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## Editorial Note

It is a matter of great satisfaction to place before our readers Volume XIX, Issue II (2025) of the *Journal of the University Institute of Legal Studies*. The present issue continues the Journal's long-standing commitment to rigorous, peer-reviewed scholarship that engages critically with law as a social institution, attentive both to doctrinal development and to the lived realities that law seeks to govern. At a time when legal systems are confronted with rapid technological change, shifting social structures, and renewed debates on equality and justice, this volume reflects the urgency and complexity of contemporary legal inquiry.

A striking feature of this issue is its sustained engagement with artificial intelligence and digital governance. Contributions on AI and law, digital policing, algorithmic influence on consumers, AI in insurance contracts, and biometric technologies interrogate the promises and perils of automated decision-making. These articles echo what Justice Benjamin Cardozo once described as the law's "process of becoming", constantly shaped by new forces yet bound by enduring principles of accountability, dignity, and fairness. The scholarship here resists technological determinism and instead situates innovation within constitutional values and regulatory responsibility.

Equally significant is the attention paid to questions of marginalisation, representation, and social exclusion. Articles examining intellectual disability and cinematic representation, the exclusion of singles, caste discrimination within the medical profession, maternity leave and the middle-class paradox, women's property rights, transgender identity, and access to justice foreground law's ethical obligation to recognise invisibility and remedy structural disadvantage. In engaging with these themes, the volume resonates with Ambedkar's enduring reminder that the true test of a society lies in how it treats those at its margins.

The issue also offers careful doctrinal and institutional analysis. Studies on the administration of the National Capital Territory of Delhi, execution of decrees, the transition to new criminal laws, the integration of forensic science within criminal justice reforms, the Right to Services Act, climate change mitigation, cyberspace, online gaming regulation, and Human Rights frameworks demonstrate a sustained engagement with governance, procedure, and accountability. Together, they reaffirm Roscoe Pound's insight that law must function as social engineering, balancing competing interests while remaining responsive to change.

The diversity of themes and methodologies represented in this volume reflects the intellectual breadth of the Journal and its contributors. From socio-legal inquiry to doctrinal critique and policy analysis, the articles collectively underscore the idea that law cannot be understood in isolation from society, technology, culture, and history.

I express my deep appreciation to all the contributors whose scholarly engagement, analytical rigour, and originality have collectively enriched this volume. Their writings not only advance doctrinal and socio-legal debates but also reaffirm the role of academic journals as vital spaces for critical reflection and intellectual exchange.

**Acknowledgements**

I am profoundly grateful to the members of our Advisory Board for their continued guidance and institutional wisdom. I acknowledge with respect Hon'ble Justice A.K. Sikri, International Judge at the Singapore International Commercial Court and former Judge of the 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, Maharashtra National Law University, Mumbai. Their association with the Journal lends it both scholarly depth and professional distinction, and their counsel has remained invaluable to its sustained academic credibility.

I also place on record my sincere gratitude to our Patron, Prof. Renu Vig, Vice Chancellor of Panjab University, whose steadfast support for research, publication, and academic excellence has been instrumental in the Journal's continued growth and relevance within the legal academy.

This issue has been the result of collective academic labour. I am grateful to the Co-Editors, Prof. Chanchal Narang and Prof. Virender Negi, whose scholarly judgment and editorial guidance have been invaluable. I also acknowledge with appreciation the Editorial Board, Prof. Navneet Arora, Dr. Anupam Bahri, and Dr. Sunny Sharma, for their consistent support and careful oversight of the review process. I am also grateful to the faculty of UILS who have been a part of the review process.

A special word of thanks is due to Dr. Sital Sharma, who has carried out the major part of the editorial work for this issue with exceptional diligence and professionalism. She has been ably assisted by her team comprising Dr. Sugandha Passi, Dr. Kritika Sheoran, Ms. Yuvina Goel and Ms. Tania Singh, whose attention to detail and commitment ensured the timely and polished completion of this volume.

I extend my sincere thanks to all contributors and reviewers for enriching this issue with their scholarship and for upholding the academic standards of the Journal. It is my hope that this volume will not only inform legal discourse but also provoke reflection, debate, and further research among scholars, practitioners, and students of law.

**Prof. Dr. Shruti Bedi**
Editor
Director, University Institute of Legal Studies

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**EDITORIAL NOTE**

## Articles

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**Articles**

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# Forensic Evidence and Judicial Scrutiny: Balancing Legal Discretion and Ethical Accountability

***Prof. (Dr.)Rattan Singh*** [*] ***& Sanighdha*** [**]

*"Many kinds of forensic evidence… enter the court with remarkable little scientific scrutiny." - Jennifer Mnookin, University of Wisconsin- Madison*

## Abstract

For any nation, the judiciary holds utmost significance, because of the legal and judicial principles that it seeks to uphold. The functions and the duties, more so, in the manner of responsibilities as performed by the judiciary are much more nuanced than anything that a citizen or a common man can think of. Therefore, each and every act performed by the judicial officers comes into the spotlight and holds utmost significance for the larger national development of each and every kind. One of the most important functions as performed by the judiciary is the appreciation of evidence as done by the judicial officers. From the grassroots level courts of India to the highest apex court of the country, it is utmost important and quintessential to appreciate evidence in a manner that justifies both the letter and the spirit of any kind of legal statute. Therefore, appreciation of evidence, is by and large the most important and indispensable function as performed by the judiciary, also because it involves the discretion of the deciding judicial officer. This discretion, being a legal discretion has to be employed in a manner that justifies the office of the judge, and for that legal guidelines have been laid down very clearly. However, while upholding the tenets of law and justice, appreciation of evidence can sometimes also lead to taking critical judicial decisions that may have far reaching consequences as well. In appreciation of evidence, the most difficult kind of appreciation, by all counts, comes while appreciating forensic evidence. Forensic evidence is evidence, which by its very nature is a bit tricky to appreciate. The comprehensive interpretation of scientific evidence is highly prone to error and the need for an in-depth analysis of evidence collected, becomes inevitable. The present research manuscript employs a doctrinal research methodology to address the issues raised above, while also discussing the role of forensic evidence in Indian legal system, the use of such evidence in decision-making, as well as challenges that the same pose to our judicial system. This will not only aid in understanding the issues better but also in providing a solution-centric conclusion, with pragmatic suggestions.

**Keywords:** *Forensic Evidence; Ethical Accountability; Legal Discretion; Judicial Scrutiny; Jurisprudence*

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## 1. Forensic Evidence and Judicial Scrutiny: Introductory Conceptual Note

The Indian legal and judicial systemic apparatus is intricately built around the principles of constitutionalism and natural justice, whereby the human rights are harmoniously dealt with legal accountability and justness, coupled with fairness as well as equity. Forensic sciences and various methods employed under the same are quintessential to deal with emerging new areas of crimes, whereby evidence is pertinently gathered with the help of forensic tools, to secure conviction, as well as to nourish judicial insights. Forensic science includes fields such as ballistics, DNA analysis, fingerprint analysis, *et al*. The reliability of forensic science and forensic scrutiny of evidence aids in maintaining judicial equanimity, avoiding wrongful convictions, rightful appreciation of evidence within the constitutional rigors as well as- the rightful appreciation of doctrines of admissibility and burden of proof that are followed and guarded zealously in India, to avoid any illegality and illegitimacy.

An in-depth forensic analysis of a crime scene can enable an investigation agency to enlighten the courts regarding a particular case. However, as much as forensic evidence is inevitable and widely recognized today, the same cannot be trusted blindly by the courts, and in the Indian legal system, it is not regarded as a binding truthful fact, because of various ethico-legal nuances involved. While the forensic investigators fulfill their bounden duty effortlessly; it is the duty of the courts to analyse whether the said evidence is relevant, reliable, and admissible, under particular circumstances or not. This is a highly discretionary task that is made sacrosanct by the fact that the lives and times of two parties are at stake, and totally dependent upon the judicial decision. Even though, forensic evidentiary exhibits are reliable most of times, yet a detailed scrutiny is recommended for better decision making; since most of the methods employed to collect forensic evidence are susceptible to human error, advertently or inadvertently.

Apart from this, the comprehensive interpretation of scientific evidence is highly prone to error and the need for an in-depth analysis of evidence collected, becomes inevitable. The present research manuscript employs a doctrinal research methodology to address the issues raised above, while also discussing the role of forensic evidence in Indian legal system, the use of such evidence in decision-making, as well as challenges that the same pose to our judicial system. This will not only aid in understanding the issues better but also in providing a solution-centric conclusion, with pragmatic suggestions.

However, before delving into the aforementioned issues, one needs to be aware of what exactly forensic evidence is, what it includes and what is meant by judicial scrutiny. The importance and significance of forensic evidence have been heavily highlighted in the past by the landmark judgments of Indian courts such as- Selvi v. State of Karnataka (importance of narco-analysis), Kathi Klau Olghad (details about self-incrimination), and recent growth of jurisprudence on digital forensics as well as DNA sampling.

