review complex biotech inventions and facilitate coherence across different IPO branches. An international consensus needs to be built to encourage ongoing review of TRIPS obligations in light of technological advancements, allowing Indian law to better support industry competitiveness and therapeutic innovation.

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[34] Storz, U. (2011). Intellectual property protection: strategies for antibody inventions. *mAbs*, 3(3), 310–317, *available at:* https://doi.org/10.4161/mabs.3.3.15530 (Last visited 14th April, 2025).

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Striking the Balance: Consistency, Coherence, and Finality in Investor-State Arbitration Reform

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Abstract

The current wave of reform in Investor-State Dispute Settlement (ISDS), particularly within the framework of UNCITRAL Working Group III, has reignited a fundamental debate in international investment law—whether ISDS should prioritize the consistency and coherence of arbitral jurisprudence or uphold the finality and conclusiveness of arbitral awards. This paper engages with this critical dilemma by revisiting the foundational purposes of investment arbitration and examining the normative and practical tensions that arise when these goals are in conflict.

While finality is traditionally considered a cornerstone of arbitration—offering swift, binding outcomes with limited avenues for appeal—it has increasingly been criticized for allowing erroneous or inconsistent legal interpretations to go uncorrected. On the other hand, efforts to enhance consistency through mechanisms like appellate review risk compromising the speed, cost-efficiency, and party autonomy that define arbitration. The debate is not merely procedural but deeply philosophical: should investment disputes be "settled" or "settled rightly"? This question takes on new urgency as ISDS reform discussions contemplate systemic changes such as multilateral appellate bodies and standing investment courts.

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The paper evaluates the theoretical underpinnings of both principles—drawing from doctrines such as party autonomy, res judicata, and the rule of law—and interrogates their application through leading ISDS cases, including CMS v. Argentina, Vivendi v. Argentina, and Philip Morris v. Uruguay. It identifies the structural fragmentation of international investment law and the absence of a binding precedent system as key contributors to inconsistent jurisprudence.

Rather than proposing absolute consistency or unqualified finality, the paper advocates for the development of a ***coherent jurisprudential framework****—where arbitral reasoning is normatively sound, legally justified, and logically structured. Coherence, unlike mere uniformity, allows for justified deviation based on case-specific nuances while preserving systemic legitimacy. This conceptual shift paves the way for reforms that balance flexibility with predictability.*

In conclusion, the paper supports the establishment of a limited appellate mechanism that respects party autonomy, ensures final outcomes, and promotes coherence in legal reasoning. Such a hybrid model offers a viable pathway to restoring the legitimacy, effectiveness, and fairness of the ISDS regime, particularly in an era of growing contestation over its structure and outcomes.

Keywords: *Investor-State Dispute Settlement (ISDS); Finality of Arbitral Awards; Consistency and Coherence; UNCITRAL Working Group III; Investment Arbitration Reform.*

1. Introduction

In the complex landscape of international investment law, a fundamental tension has emerged that challenges the very foundations of the arbitration system. This tension, encapsulated in the debate between consistency and finality of arbitration awards, represents a critical juncture in the evolution of

investor-state dispute settlement (ISDS).[1] As global economic interdependence intensifies and cross-border investments proliferate, the resolution of disputes between foreign investors and host-States has taken on paramount importance, bringing this debate to the forefront of legal discourse and policy considerations.

The origins of this debate can be traced back to the rapid proliferation of bilateral investment treaties (BITs) and free trade agreements (FTAs) in the latter half of the 20th century. These agreements, designed to protect and promote foreign investment, have given rise to a complex web of international obligations and dispute resolution mechanisms.[2] The resulting system of investment arbitration, while innovative in its approach to resolving investor-state disputes, has also exposed inherent tensions between the desire for a consistent and predictable legal framework and the need for efficient and final dispute resolution.

At its core, the debate centres on two competing principles, each with its own merits and challenges. On one hand, there is a pressing need for consistency in arbitral decisions to foster predictability, enhance the system's legitimacy, and contribute to the development of a coherent body of international investment law.[3] Consistency in legal interpretation and application is seen as crucial for maintaining the integrity of the system and ensuring that similar cases are treated alike, regardless of the composition of the arbitral tribunal or the parties involved.

On the other hand, the principle of finality ensures efficient dispute resolution, respects party autonomy, and maintains the cost-effectiveness that makes

[1] Susan D. Franck, "The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decisions" 73 *Fordham Law Review* 1521 (2005).
[2] Rudolf Dolzer et. al., *Principles of International Investment Law* (Oxford University Press, Oxford, 3rdedn., 2022).
[3] Gus Van Harten, *Investment Treaty Arbitration and Public Law* (Oxford University Press, Oxford, 2007).

arbitration an attractive option for settling investment disputes.[4] Finality is deeply rooted in the arbitration tradition and is often cited as one of the key advantages of arbitration over litigation. It provides certainty to the parties and allows for the swift enforcement of awards, which is particularly crucial in the context of international investments where delays can have significant economic implications.

Scholars and practitioners have approached this debate from various angles, presenting compelling arguments for both sides. Proponents of consistency, such as *GabriellleKaufmann-Kohler*, argue that conflicting decisions on similar legal issues undermine the legitimacy of the entire system and call for mechanisms to promote harmonized interpretations.[5] They posit that consistency is crucial for developing a predictable legal framework that can guide both investors and States in their future conduct. This view is supported by empirical studies, such as those conducted by *Franck,* which demonstrate the negative impact of inconsistent decisions on the perceived legitimacy of investment arbitration.[6]

Conversely, advocates for finality, like *Jan Paulsson*, emphasize the importance of respecting the parties' choice of arbitration as a means of dispute resolution.[7] They contend that prolonged review processes or the introduction of appellate mechanisms could undermine the efficiency and cost-effectiveness that are hallmarks of arbitration. Moreover, they argue that instead of pursuing for greater consistency it is better to concentrate on the

[4] Jan Paulsson, *Denial of Justice in International Law* (Cambridge University Press, Cambridge, 2005).
[5] Gabrielle Kaufmann-Kohler, "Arbitral Precedent: Dream, Necessity or Excuse?" 23 *Arbitration International* 357 (2007).
[6] Susan D. Franck, "Development and Outcomes of Investment Treaty Arbitration" 50 *Harvard International Law Journal* 435 (2009).
[7] *Supra*note 4.

values of accuracy, sincerity and transparency of decision making in investor-State arbitration.[8]

The debate is further complicated by the fragmented nature of international investment law, with its myriads of bilateral and multilateral treaties, each potentially subject to different interpretations. As *Schill* notes, this fragmentation poses significant challenges to achieving consistency, even as it underscores the need for some form of harmonization.[9] The absence of a formal system of precedent in investment arbitration, unlike in common law jurisdictions, adds another layer of complexity to the issue.[10]

As we delve deeper into this complex issue, it becomes clear that finding a balance between consistency and finality is not merely an academic exercise but a practical necessity for the continued viability and effectiveness of international investment arbitration. The stakes are high, as the outcome of this debate will shape the future of international investment law and have far-reaching implications for global economic governance.

This paper aims to explore the nuances of the consistency versus finality debate, analyse proposed solutions, and contribute to the ongoing discourse on how best to navigate this crucial dilemma in international investment law. By examining the theoretical underpinnings of both principles, assessing their practical implications, and evaluating various reform proposals, this study seeks to offer insights that can inform future policy decisions and scholarly discussions in this critical area of international economic law.

2. The Principle of Finality in Investment Arbitration

The principle of finality stands as a cornerstone in the edifice of international investment arbitration, embodying the notion that arbitral awards should be

[8] Irene M. Ten Cate, "The Costs of Consistency: Precedent in Investment Treaty Arbitration" 51 *Columbia Journal of Transnational Law* 418 (2013).
[9] Stephen W. Schill, *The Multilateralization of International Investment Law* (Cambridge University Press, Cambridge, 2009).
[10] Jeffery P. Commission, "Precedent in Investment Treaty Arbitration: A Citation Analysis of a Developing Jurisprudence" 24 *Journal of International Arbitration* 129 (2007).

binding and conclusive, marking the definitive end of a dispute. This principle is deeply rooted in the theoretical foundations of arbitration and has far-reaching practical implications for the conduct and outcomes of investor-state disputes. To fully grasp the significance and complexities of finality in investment arbitration, it is essential to examine its theoretical underpinnings, practical applications, and the ongoing debates surrounding its role in the international investment regime.

At its core, the principle of finality draws its theoretical basis from several key concepts in legal and arbitration theory. Foremost among these is the doctrine of party autonomy, which respects the disputants' choice to resolve their conflicts through arbitration rather than litigation in national courts. This concept reflects the contractual nature of arbitration and underscores the importance of honouring the parties' agreement to be bound by the arbitral process and its outcome.[11] Closely related to this is the legal doctrine of *res judicata*. It specifies that once a matter between two parties is settled or adjudged by a judge and award is passed, it should be treated as final and binding on the parties[12] and the same subject matter should not be litigated between the same parties elsewhere.[13]

The principle of finality also finds its justification in the pursuit of efficiency in dispute resolution. There is a contention that arbitration is designed to provide a swift and cost-effective alternative to protracted court proceedings.[14] By limiting the opportunities for challenge and appeal, finality serves to expedite the resolution of disputes and reduce the overall cost of conflict

[11] Jullian David Mathew Lew QC, *Comparative International Commercial Arbitration* (Kluwer Law International, AH Alphen aan den Rijn, 2003).
[12] Norah Gallagher, "Parallel Proceedings, Res Judicata and Lis Pendens: Problems and Possible Solutions", in Loukas A. Mistelis &Juilan D.M. Lew QC (eds.) *Pervasive Problems in International Arbitration* (Kluwer Law International, AH Alphen aan den Rijn, 2006).
[13] K. R. Handely, *Spencer Brower and Handely: Res Judicata* (Lexis Nexis, London, 5th edn., 2019).
[14] Nigel Blackaby et. al., *Redfern and Hunter on International Arbitration* (Oxford Uni. Press, Oxford, 7th edn., 2023).

resolution. The same rationale can be witnessed in the limited grounds for annulment or setting aside of arbitral awards. For instance, Article 52 (1) of the ICSID (International Centre for the Settlement of Investment Disputes) Convention, which primarily governs the ICSID arbitration, provides only narrow bases for challenging an award, typically restricted to procedural irregularities rather than errors of fact or law.[15]

Another example is the judicial review of non- ICSID arbitration. In case of non-ICSID arbitration, which is usually governed by the UNCITRAL (United Nations Commission for International Trade Law) Arbitration Rules, reviewing the award by the domestic court at the seat of arbitration is followed. The review of arbitral awards will be according to the law of the respective State. As most of the arbitration laws are modelled on the UNCITRAL Model Law, they contain an enumerated list of grounds on which an arbitral award can be reviewed in the domestic courts. These grounds are akin to the ones that are mentioned in Article 34 of UNCITRAL Model Law, which concern only about the procedural aspects of the arbitration but not the substantive aspects. These grounds only permit the domestic courts to look at the procedural correctness but not to dwell further on the merits of the facts or law.

The practical implementation of finality is further reinforced by robust enforcement mechanisms, most notably the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). This widely adopted international instrument facilitates the recognition and enforcement of arbitral awards (both commercial and investment) across jurisdictions, lending teeth to the principle of finality on a global scale. The case of

[15] ICSID Convention, Article 52(1) - (1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds: (a) that the Tribunal was not properly constituted; (b) that the Tribunal has manifestly exceeded its powers; (c) that there was corruption on the part of a member of the Tribunal; (d) that there has been a serious departure from a fundamental rule of procedure; or (e) that the award has failed to state the reasons on which it is based.

*Metalclad*v*Mexico*,[16] provides an instructive example of the interplay between international arbitration and national legal systems in enforcing finality, as the challenge to this award in Canadian courts ultimately upheld the principle of limited review for international arbitral decisions.

Proponents of finality in investment arbitration offer several compelling arguments in its favour. Chief among these is the promotion of efficiency and cost-effectiveness in dispute resolution. It has been articulated by the scholars, the finality of awards ensures that disputes are resolved swiftly, avoiding the protracted legal battles that can drain the resources of both investors and States.[17] This efficiency is not merely a matter of convenience but can have significant economic implications, particularly in large-scale investment disputes where uncertainties can impact market valuations and national economic policies. Moreover, finality also improves both the political as well as the procedural neutrality. If the principle of finality was not there, "the parties to international business transactions may have no reliable alternative to the uncertainty of third country courts or the perceived bias of the other side's hometown justice."[18] The binding nature of arbitral awards allows parties to rely on the outcomes of arbitration proceedings, facilitating long-term planning and investment strategies.[19]

Another significant argument in favour of finality is the preservation of arbitration's appeal as a preferred method of dispute resolution. The limited scope for challenging awards is often cited as a key advantage of arbitration over litigation, attracting parties to choose this form of dispute resolution. This

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[16] See *Metalclad Corporation* v. *United Mexican States*, Award, ICSID Case No. ARB(AF)/97/1 (Aug. 30, 2000); *United Mexican States* v.*Metalclad Corporation*, Supreme Court of British Columbia, [2001] BCSC 664, 5 ICSID Rep. 236, Judgment (May 2, 2001).

[17] Gary B. Born, *International Commercial Arbitration* (Kluwer Law International. AH Alphen aan den Rijn, 3rdedn., 2021).

[18] William W. Park, "Why Courts Review Arbitral Awards", in Robert Briner et. al., (eds.) *Law of International Business and Dispute Settlement in the 21st Century* 595-606 at p. 506 (Heymanns, Cologne, 2001).

[19] *Ibid*.

aspect is particularly relevant in the context of international investment, where parties often seek to avoid the complexities and uncertainties of litigating in foreign courts.

However, despite these compelling arguments, the principle of finality in investment arbitration is not without challenges. The significant problem is the limited recourse available for correcting errors of law or fact in arbitral awards. The best examples in this regard are *CMS* v. *Argentina*[20]&*Vivendi v. Argentina*[21] highlights this issue, where the ad hoc committee noted its inability to correct what it perceived as manifest errors of law due to the restricted grounds for annulment. This limitation can lead to the perpetuation of legal misconceptions and potentially unjust outcomes, raising concerns about the overall quality of justice delivered by the system.

Moreover, adopting the principle of finality and limiting the post-award review mechanisms only for procedural aspects, result in the development of inconsistent line of jurisprudence on the prominent issues, including the standards of investment protection and customary international law principles governing the investment arbitration. The stark contrast between the outcomes in Argentina crises cases[22] as well as *CME* v. *Czech Republic*[23] and *Lauder* v. *Czech Republic*,[24] where the investment arbitral tribunals reached opposite conclusions on essentially the same facts, serves as a cautionary tale in this

[20]*CMS Gas Transmission Co.* v. *The Rep. of Argentina*, Decision of the *ad hoc* Committee on the Application for Annulment, ICSID Case No. ARB/01/8 (25 September 2007).
[21]*Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A.* v. *Argentine Republic*, Decision on Annulment, ICSID Case No. ARB/97/3 (3 July 2002).
[22]*CMS Gas Transmission Company* v. *Argentine Republic*, Award, ICSID Case No. ARB/01/8 (12 May 2005); *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc.* v. *Argentine Republic*, Award, ICSID Case No. ARB/02/1 (25 July 2007); *Enron Corporation and Ponderosa Assets, L.P.* v. *Argentine Republic*, Award, ICSID Case No. ARB/01/3 (22 May 2007); *Sempra Energy International* v. *Argentine Republic*, Award, ICSID Case No. ARB/02/16 (28 September 2007); *Continental Casualty Company* v. *Argentine Republic*, Award, ICSID Case No. ARB/03/9 (5 September 2008).
[23]*Ronald S. Lauder* v. *The Czech Republic*, UNCITRAL, Award (3 September 2001).
[24]*CME Czech Republic B.V. (Netherlands)* v. *The Czech Republic, Award* (14 March 2003).

regard.[25] Such inconsistencies not only undermine the predictability of the system but also raise questions about its fairness and legitimacy.

The lack of an appellate mechanism in most investment arbitration frameworks has also been a source of criticism. **Van Harten** argues that this absence can undermine the perceived legitimacy of the system, especially when dealing with matters of significant public interest.[26] The case of *Occidental* v. *Ecuador*,[27] where a partial annulment highlighted the tension between finality and the need for correctness in high-stakes cases, illustrates the complexities of this issue.

Critics also point to the potential for "regulatory chill," where the binding nature of awards may discourage States from implementing legitimate public policy measures for fear of investor claims. The case of *Philip Morris* v. *Uruguay*,[28] while ultimately decided in favour of the State, exemplifies the concerns about the impact of investment arbitration on States' regulatory autonomy.[29] This chilling effect raises important questions about the balance between investment protection and States' right to regulate in the public interest.

Lastly, some scholars, such as *Sornarajah,*[30] argue that the finality principle can exacerbate power imbalances between investors and States, particularly when dealing with developing countries. The binding nature of awards, combined with limited review mechanisms, may place undue pressure on

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[25] *Supra*note 1.
[26] *Supra*note 3.
[27] *Occidental Petroleum Corporation and Occidental Exploration and Production Company* v. *The Republic of Ecuador*, Decision on Annulment, ICSID Case No. ARB/06/11 (2 November 2015).
[28] *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A.* v. *Oriental Republic of Uruguay,* Award, ICSID Case No. ARB/10/7 (8 July 2016).
[29] Kyla Tienhaara, "Regulatory Chill and the Threat of Arbitration: A View from Political Science", in Chester Brown & Kate Miles (eds.), *Evolution in Investment Treaty Law and Arbitration* 606 (Cambridge University Press, Cambridge, 2011).
[30] M. Sornarajah, *Resistance and Change in the International Law on Foreign Investment* (Cambridge University Press, Cambridge, 2015).

States with limited resources to defend against or comply with unfavourable decisions. In conclusion, the principle of finality in investment arbitration presents a complex landscape of benefits and challenges. While it offers crucial advantages in terms of efficiency, certainty, and the attractiveness of arbitration as a dispute resolution mechanism, it also raises significant concerns about consistency, correctness, and the balance of power in investor-state disputes.

3. The Principle of Consistency in Investment Arbitration: A Comprehensive Analysis

The principle of consistency in international investment arbitration represents a fundamental aspiration for coherence, predictability, and fairness in the resolution of investor-state disputes. This principle, while not explicitly codified in most arbitration rules or investment treaties, has emerged as a critical concern in the evolving landscape of international investment law. The quest for consistency touches upon core issues of legitimacy, equality before the law, and the development of a stable and reliable framework for global investment.

Consistency in a legal system refers to the uniform interpretation and application of legal rules across similar or identical cases.[31] This fundamental tenet of justice, as articulated by *Hart* in his seminal work on jurisprudence, holds that similar factual and legal situations should lead to similar outcomes.[32] A consistent adjudication system "promotes equality among litigants, constrains idiosyncratic decision-making and increases the perception of legitimacy of dispute resolution."[33] Moreover, consistent adjudication supports the gradual development of substantive law by fostering certainty in how legal rules are applied and interpreted, which is essential for

[31] Thomas M. Franck, *Fairness in International Law and Institutions* 38 (Clarendon Press, 1995).
[32] H. L. A. Hart, *The Concept of Law* (Oxford University Press, Oxford, 1961).
[33] *Supra*note 8, p. 420.

the stability of any legal framework.[34] For any dispute resolution system to flourish, consistency is foundational because it is intrinsically linked to the *rule of law*.[35]

In the context of investment arbitration, this principle takes on added significance due to the decentralized nature of the system and the absence of a formal doctrine of precedent.[36] As investment arbitration has proliferated, with hundreds of cases decided under various bilateral and multilateral investment treaties, the need for a systematic and harmonized approach to interpreting key legal concepts has become increasingly apparent. This development of a consistent jurisprudence, as noted by *McLachlan,*[37] serves to enhance the legitimacy of the system and provide guidance for future tribunals and stakeholders.

Moreover, unlike commercial arbitration, which typically involves two private parties, ISDS disputes involve sovereign States and private actors. These disputes often challenge the domestic laws and regulatory measures of the host State, which are scrutinized in light of international obligations and investment treaties. Inconsistent decisions in this context can lead to legal uncertainty, where the validity of domestic laws and the interpretation of international legal rules may vary significantly from one tribunal to another. This creates a scenario where the outcome of a dispute becomes dependent on an adjudicatory mechanism that cannot guarantee uniformity.[38]

The consequences of inconsistency in ISDS are profound. Not only can it result in injustice for the parties involved in a particular case, but it also

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[34] *Ibid*.
[35] John Rawls, *A Theory of Justice* 208 (Harvard University Press, Harvard, Revised edn., 1999).
[36] *Supra*note 5.
[37] Campbell McLachlan, "The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention" 54 *International and Comparative Law Quarterly* 279 (2005).
[38] *Nejdet Şahin and Perihan Şahin* v. *Turkey*, App. No. 13279/05, Eur. Ct. H. R., Dissenting Opinion, (20 October 2011) p. 25 at para 5.

undermines the ability of both investors and States to plan their actions based on predictable legal outcomes. This unpredictability can impose substantial economic costs on both parties, disrupting investment flows and deterring future economic activities. Thus, consistency enhances legal certainty and predictability. In international investment law realm, consistent decision-making allows investors and States to better anticipate the legal consequences of their actions, facilitating informed decision-making and potentially reducing the likelihood of disputes.[39]

In the words of *Gabrielle Kaufnann-Kohler*, "…. the credibility of the entire dispute resolution system depends on consistency, because a dispute settlement process that produces unpredictable results will lose the confidence of the users in the long term and defeat its own purpose."[40] Investor-State arbitration is currently facing the same issue. Due to the lack of consistency in the dispute resolution mechanism, the investment arbitral tribunals issue divergent decision in the cases despite the similar factual matrix. The best examples are, Argentina crises cases,[41] *Lauder* v. *Czech Republic*[42] and *CME* v. *Czech Republic*,[43] arising from essentially the same facts, sparked significant criticism and highlighted the risks of inconsistency in the system. Furthermore, in a system which is governed by a bunch of substantive investment treaty standards, consistency is of paramount importance. Divergent decisions of the arbitral tribunals on a treaty standard might confuse its interpretation and application to the future cases. The same can be seen in

[39] Julian Arato et. al., "Parsing and Managing Inconsistency in Investor-State Dispute Settlement" 21 *Journal of World Investment & Trade* 336 (2020).
[40] *Supra* note 5 at 378.
[41] *CMS Gas Transmission Company* v. *Argentine Republic*, Award, ICSID Case No. ARB/01/8 (12 May 2005); *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc.* v. *Argentine Republic*, Award, ICSID Case No. ARB/02/1 (25 July 2007); *Enron Corporation and Ponderosa Assets, L.P.* v. *Argentine Republic*, Award, ICSID Case No. ARB/01/3 (22 May 2007); *Sempra Energy International* v. *Argentine Republic, Award*, ICSID Case No. ARB/02/16 (28 September 2007); *Continental Casualty Company* v. *Argentine Republic, Award*, ICSID Case No. ARB/03/9 (5 September 2008).
[42] *Ronald S. Lauder* v. *The Czech Republic*, UNCITRAL, Award (3 September 2001).
[43] *CME Czech Republic B.V. (Netherlands)* v. *The Czech Republic*, Award (14 March 2003).

the interpretation and application of various treaty standards such are Full Protection and Security, Fair and Equitable Treatment and Most-Favoured Nation Treatment. The seminal work of *Gabriellle Kaufmann-Kohler* highlights the existence of inconsistencies in the treatment of different treaty standards.[44]

However, the pursuit of consistency in investment arbitration faces significant challenges and criticisms. One primary concern is the potential for rigidity and the stifling of legal evolution. As investment law operates in a rapidly changing global economic environment, there is a need for flexibility to adapt to new circumstances and policy considerations. Another challenge is the difficulty of achieving consistency in a system characterized by diverse treaties, each with potentially unique provisions and objectives. The fragmented structure of investor-State arbitration often leads to varying interpretative outcomes. Given the diversity of legal instruments, parties, and contexts, some level of inconsistency across arbitral decisions is not only inevitable but can also be justifiable and even necessary. Each investment treaty may contain distinct provisions, tailored to the specific needs of the contracting parties, which can result in differing interpretations when applied in arbitration.

Moreover, the lack of a centralized appellate mechanism in most investment arbitration frameworks poses a structural challenge to achieving consistency. Unlike in domestic legal systems or in the WTO dispute settlement system, there is no overarching body to reconcile conflicting decisions or provide authoritative interpretations of legal principles. This absence has led to calls for reform, including proposals for the establishment of a multilateral investment court. The principle of consistency also raises questions about the

[44] Gabrielle Kaufmann-Kohler, "Is Consistency a Myth?", in Emmanuel Gaillard & Yas Banifatemi (eds.) *Precedent in International Arbitration* 137 (Juris Publishing, New York, 2008).

appropriate balance between consistency and party autonomy in arbitration. As **Brower and Schill** point out, the flexibility and adaptability of arbitration, which are among its key attractions, might be compromised by an overly rigid adherence to consistency.[45]

4. Coherent Line of Jurisprudence is Necessary for Investment Arbitration

The calls for consistency in investor-State arbitration has raised enormously. In order to address the issue of inconsistency, the UNCITRAL Working Group III, in pursuing of its mandate to reform the ISDS mechanism has considered the establishment of an appellate mechanism. The aim of the appellate mechanism is to enhance the legitimacy of the investment arbitration system as a whole by developing consistency and coherence. Keeping aside the creation of an appellate mechanism, the question is what is actually needed for ISDS system. Does it should promote finality or consistency. The propositions and oppositions for both the principles have very strong points. The ISDS jurisprudence clearly emphasise that the finality of arbitral awards allows limited review of arbitral awards. It does not allow to rectify an award even after identing manifested errors of law. On the other hand, with a fragmented and diversified structure achieving absolute consistency is impossible to achieve because of its structure. For settling the ISDS disputes, rather than finality the adjudication mechanism should be more coherent in nature.