According to the American Academy of Forensic Sciences, "the word forensic comes from the Latin word *forensis*: public, to the forum or public discussion; argumentative, rhetorical, belonging to debate or discussion. A relevant, modern definition of forensic is: relating to, used in, or suitable to a court of law. Any science used for the purposes of the law is a forensic science. The forensic sciences are used around the world to resolve civil disputes, to justly enforce criminal laws and government regulations, and to protect public health. Forensic scientists may be involved anytime an objective, scientific analysis is needed to find the truth and to seek justice in a legal proceeding.[1]" According to the National Institute of Standards and Technology (NIST), "forensic science is the use of scientific methods or expertise to investigate crimes or examine evidence that might be presented in a court of law. Forensic science comprises a diverse array of disciplines, from fingerprint and DNA analysis to anthropology and wildlife forensics. [2] "Fields like forensic anthropology[3], criminalistics[4], forensic jurisprudence[5], forensic engineering[6], forensic

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[1] American Academy of Forensic Sciences *available a*t https://www.aafs.org/careers-forensic-science/what-forensic-science (last visited on June 02, 2025); Dr. Ishita Chatterjee, *Law Of Forensic Science* (2023); Prof. (Dr.) V.P. Singh, *Forensic Science* (2020); Dr. Purvi Pokhriyal, *Forensic Science And Criminal Investigation* (2024); Rajasi Guharoy *et al*,*Forensic Science-Revolution Of Criminal Law And Trends* (2025); Pro Bono India, *Landmark Judgments On Forensic Science And Criminal Investigations* (2024); V.P. Singh, *Forensic Science For Law Students And Law Professionals* (2022); Prof. (Dr.) Nuzhat Parveen Khan, *Forensic Science And Indian Legal System* (2022); Abhishek Sharma Padmanabhan, *Evidentiary Value Of Dna Profiling In Criminal Trials* (2024); Pratyusha Das, *Forensic Evidence: Admissibility In Criminal Justice System* (2019); Val McDermid, Forensic: *What Bugs, Burns, Prints, Dna, And More Tell About Crime* (2016); B.R. Sharma, *Forensic Science: Criminal Investigations And Trials* (2020); Ramchandran, *Forensic Evidence* (2019); B.C. Bridges *et al*., *Scientific Techniques In Criminal Invetsigations* (2016); B.S. Nabar, *Forensic Science In Crime Investigation* (2023); V.R. Krishna Iyer, *Equal Justice And Forensic Processes* (2022); Yogesh V. Nayyar, *Framework Of Investigation: Forensics, Important Aspects Of Timelines, Sops, Seizure, Admissibility, Proof Of Digital, Electronic, Dna, Fingerprint* (2025); R. Ramchandran, *Scientific Techniques Of Criminal Investigation* (2023); Upinder Singh Janda, *Forensic Science And Law* (2017).

[2] National Institute Of Standards And Technology, *available at*: https://www.nist.gov/forensic-science (last visited June 02, 2025); V.R. Dinkar, *Scientific Expert Evidence: Determining Probative Value And Admissibility On The Courtroom* (2024); Department of Army, *USA Handbook On Forensic Services* .

[3] National Museum Of Natural History, *available at:* https://naturalhistory.si.edu/education/teaching-resources/anthropology-and-social-studies/forensic-anthropology(last visited on June 02, 2025); Dr, Meenal Dhall *et al*, *Handbook Of Forensic Anthropology* (2024); Steven N. Byres, *Introduction To Forensic Anthropology* (2023).

[4] Britannica, *available at:* https://www.britannica.com/topic/criminalistics (last visited on Jun. 02, 2025); Science Direct, *available at*: https://www.sciencedirect.com/topics/social-sciences/criminalistics (last visited on June 02, 2025); American Academy Of Forensic Sciences, *available at:* https://www.aafs.org/careers-criminalistics (last visited on June 02, 2025); Forensics College, *available at*: https://www.forensicscolleges.com/blog/resources/

odontology[7], forensic pathology[8], forensic entomology[9], toxicology[10], et al, are all related forensic science and can be termed as off-shoots of the forensic science field only.

The Government of Rajasthan's Directorate of State Forensic Sciences Laboratory defines forensic sciences, apart from also stating the usage of forensic evidence by the Investigating Officer (I.O.) to investigate a particular case. It states, "forensic science, or forensics, is the application of a broad spectrum of sciences to establish how event/incident/crime occurred and thereby provide impartial evidence that can be used in a court of law. Forensic scientist uses applications of methods and techniques of well-established science in legal matters to uncover scientific evidence of a variety of fields. The word *Forensis* indicates a discussion or examination which was performed in public, as; in the ancient world the criminal and civil trials were usually held in public, it carries a strong judicial connotation. The word *Science* is derived from the Latin word for *knowledge* and is today closely resembles the scientific

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what-is-criminalistics (last visited on June 02, 2025); California Institute Of Criminalists, *available at:*https://cacnews.org/membership/criminalistics (last visited on June 02, 2025); Gannon University, *available at:*https://www.gannon.edu/academic-offerings/humanities-education-and-social-sciences/graduate/criminalistics/what-is-criminalistics/ (last visited on June 02, 2025).

5 Britannica, *available at:* https://www.britannica.com/science/forensic-science/Jurisprudence (last visited on June 02, 2025); Elementary Education Online, *available at:*https://ilkogretim-online.org/index.php/pub/article/download/2946/2894/5723 (last visited on June 02, 2025); American Academy Of Forensic Sciences, *available at:* https://www.aafs.org/membership/jurisprudence (last visited on June 02, 2025); Medical Jurisprudence, *available at:*https://www.ebcwebstore.com/product/medical-jurisprudence-forensics-toxicology-necrophilia-and-graphology(last visited on June 02, 2025).

6 National Forensic Science Engineering, *available at:* https://www.nfsu.ac.in/Programs/programinfo/51?deptid=45 (last visited on June 02, 2025).

7 Sciences Direct, *available at:* https://www.sciencedirect.com/topics/medicine-and-dentistry/forensic-odontology (last visited on June 02, 2025); National Institute Of Health, *available at*: https://www.ncbi.nlm.nih.gov/books/NBK540984/ (last visited on June 02, 2025); American Dental Association, *available at:*https://www.ada.org/resources/ada-library/oral-health-topics/forensic-dentistry-and-anthropology(last visited on June 02, 2025).

8 Royal College Of Pathologists, *available at*: https://www.rcpath.org/discover-pathology/careers-in-pathology/careers-in-medicine/become-a-forensic-pathologist.html(last visited on June 02, 2025).

9 Science Direct, *available at:* https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/forensic-entomology#:~:text= (last visited on June 02, 2025); National Institute Of Health, *available at:* https://pmc.ncbi.nlm.nih.gov/articles/PMC3296382/ (last visited on June 02, 2025); Trace Wildlife Forensic Network, *available at:*https://www.tracenetwork.org/wp-content/uploads/2018/05/Hall-M.-Whitaker-A.-and-Richards-C.-2012.-Forensic-entomology-Chapter-8-from-Crime-Scene-to-Court-Wiley-Blackwell.pdf(last visited on June 02, 2025).

10 National Institute Of Justice, *available at:* https://nij.ojp.gov/topics/forensics/forensictoxicology (last visited on June 02, 2025); Springer Link, *available at:* https://link.springer.com/journal/11 419 (last visited on June 02, 2025).

method, which means a systematic way of acquiring knowledge. So, *forensic science* is the use of all available scientific methods and processes in crime-solving. A forensic scientist assists/advises I.O. to seize, acquire, preserve the scientific evidence, and then analyze and generate the forensic report by using cutting-edge scientific techniques of forensic science in almost every discipline.[11]"

It is further stated that, "in the forensic examination process, a forensic scientist uses complex high-end precise instruments, mathematical concepts, rule of general science, along with reference literature in analyzing evidence in the laboratory or even on the crime scenes sometimes depending upon case to case. A forensic scientist can also be called to testify as an expert witness in the court for the parties involved in the case prosecution or the defense. Their testimony is considered to be very trusted for civil and criminal cases both as these forensic professionals are never concerned with the outcome of the case rather than testifying the objects purely based on scientific facts and principals. Forensic science draws contributions from almost all scientific branches like physics, chemistry, biology, forensic engineering, electronics, and computer science, etc., for recognizing, identifying, and evaluating any physical evidence that brought to any forensic scientist for examination. In the modern judicial system, it has become an essential part because it utilizes a vast spectrum of available science to acquire crime relevant, factual, and legal information. Forensic science spreads over Document examination, DNA analysis, Electronic or Digital Media examination, Toxicology, Ballistics, etc. At last, but not least, that any science could be forensic science, as almost all can contribute to legal proceedings of civil or criminal cases.[12]"

Thus, forensic science and evidence hold utmost importance in solving of myriad cases and the testimony of forensic scientists holds the key to the same.

Judicial scrutiny on the other hand means the usage of judicial discretion after carefully scrutinizing the evidence produced before the court of law for decision in a particular case. It is defined as, "judicial scrutiny is the process by which courts examine the actions of the legislative and executive branches to determine whether they are constitutional. This concept is essential as it establishes a system of checks and balances, ensuring that laws and government actions adhere to the Constitution. The intensity of this scrutiny can vary, with different standards applied depending on the nature of the law or action being challenged.[13]"

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[11] Government Of Rajasthan:- Forensic Sciences, *available at:* https://home.rajasthan.gov.in/content/homeportal/en/stateforensicsciencelaboratorydepartment/aboutus/AboutForensicScience.html (last visited on June 02, 2025); National Institute Of Health, *available at*: https://pmc.ncbi.nlm.nih.gov/articles/PMC10576124/ (last visited on June 02, 2025).

[12] Government Of Rajasthan:- Forensic Sciences, *available at:* https://home.rajasthan. gov.in/content/ homeportal/en/stateforensicsciencelaboratorydepartment/aboutus/AboutForensic Science.html (last visited on June 02, 2025).

[13] Supreme Court Of India, *available at:*

Even though generally it is applied in checking and analysing the actions taken by the legislative and executive, in cases where the whole moot point rests on analysing the forensic evidence, scrutiny of the same is also carried out. After analysing forensic evidence and judicial scrutiny, it must be understood that without judicial scrutiny of the forensic evidence that is presented in a particular case for a decision, the judgment cannot be stated to be a balanced or a well-thought out one. Thus, scrutinizing each and every forensic evidence that is presented before a court is a must, since the forensic evidence collection is being highly susceptible to human error, and the same not being binding upon the court of law. This leads one to the subsequent issue of usage and inculcation of forensic evidence in the judicial decision-making process, the legal backdrop of the same, and the issues that the same poses.