Consistence is the phenomenon of treating similar cases alike. Whereas, coherence, which appears to be a synonym to consistency, refer to 'being logical and consistent'.[46] An idea, reason, or opinion is said to be coherent

[45] Charles N. Brower & Stephen W. Schill, "Is Arbitration a Threat or a Boon to the Legitimacy of International Investment Law?" 9 *Chicago Journal of International Law* 471 (2009).

[46]Ameyavikarma Thanvi, "Bringing Consistency to Investment Arbitration: Challenges and Reform Proposals", in Alan M. Anderson & Ben Beaumont (eds.) *The Investor-State Dispute Settlement System: Reform, Replace or Status Quo?* (Kluwer Law International, AH Alphen aan den Rijn, 2020).

when it is clear, well-considered, and each part connects or follows naturally in a reasonable way.[47] In the context of legal systems, coherence is essential for establishing legitimacy. Coherence in a legal system goes beyond the mere consistent application of rules. It requires that the legal rules themselves be interconnected and non-contradictory with the other existing rules. This ensures that different laws and regulations work in harmony, creating a unified and rational legal framework.[48] A coherent legal system avoids internal conflicts, which could otherwise lead to confusion, unpredictability, and a loss of confidence in the system's fairness and integrity.

Justified legal decisions that are normatively coherent "employ distinctions and similarities that are principled and reasonable as opposed to those which are arbitrary and unreasonable."[49] The absence of a requirement for justification in legal decision-making could lead to unpredictable and inconsistent outcomes, which would undermine the stability of the legal system.[50] In investment treaty arbitration, the tribunals constituted in individual cases are tasked with a critical responsibility: to "review the facts to separate out those entailing treaty violations from those meeting the relevant treaty standards."[51] Each arbitral award is discrete, containing decisions based on the specific facts and legal arguments of the individual case. In reaching these decisions, arbitral tribunals often adopt new approaches and reasonings, contributing to the evolving body of jurisprudence in international investment law. When arbitral tribunals employ sound legal reasoning, even if the outcomes of similar cases differ due to varying facts or contexts, such

[47] Katharina Diel-Gligor, *Towards Consistency in International Investment Jurisprudence: A Preliminary Ruling System for ICSID Arbitration* (Brill Nijhoff, Leiden, 2017).
[48] *Ibid*.
[49] J. M. Balkin, "Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence" 103 *Yale Law Journal* 105 (1993).
[50] *Id* at p. 114.
[51] Stanimir A. Alexandrov, "On the Perceived Inconsistency in Investor-State Jurisprudence", in José E. Alvarez et. al. (eds.) *The Evolving International Investment Regime: Expectations, Realities, Options* 61 (Oxford University Press, Oxford, 2011).

divergence is considered rational and acceptable. This recognizes that while consistency is important, flexibility is also necessary to account for the unique circumstances of each case.

The principle of coherent reasoning in arbitral awards has been recognized and affirmed by tribunals. For example, in *Vivendi v. Argentina*, the tribunal noted that "considerations of basic justice would lead tribunals to be guided by the basic principle that 'like cases should be decided alike,' unless a strong reason exists to distinguish the current case from previous ones."[52]Which means, in order to deviate from the previous line of decisions the arbitral award should contain *legally permissible reasons*. Legally permissible reasons are those employed by arbitral tribunals that reflect "greater coherence and integrity,"[53] founded upon the correct identification and interpretation of international rules, treaty text, and relevant precedents. This standard of legal reasoning extends beyond merely explaining why an outcome differs from prior awards. Instead, it imposes a minimum obligation of rationality in the underlying legal reasoning used to justify any arbitral conclusion.[54]This refined notion of consistency is essential for the ISDS system.

5. Conclusion

Developing a coherent line of jurisprudence is not an easy task for the ISDS regime considering the structural deficiencies it poses. In order to achieve the same, the UNCITRAL WG III, has considered the establishment of permanent standing appellate mechanism for investor-State arbitration. The aim of the appellate mechanism is to achieve consistency, coherence, predictability and

[52]*Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A.* v. *Argentine Republic*, Decision of Tribunal on Objections to Jurisdiction, ICSID Case No. ARB/97/3 (29 January 2004) at para 97.

[53] Jurgen Kurtz, "Building Legitimacy Through Interpretation in Investor-State Arbitration: On Consistency, Coherence and the Identification of Applicable Law", in Zachars Douglas et.al. (eds.), *The Foundations of International Investment Law: Bringing Theory into Practice* 274 (Oxford University Press, Oxford, 2014).

[54]*Ibid.*

correctness of arbitral awards. There is a strong objection for the creation of an appellate mechanism as it extends the dispute and a standing appellate mechanism would convert the ISDS system into more like a court system. The proponents on finality also argues that the creation of an appellate mechanism would destroy the one of the core functions of investment arbitration.

The thing that has to keep in mind is creating a standing appellate mechanism would not disrupt the principle of finality as it would be more like the existing judicial review procedure or annulment procedure of investment arbitration awards. However, the appellate process would have additional grounds to review the arbitral awards. The awards rendered by the appellate body will not be reviewed further and they also have binding nature on the parties to the disputes. Moreover, appealing an arbitral award is at the discretion of the parties. It respects the autonomy of the parties to the dispute. Which means the potential appellate mechanism for investment arbitration also upholds the principle of finality. Moreover, it also ensures to develop a consistent and coherent line of jurisprudence for ISDS disputes and enhance the legitimacy of the dispute resolution.

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Persistent Resistance to Gender Equality in Sub-Sahara Africa: An Aberration to the Propagation of Fundamental Rights

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Abstract

Women across the globe have been agitating for equal rights with their men counterpart. Gender equality propagates the view that women should not be suppressed or discriminated in any way akin to the fact they were born women,but that women should be allowed equal rights and responsibilities in terms of property, education, family, health, government policies and politics and other legal rights and freedom. Against this backdrop, series of international laws, conventions, treaties, national and local legislations were put in place to ensure the propagation and preservation of gender equality and non-discrimination of women and girls across the globe. This work found that despite the enactment of these laws and legal instruments, and the interpretation of the laws by the Courts, women and girls are continually discriminated in sub-Sahara Africa and other parts of the globe on the grounds of religion, custom, sex, race, origin and above all, because they are born women. It is concluded that all humans are created by God Almighty and as such, all are equal before the creator. Therefore, women and men should be treated equally and should be devoid of discrimination in terms of rights and obligations. This work adopted the doctrinal research methodology. It is recommended among others that the rights of women be entrenched in the constitution of all nations; there should be quarterly report of the violation of

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women rights across the globe; there should be penalties against the violation of women's rights; all restrictions on women's rights should be abolished forthwith.

Keywords: *Discrimination, Equality, Gender Rights, Women, Violation.*

1. INTRODUCTION

In 1945, the United Nations Charter was adopted by the leaders in the world, and its principle was premised on the background and fact that there should be entrenched, equality and an environment devoid of discrimination against any individual no matter his or her sex, color, race, language, religion, birth, national or social origin among other reasons.[1] Despite this resolution, women and girls are often denied their rights and discriminated on the grounds that they are born women, age, marriage, ethnic background, origin, incapacitation and gender related issues.[2] This is more aggravating when it involves trans-gender and intersex women and other related concerns as it affects women and girls especially in Africa and across the globe. It is imperative that individuals no matter their sex are allowed to enjoy their rights and freedom whether men and boys or women and girls in order to enhance the dynamics of social life within the family, community and the society at large. It is against the backdrop that the United Nations Human Rights has resolved to collaborate with various states and civil societies and Non-governmental Organizations across the globe to abolish such legislations, conventions, customs and government policies which propagates discrimination and gender-related practices; terminate gender violence; reform such discriminatory norms that are not palatable and adverse to gender issues; ensure the freedom in the employment, sexual health and such other related health and social rights; to preserve and ensure the civil rights of women and girls rights crusaders as it

[1] United Nations Human Rights Office. (n.d.). OHCHR and women's human rights and gender equality. United Nations Human Rights Office, *available at:*https://www.ohchr.org/en/women (Last visited 6th January, 2025).
[2] *Ibid.*

affects feminism; to initiate and promote equal participation of women or girls and men or boys including individuals of different genders in socio-economic, civil, political and cultural wellbeing in their day to day activities; and to promote and ensure that there is gender equality in the gamut of the United Nations offices globally.[3]

In order to reduce, if not totally eradicate gender-based inequality between men and women, several treaties, conventions and bilateral relations between nations have been put in place to ensure that men and boys or women and girls are of equal status in socio-economic and political wellbeing of individuals in the various states. In April, 2014, the International Human Rights Law and Gender Equality and Non-Discrimination Legislation briefing paper made provisions for the requirements and good practices to enhance women's legal protection against discrimination and inequality. Such legal policies include, international obligation to ensure that there are equality and freedom from discrimination against women and girls; the establishment of necessary legal guarantees against inequality and discrimination; to guarantee equality and to enthrone unambiguous and an all-embracing meaning of discrimination and equality; to ensure full-fledged abolition of discrimination in both public and private backgrounds.[4]

Legislations bordering on gender equality and discrimination are not restricted to the above assertions, but it encompasses the sexual harassment of women and girls and discrimination bordering intersection which should also be entrenched.[5] Some gender inequality imbroglio span from gender discrimination, gender equality, violence against women, sexual harassment

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[3]*Ibid.*

[4]International Commission of Jurists: International human rights law and gender equality and non-discrimination legislation: Requirements and good practices, *available at:*https:// www.icj.org/wp-content/uploads/2014/05/GEL-BRIEFING-ELECwhole.pdf (Last visited 6th January, 2025)

[5]*Ibid.*

against women and girls, political rights of women and girls; right to education, marriage and family matters as it affects women; trafficking in women and girls, labor and employment related issues against women; property-related matters and series of others.[6] The crux of this work is that women and girls are being discriminated across sub-Saharan Africa and the world over just because they are born women.

It is submitted that women are humans like men; they are created like men by the same Almighty God. It follows that the mere fact that they are women should not culminate in their discrimination in any form on the planet earth. As men enjoy their rights, women should also be allowed to enjoy their fundamental human rights. Unfortunately, in sub-Sahara Africa, where customs and other ways of life hold sway, women are berated sequel to some practices which are inherited from the ancestors and such practices or customs have become the norm in such societies. If all humans are born equal and no individual is greater than another, why any form of discrimination in terms of gender? Every individual including men and women are equal to another in dignity and rights.

2. Law, Gender and Equality

The need for individuals to submit to the authorities of every community in an organized society heralds the beginning and realization of the need to regulate and propagate peace and tranquility in such community and the society at large. Humans and the societies are fragile in nature, therefore, there is the need to curtail the activities of individuals and the societies in order to ensure order, tranquility and socio-economic growth. This is where the 'Theory of Social Contract' originates, that individuals in the societies surrender to the authorities and agrees to be bound by the rules and subject themselves to the

[6] International Justice Resource Center: Women's human rights. International Justice Resource Center, *available at:*https://ijrcenter.org/thematic-research-guides/womens-human-rights/ (Last visited 6th January, 2025).

authorities. The authorities too are subjected and bound by the rules in order to avoid tyranny and autocratic acts. Law therefore, is:

> *"The regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society … the set of rules or principles dealing with a specific area of a legal system…*[7]*"*

Law has been stated to mean 'what officials do about disputes'.[8] It was also described as 'the prophecies of what the Courts do…[9] However, Hart admonished that giving answer to the question 'what is law' should be deferred except after we have enquired what really has been problematic to those who attempted to provide answer to a similar question.[10] What law encompasses is that a variety of human conducts are mandatory and obligatory but not optional. Law and morality intervolve in the sense that they impose obligations.[11] Law is backed by sanctions. Hart, posited that: both those who have found the key to the understanding of law in the notion of orders backed by threats, and those who have found it in its relation to morality or justice, alike speak of law as containing, if not consisting largely of rules. Yet dissatisfaction, confusion, and uncertainty concerning this seemingly unproblematic notion underlies much of the perplexity about the nature of law.[12]

From the foregoing, law is command which culminate in sanctions as a penalty against any one that contravenes its provisions. Consequently, law heralds order in the society by regulating the c human conduct in the societies.

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[7] Bryan A. Garner, *Black's Law Dictionary* (7th edn, West Group 1999).
[8] H. L. A. Hart, *The Concept of Law* (1st edn, Oxford University Press 1961)
[9] O. W. Holmes, 'The Path of Law' in *Collected Papers* (1920) 173.
[10] *Supra* note (HLA Hart)
[11] *Ibid.*
[12] *Ibid.*

Legislations are made to curtail the activities of criminals in the society; constitutions are drafted to limit the powers of government and the governed.[13] Gender normally varies from one society to the other and it is dynamic as it changes from time to time. Equality means 'being equal' as it concerns opportunities, rights and status in the society.[14] What this means is that everyone is given equal opportunity; possess equal rights and opportunities whether a man or woman. Law guides the people in every society, while gender encompasses both the male and female sex in relation to their socio-cultural wellbeing and status.

Gender equality does not necessarily suggest that men and women should be equal or the same, but what it is all about is that women and men's rights, status and opportunities should not be anchored on the fact that they are born women or men.[15] It also refers to equal rights, equal opportunities and equal status of women and men towards contributing their quota to the socio-economic advancement of the society.[16] It is synonymous with the well-entrenched principle of equality which connotes the acquisition of same opportunities, rights or status, privileges, immunities and on the other hand, liabilities and duties. What gender equality emphasizes is that both women and men must enjoy the same opportunities and reward.[17]

In 1945, the United Nations Charter adopted the principle of equality and non-discrimination and it became fundamental principles of the UN that women and girls must not be discriminated in any form on the ground that they are

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[13] U.S. Const. amend. I–XXVII (1787), *available at:*https://www.archives.gov/founding-docs/constitution-transcript (Last visited 6th January, 2025).

[14] Martinez, H. (n.d.). *What is equality?* United Way of Northern California, *available at:*https://unitedwaynca.org/blog/what-is-equality/ (Last visited 9th January, 2025).

[15]A. M. Bokani, 'Inequality, Gender Equality and the Application of the Principle of Resulting Trust to Married Women in Nigeria: A Need for Gender Equality–Based Approach' (2024) 13 *Journal of Private and Comparative Law* 203.

[16]*Ibid.*

[17]O. A. Adegoke, 'Protection of Nigerian Women's Social and Economic Rights as a Safeguard to Equity and Empowerment' (2016) 6(1) *Human Rights Review* 5.

born females and on the ground of race, age, ethnicity, disability or socio-economic background coupled with gender-based. There is a popular saying that 'what men can do, women can do even better'. Discrimination against women has been condemned across the globe. For example, in Afghanistan, there was a banning woman from participating in medical training.[18] Some women are not allowed to work or hold some positions on the ground of religion and custom or that they are women or girls. This is an aberration and contrary to the universal right of individuals.

Sequel to age, race, ethnicity and other gender-based issues, series of women including intersex women have been traumatized.[19] A very wide range of discrimination have been unleashed on women and girls with varying degrees in various jurisdictions either in the workplace, their legal status, inheritance and property, marriages or family, education, healthcare, nationality and others. Despite the struggle and advocacy by the United Nations and enactment of laws locally and internationally, women and girls are continually discriminated in various parts of Africa and across the globe because they are born women.[20]

All women are entitled to enjoy human rights as encapsulated in the various international, regional and domestic laws. It is incumbent upon the various states to ensure that women enjoy such rights, such as the right to participate in politics; right to associate freely; right to Medicare; right to freely move from one place to another; right to own a property and to inherit; right to be free from violence; right to have dual nationality; right to socio-cultural

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[18] United Nations Human Rights Office. (n.d.). *OHCHR and women's human rights and gender equality, available at:*https://www.ohchr.org/en/women (Last visited 9th January, 2025).

[19] *Ibid*.

[20] International Commission of Jurists: *International human rights law and gender equality and non-discrimination legislation: Requirements and good practices*, *available at:*https:// www.icj.org/wp-content/uploads/2014/05/GEL-BRIEFING-ELECwhole.pdf (Last visited 8th January, 2025).

wellbeing; civil rights; right not to be trafficked; right against discrimination; right to education and other such rights. On the 18th December, 1979, the United Nations on the Elimination of Discrimination Against Women (CEDAN) adjudged the most all-embracing treaty as regards the rights of women was adopted.[21] So many states numbering about 188 ratified this treaty in May 2024. The aim of the treaty is to ensure that women are accorded equal rights in the social-political, economic, civil and cultural spheres of their life no matter their status whether married or not. Also, the treaty made provisions for the abolition of discrimination against women.[22]

3. International Laws, Treaties and Instruments on the Rights of the Citizens

There are series of international laws, Treaties, Conventions and legal instruments that provide for the fundamental human rights of the citizenry in every society. They include international, regional and national instruments. This work will briefly examine some of these laws, treaties and instruments and their provisions as they affect the citizenry. Some of these rights are fundamental and others are socio-political and economic rights. The United Nations Declaration on Human Rights, 1948 is the foundation of the rights of the people providing for the citizens to fully participate in the government of any nation. Again, the International Convention on political rights of women was established in 1952. The United Nations Declaration on Human Rights 1948 made provisions to the effect that parties must ensure that human and

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[21] United Nations(1981, September 3), Convention on the elimination of all forms of discrimination against women (CEDAW), 1249 U.N.T.S. 13, *available at:*https: //www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women (Last visited 9th January, 2025)

[22] Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981), arts. 1–5, *available at:*https://www.ohchr.org /en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women (Last visited 9th January, 2025).

fundamental rights or freedoms are promoted and encouraged.[23] The UN Security Council has also been involved in election activities in Cambodia in 1993; Namibia in 1989; and El Salvador in 1994.[24]

The International Covenant on Civil and Political Rights, 1966 enjoined State parties that are yet to make provisions in their laws or constitutions to endeavor to give effect to the rights as enshrined in the covenant. It further provided that there should be non-discrimination in the conduct of elections and therefore, enjoined party States to ensure the implementation of the provisions of the covenant.[25] It also provides for freedom of association; freedom of movement; peaceful assembly; right to hold opinions;[26]

Again, the International Convention on the Elimination of all forms of racial discrimination established in 1909 is another convention that brought measures to address some disparities that have beclouded equal rights and access to public service. It provides for equal rights and equal access to political rights. Again, there is the Convention on the Elimination of all forms of Discrimination Against Women. It was adopted in 1979 but came into force in 1981. The CEDAN is established to consolidate other international laws, treaties and conventions as it affects the rights of women. It provided for the enjoyment of socio-political rights of women. It presupposes that women must have equal rights as their men counterparts in politics and decision-making processes in governance. It supports the notion that women should possess the same and equal rights to vote in any elections, be it general election or a referendum. And the Convention gives women right to participate in the

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[23] International Institute for Democracy and Electoral Assistance, *A Practical Guide to Constitution Building* (2010).

[24] International Institute for Democracy and Electoral Assistance, *International Obligations for Elections: Guidelines for Legal Frameworks* (D Tuccinard ed, International IDEA 2014).

[25] *International Obligations for Elections: Guidelines for Legal Frameworks* (D. Tuccinard, Ed., International Institute for Democracy and Electoral Assistance, 2014), art. 25.

[26] *Ibid.*

formulation of government policies and to partake in every level and activities of government.

Declaration on the rights and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms came into being in 1998. This declaration is to the effect that the observance, promotion and protection of all forms of human and fundamental rights and freedoms are carried out as it affects every person in all nations across the globe. Also, the Convention on the rights of persons with disabilities was adopted in 2006 with its mandate to protect the electoral rights of every person(s) with disabilities, be it physical or mental disabilities. The crux of the Convention is to allow persons with disabilities participate in elections and be allowed to vote and be voted for in any elections without any form of discrimination. These laws, Conventions, treaties and instruments in election participation are to ensure international electoral standards across the universe and to articulate, promote and protect non-discrimination against women and girls and persons with disabilities. The International Covenant on civil and political rights, 1966 declared that each state party must ensure that men and women enjoy equal civil and political rights. It also provided that no one should be compelled to perform compulsory labor.The Vienna Declaration and Programmed of Action of 1993 which was adopted by the World Conference on Human Rights in Vienna makes provision to the effect that 'the human rights of women and the girl-child are inalienable, integral and indivisible part of Universal Human Rights.[27] The Summit of Heads of State and Government world summit outcome (2005) provides for gender equality and empowerment of women. Apart from these International Conventions and treaties, there are also Regional and National Conventions and Laws that encourages the participation of the citizenry in political activities of a country. Such organizations include the African Union (AU), Economic Community of

[27]*Ibid.*

West African States (ECOWAS) and various countries' constitutions. The basic truth is that for an election to possess international standards, the citizenry including women must be freely allowed to participate in that election.[28]

Human rights are defined as 'absolute moral claims or entitlement to life, liberty and property'.[29] In *Bobade Olutide& Ors v Adams Hamzat & Ors,*[30]the Court stated thus:

> *…now, I understand, Human Rights are moral principles or norms that describe certain standards of human behavior, and are regularly protected as legal rights in municipal and international laws. They are commonly understood as inalienable fundamental rights. These rights are based on belief that everyone is equal and should have the same rights and opportunities… However, these rights can be taken away though as a result of due process based on certain circumstances.*[31]

The African Charter on Human and Peoples' Rights[32] makes provisions to the effect that 'every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with provisions of the law' It further provided that 'every citizen shall have the right of equal access to the public service', and 'every individual shall have the right of access to public property and services in strict equality of all persons before the law'. It also provided that

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[28] Okonkwo, P. O. (n.d.). Over a decade of uninterrupted periodic elections in Nigeria: Challenges in complying with international standards. SSRN, *available at:*https://papers.ssrn.com/so13/papers.cfm?abstract_id=3368695 (Last visited 13th January, 2025).

[29] A. D. Jacob, 'Human Rights under the Nigerian Constitution: Issues and Problems' (2012) 2(12) *International Journal of Humanities and Social Science* 43.

[30] *Case Name*. (2016). LPELR – 26047 (Court of Appeal, Nigeria), *available at:*https://www.lawpavilion.com/lpelr/26047 (Last visited 13th January, 2025).

[31] *Ibid.*

[32] Nigeria, *Ratification and Enforcement Act*, Cap 10 Laws of the Federation of Nigeria 2004.

'all peoples shall be equal, they shall enjoy the same rights and respect'.[33] Also, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that 'the participation by the people in their government shall be ensured in accordance with the provisions of this constitution.[34] It also prohibits discrimination on grounds of sex, origin, religion, ethnic and languages.[35] The constitution also provides for equality and justice in the ideals and social order of the state. Thus, it provides that 'every citizen shall have equality of rights, obligations and opportunities before the law. It also stated that there should be equal work opportunities devoid of discrimination of employment on the ground of sex and any other such grounds.[36]

The rights adumbrated under these international laws are enforceable by member states. Thus, in *Ogugu v State*,[37] the Supreme Court of Nigeria held that the provisions of African Charter on Human and Peoples' rights are enforceable by the High Courts in Nigeria. Again, in *General Sani Abacha v Gani Fawelunmi,*[38] it was held that the Nigerian constitution is the supreme law of the land and its supremacy cannot be questioned, being the Grund norm. And in *Organ v Nigeria Liquefied Natural Gas,*[39]the Court of Appeal stated that all organs of government have it as a duty to observe and conform to the provisions of the constitution as it pertains to Chapter II of the said constitution bordering on fundamental objectives and derivative principles. In South Africa, the Court held that the constitution provided for civil and political rights and social economic rights. It further stated that all rights are interrelated and mutually supporting.[40]

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[33] *Ibid.*
[34] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 14(1)(c).
[35] *Ibid.*
[36] *Ibid.*
[37] (1994) 9 NWLR (Pt. 366)1 at 26-27.
[38] (2000)6 NWLR (Pt. 600) 228.
[39] (2012) All FWLR (Pt. 535), 338.
[40] See, Government of the Republic of South Africa v Grootboom (2001) 36 WRN @ 162-163.

Gender equality is very essential because it enhances the economic balance in a country's education, health and job opportunities, thereby improving the well-being of the people including women and men. Inclusion of women in decision-making processes across the globe heralds progress and national unity. Challenges such as difference in pays between men and women; inheritance and education gaps, culturally motivated discriminatory practices in Sub-Sahara Africa and some countries are some factors militating against gender equality.[41] The way forward is that propagating gender equality is a necessity to the actualization of the maximum goal of harmonizing and making the society inclusive, fair and better.[42] Therefore, gender based issues needs to be emphasized and remedied in order to encourage women in a very mutual relationship that would enhance development rather than oppositionality.[43]

4. Gender Equality and African Customary Laws

Gender equality connotes rights, opportunities and obligations of every individual in the society and should not be determined by whether an individual is born a woman and girl or a man and boy.[44] On the other hand, customary law mean customs accepted by members of a community as binding on the people. It has been described as 'a mirror of accepted usage'.[45] It is known for its changes or dynamic nature from time to time as the socio-economic spheres of the society progresses. One of the characteristics feature of African customs is its flexibility.[46] The Supreme Court of Nigeria has stated

[41] A. Ittianath, *Gender Equality Essay: Bridging the Gap for a Better Future*, Vedantu, *available at*: https://www.vedantu.com/english/gender-equality-essay (Last visited 19th January, 2025).
[42] *Ibid.*
[43] I. Olude, O. Adeyanju, O. Adetoye and F. Talfa, 'No Ladies at the Bar: Equality in Gender as a Basis for Complementarity and Not Oppositionality' (2025) 10(1) *International Journal of Gender Studies* 1.
[44] UNFPA ESARO. (n.d.). *Gender equality*. UNFPA, *available at:*https://g.co/kgs/78WiH17 (Last visited 14th January, 2025)
[45] *Owonyin v. Omotosho*, (1961) 1 All N.L.R. 304.
[46] Osborne, C.J., in *Lewis v. Bankole* (1908) 1 N.L.R. 81, 100–101.