## 2. Forensic Evidence and Judicial Decision Making: Issues and Challenges

Before delving into the interconnection between judicial decision making and forensic evidence (law in India), it must be noted that it is pertinent to study the historical background of forensic science and evidence collection for the purposes of understanding how the forensic science in its present form is used in judicial decision making. It is recorded that in Indian medicinal system, Arthshastra is the very first word on forensic science, with the Chinese manuscripts corroborating the same. It is also additionally reported that, Indians knew for long that the handprints, known as the *Tarija*, were inimitable (unique). The use of fingerprints as signatures by illiterate people in India, introduced centuries ago, was considered by some people as ceremonial only, till it was scientifically proved that identification from fingerprints was infallible (Flawless, Perfect).[14]

However, a more recent growth can be traced back to the late 18th and early 19th centuries under the British colonial rule. It is also corroboratively stated that, "the roots of forensic practices in India can be traced back to the colonial period when the British introduced several legal reforms. During the 19th century, there were some attempts to integrate medical knowledge with law enforcement. The Indian Penal Code (IPC) of 1860 and the Indian Evidence Act of 1872 were key legal frameworks that laid the foundation for the admissibility of scientific evidence in court. However, these early efforts were rudimentary compared to modern forensic practices. In the late 19th and early 20th centuries, forensic medicine began to take shape with the establishment of medical colleges and hospitals. Forensic pathology, in particular, gained recognition as an essential field, and autopsies started to be routinely

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https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/04/2024042495-1.pdf (last visited on June 02, 2025); Oxford Academic, *available at:* https://academic.oup.com/icon/article/16/2/315/5036485(last visited on June 02, 2025).

[14] Legal Services India, *available at:* https://www.legalserviceindia.com/legal/article-2975-history-and-development-of-forensic-science-in-india.html (last visited on June 02, 2025).

conducted to determine the cause of death in suspicious cases.[15]"

With this, the Fingerprint Bureau of India was then formed at Calcutta[16] in 1897 with Sir Edward Henry spearheading the same. Forensic Medicine and Toxicology started growing as interesting fields and disciplines due to rise in poison-related deaths. After independence, the Central Forensic Science Laboratory[17] was established in 1957 under the Ministry of Home Affairs, Government of India, with regional laboratories in Kolkata, Hyderabad, and Chandigarh[18]. Forensic Toxicology[19], Forensic Biology[20], serology[21] and ballistics[22] became mainstream as well. With the development of forensic field, landmark cases[23] (usage of DNA analysis; Narco-Analysis; and

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[15] Legal Bites India, *available at:* https://www.legalbites.in/forensic-law/historical-development-of-forensic-law-in-india-1070170(last visited on June 02, 2025)

[16] Fingerprint Bureau, *available at:*https://www.ncrb.gov.in/en/central-finger-print-bureau (last visited on June 02, 2025).

[17] Central Forensic Science Laboratory, *available at:*https://www.cfslchandigarh.gov.in/contact-us.aspx (last visited on June 02, 2025).

[18] Central Forensic Science Laboratory, *available at:* https://www.cfslchandigarh.gov.in/ (last visited on June 02, 2025); Central Forensic Science Laboratory- Kolkata, *available at:* https://www.indiascienceandtechnology.gov.in/allstinstitutions/central-forensic-science-laboratory-kolkata-0 (last visited on June 02, 2025); Central Forensic Science Laboratory-Hyderabad, *available at*: https://www.indiascienceandtechnology.gov.in/allstinstitutions/ central- forensic-science-laboratory-hyderabad-0 (last visited on June 02, 2025).

[19] National Institute Of Justice- Forensic Toxicology, *available at:* https://nij.ojp.gov/ topics/forensics/forensic-toxicology (last visited on June 02, 2025); Springer Link, *available at:*https://link.springer.com/journal/11419 (last visited on June 02, 2025).

[20] Chestnut Hill College- Forensic Biology, *available at:* https://www.chc.edu/ academics/ programs/forensic-biology/(last visited on June 02, 2025).

[21] Science Direct- Serology,*available at:*(last visited June 02, 2025); Healthline-Serology, *available at:* https://www.healthline.com/health/serology (last visited on June 02, 2025); National Cancer Institute, *available at:* https://www.cancer. gov/ publications/ dictionaries/ cancer-terms/def/serology-test (last visited on June 02, 2025); National Institute Of Health, *available a*t: https://pmc.ncbi.nlm.nih.gov/articles/PMC4553097/ (last visited on June 02, 2025); John Hopkins Medicine, *available at:* https://www.hopkinsmedicine.org/ health/ treatment-tests-and-therapies/immunology-and-serology (last visited on June 02, 2025); Britannica, *available at:* https://www.britannica.com/science/serological-test (last visited on June 02, 2025); World Heath Organisation, *available at:* https://www.who.int/emergencies/ diseases/novel-coronavirus-2019/serology-in-the-context-of-covid-19 (last visited on June 02, 2025).

[22] National Institute of Standards And Technology, *available at:* https://www.nist.gov/firearms-and-toolmarks (last visited on June 02, 2025); Research Gate: Forensic Ballistics, *available at:*https://www.researchgate.net/topic/Forensic-Ballistics/publications (last visited on June 02, 2025); Sifs India, *available at:*https://www.sifs.in/blog-details/forensic-ballistics-history-overview-types (last visited on June 02, 2025); Royal Society- Understanding Ballistics, *available at:* https://royalsociety.org/-/media/about-us/programmes/science-and-law/royal-society-ballistics-primer.pdf (last visited on June 02, 2025).

[23] *State v Sushil Sharma (2007); State of Maharashtra v Prabhu Bakhre Gade (1995); Selvi v. State of Karnataka (2010).*

Polygraph/Narco- Analysis usage) have been noted and recorded in India that have established the foundation and groundwork of forensic law, forensic evidence, and usage of forensic evidence in case-solving in the Indian jurisdiction. Moving on from the study of historical background of forensic evidence and forensic science in India, it is now pertinent to study the foundation of forensic law in India, and the legal backdrop of the same.

According to Manupatra, "forensic science law in India is the branch of law that deals with the application of scientific methods and techniques to investigate crimes, examine evidence, and present findings in a court of law. The use of forensic science in the Indian legal system dates back to the late 19th century. *The Indian Evidence Act of 1872 was the first law in India that recognized the admissibility of scientific evidence in courts*. Forensic labs in India are working with an increasing amount of cases as the use of scientific methods in criminal investigations grows. These labs are essential for gathering important scientific data as well as for promptly providing findings to different criminal justice system stakeholders. Courts then evaluate and interpret these findings based on their correctness, transparency, and objectivity to either clear innocent parties or prove beyond a reasonable doubt the guilt of suspected offenders. The best forensic lab should have state-of-the-art, reliable information-gathering procedures and use the best scientific methods possible for material analysis. These labs ought to actively interact with criminal justice system decision-makers and urge them to utilize the most trustworthy forensic techniques.[24]"

Additionally, it also states that, "these laboratories analyze physical evidence, such as DNA, fingerprints, and ballistics, to aid in criminal investigations and trials. The use of forensic science in India is governed by various laws and regulations, including the Code of Criminal Procedure, the Indian Evidence Act, and the Narcotic Drugs and Psychotropic Substances Act. These laws regulate the collection, preservation, analysis, and presentation of forensic evidence in courts. Forensic science law in India also includes the legal framework for forensic experts and their testimony in court. The law requires that forensic experts be trained and qualified in their respective fields and that their testimony be objective, impartial, and based on sound scientific principles.[25]" Forensic law and forensic evidence along with the forensic science laboratories, aid in delivering justice in cases that heavily or even partly rely on forensic circumstantial evidence.

Even though forensic evidence is admissible in Indian jurisdiction and courts under it, the same is not binding upon the courts, because forensic evidence comes within the category of opinion of the court made upon the opinion of a forensic scientist, who analyses the circumstantial forensic clue that is present on the crime scene. Opinion

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[24] MANUPATRA, *available at:* https://www.manupatracademy.com/legalpost/forensic-law-forensic-science-law-in-india (last visited on June 02, 2025).

[25] MANUPATRA, *available at:* https://www.manupatracademy.com/legalpost/forensic-law-forensic-science-law-in-india (last visited on June 02, 2025).

of experts is admissible however the same is not binding because of two reasons: its susceptibility to human error both in collection, analysis and application in a particular case; and because of the dual opinion base on which the idea is founded. Section 45 of the Indian Evidence Act, 1872 used to deal with opinion of the experts and Section 39(1) is the corresponding section of the same. Certain principles are utilised in forensic science to study the given circumstantial forensic traces present at a crime spot and these include- the law of individuality[26], law of progressive change[27], principle of exchange[28], principle of comparison[29], principle of analysis[30], law of probability[31] and principle of linkage.[32] Forensic evidence at a crime scene[33] can range from- biological material like semen, blood, saliva; fibers, paint chips, glass, soil and vegetation, accelerants, fingerprints, hair, impression evidence like shoe prints, fracture particles like glass pieces, narcotics, et al. Forensic evidence particularly can be both oral (statements made by witnesses or experts- expert testimony explaining the analysis of forensic evidence) or documentary (medical reports, photographs, scientific analysis data like DNA etc.). The two major principles guiding admissibility of forensic evidence in courts of law are derived from US jurisdiction and are considered for reference purposes in cases, where it is deemed necessary.

In *Frye* v. *United States of America* 293 F. 1013 (D.C. Circ1923), it was stated that, *"the basic premise provides that an opinion of an expert is admitted if the scientific approach on which the view is based is generally accepted for accuracy in the appropriate community of scientists. In Frye, the circuit itself upheld the trial court's decision to include expert testimony about the use of lie detectors. The systolic blood pressure test was thought to have "not yet gained such standing and scientific acceptability among physiological and psychological authorities." The Frye standard, also known as the "general acceptance" test, is accurately stated as: It is difficult to*

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[26] SIFS- Law of Individuality, *available at:* https://www.sifs.in/blog-details/principles-of-forensic-science# (last visited on June 02, 2025).

[27] SIFS- Principles of Forensic Science, *available at:*https://www.sifs.in/blog-details/principles-of-forensic-science (last visited on June 02, 2025).

[28] National Institute of Health- Locard's Principle of Exchange, *available at:* https://pmc.ncbi.nlm.nih.gov/articles/PMC8544144/ (last visited on June 02, 2025).

[29] Legal Services India, *available at*: https://www.legalserviceindia.com/legal/article-2974-concept-and-principles-of-forensic-science.html (last visited on June 02, 2025).

[30] SIFS- Principles of Forensic Science, *available at*: https://www.sifs.in/blog-details/principles-of-forensic-science (last visited on June 02, 2025).

[31] *Ibid.*

[32] National Institute Of Justice, *available at:*https://nij.ojp.gov/nij-hosted-online-training-courses/population-genetics-and-statistics-forensic-analysts/population-theory/linkage-equilibrium (last visited on June 02, 2025).

[33] National Institute Of Justice, *available at:* https://nij.ojp.gov/nij-hosted-online-training-courses/crime-scene-and-dna-basics-forensic-analysts/evidence-crime-scene/types-evidence (last visited on June 02, 2025).

*say when a scientific theory or discovery crosses the border that separates the experimental and demonstrative stages. The evidential effect of the theory must be acknowledged somewhere within this twilight range, and while courts will go far in accepting expert testimony concluded from an established scientific concept or discovery, the fact from which the deductive reasoning is made should be sufficiently well-established to have acquired general acceptance within the specific field where it belongs to.*[34]"

Additionally, in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc* (509 U.S. 579), it was highlighted that, "*stating as the case law was incompatible with all relevant evidentiary rules, notably the Court decided in Daubert that Rule 702's twin standards of relevancy and dependability are incompatible with the more stringent general acceptance requirement. The Court highlighted the significance of a trial judge's gatekeeping responsibility when allowing expert testimony and identified a non-exhaustive list of issues to consider, including: dependability of expert's opinion; approach is subject to review by others, interest rate of error of the theory, continuous upkeep of standards and confidence, existence of guidelines, et al*.[35]" Therefore, both the cases established the basis of acceptance of forensic evidence and expert testimony for better judicial decision making process.

It is also stated, "forensic evidence is critical in establishing a scientific foundation for investigations and is frequently the deciding factor in solving crimes and delivering justice. It aids in the identification of suspects or victims by using techniques including analysis of fingerprints, profiling of DNA, and dental data. Forensic evidence can construct a timeline of events, which is critical for understanding the progression of a crime. It aids in the reconstruction of crime scenes, which allows investigators to gain a greater understanding of how and why a crime happened. In circumstances of mysterious deaths, forensic evidence such as autopsies and toxicology analyses can help determine the cause of death. It aids in the recognition of patterns and linkages in criminal conduct, which can be helpful in connecting instances and identifying repeated offenders. Forensic ballistics can identify the form of firearm applied, link bullets and shells to specific guns, and provide information about shot direction.

Digital evidence like as messages via text, email, and data from computers plays an important role in investigations in the digital age. It aids in the identification and linking of physical objects such as fibres, hair, and dirt to specific persons or locations. Documents and signatures can be authenticated using analysis of

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[34] *Frye v United States of America* 293 F. 1013 (D.C. Circ. 1923), *available at:* https://www.legalbites.in/forensic-law/admissibility-of-forensic-evidence-in-courts-972604 (last visited on June 02, 2025).

[35] *Daubert v Merrell Dow Pharmaceuticals, Inc* (509 U.S. 579), *available at:* https://www.legalbites.in/forensic-law/admissibility-of-forensic-evidence-in-courts-972604 (last visited on June 02, 2025).

handwriting and document scrutiny. In court, forensic experts may offer expert testimony, assisting judges and jurors in understanding complex scientific evidence.[36]" Therefore, the use of forensic evidence in judicial decision making is immense, but the same is also filled with certain issues and challenges, primary being the non-binding nature of the forensic evidence on the judicial officer/court of law, as already discussed.

Apart from this, the scope of forensic evidentiary value encompasses civil and criminal law both. In civil cases- paternity issues, genuineness of signatures and confronting issues of forgery, execution of documents, determination of age for custody related cases, transplantation of human organs, mental ill health, medical termination of pregnancy are determined by usage of forensic evidence. In criminal cases- ascertaining the involvement of accused at the scene, examination of samples of urine, blood, feces, sweat, brain mapping, truth serum, lie detector, DNA, bomb blast, gunshot, etc, skull identification, determination of age for assessing juvenility are determined by usage of forensic evidence. Application of judicial mind is done in three phases with special regard to forensic evidence-[37]this is where legal standards and scientific standards intersect, judge's decisions about the admissibility rest solely on legal standards; they are exclusively within the province of the court and no expert can substitute that opinion or finding. but the decisions require making determinations about scientific validity; it is the proper province of the scientific community to provide guidance concerning scientific standards for scientific validity; and what is proved in law is what the judge believes to be true.

Even though forensic evidence is heavily used in a number of cases, the same is also fraught with a number of legal challenges which need to be addressed for seamless justice delivery. Issues such as- difference in capabilities and standards of different forensic labs in India; many forensic labs still follow traditional knowledge systems and inadequate infrastructure; prolonged forensic lab reports and analysis also lead to delayed justice delivery in serious cases such as cases of offences against women, digital arrest cases, etc; absence of forensic science specialists making backlogs worse in all terms whatsoever; and ultimately the perishability of forensic evidence; lack of proper usage of forensic evidence by law enforcement agencies in prosecution purposes; and inadequacy of inculcation of modern technologies in forensic evidence collection. Thus, these challenges and other issues lead to lack of reliability of forensic evidence in India and other jurisdictions as well. The same issues are also present in the upcoming field of digital forensics.

Apart from this, the issues of evidence reliability, opaque procedural laws, and

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[36] *Magan Bihari Lal v. State of Punjab* (1977), *Ramesh Chandra Aggarwal v Regency Hospital Ltd* (2009), *Mohan Singh v State of Punjab* (1975), *Field v Leeds City Council* (1999), Legal Bites- Admissibility of Forensic Evidence, *available at:* https://www.legalbites.in/forensic-law/admissibility-of-forensic-evidence-in-courts-972604 (last visited on June 02, 2025).

[37] National Judicial Academy- Government Of India, *available at:* https://nja.gov.in/ Concluded_Programmes/2022-23/SE-09_2023_PPTs(last visited on June 02, 2025).

ambiguous laws with regard to evidence analysis, trust erosion following certain case decisions, et al are certain issues that need to be addressed to give more authenticity and reliability to the forensic evidence collected and analysed. Low public awareness regarding the power of forensic sciences is also one of the major reasons.

### 3. Forensic Evidence and Judicial Decision Making: Way Forward

Conclusively, there is a need for an overhaul in the forensic science paradigm to further the cause of justice delivery and timely judicial decision making by avoiding long delays in procurement of forensic evidence and analysis. Legislatively, a whole new law dealing with newer forensic science advancements, collection of forensic evidence and analysis of the same, setting out standards for entry level jobs in the forensic science sphere, and the requirement/ eligibility criteria of the same.

This wholesome legislation will target two things- entry of forensic professionals in the field with adequate experience and academic qualification and assimilation of scattered forensic laws at different places at one particular place. Infrastructurally as well, investment wise, a lot of investment needs to be made, in terms of equipments to be acquired, professionals to be trained, and analysis to be done. Apart from this, standardization of procedures to be adopted for forensic analysis needs to be adopted, along with investment of forensic education, courses, various multidisciplinary studies can be introduced in this particular field, with encouragement of research, public-private partnerships, public awareness generation, myriad partnerships with different countries and institutions for advancements of this field. This will not only advance the field, but also result in awareness regarding the scope of forensic science as a field for justice delivery and justice advancement. This will undoubtedly aid in national progress, research enlightenment, and most of all furtherance in justice delivery mechanism and grievance redressal apparatus.

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# Understanding Marginalisation: Bollywood and Representation of Intellectual Disability in Selected Indian Films

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**Abstract**

Intellectual Disability, especially in Indian films, is often a subject wrapped in silence. Despite being a layered and complex category, the subject has remained on the margins, unlike the cinematic representations of the West, which offer a rich engagement with the subject. Further, existing films focus on the able-bodied norm, compromising the subject's positionality. There has been a recent shift that not only focuses on alternative modes of representation but also advocates social inclusion in narrative, characterisation, and representation. Two such films are selected for the study, i.e. Laal Singh Chaddha (2021) and Tanvi the Great(2025). Through these films, the paper seeks to understand the shifts evident in Indian cinema. Through the lens of cultural studies, especially Stuart Hall's idea of representation, the paper aims to engage with the selected films through characterisation, themes, plot analysis, and a new approach to the subject. These films recognise the existing stereotypes and mark a subtle departure from the oft-repeated tropes vis-à-vis the subject and the use of the cinematic lenses. Moreover, advocacy of inclusion is not limited to the protagonist but mirrors the subtle realities of society that create boundaries around the other. Finally, the paper also analyses the film's engagement with the subject, which is more aligned with the social model of disability, as argued in the selected films.

**Keywords:** *Inclusion, Representation, Marginalisation, Indian Films, Intellectual Disability*

## 1. Introduction

Mainstream Hindi films, especially those made by Bollywood, have played a significant role in shaping society's imagination. In the context of Bollywood, disability, especially intellectual disability, has found representation on the margins. Though there exists a rich set of films on physical disability, intellectual disability has often been overlooked, or is looked at from a limited perspective, mainly rooted in the medical model, as something that needs to be understood rather than as an equal participant in society. Unlike *The Good Doctor* and *Rain Man (1988)* in western cinema, which have broadly discussed the idea of intellectual disability. These

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cinematic texts have engaged with the personal and social lives of the characters, thereby creating a broader understanding of the inside and the outside.

However, the narratives in Indian films are often analysed from lenses of either pity or redemption on the one hand, to validation of the human endurance by overcoming significant challenges, on the other. With the turn of the century, there has been a significant shift in the representation of disability and intellectual disability in Indian Films. This paper analyses the subject of representation of intellectual disability, with critical questions that focus on the idea of positionality of the characters, also vis-à-vis gender and its impact. A discourse on the difference between neurotypical and neuroatypical, as is presented in the selected films is also analysed in the paper. Stuart Hall in his *Representation: Cultural Representations and Signifying Practices*, through a constructivist approach, suggests that the meaning of the text is not limited to the mere reflection of reality, but is an active production that influences our perception, this idea becomes an integral part of the paper also. This can be analysed through the construction of language and cultural differences, where the idea of inclusion and exclusion comes to the fore. Further, through the lenses of Film Studies and the Social Model of Disability Studies, the paper seeks to analyse the role played by selected cinematic texts in the discourse of inclusion. The films selected for the study include *Laal Singh Chaddha* (2022), directed by Advait Chandan, and *Tanvi The Great* (2025), directed by Anupam Kher.