that customary law entails any system of the law which is not common law or a law made by the legislature or any law-making body in Nigeria, but it is enforced by the Courts and it is binding on the parties that are subject to its existence.[47] The constitution of the Federal Republic of Nigeria 1999 (as amended) is the Grund norm of the country. It provides that its provisions is supreme and shall have a binding force on all authorities and persons within the Federation of Nigeria.[48] It further provides that any law that is inconsistent with the provisions of the constitution shall be void to the extent of its inconsistency. The constitution forbids any state of the federation from adopting any religion as the religion of that state. It also permits every citizen of the country to acquire and own immovable property anywhere in Nigeria.[49] In *Oba Lawal Ifabiyi v Chief S. Adeniyi*[50], it was held that the basis of native or customary law is for a person who alleges the existence of a custom to lead evidence to the establishment of such custom as the customary law is unwritten. Customary law cannot be in conflict with the provisions of the constitution. Where a custom is inconsistent or in conflict with the provisions of the constitution, it is declared unconstitutional. Thus, in *Timothy v Oforka,*[51] where a custom deprives a woman or girls and children from the gift of land from their father or mother, it was held to be contrary to the provisions of the constitution. Also, in *Ukeje v Ukeje,*[52] it was held that women, children and children born out of wedlock cannot be disinherited as it contravenes the provisions of the constitution.[53] Again, in *Mariam v Daniel,*[54] it was held that a woman is lawfully entitled to inherit her late father's property under the

[47]*Zaiden v. K. Molissen* (1973) 11 S.C.I.; see also *Ekeocha v. Ariataraonyenwa* (2009) ALL FWLR (Pt. 456) 1960, para. E.
[48] Constitution of the Federal Republic of Nigeria, 1999 (as amended), S. 1(1).
[49]*Ibid.*
[50] (2000) 78 LRCN 1402@ 1415.
[51] (2008) ALL FWLR (Pt. 413) 1370, 1381–1382, paras. C–B.
[52] (2014) 14 NWLR (Pt. 1418), 384–408, paras. C–E.
[53] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 32; see also *Chiduluo v. Attanssey* (2020) 6 NWLR (Pt. 1719), 102, 135, paras. B–D.
[54] (2020) LPELR – 51965 (CA), 26–28.

native laws and custom as embedded in section 42 of the constitution of the Federal Republic of Nigeria 1999 (as amended). Any attempt to deprive or disinherit a woman from her late father's property would amount to being repugnant.

Silas criticized the practice of disinheritance of women in Igbo land in Nigeria describing it as a culture that seem not to encourage the development of women and female children.[55] The scholar stated further that such act is discriminatory and that it has spurred the introduction of some international laws, conventions, treaties and other legal instruments already adumbrated earlier in order to cushion the effect of such barbaric and outdated practices.[56]

The practice was that women and female children are not entitled to inherit their late father's property in Igboland in the south eastern part of Nigeria, but on the 14th day of April, 2014, the apex Court of Nigeria put the agony of disinheritance against women to rest when it held in *Ukeje v Ukeje* that women and female children are entitled to inherit their late father's property. Only male children were entitled to inherit their father's property before the judgment was delivered.[57] Despite the judgment above, the end to disinheritance of women and girls do not seem in sight as the outdated practices still holds sway in many parts of the country.[58] Again, the question is what makes the first son of a deceased so important that he alone must inherit the property where his late father lived, died and was buried in Benin/Bini kingdom or custom in Nigeria? In *Abudu v Eguakun,*[59] the Supreme Court

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[55] S. T. Silas, *Disinheritance and Women Development in Igboland, Eastern Nigeria: A Theological–Ethical Study*, *available at:*https://acjol.org/index.php/jassd/article/view/455 (Last visited 15th January, 2025)

[56] *Ibid.*

[57] Library of Congress. (n.d.). *Nigeria: Supreme Court invalidates Igbo customary law denying female descendants the right to inherit*, *available at:*https://www.invalidates-igbo-customary-law-denying-female-descendants-the-right-to-inherit/ (Last visited 15th January, 2025).

[58] *Ibid*.

[59] (2003) 14 NWLR (Pt. 840), 311, 319.

held that the Igiogbe (the house where the deceased father lived, died and was buried) can only vest in the first son of the deceased after the second burial rites must have been conducted by the said eldest or first son. The Court further stated that until this is done, the eldest son holds the property in trust for the entire family.[60] But the question is: assuming the deceased had one and only property being where he lived, died and buried what would be shared to other members of the family? It is submitted that the Courts should have a rethink towards the issue of Igiogbe in Benin/Bini native law and custom in order not to disinherit other members of the family and to avoid placing special interest in the eldest or first son of the deceased.

Nonetheless, despite the existence of a custom, the Courts can reject such custom where it appears to be barbaric and outdated. In doing so, the Courts apply the repugnancy test; incompatibility test; and public policy test. Thus, in *Edet v Essien,*[61] the Court declared a custom that says that a child belongs to the man who paid the mother's dowry as repugnant to natural justice, equity and good conscience.[62] The incompatibility test of a custom was demonstrated in *Salau v Aderibigbe,*[63]where the Court stated that a rule of customary law is incompatible with local statutes or subsidiary legislations if the local enactment is intended to govern the subject matter to the exclusion of the customary law. In *Cole v Akinyele,*[64]the Federal Supreme Court stated that the Yoruba custom of legitimation by acknowledgment of paternity was void, consequent upon public policy as it applies to a child born out of wedlock under the marriage ordinance.

5. Conclusion

The quest for gender equality has reached a crescendo. It has become so vital that virtually in every part of the world, this struggle has evolved and it is

[60] *Ibid*.
[61] (1932) 11 N.L.R 47.
[62] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 42.
[63] (1963) W.N.L.R. 80.
[64] (1960) 5 F.S.C. 84.

seriously propagated the world over. It is true that if humans are created by God, there is no difference between men and women, and that there should be non-discrimination against women and girls in the scheme of things. Therefore, women must be allowed to enjoy the same rights, privileges and obligations as their men counterparts but not because they are born women. So many laws have been put in place by the international organizations, regional and national governments but it appears that in Africa and other parts of the world, many communities are adamant and have refused to abide by the laws and various judgments of Courts banning such inequalities. The right of women against violence; to acquire property, inheritance; trafficking; education, discrimination; political, social and economic rights; sexual rights, are inalienable and ought not be derogated from.

6. Recommendations

Having adumbrated extensively on the subject matter, the following recommendations are made: that member states of various international treaties and Conventions should ensure the implementation of the resolutions; State parties should endeavor to domesticate the various treaties entered into; the rights of women should be enshrined in the constitutions of various countries as fundamental human rights and violators of such rights be made to pay reasonable compensations; all women should be accorded the same political and socio-economic rights in all nations; all restrictions on women on the grounds of religion, custom, sex, race, color and any other grounds should be abolished forthwith; the Courts should endeavor to nullify and void customs and cultures that have outlived their usefulness; there should be quarterly reports and publications of the activities and violations of gender equality across the universe.

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The Role of Extended Producer Responsibility in India's Environmental Protection Framework for Effective E-Waste Management

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Abstract

In the current scenario where the world is developing at a higher pace, India, one of the major developing economies in the globe is facing a new challenge, how to deal with the rapid growth of waste from electrical and electronic equipment (WEEE). According to the recent Published data, India is on the third position in the list of highest producers of E waste in the world.[1] The reason behind this rapid growth is increase of consumption of electronic devices. The new technological developments such as E vehicles also become a recent addition to this rapid growth. This will cause great harm to human health and the environment, if not managed properly. The Indian government is addressing this issue and making effective legislation to deal with E waste and it is trying to establish a proper system to manage E waste at very initial level. Establishing a proper channel of facility for implementing rules to curb this issue of this is bit difficult part because consumers are not much aware about the facilities and producer does not want make public aware about this because it will directly make them liable for the production and make them finance the whole process of cleanliness of the area. Some essential steps were taken by the government to control this generation and disposal of the E waste, but some flaws are still persisting and that needs to be redressed as

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[1] "Statista, Global E-Waste – Statistics & Facts", *available at:*https://www.statista.com/topics/3409/electronic-waste-worldwide/#topicOverview(Last visited 16th June, 2023).

soon as possible for the protection of environment and if this addressed on time and implemented & executed in the proper manner then it could become a revolutionary step to control this problem.

Keywords: *E waste, Extended Producer Responsibility, Collection, Recycling, Safe Disposal.*

1. Introduction

E waste or electronic waste is a major challenge for India in the line of pollutions. The reason behind the extreme concerned of the world about this category of pollution is that the humanity is deviating from manual working to mechanized working. This mechanized working involves various electronic appliances which become old, discarded or end life with time and converted into the E waste. Appliances like Trimmer, Mobile phone, Tablets, computers, Laptop, Refrigerator, T.V., Fused Bulbs, Lights, Etc. Improper e-waste disposal endangers the global ecosystem. According to the global E-waste monitor report 2023, India is third in the list with approximate yearly production is 1.7 million tons which is a huge quantity for the nation like India. We are already facing various problems in context of pollution, but due to lack of awareness about this category E waste pollution is becoming a serious challenge to deal with. People are least aware about the processes developed to treat this category of waste and government has no planning to make the public aware about the measure enforces to manage this E waste. Advancements in technology have greatly enhanced the capacity of electronic devices and have led to numerous innovations. With the availability of newer and better electronic devices, people are less inclined to repair their old ones. This trend has led to an increase in the rate of e-waste, with the up-gradation of technical innovations and obsolescence in e-products being the primary factors behind this growing problem.[2] Indian government has implemented

[2] Monika & Pramod Malik, "E-Waste Management in India: Challenges and Opportunities", 26 *MDU L.J.* 8 (2021).

several measures to manage the E waste such as enacted E waste (Management and Handling) Rules, 2011[3] and revised the E waste management Rules in 2016[4] later it was again revised in 2018, the E waste management Rules 2018 and lastly revised E waste management Rules, 2022 which were enforced from April 2023, under these rules government enforced the responsibility and liability for the for producers, consumers, collection centers, dismantlers, and recyclers of electronic products. The provision such as section 3, 6 and 25 of the Environmental Protection Act, 1986, gives the way to enact these rules for management of E – waste.

The first E-waste (Management and Handling) Rules were notified in 2011 by the Ministry of Environment, Forests and Climate Change, which is responsible for waste-related legislation; they have been regularly updated and amended since then, with the latest amendment having come into force in April 2023.[5]

Under these rules the government incorporate most efficient clause which is 'Extended Producer Responsibility'. It was incorporated within the E waste (Management and Handling) Rules 2011, under chapter II by the name "Responsibility" but later it was amended and later in the revised rules of 2016 chapter II names as "Extended Producers Responsibility" where the responsibilities of safe collection, recycling and safe disposal of E waste enacted to tackle the E waste through a proper and in a channelize way to ensure environmentally sound management of such waste. Extended Producer Responsibility may comprise of implementing take back system or setting up of collection centers or both and having agreed arrangements with authorized dismantler or recycler either individually or collectively through a Producers

[3] E-Waste (Management and Handling) Rules, 2011.
[4] E-Waste (Management) Rules, 2016.
[5] Cornelis P. Baldé et al., *Global E-waste Monitor* (International Telecommunication Union & United Nations Institute for Training and Research [UNITAR] SCYCLE Program, Geneva/Bonn, 2024).

Responsible Organizations recognized by producers in their Extended Responsibility[6] in the revised rules of 2016. The producer has also to setup collection centers, conduct awareness campaigns, and work with authorization recyclers for the proper treatment of the waste, but does the facility is functioning in the way as it has been created by the framers.[7]

As we know that the growth of E waste generation enhanced exponentially due to fast growth in information technology and communication sector.[8] It is essential to curb this exponential surge and controlling it also requires the contribution of the consumers with the mandatory responsibility of producers. Consumers have played a vital role to dump or deposit this waste to the proper collection centers, so that it won't take much time in collection. This initiative also decreases the chances of dumping the waste to unauthorized local collection vendors which could improperly treat the waste and leads to other ill effects of that. This process requires equal participation and contribution of producers as well as consumers because they are the ultimate users of the product and they should have that awareness that what could be effect of the actions if they discard that without take due precautions before discarding it.[9]

2. Extended Producer Responsibility: What about consumers?

The E-Waste (Management) Rules, 2022, notified by the Government of India under the Environment (Protection) Act, 1986, place extensive obligations on producers through the concept of Extended Producer Responsibility (EPR). These obligations require producers of electrical and electronic equipment (EEE) to ensure that discarded products are collected, recycled, refurbished, and reused in an environmentally sustainable manner. Producers are also

[6] E-Waste (Management) Rules, 2016.
[7] *Supra* note 5.
[8] Akansha Manish & Paromita Chakraborty, "E-Waste Management System in India: Challenges and Opportunities", The Energy and Resources Institute, *available at*: https://www.teriin.org/article/e-waste-management-india-challenges-and-opportunities (Last visited on November 6, 2024).
[9] *Ibid.*

mandated to register on the Central Pollution Control Board's (CPCB) EPR portal, meet annual collection and recycling targets, and ensure that e-waste is channelized only through authorized recyclers and refurbishes. While these rules mark a significant step towards sustainable development and environmental protection, a pertinent question arises regarding the position of the consumer. Consumers often purchase electronic products at a high cost when they are brand new, but at the end of the product's life cycle, they face the challenge of disposal. Unlike producers, whose responsibilities are explicitly codified under the Rules, the government has not provided a statutory mechanism that secures the consumer's economic interest at the time of disposal.