The films were selected on specific ideas: a) the way the films engage with intellectual disability, especially in terms of the treatment of the subject, both narrative and cinematic, b) both films narrate the lived experiences of the protagonists, i.e. both Laal (played by Aamir Khan) and Tanvi ( played by Shubhangi Dutt) are the principal characters; also, c) the way in which they open a discussion on the politics of inclusion especially for their neurodivergent characters. *Laal Singh Chaddha* maps the journey of its male protagonist, Laal, whereas *Tanvi the Great* features a woman as its protagonist. This is symbolic as the women are doubly marginalised, in terms of their disability as well as in terms of gender. Thus, the study also focuses on the gendered experiences of the protagonists vis-à-vis their experiences with the world outside. Finally, the characters, though protagonists in their respective narratives, struggle to portray their journeys through their neurodivergent experiences.

Bollywood's engagement with Intellectual Disability has become more nuanced in the films made in the twenty-first century. Films such as *Black* (2005), *My Name is Khan* (2010) *Taare Zameen Par (*2007) and *Margarita with a Straw* (2014) not only depict intellectual disability but create a cinematic language that engages with this subject in a sensitive manner, a subject which has always been on the margins. Thus, exploring multiple themes to map the nuanced challenges and bring out the shades of silence and marginalisation attached to the representation of disability. These films aimed to raise awareness of the lived experiences and to focus on the structural challenges faced by characters; such representations were earlier situated in either the

medical model or the charity model of disability representation. It can be specifically seen in terms of establishing a dialogue between neuroatypical experiences in a neurotypical world. In the selected films, this discussion is taken forward regarding the agency of the characters. However, the emotional responses that represent the able-bodied notion of pity remain a strong element in these films Lennard J. Davis' argument that focuses on the construction of 'normal' becomes an apt idea, as normalcy is defined in terms of 'able-bodied' in these films. Thus, through the films advocate inclusion, 'pity' and emotional truth drive the core narrative, which requires a close analysis, as the 'able-bodied' lenses are still part of the structure of these films.

The research methodology is rooted in cultural studies, especially a close analysis of films through the help of plot and characterisation. The paper is situated within the social model of disability studies to understand the barriers faced by neurodivergent protagonists in terms of societal attitudes, spatial dynamics, and, specifically, the silences between neurotypical and neuroatypical that society fails to accommodate, as represented in the films. In contrast to the medical model, which analyses disability as a problem that needs a cure, the social model emphasises empowerment and agency. Moreover, through the lens of film studies, the paper also situates the idea of visibility in terms of representation. Although the characters play a central role in the film, their challenges are pushed to the margins and remain limited or invisible.

## 2. Initiating a Dialogue: Representation of Intellectual Disability

*Laal Singh Chaddha* an adaptation of *Forrest Gump* (1994), the film's plot revolves around the protagonist who becomes directly/indirectly part of the various movements in Indian history and culture. Laal, who is from the Sikh community, helps to situate the narrative in a particular sociological and cultural milieu. Further, through a person with intellectual disability (though the film stays silent on his disability), the film is a narration of his journey while travelling in a train; however, the film remains silent about his disability. Through his behaviour and patterns, one can position him as a person with disability, and more specifically, an intellectual disability. Unlike mainstream films centred on characters and their inclusion/exclusion in society, Laal's journey is presented through the lens of innocence, rooted in ignorance, and mostly apolitical in nature. The focus, in the film, shifts from the individual to social events, subtly silencing the character and his experiences. Thus, the events that occur around Laal become acts of record-keeping without his insight into the cultural or political movement. The moments when Laal faces exclusion, especially regarding his neurodivergent experiences, are either masked by his honesty and naivety (creating emotional comfort/humour for the neurotypical audience) or are minor parts of the film. The film struggles to create an inclusive frame, balancing the social challenges with those faced by the protagonist and again, reiterating the supremacy of able-bodied narratives. The traumatic memories/events from the past that haunt the fellow passengers, are presented as simplistic/naïve in Laal's narration; his voice and agency are missing. Thus,

reinforcing the idea that the gap between Laal and others is a gap between disabled perceptions and able-bodied perceptions.

The narrative uses the train as a motif in the film, mirroring his personal journey: he meets many people but is understood by a few. The journey also mirrors this, as the fellow passengers see him as an outsider until he presents his success in the neurotypical world. The gaze with which the film begins, especially in the railway coach, can be interpreted as unusual or fearful. The actors' exaggerated gestures also isolate the character, shifting it towards humour rather than the lived experience. As recurrently happens in the Bollywood trope, the difference, lack of understanding between neurotypical and neuroatypical the focus shifts from creating a bridge between the two, but uses humour where neurotypical is established as 'normal', and the gaze oscillates between uncertainty and belittling neuroatypical experiences. The difference, instead of creating politics of inclusion, comes out as a lack which is filled through the idea of proving oneself to the world outside. This happens in terms of extraordinary achievements as well as a life that can be seen as inspiring.

On the other hand, *Tanvi the Great* is a narrative about a young woman who is on the spectrum and aims to fulfil her father's dream. The film is rooted in the challenges Tanvi faces, who comes to stay with her grandfather while her mother, Vidya, is away on a project related to the spectrum, where she advocates for social inclusion. This dual structure shifts between complete ignorance (as portrayed by the grandfather's prejudices and misconceptions) and an understanding grounded in inclusion and its broader contours (as represented by the mother, whose advocacy of inclusion resonates throughout the film). The plot can be broadly divided into two parts for the analysis. The first part captures the struggle of a neurodivergent character, and the second broadly centres on a neuroatypical character's efforts to break down the barriers of neurotypical society (for personal reasons) and prove herself.

Tanvi's journey from a protagonist who is a neuroatypical person to the narrative of achieving success in the training for the armed forces signifies the idea of "supercrip" as is examined by Paul K. Longmore (1987), focusing on the portrayals of disabled people who are celebrated for overcoming disability through exceptional achievements, as it promotes the stereotypical able-bodied narratives. It promotes the idea that the narrative of inclusion can be achieved through personal determination in overcoming barriers. While she successfully undertakes the arduous tasks as a part of the army training, her challenges with the spectrum become secondary; they come to the forefront only when she sits for the interview and is not selected, for being on the spectrum. Again, at this juncture, like mainstream films, the film delves into emotional arguments and the opportunity of an inclusive participation in the world outside becomes muted. The idea of exclusion, in terms of the challenges present in society, becomes marginal, and her own struggles become secondary. For instance, her insistence on joining the army seems to be her dream, rooted in her agency and dreams. In a dramatic shift, it is established that she just wanted to fulfil her father's aspirations. Thus, emotional response disempowers the aspirations and almost makes

the protagonist appear to be naïve and without a voice/agency for the self.

### 3. Textual Analysis: Challenges, Exclusion and An Idea of Inclusion

The path to inclusion is full of challenges, as the selected films depict. In terms of education, job opportunities, and relationships, the struggle seldom finds its way onto the screen. Here, two films open up discussions on specific issues related to personal ambitions and finding a voice in society. For instance, in *Laal Singh Chaddha,* the opening sequence depicts a mother's struggle to enrol her son in a 'regular' school. The dialogue between the school principal represents one such challenge. While the mother insists on the broader idea of 'normal', the principal's reluctance can be analysed as a wider rejection of inclusion. Moreover, the principal becomes the voice of the stereotypical, able-bodied response, seeing the world through the lens of 'normal'. Throughout the narrative, insults towards Laal are rooted in words like *Khota, pagal,* which become part of the lived reality and marginalisation. The film captures these realities through the denotative and the connotative aspects. Though the film struggles to delve deeply into the challenges, it broadly conveys the idea of difference and the lack of acceptance in society. Thus, in the film, the protagonist has to answer the stereotypical notions of the 'normal', rooted in cliches, drawing attention to the aspects of exclusion and its onscreen representation.

Furthermore, Laal's narrative is presented through a first-person point of view that allows a window into his understanding of the world. Despite the first-person point of view, his perspective is shaped by the other characters. At times, he is not an active participant but a passive observer. For instance, though he sees the futility of war, it is not rooted in critique but in an emotional observation. Thus, the first-person point of view is not liberating, as it does not create agency but presents his opinion as a naïve observer who seems to lack an opinion on the issues at critical junctures. This becomes challenging as his view is constantly moved to the margins. The same aspect is carried throughout the narrative, in terms of childhood, as a war veteran and an entrepreneur, the silence remains constantly present.

Relationships are an integral part of human life, and their representation in *Laal Singh Chaddha* also requires a close analysis. The films made in the mainstream mainly focus on the able-bodied relationships; the characters with disabilities have been on the margins. In this context, Laal's longing for love remains unfulfilled and follows the established patterns. Rupa constantly seeks emotional support from Laal, but the romantic relationship always remains elusive. Laal's other relationships can also be seen through the same lens; his associations with other characters are through disability and exclusion. For instance, Bala, as well as Mohammad Paaji, can be seen through the lenses of disability. Mainstream films have always found it challenging to create a bond between able-bodied people and people with disabilities. Hence, the friendship in the narrative is with people who face disability, for example, Bala emerges as a person with neurotypical characteristics, Mohammad Paaji loses his leg in the war, and then forms an association with Laal. This should also be analysed vis-

à-vis the people he meets on the train, i.e. able-bodied, and who look at Laal as a person on the outside, or uses humour to reach him. The people in the train do not take him seriously till the time he proves his success by showing his image on the cover page of a leading magazine. Reiterating the supercrip, Laal has to prove himself to be part of the social structures.

On the other hand, *Tanvi the Great* is a film centred on a woman on Spectrum as the central protagonist. A woman with intellectual disability as a protagonist is a very small category in Indian Films. Thus, Tanvi faces double marginalisation in terms of her gender identity as well as her intellectual disability. If, on the one hand, Laal achieves success because of the circumstances and events, Tanvi's journey is based on Autism and the struggles of daily life. In the narrative, her character development centres on her struggle with the world outside, capturing the nuances and challenges of people on the spectrum. The film belongs to a limited set of texts in Bollywood that engage directly or indirectly with neurodivergent characteristics.

The structure of the film is presented through three characters: Tanvi, who embodies the lived experience; the mother, who articulates the challenges of parenthood and serves as an advocate of inclusion; and the grandfather, who represents ignorance. The grandfather reinforces the stereotypes, in terms of blaming the mother, finding fault in Tanvi, and his constant belief that Tanvi's position can be cured medically. On the other hand, the mother's response can be seen as an answer to these questions, creating an understanding on Autism, as well as challenging stereotypical able-bodied ideas, which limit intellectual disability to certain cliched expressions. The film maintains a distance from the medical model and, through the social model, maps the journey where Tanvi and her grandfather come close to each other and develop a warm relationship. This also becomes the primary idea, advocating inclusion through its structure, i.e., the social model of disability. In the film's initial part, with the help of the uninitiated grandfather, played by Anupam Kher, the uninitiated audience is introduced to the neurodivergent world of Tanvi, and the grandfather's journey becomes the audience's journey.

The film navigates a difficult challenge: between a representation that risks infantilising Tanvi's character and one that creates a character with a voice and agency. Avoiding over-simplification, the film portrays Tanvi's sensory overload and inconvenience without exaggeration. For instance, her challenge to adjust to the new circumstances is captured with subtle details. Tanvi avoids making eye contact; her repetitive behaviour is adequately captured in the film. The film also pays attention to the little details, such as her obsession with a particular food and her crossing the threshold. This struggle of everyday life in terms of tying her shoelaces and interacting with people is aptly captured in the film. The mother's absence, as she leaves for an academic program, balances this out, leaving Tanvi to negotiate with the outside world without her mother's support. Through the grandfather, the film also introduces the lived realities of people on the spectrum. His constant challenge to understand Tanvi helps the audience understand Tanvi and her challenge of inclusion.

Her association with music also reflects the idea that people on the spectrum have a leaning towards other skill and the film focuses on Tanvi's relationship with music. Through her school teacher, her journey with musical notes is explored. Though the teacher in the initial discussion is apprehensive, but as she shows exceptional skills in singing, the attitude changes. Again, the teacher's attitude reveals an acute able-bodied misunderstanding in the initial conversation, which reflects a stereotypical understanding through an able-bodied lens; his transformation signifies a shift that comes with understanding. Time and again, the narrative focuses on the challenges of inclusivity. Especially in the society, which often is not able to see the social exclusion it creates for people.

A significant part of the film focuses on the idea that Tanvi wants to join the armed forces to fulfil her father's dreams. The film takes on the sentimental lens as she joins the training academy of her father's friend, a character who faces a moral guilt, (as Tanvi's father had saved his life by sacrificing his).These complicated dynamics attach him to Tanvi in order to realise her dream of joining the forces. The film shifts towards the able-bodied perspective where the protagonist has to find a place or create one if needed. Sentimentalism becomes the key factor; positionality or the idea of inclusion becomes a secondary part of the narrative. Throughout the training process, Tanvi is required to adapt to the rigorous process, which is based on the idea of the neurotypical way of life. Tanvi is expected to adapt to the training process; on the other hand, there is complete silence on the idea of inclusion. The entire narrative revolves around Tanvi's negotiation with the outside world and not the space where neurodivergent people also become part of the 'normal'.

The film in latter half pivots towards her training for selection in the army. This section, at one level, breaks the idea of super-crip but reaffirms the able-bodied notion of the challenges that have to be navigated through the lenses of 'normal'. One of the key points in the film is the rigorous training that Tanvi undertakes. Here she is expected to come closer to the 'normal' way of life. Her difference is celebrated, but eventually, she becomes part of the group where her identity merges with the group. This is a significant flaw in the narrative, as it almost portrays that Tanvi has overcome something which can make her 'normal' and 'acceptable'. As can be seen in the mainstream narratives, the film does not focus on the challenges of inclusion in such a space but falls into the trap of inspiration and motivation. The film becomes a journey of adapting to the space, the challenges in terms of difficulty that can be overcome through the human spirit and resilience.

Finally, the entire narrative turns into inspiration and motivation. The protagonist clears the challenging examination and is called for the interview; her struggles, emotional and physical, are marginal, and she does not find adequate space. Moreover, the idea of joining the armed forces becomes a dominant idea. The initial struggle becomes secondary and marginal. The question of inclusion also becomes secondary in the narrative. The plot shifts to human resilience and the spirit to overcome all the challenges. For example, the first half of the film is a subtle

development of the relationship between grandfather and granddaughter, as well as her challenges with the world outside. Challenges such as crossing the threshold of the door, placing plants in the room, and her sensory discomfort with the surroundings is adequately captured in the film which are incomprehensible to the grandfather, he forms a bridge with Tanvi towards the end.

Both *Laal Singh Chaddha* and *Tanvi The Great* also create an insight into disability. Most of the characters in the films look at the protagonist through an able-bodied lens. Hence, Renu Addlakha's discussion on the way the disability is constructed becomes pivotal for the study, as she argues that the perception of society towards disability as helpless victims and a burden creates more barriers than the disability itself. As can be seen in the selected films, also

**4. Comparative Analysis**

Both *Laal Singh Chaddha* and *Tanvi the Great* reflect Bollywood's attempt at representing neurodivergent characters in a new light. In terms of characterisation, both the films are based on the challenges and struggles of the principal characters. Both films take intellectual disability as the core narrative, yet the discourses and challenges related to intellectual disability remain primarily in the background. Moreover, the undercurrents, i.e. onscreen representation of inclusion or the idea of generating a discussion about the same, remain secondary. As can be seen in the narratives of disability, both characters have to achieve success to prove their selfhood in the neurotypical world. Hence, there is an ambivalence in the representation of disability; both films begin with an idea of inclusion, but the narrative merges with the stereotypical construction of the neurotypical worldview.

For instance, in Laal Singh Chaddha, the idea of overcoming challenges is developed through the concept of resilience and vulnerability. Laal, though a central character doesn't have the agency to speak about his own perspective to the events outside or he is portrayed as a character who has a limited understanding is problematic in nature. On the other hand, the narrative of *Tanvi the Great* is more layered and nuanced. Tanvi's struggle begins with the representation of people on the spectrum; attention is paid to the details, yet the invisible is more visible in the film. For instance, the film opens with Tanvi's father and his professional aspiration; towards the end, the entire narrative turns to Tanvi's idea of fulfilling his dreams. Her own identity and aspirations never find a space in the narrative. Her challenges vis-à-vis her lived experience are almost negated, and the narrative portrays her struggle to prove herself in the neurotypical space and structures.

Another feature in the narrative that serves as a meeting point between the two films is the role ofa supporting caregiver. In mainstream films, the idea of taking care of the family is seen in the role of mothers. Here, in addition to the emotional support that mothers lend to the leading characters, they also become advocates of inclusion in the narrative. Laal's mother Gurpreet, and Tanvi's mother, Vidya, play an essential role in the narrative. Laal's mother helps him navigate the world outside. She acts as a

protective agent on the one hand, and through her engagement with Laal, a larger discourse on intellectual disability, and it's challenges can be seen in the narrative. Like Gurpreet, Tanvi's mother, Vidya, plays a role similar to Laal's mother, where she not only helps Tanvi to navigate the challenges that are im-balanced towards neuroatypical people but also becomes an advocate of inclusion. As she advocates for social model of inclusion, Tanvi becomes the manifestation of the idea. Throughout the narrative, she counterbalances the grandfather's narrative and provides insight which the society fails to accommodate.

Both the films situate intellectual disability in stylistics and ignore the larger question about inclusion in society. Laal's disability is rooted through the lenses of innocence; his subjective opinion is missing, and the narrative becomes about his achievement rather than his "self". His character is shaped by other characters, which he accepts without challenge. However, there are glimpses of his understanding of human behaviour. His character is not rooted in malice and vengeance, but in innocence, which creates differences in his behaviour vis-à-vis others.

On the other hand, Tanvi's journey is also rooted in emotional experiences. The artistic impulse in Tanvi becomes a larger motif, layered through her zeal to excel in her training for the armed forces. She proves herself in the neurotypical world through her creativity and enthusiasm rather than opening up the discourses of equality and inclusion. Tanvi comes close to being an "autistic savant" who achieves through her outstanding work.

Thus, in both films, the discourses of equality are rooted in the able-bodied experiences. As Sati points out, text is often trapped in the narratives of inspiration or cure, and thus signifies the dominant attitude of the able body; rather than questioning it. The narratives are sympathetic, but the idea of inclusion seems to be missing in both. These experiences are mediated through able-bodied narratives, and the text appears to struggle with the concept of inclusion.

## 5. Conclusion

The two films selected for the study highlight the mainstream film industry's attempts to engage with intellectual disability. Though the narrative is marked by sentiment and emotional response, the agency of the characters and the challenges faced by the primary caregivers, especially mothers, play a pivotal role. The selected films open up discussion about the idea of inclusion; for instance, they are based on the lives and struggles of characters with intellectual disability, and, through a first-person point of view, they create a space for subjective interpretations and observations. In addition, certain key characters, such as mothers in *Laal Singh Chaddha* and *Tanvi the Great*, become advocates for inclusion, thereby highlighting the collective struggle. Though mainstream Hindi films have tended to marginalise the voices of the other, these films stand out for their portrayal of society's challenges and opinions.