The 2022 Rules obligate consumers and bulk consumers only to hand over e-waste to authorized collection centers, refurbishes, or recyclers. However, there is no legal provision requiring producers or the government to reimburse or compensate consumers for the residual value of their discarded gadgets. In contrast to certain global practices—for example, in the European Union, where deposit-refund schemes and take-back with incentives are common—India's regulatory framework is primarily environment-centric and does not extend to economic protection of consumers. At present, whatever monetary return a consumer may receive for disposing of old electronics is largely driven by market forces and voluntary initiatives. Some producers and retailers in India have introduced buy-back schemes, exchange offers, or discount programmes on new products when old gadgets are returned. Similarly, authorized recyclers sometimes provide vouchers or small payments to encourage responsible disposal. Yet, these are not mandated by law and remain inconsistent across industries. From a consumer rights perspective, this creates a regulatory gap. While the Consumer Protection Act, 2019[10] safeguards consumers against defective products and unfair trade practices, it

[10] The Consumer Protection Act, 2019 (Act 35 of 2019).

does not address the economic loss incurred at the time of discarding expensive electronic items. The government has attempted to address the issue indirectly by requiring producers to conduct awareness campaigns about safe disposal, but this is aimed more at environmental safety than consumer benefit.

The Supreme Court's decision in *Vellore Citizens Welfare Forum* v. *Union of India*[11] is remembered as a watershed moment in Indian environmental jurisprudence. In this case, the Court emphasized the adoption of Sustainable Development, the Precautionary Principle, and most importantly, the Polluter Pays Principle as essential features of Indian law under Article 21 of the Constitution. Although the case primarily dealt with industrial effluents from tanneries, its jurisprudential foundation has since extended to broader environmental regulatory mechanisms, including the Extended Producer Responsibility (EPR) regime under various waste management laws, particularly plastic and electronic waste. The Polluter Pays Principle, as applied in the judgment, placed the financial burden of environmental harm squarely on the polluter, compelling industries to not only stop pollution but also compensate for restoration. This principle directly inspired the idea of EPR, where producers are made responsible for managing the end-of-life disposal of the products they introduce into the market. However, when this principle is examined in the context of electronic waste, critical gaps emerge. While producers are obligated under the E-Waste (Management) Rules, 2022[12] to collect, recycle, refurbish, and ensure safe disposal, the consumer's position remains inadequately addressed. A consumer who pays a high upfront cost for electronic products naturally expects some benefit—whether monetary return, discount, or incentive—when handing over the product for recycling at its end-of-life stage. Unlike in Germany and Britain, where structured deposit-

[11] *Vellore Citizens Welfare Forum* v. *Union of India* (1996) 5 SCC 647.
[12] E-Waste (Management) Rules, 2022.

refund and take-back schemes provide tangible consumer benefits, Indian law does not mandate such mechanisms. Instead, the government has left consumer incentives largely to the discretion of producers or the informal market of kabadiwalas, who, despite being environmentally unsafe, continue to provide immediate monetary returns to consumers and thus dominate the e-waste ecosystem.

This reveals a paradox: while judicial pronouncements such as Vellore Citizens Welfare Forum champion environmental protection for the people of India, the actual regulatory translation into EPR frameworks focuses almost entirely on producer obligations and environmental restoration, without providing direct consumer protection or motivation. The judicial spirit of balancing development with people's rights seems only partially realized, as the ordinary consumer bears both the economic burden of expensive electronic goods and the responsibility of disposal, with little incentive or security provided by law.

3. Limitation of Extended Producer Responsibility

Although the Extended Producer Responsibility (EPR) framework under the E-Waste (Management) Rules, 2022[13] is a progressive step, its implementation in India has faced significant challenges. Unlike countries such as Germany and the United Kingdom, where structured systems of designated dumping zones and consumer drop-off counters are well established, India lacks a similar robust infrastructure. In Germany and Britain, consumers have convenient access to municipal collection points, recycling centers, and retailer take-back counters where they can deposit electronic waste free of cost. This accessibility ensures high compliance and consumer participation. In contrast, India has not developed a widespread network of easily accessible dumping zones or e-waste counters where individuals can deposit their

[13] *Ibid.*

discarded gadgets. The absence of such infrastructure discourages ordinary consumers from following the formal e-waste disposal channels envisioned by the Rules.

Further, the Indian system relies heavily on contracts awarded to private companies for the collection of e-waste. However, these companies frequently subcontract or depend upon local vendors and informal waste collectors for actual collection, transportation, and segregation. This indirect system dilutes accountability and undermines the very purpose of a producer-led responsibility framework. Another critical shortcoming is the lack of consumer-oriented guidelines and incentives. The Rules do not mandate producers to provide tangible benefits—such as discount coupons, deposit-refund schemes, or buy-back offers—that could motivate consumers to hand over their used electronic products at designated collection centers. In the absence of such incentives, the general public continues to rely on the informal sector, particularly “kabbadiwalas”, who, despite operating outside the formal recycling chain, offer consumers a small but immediate monetary return in exchange for their discarded electronics. This makes the informal sector far more attractive to consumers compared to the formal system.

The result is that the informal recycling sector still dominates e-waste management in India, while formal producer responsibility mechanisms struggle to gain traction. Informal collectors often handle waste in environmentally unsafe ways, leading to pollution, health hazards, and the loss of valuable recyclable materials that could have been processed under authorized systems.

4. Possible Challenges and Future Prospects of Extended Producer Responsibility in India

Despite the ambitious vision and strategic significance of the Extended Producer Responsibility (EPR) framework in India's environmental

governance, its practical implementation is riddled with numerous systemic and structural challenges. These hurdles, if not addressed comprehensively, risk undermining the intended environmental and socio-economic outcomes of the policy. One of the primary implementation challenges of EPR in India is the fragmented and decentralized waste collection system, particularly in urban and peri-urban areas. Waste management in the country is largely handled by informal waste pickers and scrap dealers, often referred to as the *kabadiwala* network. While this informal sector plays a critical role in resource recovery and recycling, it operates without any formal regulation, standardization, or support, leading to inefficiencies and poor environmental practices.[14]

The lack of integration between formal EPR mechanisms and informal workers results in:

- *Underreporting and Leakage:* Underreporting means that producers, recyclers, or other stakeholders intentionally or unintentionally report lower quantities of recyclable waste than what is actually generated, collected, or processed. Leakage refers to recyclable materials escaping the formal waste management and recycling system, often being diverted to the informal sector or disposed of inappropriately (e.g., dumped or landfilled), instead of being properly tracked, recycled, and reported under EPR obligations.[15]
- *Occupational Hazards:* Occupational hazards are risks or dangers that individuals face in the course of their work. For informal waste workers, these hazards stem from handling hazardous, contaminated,

[14] "Ministry of Environment, Forest and Climate Change, E-Waste (Management) Rules, 2016", *available at* https://moef.gov.in/wp-content/uploads/2017/08/E-Waste_Mgmt_Rules_2016.pdf (Last visited June 6, 2025).

[15]Akansha Manish & Paromita Chakraborty, "E-Waste Management System in India: Challenges and Opportunities", The Energy and Resources Institute, *available at* https://www.teriin.org/article/e-waste-management-india-challenges-and-opportunities (Last visited on November 6, 2024).

or sharp materials without protective gear, training, or regulated working conditions.[16]

- *Loss of Economic Value:* As unorganized recycling lacks quality control and technology. Unless these informal actors are recognized, trained, and integrated into formal waste management systems, EPR will remain only partially effective.[17]
- *Lack of Uniformity Across States:* India's federal structure creates variations in EPR enforcement at the state level, despite a central policy mandate from the Ministry of Environment, Forest and Climate Change (MoEFCC). Several state pollution control boards (SPCBs) and local urban bodies have not aligned their waste management policies or enforcement infrastructure with national-level EPR requirements.[18]

One more major challenge is the lack of uniformity in the implementation of EPR regulations across different states. This inconsistency leads to regulatory confusion for producers operating in multiple regions, causes variations in monitoring and compliance protocols, and hinders progress toward national waste management goals. To address this, it is crucial to harmonize policies and establish a consistent national framework with clearly defined responsibilities and penalties for non-compliance. Another significant issue is the limited awareness and compliance among small and medium enterprises (SMEs). Unlike large multinational and domestic corporations, which typically comply with EPR norms due to reputational concerns and greater resources, SMEs often lack awareness, technical expertise, and financial

[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.*

capacity to fulfill their obligations.[19] As a result, only large producers remain accountable, which distorts market fairness. Moreover, a considerable portion of waste generated by SMEs remains unmanaged, undermining environmental objectives. The burden of compliance also becomes disproportionately heavy on larger entities. To mitigate this, a robust outreach initiative, financial support mechanisms, and simplified compliance requirements for SMEs are necessary. Looking ahead, the future of EPR in India appears promising, contingent upon strategic reforms and innovative practices. A key recommendation is the integration of the informal sector into the formal EPR system. This could involve registering and certifying informal waste workers, offering them skill development and capacity-building programs, and fostering public-private partnerships to build inclusive waste management infrastructure. Such steps would enhance social inclusion and accountability in the recycling ecosystem. Further, there is a need for capacity building and the adoption of advanced technologies. This includes organizing training workshops for regulatory authorities, providing technical assistance to producers for creating take-back systems, and developing digital platforms for real-time tracking of waste. Technologies such as blockchain, the Internet of Things (IoT), and Geographic Information System (GIS)-based tracking can improve transparency and curb fraudulent practices in reporting. Additionally, EPR must align with the broader goals of a circular economy, which emphasizes resource efficiency, waste reduction, and product longevity. By promoting eco-design, repair, reuse, and recycling, India can reduce environmental impacts, stimulate innovation, and generate green employment opportunities. Lastly, the legal and institutional frameworks governing EPR must be strengthened. This entails instituting clear penalties for non-compliance, setting standardized targets for various waste categories like e-

[19]Anupam Sastry, "Law and Policy for Management of E-Waste in India", 1 *NALSAR Environmental Law & Policy Review* 45 (2013).

waste, plastics, tyres, and batteries, and establishing independent monitoring bodies. Creating a National EPR Compliance Authority with enforcement powers could significantly enhance compliance, monitoring, and overall system efficiency.

5. Conclusion

The EPR framework in India has not yet achieved its intended goals because of infrastructural deficiencies, lack of consumer incentives, and dependence on informal vendors. For EPR to succeed, the government must establish designated collection points across urban and rural areas, ensure transparent accountability of producer responsibility organizations, and make it mandatory for producers to offer incentive-based take-back schemes. Without these reforms, India will continue to face difficulties in channelizing e-waste into formal recycling systems, despite having progressive rules on paper. In contrast, countries like Germany and Britain have successfully implemented the EPR principle by creating well-structured municipal collection centres, accessible drop-off counters, and mandatory retailer take-back systems, which make it convenient for consumers to dispose of electronic waste responsibly. India's lack of such infrastructure and consumer-oriented mechanisms is a major reason why the informal sector continues to dominate e-waste management.

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'From Digital Divide to Digital Justice': Bridging Legal Access Through Online Dispute Resolution in Rural India

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Abstract

Right to access to justice is a fundamental right, however, it is an unrealized goal for many parts of the rural India owing to a number of geographical, economic and social barriers. Technology based solutions in form of Online Dispute Resolution (ODR) can bridge this gap by helping to resolve disputes while bypassing the physical presence needed in the Court of law. This research investigates the potential of ODR to transform access to justice for people in rural & remote areas where traditional courts are not accessible. It delves into the challenges faced by rural people while accessing justice, which includes long distance to court, high litigation cost and paucity of legal awareness. Next, it looks at how ODR can overcome these barriers by decreasing travel, lowering costs, and speeding up the resolution process. The research also describes the crucial function of digital infrastructure and mobile technology in supporting ODR while acknowledging the associated technological, legal and cultural barriers that prevent its adoption. This research identifies best practices for ODR implementation in rural spheres through an analysis of efficacious ODR initiatives in India and international models. It proposes suggestions for expanding digital infrastructure, building legal awareness and ODR platforms that suit the needs of the rural population in the country. However, if the limitations of ODR are overcome through policy

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and community engagement along with adequate development of infrastructure, ODR has the potential to completely transform access to justice in rural India.

Keywords*: Access to Justice, ODR, Rural India, Digital Justice, E-Courts, Judicial System, Legal Technology, Rural Connectivity*

1. Introduction

Access to justice is the bedrock of any democracy; no one who lives in a democratic society should be forced to pay for, or lack access to, the legal resources needed to assert their rights and receive equal treatment before the law. An important aspect of preventing rules by decree and maintaining equality as well as the freedoms of all citizens it serves to play.[1] There is a deep embedding of the right to justice in Indian Constitution in Art. 14, 21, & 39A, which guarantee equality before law, the protection of life and liberty, and free legal aid to poor persons, respectively. Consequently, these constitutional provisions classify to form an equitable and inclusive justice system. But reality on the ground often falls short of these safeguards.[2]

There's a large gap between urban and rural regions in India's judicial system. Relative better infrastructure of the urban areas gives them more access to courts, legal professionals, and ADR mechanism. On the other hand, the rural population is often confronted with so many barriers to access justice. The main problem is a lack of physical proximity to courts. The transportation infrastructure in many rural communities is inadequate, and legal centers are far from district courts, rendering travel to and from them both time consuming and expensive. Besides, the lack of access to legal services in rural

[1] *United Nations*, *Access to justice* (n.d.), *available at*: https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ (Last visited on August 1, 2025).