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# AI and Law: Regulating Machine and Intelligence in Just Delivery

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## Abstract

The integration of Artificial Intelligence (AI) into legal, administrative, and governance frameworks marks a paradigm shift in the way justice is conceptualized and delivered. In India—a democratic nation with a complex legal system, a growing digital economy, and deep socio-economic disparities—the challenges and opportunities posed by AI are particularly significant. This paper critically examines the intersection of AI and law in the Indian context, exploring how emerging technologies can be effectively regulated to promote just, fair, and accountable outcomes within a constitutional framework. AI is increasingly influencing decision-making processes across sectors, including predictive policing, facial recognition surveillance, digital forensics, and judicial analytics. While these applications promise efficiency, cost-effectiveness, and improved access to justice, they also raise profound legal and ethical concerns. Can AI comprehend the nuances of constitutional values like dignity, equality, and due process? How can opaque algorithms be held accountable in a rule-of-law society? What are the implications for individual rights and state responsibility? These are the central questions this paper seeks to explore. In India, AI has begun to influence the judiciary, most notably through the Supreme Court's e-Courts Project and other digital initiatives aimed at case management and backlog reduction. However, there remains an absence of a coherent legal framework governing the use of AI in legal and quasi-legal decision-making. The lack of statutory regulation, combined with weak data protection norms and algorithmic opacity, could undermine fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution. This paper argues that the unregulated deployment of AI systems may exacerbate existing inequalities, reinforce systemic biases, and erode the principles of natural justice. Through a comparative analysis of international frameworks, such as the European Union's AI Act and OECD principles on trustworthy AI, the paper identifies models that could inform India's regulatory path. The Indian legal system, with its strong emphasis on public interest, constitutional morality, and social justice, requires an indigenous model of AI governance that balances innovation with human rights. Regulatory strategies must include mandatory algorithmic audits; explainability standards, legal liability norms for AI developers and deplorers, and public consultation mechanisms. The paper also explores the concept of granting limited legal personhood to AI entities in specific, controlled environments, primarily to allocate liability and establish jurisdiction. However, it cautions against over-automation in matters that

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require judicial discretion, empathy, and moral reasoning. Rather than replacing human adjudication, AI should function as an assistive tool under strict human oversight. Finally, this research proposes a roadmap for India's AI regulatory future, grounded in constitutionalism, democratic accountability, and technological ethics. It calls for the formation of a statutory AI Commission, development of a comprehensive AI law, and integration of AI literacy into legal education and judicial training. In conclusion, the just delivery of services in an AI-enabled legal system must prioritize justice over speed, equity over efficiency, and human dignity over mechanical precision.

**Keywords:** *Artificial Intelligence (AI), Indian Legal System, Justice Delivery, Transparency, Rule of Law*

## 1. Introduction

The integration of Artificial Intelligence (AI) into governance and legal systems is not a futuristic projection—it is a contemporary reality that is reshaping how justice is conceived, delivered, and perceived. Across the world, AI has become increasingly embedded in decision-making systems, from predictive policing and facial recognition to automated legal research and algorithmic risk assessments in criminal justice[1]. While the technological leap promises efficiency, consistency, and speed, it simultaneously presents one of the most complex regulatory challenges of our time. AI's capacity to mimic cognitive processes such as learning, reasoning, and problem-solving—though devoid of human consciousness—raises fundamental questions about legality, accountability, and morality in decision-making. In India, the deployment of AI in legal and administrative contexts is gathering momentum. Initiatives such as the Supreme Court's e-Courts Project, AI-based legal research tools, and government-led data analytics systems are part of a broader shift towards digital governance. While the goal of such digitization is ostensibly to reduce case backlog, improve public service delivery, and ensure transparency, the absence of a robust legal and ethical framework for AI governance has led to growing concerns. These include algorithmic bias, lack of transparency, violation of privacy, and the potential dilution of fundamental rights guaranteed under the Indian Constitution.[2]

This technological shift is occurring in a complex legal landscape marked by deep socio-economic inequalities, infrastructural gaps, and limited technological literacy. In such a context, unregulated or poorly regulated AI may not just fail to deliver justice—it could actively undermine it. As India continues to embrace digital transformation, it becomes imperative to interrogate how AI interacts with the principles of rule of law, constitutional morality, and democratic accountability.

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1 Stuart Russell, *Human Compatible: Artificial Intelligence and the Problem of Control* (Viking, 2019).

2 B. N. Patel, "The Intersection of Law and Technology: Reviewing the Legal Implications of AI." 2(4) *Indian Journal of Law* 91–96 (2024) DOI: 10.36676/ijl. v2.i4.47.

## 2. Justice in the Digital Age: Opportunities and Risks

There are two sides to the use of AI in the legal system. On the one hand, it offers unprecedented opportunities to streamline judicial processes, democratize access to information, and support legal professionals in decision-making. AI can help reduce the human burden in repetitive tasks, ensure consistent application of law, and even predict legal outcomes to assist in settlement negotiations. Projects like the **e-Courts Mission Mode Project (Phase III), which envisions "smart" courts and paperless hearings,** have the potential to transform justice delivery in India. However, these benefits must be critically evaluated against the backdrop of inherent risks. AI systems, no matter how advanced, are ultimately dependent on the data they are trained on. In a country like India, where historical data often reflects systemic inequalities—whether on the basis of caste, class, gender, or religion—algorithms can inadvertently reproduce or even magnify such biases. Moreover, most AI systems operate as "black boxes"—opaque and unexplainable to non-experts—which poses a direct threat to transparency and accountability, two pillars of a functioning democratic legal system. In criminal justice, for example, predictive policing tools may disproportionately target marginalized communities, leading to over-policing and reinforcing social stigmas[3]. In civil litigation, algorithmic case prediction may pressure litigants to settle based on perceived probabilities rather than actual legal merit. These scenarios raise critical questions: Can an AI system understand context, nuance, or constitutional values such as equality and dignity? Who is liable when an AI tool makes a decision that infringes on someone's rights? And how does one ensure due process in a digital courtroom run partially by machines?

It is clear that in the absence of carefully designed regulations and oversight, the promise of AI can rapidly turn into peril—especially in a nation where access to justice is already uneven and often structurally constrained.

## 3. Defining Artificial Intelligence in Legal Contexts

Artificial Intelligence (AI) is a rapidly evolving field, and its legal definition remains fluid and context-dependent. In general terms, AI refers to computer systems or software capable of performing tasks that typically require human intelligence, such as reasoning, learning, problem-solving, perception, and language understanding. However, when transposed into legal frameworks, the definition of AI must go beyond technical capabilities to include accountability, transparency, and regulatory implications.

Legal systems have begun to define AI through national and international legislation. For instance, the European Union's ArtificialIntelligence Act defines an AI system as "*means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit*

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[3] Peter de Souza, "AI and the Indian Judiciary: The Need for a Rights-based Approach" (Policy Watch, Hindu Centre, 28 Nov 2024) (The Hindu Centre).

*or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments"*[4]

From a legal perspective, defining AI involves not only recognizing its computational attributes but also identifying how its use impacts rights, obligations, and liability. The definition must be precise enough to be enforceable yet adaptable to accommodate future developments. As AI continues to shape sectors like healthcare, finance, law enforcement, and transportation, its legal definition will remain a cornerstone for regulatory frameworks and ethical deployment.

In India, the definition of Artificial Intelligence (AI) is still in a developmental phase, as the country has yet to enact a comprehensive legal framework specifically governing AI. Nonetheless, various government reports and policy documents provide working definitions that help shape the national discourse around AI regulation and implementation.

The NITI Aayog, India's premier public policy think tank, say AI is constellation of technologies that enable machines to act with higher levels of intelligence and emulate human capabilities of sensing, understanding, and responding." This broad definition emphasizes the transformative potential of AI across sectors like healthcare, agriculture, education, smart mobility, and governance.[5]

Unlike jurisdictions such as the European Union, India has not yet formalized a statutory definition of AI within its legislative framework. However, legal and regulatory bodies are increasingly recognizing the need to define AI in order to address issues such as data privacy, algorithmic bias, accountability, and liability.

In judicial and legal contexts, defining AI is particularly important for determining responsibility when AI systems make autonomous decisions. As India progresses toward a digital economy, the articulation of AI in legal terms will likely evolve through a combination of policy initiatives, court rulings, and sector-specific regulations. Until a comprehensive AI law is enacted, definitions remain flexible and subject to interpretation based on the context of use.

## 4. The Nature of Justice: Constitutional and Jurisprudential Perspectives

In the context of integrating artificial intelligence (AI) into legal systems, the nature of justice must be examined both constitutionally and jurisprudentially. Justice is not merely a procedural ideal; it is a normative commitment rooted in the very foundations of democratic legal orders. Within the Indian constitutional framework,

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4 European Union, Regulation (EU) 2024/1689, Artificial Intelligence Act, 2024, OJ L 202, 12.7.2024, p. 1–159.

5 NITI Ayog Paper "Responsible AIfor All; Adopting the Framework – A use case approach on Facial Recognition Technology "(NITI Ayog , Nov2022).

justice—social, economic, and political—is not an aspirational value but a constitutional guarantee enshrined in the Preamble and operationalized through fundamental rights and directive principles. From a constitutional standpoint, justice entails fairness, non-arbitrariness, and dignity. These principles are challenged when legal decision-making is delegated to AI systems. Algorithms may process information efficiently, but efficiency must not come at the cost of substantive justice. The Constitution demands a balance between legal certainty and moral reasoning, both of which are threatened if the rule of law is reduced to code.

Jurisprudentially, justice has been theorized through various lenses. Aristotle's conception of distributive and corrective justice reminds us that outcomes must be fair and processes must be equitable. In modern jurisprudence, thinkers like Ronald Dworkin assert that justice requires decisions to be made with integrity and principle—not just precedent. AI systems, trained on historical data, risk entrenching past biases if not guided by a deeper moral compass.

Moreover, natural justice—especially the right to be heard—must not be undermined by opaque algorithmic processes. The judicial function is not merely to apply rules but to interpret and contextualize them. Machines, however sophisticated, lack the human capacity for empathy, context appreciation, and moral deliberation—qualities central to the just delivery of law. Therefore, any regulatory framework governing AI in legal contexts must ensure that the constitutional vision of justice is preserved and jurisprudential wisdom is not overridden by technological determinism. Justice, ultimately, must remain human in character, even when assisted by machines.