[2] H. Karanure, "Article 14 – Equality before law and equality protection of the law" *Manupatra* (2022), *available at*: https://articles.manupatra.com/article-details/Article-14-Equality-Before-Law-and-Equality-protection-of-the-law (Last visited on 1st August, 2025).

areas exacerbates the problem by imposing many rural residents into dire circumstances without much representation, or legal advice. The fact the huge backlog in Indian judicial system costs add to the already prevalent urban rural disparity in access to justice. More than 5 crores of pending cases, with delays of years or even decades. Most of the judges are stuck in this backlog, in between these meetings, and this backlog not only creates inefficiencies, but it diminishes the public's confidence in the judicial process, especially for those in remote areas who have to already overcome logistical and financial barriers.[3]

India's justice barriers are not only logistical. The access to justice is broader than simply seeing the inside of a courtroom. It requires being able to understand and move through the legal system, receiving fair and fair play treatment also get disputes settled in a timely (and affordable) fashion. All of the above challenges are exacerbated for rural populations. Legal procedures can be complex for people who do not know the lingo of the court, do not know how to read or have no resources to hire competent legal counsel. High litigation costs, in particular, can deter people from pursuing their cases, and particularly when their economic situation makes even basic necessities beyond reach.

Besides, to the extent possible, access to justice depends on whether people know their rights, and if so, whether they are aware of legal aid. People in many rural areas are not fully informed about what the law entitles them to or how they can seek redress. Women, economically disadvantaged persons, and minorities are particularly susceptible in this regard because they are marginalized communities. Although they are constitutionally required, legal aid services, especially in remote areas, are not that helpful in practice. The

[3] A. Ranade, "Pending cases cross 5-crore: Justice delayed is justice denied" *Deccan Herald, available at*: https://www.deccanherald.com/opinion/pending-cases-cross-5-crore-justice-delayed-is-justice-denied-1241077.html (Last visited on 1st August, 2025).

absence of legal awareness and help towards a lack of balanced justice distribution system in India is one of the reasons that contribute to the lack of justice. This is where innovations, such as ODR, promise to fill in the gap between urban and rural access to justice.[4]

Since much of the existing system is built upon adversarial models of conflict resolution, it stands to reason that ODR is also best suited for those unable to navigate or endure adversary court options due to geographical, financial, or procedural barriers. ODR uses digital platforms to resolve disputes using processes such as mediation, arbitration, & negotiation, all of which can be done remotely. This technology driven approach makes parties resolve conflicts without physical appearances in court or formal legal settings, providing a flexible and cost effective and time efficient alternative to the conventional judicial process.[5]

ODR is rooted in the field of e-commerce in which it first developed to address online transaction disputes. Early in the development of e-commerce, platforms such as eBay and PayPal used digital mediation and arbitration to resolve cross border consumer disputes in an efficient, independent of national court manner. These platforms were successful in showing that ODR can be used to resolve a broad range of disputes quickly and cheaply. ODR has been extended beyond consumer disputes to include civil, family and commercial matters in time. It has proved attractive to parties seeking quicker resolution by virtue of its capacity to avoid delays and costs inherent in traditional litigation.[6]

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[4] *UNDP*, *Programming for justice: Access for all. A practitioner's guide to a human rights-based approach to access to justice* (2005).

[5] Varsha, "Online dispute resolution and access to justice: Analyzing challenges and opportunities" *BnB Legal* (9 2023), *available at*: https://bnblegal.com/article/online-dispute-resolution-and-access-to-justice-analysing-challenges-and-:opportunities/ (Last visited on 1st August, 2025).

[6] A. Gupta & A. Bajpai, "Online dispute resolution in India: A distant reality or dream?', in P. Das (ed), *Contemporary perspectives in international arbitration: Decoding global trends* (Thomson Reuters, 2023).

The adoption of ODR has become a part of India's larger push towards digital governance and in India itself. However, the groundwork for digital technologies integration for the judicial system was prepared by initiatives like 'Digital India' campaign as well as the Supreme Court's E-Courts project. Bankruptcy cases are digitized, subject to e-filing systems; virtual court hearings are maintained; all which have streamlined legal processes. The COVID-19 pandemic, meanwhile, sped up the ODR adoption because lockdowns forced the hearings and out-of-court settlements to be virtual. Today, in India, several ODR platforms like Sama and Centre for Online Dispute Resolution (CODR) are leading the way with the resolution of disputes. These platforms provide services for all kinds of issues, including but not limited to consumer grievances, commercial disputes, and even family matters.[7]

ODR offers real promise for addressing the access to justice crisis in rural India. Digital mediation or arbitration can help often civil disputes regarding property, contract, or inheritance to be resolved in a way that saves time and decreases costs for the parties involved. ODR can also be an efficient means for addressing consumer disputes, especially those from online transactions, due to its applications of handling those in a swift and seamless way. ODR is also flexible enough to resolve commercial disputes, which are often resolved faster and less expensively than drawn out litigation through arbitration or negotiation.

Beyond such traditional dispute areas, ODR can handle a host of other kinds of disputes as well, including workplace conflicts, small claims, and family disputes including divorce and child custody. ODR is a feasible, accessible, scalable and efficient solution to the problem of rural India where physical

[7] R. K. Gaur, "Tech-driven justice: Unraveling the dynamics of online dispute resolution (2024) *Live Law,available at*: https://www.livelaw.in/ lawschool/articles/ future-of-justice -technology-alternative-dispute-resolution-260027. (Last visited on 1st August, 2025).

distance to courts, high cost of litigation is a major deterrent. By its ability to operate across geographical boundaries, and cost effectiveness, ODR is an essential tool for enhancing access to justice for underserved populations.[8]

2. Objectives

This research seeks to explore the transformative potential of Online Dispute Resolution (ODR) in addressing the persistent justice gap in rural India. The primary objectives of the study are as follows -

2.1. To examine the barriers to accessing justice faced by rural populations in India, including geographical, economic, institutional, and socio-cultural impediments.

2.2. To critically assess the feasibility, effectiveness, and scalability of ODR mechanisms in the rural Indian context.

2.3. To evaluate the legal and policy framework governing ODR in India and analyze its adequacy in promoting digital justice.

2.4. To identify best practices and success stories from both domestic and international ODR initiatives that can be adapted for rural India.

2.5. To propose policy and infrastructural recommendations for integrating ODR into India's rural justice delivery mechanisms in a sustainable and inclusive manner.

3. Methodology

The research adopts a doctrinal and analytical approach based on both primary and secondary legal sources. The methodology includes -

3.1. Doctrinal analysis of constitutional provisions (such as Articles 14, 21, and 39A), statutory laws including the Civil Procedure

[8] *Ibid.*

Code, the Arbitration and Conciliation Act, and the Information Technology Act, as well as judicial pronouncements related to online dispute resolution.

3.2. Policy and institutional analysis of government initiatives like the Digital India Programme, Bharat Net, and the E-Courts Mission Mode Project.

3.3. Comparative assessment of global ODR practices and how they inform the Indian context, particularly through documents by UNCITRAL, WIPO, and international arbitration forums.

3.4. Review of academic literature, reports, and working papers from credible sources including the NITI Aayog Expert Committee Report on ODR, Vidhi Centre for Legal Policy, and scholarly journals.

3.5. Empirical insights drawn from documented outcomes of Indian ODR platforms such as Sama and CODR, with emphasis on their operational models, outreach in rural areas, and impact.

This blended methodology allows for a critical understanding of the challenges and opportunities that ODR holds in bridging the justice divide in India's rural landscape.

4. Current Challenges in Accessing Justice in Rural India

While there exist an elaborate legal framework promising justice and equal rights for all citizens is not accessible to India's vast rural population. This disparity between urban and rural judicial access is both wide and deeply rooted by a combination of logistical, economic, institutional, social and cultural factors. Systemic inefficiencies and social realities of the rural communities worsen these issues, which makes it particularly difficult for individuals to seek, and to access timely and effective justice. Challenges to

justice in rural India can be categorized into different domains, each having its own barriers to the rural people.

4.1. Geographical and Logistical Barriers

A major challenge to rural peoples' access to justice in rural India is its geographical isolation. District and Urban centers become the place of concentration of courts and legal institutions, which are quite far off from remote villages. Each of these courts is so far away for rural people that they often travel great distances without adequate public transportation. But there are no proper roads, no regular bus or train services, and the costs of private transportation are prohibitively high to make the situation worse. But many rural residents are compelled to spend huge sums of money and lots of time just to get to court, and for the poorest of the poor such costs often prove prohibitive, keeping them from getting justice at all.[9]

In addition, the barriers to physical travel are not the only ones. The coordination between rural litigants and legal professionals is hampered by poor communication infrastructure, including poor internet access. In recent times, as technology finds its way into the legal system, virtual hearings, online consultations, digital filings are all the more common. But the 'digital divide' that excludes large swathes of rural India from accessing such services means that rural populations are often unable to. Rural litigants are further disadvantaged by the uneven rollout of technological solutions such as ODR systems, which often leave them unable to participate in the digital legal revolution and behind in an ever more tech reliant judicial process.[10]

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[9] Ankona, *Online Dispute Resolution in India*, VIA Mediation Centre (n.d.).

[10] P. Yadav, "Digitizing justice: The case for dedicated online dispute resolution legislation in India" *SSRN* (2024), *available at*: andhttps://papers.ssrn.com/sol3/ apers.cfm? abstract_id =4840167 (Last visited on 2nd August, 2025).

4.2. Economic Constraints

Another big hindrance in the hunt for justice in rural India is economic barriers. The cost of legal proceedings to many is simply too high. Litigation costs include a wide variety of costs including lawyer fees, court charges, travel costs and administrative costs. Most of these financial burdens disproportionately affect rural populations and particularly those from marginalized communities like small scale farmers, tribals and women. Most people working in rural areas are dependent on seasonal agricultural labor, or informal work, and have precarious and limited income. That means that the financial strain of trying to pursue legal action is too much for some people to bear, it can even discourage people from seeking justice even where there are serious grievances.

These economic challenges hit the hardest at the marginalized groups. For instance, farmers mired in land disputes or bound in cycles of debt frequently avoid the legal system, because the costs to litigate are greater than they can earn. Many who have legitimate claims are scared off by the fear of adding to their poverty with legal fees, and are therefore susceptible to exploitation by landlords, moneylenders, or other powerful persons. Women in rural India, many of whom does not have financial independence, also have additional obstacles to going to justice. Anyone dependent on male family members for economic support, and subject to the restraints of social pressure, especially in relation to domestic violence, property, and questions of inheritance, may not be able to get legal representation.[11]

Though theoretically available, legal aid services are not effectively promoted nor implemented adequately in many rural regions. These legal services are intended to offer free or affordable legal help to those who need it, but rural

[11] I. Aravind, "Online dispute resolution is beginning to find takers in India" *The Economic Times* (2020). *available at*:https://economictimes.indiatimes.com/small-biz/startups/ features/ online disputeresolution-is-beginning- to-find-takers-in-india/ articleshow/73206371.cms? from=mdr (Last visited on 2nd August, 2025).

residents often do not know they exist or are stymied by red tape. Many individuals are kept in the dark about the consequences of the law because they do not have the funds or access to allocate to pay for legal representation, when necessary, because of this they often find themselves trying to represent themselves in court without the tools necessary for success due to lack of legal knowledge or experience.

4.3. Institutional Barriers

Institutional barriers to justice for rural populations are as much in the judicial system itself. The biggest problem is that rural areas have no courts or judicial personnel, resulting in a mountain of cases. But in many rural districts, there is a gaping gap between number of cases filed & capacity of local courts to process them. The lack of judges, clerks and other court staff needed means relatively simple disputes can languish in the system for months or years before being resolved.

Which is not only frustrating for litigants but also might have profound social and economic consequences especially when delays are critical. This is just one example of a land dispute that is common in rural areas and is tied up in legal limbo that can keep farmers from cultivating the land or planning for the long term. Just as delays in resolving family disputes, criminal charges, or employment grievances can prolong uncertainty, which is already difficult for many rural citizens to endure.[12]

The institutional barriers are also created by India's legal procedures being complex. Formalities, legal jargon and elaborate procedures are the hallmarks of the judicial process, and they can be so burdensome for an ordinary rural citizen that he ends up losing his case. For the unfamiliar with the workings of

[12] Primus Partners, "Can ODR be the game changer for the digital economy? Recommendations to empower the digital nagriks" (2024), *available at*: https://primuspartners.in/docs/documents/B5CCex7rcRswcwtdkBEI.pdf (Last visited on 2nd August, 2025).

the court system the bureaucracy and procedures of the judiciary can be too much. Many stay away from doing anything because of the lack of accessibility to simplified legal information and procedural guidance, which discourages people from taking action or causes people to drop a case in the middle of it.

4.4. Social and Cultural Barriers

Additional hurdles in accessing justice exist also from social and cultural factors that are present in rural population. Rural India, especially, women and marginalized communities are illiterate and don't know the laws of the land. Rural citizens are not aware of their legal rights and what is the redressal mechanism available to them. Often, they do not even know they are entitled to justice and do not take legal action, despite this. Finally, going along with economic illiteracy, individuals find it difficult to engage legally oriented documents, court proceedings or even to understand the outcomes of cases because of their sense of powerlessness in the judicial process.

Additionally, rural boundaries and related gender bias can frustrate access to justice for some people in society. For example, caste-based discrimination can stop lower caste people from approaching the law without social repercussions. Like women, there are often extra barriers for women to get to this same outcome, including women being discouraged from seeking legal redress in patriarchal families matters or domestic violence cases. Gender biases also affect when justice is delivered, and gender biased issues seem to be prevalent, female litigants are usually discriminated or marginalized in the court process.[13]

However, informal dispute resolution mechanisms such as local Panchayats or village council are preferred by rural communities, which take place quickly

[13] J. Clammer & M. Byrne, "The Village Says "No": Why Online ADR Is Not (Yet) Working in Rural India" 3(1) *Law, Technology and Humans* 133 (2021).

and are more familiar to them. These traditional systems can certainly deliver effective answers in some cases, but they may not be impartial, legal and enforceable, especially where powerful people, or even local elites, have their way in decision making. Additionally, it often happens that Panchayats and other unorganized forums are in no position to sort out even complex legal issues, or to protect the rights of less privileged groups, which results in injustice. However, given these limitations, informal systems continue to be preferred, as many rural citizens regard the formal legal system as distant, inaccessible and/ or intimidating.[14]

5. Overview & Role of Online Dispute Resolution in India

The rapid expansion of the internet and e-commerce has resulted in ODR becoming a 'logical and natural progression' for the speedy resolution of disputes, providing a fast and easy way to do so. ODR is less than 20 years old, first being introduced by American scholars Ethan Katsh and Janet Rifkin in their 2001's book but has become widely recognized worldwide. There is promise that influential organizations such as the WIPO, Hague Conference on Private International Law & US Department of Commerce will explore its potential. This approach has been taken up by governments in several countries in a short span. The appeal of the concept at a global level is based on the growth of international business and the added value of ODR in relation to traditional methods of ADR. The one big advantage of it is flexibility, participants don't necessarily have to be physically present in a certain location. This also means they can engage in the process from their offices or their homes if they need to.[15]

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[14] NITI Aayog Expert Committee on ODR, "*Designing the future of dispute resolution: The ODR policy plan for India"* (October 2021), *available at*: https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf (Last visited on 2nd August, 2025).

[15] Juris Centre, "The rise of online dispute resolution (ODR) in India" (2024), *available at*: https://juriscentre.com/2024/02/14/the-rise-of-online-dispute-resolution-odr-in-india/ (last visited on August 2, 2025).

The significant increase in online cross-border transactions, coupled with the growing need for dispute resolution mechanisms, prompted the UN Commission on International Trade Law (UNCITRAL) to focus on ODR during its forty-third session. UNCITRAL emphasized that accessible dispute resolution is a valuable resource for both buyers and sellers involved in international commercial transactions. Its Working Group is currently discussing the development of 'Procedural Rules for ODR in Cross-Border Electronic Commerce Transactions.' In 2017, UNCITRAL also published its Technical Notes on ODR, reflecting ongoing efforts to make the ODR process a practical and widely adopted solution.[16]

The current legal provisions in India do not rest a ban on ODR, and in fact, do not prevent its application either. ODR is in synergy with India's legal system because the legal adage is one that states that if something is not prohibited then it is permitted. In fact, the laws of India promote the use of ADR mechanisms and there is scope for ODR as well. For example, Section 89 of CPC, 1908 encourages the use of ADR methods, and Order X, Rule 1A permits the courts to order the parties to consider any ADR mechanism to resolve their disputes that include ODR. Likewise, the Arbitration and Conciliation (Amendment) Act, 2015 adopted a liberal approach for reference to the mediation and conciliation, besides making it possible for the arbitral tribunal to adopt mediation, conciliation or such other procedure during arbitration. The Act also gives the parties considerable freedom to decide where and how to pursue their cases.[17]

With respect to legality of proceedings carried out on, or through electronic platform and of electronic evidence produced in course of such proceedings, IT Act, 2000 & Indian Evidence Act 1872 *inter alia* make it clear that

[16] *Supra* note 10.
[17] D. Kinhal, T. Jain, V. Misra & A. Ranjan, "ODR: The future of dispute resolution in India" *Vidhi Centre for Legal Policy* (2020), *available at*: https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/ (Last visited on 2nd August, 2025).

electronic evidence may be admitted & treated as such under Indian legal system. Apex court in *State of Maharashtra* v. *Dr. Praful B.* Desai[18] noted use of video conferencing to take witness statement. Arbitration Act goes on to say that in ADR process, if award is pronounced, then it can be exchanged through e-mail by sending scanned copies. There is lot of legal backing to holding this stance, & courts have also found dispute resolution through electronic communication valid in various cases. In *Grid Corporation of Orissa Ltd v. AES Corporation*[19] observed that "when a suitable consultation can be achieved by resorting to electronic media and remote conferencing, it is not necessary that two persons who are required to act in consultation with each other should necessarily be together at one place unless it is requirement of law or a contract between the parties". In view of this, it can be concluded that ambit of existing legal framework when it comes to ODR process is sufficient.

ODR process is useful in many specialties of law. ODR has great potential as an efficient tool to solve such e-commerce transactions as the e-commerce market is growing and e-commerce disputes are a part of daily practice. At the same time, ODR could also be a good process for the disputes of employment, real estate, banking etc. because ODR is a more convenient way to maintain a warm business relationship even within physical distance. Additionally in intellectual property disputes due to cross border transactional probability they can directly observe and participate in the proceedings and also can sue and be sued without any territorial barriers.

Country's requirements align with benefits of concept & hence, ODR process is most appropriate for India. One of main advantages of ODR is cost saving which has been listed above. As an approach to the conventional trial process, ODR offers the likelihood of dispute settlement at considerably reduced cost. As of now, economy & politics in India is more concentrating on its small

[18] (2003) 4 SCC 601.
[19] (2002) 7 SCC 736A.

business, online business, startup etc. In short, this is extremely favorable lower cost advantage for businesses & customers for whom prices are the main bar to justice. In the longer run, growth of ODR would also help in achieving the legislative goal of making India an international ADR destination.

6. Potential of Online Dispute Resolution to Enhance Access to Justice in Rural Areas

6.1. Reducing Physical Distance Barriers

The ability of ODR to do away with the need for physical presence in courts can be of great benefit to those who live far from centers of population. For minor and non-criminal disputes, it is hard for people to come from remote rural villages to court complexes and in India, the distances are vast. This problem is compounded by the time and financial costs of travel, lodging and taking time off work.

ODR can turn this scenario on its head and allow litigants to participate in legal proceedings from within their own homes or their local community centers. This becomes all the more important in states like Uttar Pradesh, Bihar, Rajasthan, where getting to courts is often an issue of poor infrastructure. *State of Maharashtra v. Dr. Praful Desai*[20]allowed video conferencing for recording testimonies of witnesses opened door for introducing technology into legal proceedings. The pandemic induced shift of courts towards digital courts further enhanced the foundation laid for more widespread adoption of ODR mechanisms.

India's rapidly growing internet penetration has created a strong case for mobile accessibility and ODR's capacity to bridge the rural. Important enablers are government initiatives like Digital India and increasing low-cost internet accessibility with programs such as BharatNet aiming at providing

[20] (2003) 4 SCC 601.

broadband connectivity to all of India's 2.5 lakh Gram Panchayats. In addition, the growing availability of low-cost smartphones makes it possible for users in regions where there may be limited access to computers to have access to ODR platforms. As more people become digitally literate in rural areas, the distance barrier is nullified by ODR platforms that provide mobile dispute resolution and participation in court proceedings by video conferencing.

6.2. Cost-Effectiveness and Affordability

ODR platforms also dramatically decrease the financial costs of seeking justice, which is typically a major impediment to rural litigants. Litigating in the traditional court has many factors such as the legal fees, court fees, travel expenses, and the additional cost with the requirement for multiple appearances in court, and the result is it's very expensive. In rural communities, where economic resources tend to be limited, however, high costs of litigation are prohibitive.

ODR can sharply lower this cost. And dispute resolution becomes more affordable, as operational costs are reduced (without the need for physical infrastructure such as courtrooms or legal offices). Some ODR processes could also provide simplified legal representation and some disputes, in fact, might not even require formal representation altogether, reducing attorney fees. There are many ODR platforms, such as Sama and CODR, who offer subscription models, pay per case options, even government sponsored services for low-income litigants to further reduce financial burdens.[21]

In this context, the success of the Lok Adalat, an informal dispute resolution mechanism that is rapidly going online, is a template for cheap justice. Traditionally, Lok Adalat have been an affordable method to resolve smaller disputes and incorporation of them to ODR platforms amplifies their reach and efficiency in rural areas. For instance, the E-Lok Adalat during the COVID-19

[21] *Supra* note 7.

pandemic showed that disputes can be resolved online at almost negligible costs, for example cases involving motor vehicle accidents, matrimonial disputes and land disputes.

6.3. Expediting Dispute Resolution

This particular issue remains one of biggest challenges to judicial system with rural plaintiffs waiting for anything between a year and three decades to get their cases heard and determined. ODR has the capability to shorten dispute resolution processes and therefore eliminate these delays.

In conventional litigation, matters may take unnecessarily long periods due to procedural formalities, congestion in the courts and frequent postponement of hearings. But since ODR mechanisms include online arbitration, mediation, and conciliation, the disputes can be solved faster, with little attention paid to procedural issues. For example, an ODR platform may be used to conduct negotiations or mediation sessions that are more convenient and can be held at any time on different days, that is, there is no physical contact.[22]

The speed of ODR is most appealing in relation to civil matters; those being family issues, land disputes, or consumer complaints which are not as intricate as a criminal case, but nonetheless take up a great amount of time within a court. ODR can assist in freeing the burden of the courts especially in a country which has currently more than 50 million outstanding cases. Arbitration and Conciliation (Amendment) Act, 2015, which fine-tuned arbitration process, adds yet more enhanced legal support to the fast track ODR process.[23]

Furthermore, ODR may help to deal with the cases quicker because many delays that can occur in the courtroom-based litigation are avoided, including adjournments or scheduling conflicts or time-consuming physical collection of

[22] *Supra* note 15.
[23] *Supra* note 3.

evidence and witnesses. Taking into consideration present possibilities of digitalized submission of evidence, automatic scheduling of hearings, or asynchronous communication, instead of years, most of the disputes can be solved in weeks or months.

7. Conclusion

ODR is capable of becoming the game-changer in India justice delivery system especially for the rural and remote population. From the discussion made in this article, it can be appreciated that ODR has a potential to reduce geographical, economic and institutional barriers to legal redress in rural areas which have remained a major hindrance in the past. Thanks to the advancements in technology, it is possible for such disputes to be handled without having to go to the physical court thus saving on cost and at the same time helping to offload the congested courts. Further, ODR can reduce the time taken to complete a case, a valuable asset given that a country where the length of court cases is associated with a slow delivery of justice. Despite the general acclaim of ODR in general and more specifically in consumer and commercial disputes in particular, the actual realization of the potential of ODR in rural areas of India largely depends on certain specific obstacles that are related to the level of digital literacy, cultural attitudes to the use of technology, and availability of Internet connections.

Consequently, for the future, the successful application of ODR in the rural context is possible only with the help of an integrated approach. First, digital infrastructure should be developed to guarantee that rural people can gain good Internet access and the right digital tools. Such government initiatives launched recently are Digital India which has the objective to reduce the digital divide. Also, there is a requirement of huge capacity building in order to empower the rural users about the legal, technical and other aspects of ODR platforms. Legal aid organizations, local governments, and civil society

partners can also have great roles in promoting ODR and at the same time avoiding a situation in which the least advantaged are locked out. In addition, policy and regulatory frameworks require enhancement, which guarantees enforceability security of ODR decisions to enhance people's confidence in these systems.

Thus, the success of ODR in future in rural India heavily rely on its efficacy to bring in the principle of equity and inclusion. Thus, the needs of rural people must be considered during designing and implementing ODR platforms, addressing language barriers; the platform's interface; and gender and caste bias in justice. Integration of the Panchayats with ODR platforms can fill the gap between the formal and the informal systems of justice delivery since they will provide efficient and fair solutions. If the challenges discussed above are met, and the opportunities of technology are fully realized, ODR can become a tool that allows not just the closing of the urban-rural justice gap, but to make the constitutional right of access to justice a reality for all citizens regardless of status.

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