## 5. Rule of Law, Accountability, and the Ethics of Automation

The integration of artificial intelligence into legal systems compels a critical examination of foundational principles such as the rule of law, institutional accountability, and the ethical dimensions of automated decision-making. The rule of law, which demands legality, predictability, transparency, and equality before law, faces new challenges in the age of algorithmic governance. AI systems, often operating through opaque, proprietary code, risk undermining the principle that laws must be knowable and decisions reviewable. When a decision is rendered by a machine whose reasoning cannot be understood or questioned, it violates not only the spirit of due process but the structural integrity of constitutional justice itself. Accountability, too, is placed under strain in AI-assisted legal processes. In traditional frameworks, judges, lawyers, and state actors are answerable for their decisions through systems of appeal, judicial review, and professional discipline. However, AI introduces a problematic diffusion of responsibility. When outcomes are driven by data sets, probabilistic reasoning, and complex algorithms, it becomes increasingly difficult to locate liability. This accountability gap is especially dangerous in the legal domain, where liberty, livelihood, and fundamental rights are

at stake. Regulatory systems must ensure that AI tools used in legal processes are subjected to human oversight, institutional audit, and, where necessary, constitutional scrutiny[6].

Equally important is the ethical evaluation of automation in law. AI lacks moral agency; it does not comprehend harm, dignity, or fairness—it merely detects patterns. If trained on biased or incomplete data, these systems can perpetuate and even amplify existing injustices under a veneer of objectivity. The ethical deployment of AI in law requires not only technical safeguards but a jurisprudential orientation—an insistence that technology serves the values of justice, equality, and human dignity. Automation must never become a substitute for reasoned deliberation or moral responsibility[7].

Therefore, any use of AI in the legal domain must be anchored in the rule of law, reinforced with mechanisms of accountability, and guided by ethical constraints. The promise of innovation must not blind us to the dangers of disempowerment and abstraction. As we regulate machine intelligence in the service of justice delivery, we must ensure that it remains a tool—never the master—of constitutional values.

## 6. AI in Justice Delivery: Global Developments and Indian Realities

Globally, artificial intelligence is being increasingly integrated into justice systems with the promise of enhancing efficiency, reducing human error, and addressing procedural delays. In several jurisdictions, predictive policing and risk assessment tools are now central to criminal justice strategies. These systems, often data-driven, aim to forecast crime-prone areas or assess an individual's likelihood of reoffending. However, countries like the United States have faced criticism over the deployment of tools such as COMPAS and PredPol, which, while technologically advanced, have been shown to rely on historically biased datasets—leading to the disproportionate targeting of marginalized communities and raising serious concerns about fairness, racial profiling, and due process. Along side policing, facial recognition and surveillance technologies have gained prominence, particularly in nations such as China and the United Kingdom. These systems enable real-time monitoring and rapid identification of individuals in public spaces. While touted as effective tools for crime prevention and public safety, they pose grave risks to privacy and individual autonomy. The use of such technologies without clear legal safeguards has prompted debates around consent, mass surveillance, and the potential for authoritarian misuse, leading some democratic countries to propose bans or moratoriums on their deployment. In the courtroom, AI is also transforming the landscape of legal research and judicial analytics. Advanced platforms like Westlaw Edge, LexisNexis, and

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6 Custers, B. & Fosch-Villaronga, E. (Eds.), Law and Artificial Intelligence: Regulating AI and Applying AI in Legal Practice, T.M.C. Asser Press, The Hague, 2022.

7 "Why AI is a Threat to the Rule of Law,"1(10) Digital Society, August 2022.

ROSS Intelligence use machine learning to parse legal texts, identify relevant precedents, and even predict judicial behavior. These tools have revolutionized legal practice by reducing research time and increasing the precision of legal arguments. However, when statistical predictions begin to influence judicial reasoning, concerns emerge about over-reliance on algorithmic insights at the expense of moral, social, and contextual judgment, which are essential to just adjudication[8].

Another notable development is the rise of Online Dispute Resolution (ODR) systems, particularly in jurisdictions like Canada, the Netherlands, and China. These systems integrate AI to facilitate negotiation, mediation, and resolution of low-value civil disputes. By automating parts of the dispute resolution process, they enhance access to justice for individuals who may be deterred by the cost or complexity of formal litigation. Nevertheless, these systems are often criticized for their limited ability to handle nuanced human emotions, cultural sensitivities, or power imbalances, which remain integral to fair resolution.[9]

Taken together, these global trends illustrate the immense potential of AI in legal systems, while also underscoring the ethical, constitutional, and institutional challenges involved. As countries experiment with algorithmic tools in policing, adjudication, and dispute resolution, it becomes imperative to ensure that these technologies uphold, rather than undermine, the core values of justice, fairness, and human dignity.

## 7. Developments in AI and Legal Administration in India

India's tryst with artificial intelligence in the realm of legal administration is at a formative but rapidly evolving stage. The most significant institutional development in this context has been the **E-Courts Project,** a flagship initiative under the National e-Governance Plan for the judiciary, launched by the Government of India and monitored by the Supreme Court's e-Committee. The project seeks to digitize court records, facilitate electronic filing and video conferencing, and ultimately ensure more efficient and transparent judicial processes. While not entirely AI-based in its current architecture, the e-Courts framework provides the foundational digital infrastructure necessary for future AI integration. It has catalyzed various digital reforms across High Courts and District Courts, such as automated cause list generation, digital document repositories, and SMS-based hearing updates—all of which, while not intelligent per se, signal a move towards data-rich ecosystems that can support AI-driven insights in the near future.[10]

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[8] Black, J. & Murray, A. D., "Regulating AI and Machine Learning: Setting the Regulatory Agenda" 10(3)*European Journal of Law and Technology* (2019).

[9] Kahdhim al-Kemawee, J. A. A. H., "Artificial Intelligence and the Law: Legal Frameworks for Regulating AI and Ensuring Accountability" *Utu Journal of Legal Studies*(2024).

[10] Matthan, Rahul & Sanah Javed, "Global AI Governance Law and Policy: India", IAPP Resource Article Series, July 2025.

Parallel to institutional reforms, India has witnessed a steady emergence of legal tech startups that are experimenting with AI applications tailored to the domestic legal environment. Companies such as Case Mine, Riverus, Practice League, and Mike Legal are employing natural language processing, machine learning, and data analytics to streamline legal research, contract analysis, and compliance tracking. These platforms are attempting to bridge the gap between voluminous legal information and accessible knowledge by offering predictive analytics, judgment summarization, and case law mapping. While these systems are still in their developmental stages, they hold potential to democratize legal knowledge, reduce dependency on manual research, and even influence judicial trends. However, the use of AI in these domains raises critical concerns about data quality, legal interpretation, and the lack of standardization across jurisdictions. Since most Indian judgments are written in varied formats and languages with inconsistent metadata tagging, the reliability of AI predictions remains a challenge in absence of curated and standardized legal corpora.[11]

Beyond the courtroom and startups, sectorial adoption of AI in legal and quasi-legal domains is also gradually gaining traction. The Reserve Bank of India and the Securities and Exchange Board of India (SEBI), for instance, have begun using AI and machine learning tools for fraud detection, market surveillance, and compliance monitoring. Similarly, state police departments in cities like Hyderabad and Delhi have explored AI-driven facial recognition systems and predictive crime mapping technologies, although these practices are still mired in legal and ethical scrutiny due to concerns over privacy, surveillance, and consent. These fragmented yet telling examples indicate a growing institutional appetite for AI solutions, even as legal and regulatory frameworks remain underdeveloped.[12]

Despite these developments, the Indian legal ecosystem lacks a cohesive national strategy or regulatory blueprint for the ethical and accountable deployment of AI in justice delivery. The existing regulatory discourse on AI is fragmented, often focused on commercial or defense applications, with limited attention to the constitutional implications of automated decision-making in legal contexts. There remains an urgent need to formulate sector-specific guidelines for the use of AI in courts, law enforcement, and public dispute resolution systems—ones that are rooted in the principles of transparency, accountability, due process, and non-discrimination. Without such frameworks, India risks importing technological solutions without adapting them to the socio-legal complexities of its justice system. In sum, India's engagement with AI in legal administration is still in its nascent phase, marked by

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[11] Ishnay Prakash, Dhruv & Sanjeev Purkar, "Navigating the Regulatory Landscape for AI and Publicly Available Data in India" *Indian Journal of Law and Legal Research* (2024).

[12] Editorial, "Sebi proposes 5-point AI rulebook for securities market," Economic Times, Jun. 20, 2025.

experimentation, decentralization, and infrastructural preparation. The convergence of digital judicial reforms, legal tech innovation, and sectoral experimentation has laid the groundwork for a more technologically enabled justice system. However, in the absence of a robust regulatory and ethical framework, the deployment of AI may fall short of the constitutional promise of justice. The path ahead requires not only technological readiness but jurisprudential maturity, ensuring that the future of AI in Indian law remains as much about rights as it is about before Courts Project and Digital Reforms.

## 8. Legal and Constitutional Challenges in India

The integration of artificial intelligence into India's legal and administrative domains raises a host of constitutional and legal challenges that demand urgent attention. While the benefits of AI in justice delivery—efficiency, speed, and data-driven insight—are often emphasized, the deployment of these technologies within a legal system governed by a written constitution presents serious concerns regarding fundamental rights, rule of law, and democratic accountability. The Indian Constitution, as a living document, guarantees a range of civil liberties under Part III, including the right to equality (Article 14), protection against arbitrary action (Article 21), and the right to freedom of speech and expression (Article 19). These rights form the normative core around which all uses of state power—including technologically mediated ones—must revolve. Yet, AI systems, particularly those used in surveillance, policing, adjudication, and public decision-making, often operate with minimal transparency, no legislative mandate, and little to no public accountability, thereby posing a direct threat to constitutional guarantees.[13]

One of the foremost concerns is the lack of a clear legislative framework governing the use of AI in legal and public decision-making spaces. Most deployments—whether in facial recognition by law enforcement agencies or predictive tools in judicial analytics—occur without statutory basis or parliamentary oversight. This undermines the principle of legality, a cornerstone of constitutional governance. The use of opaque, proprietary algorithms in judicial or administrative decision-making also raises questions about due process. If a person is subjected to a police investigation, denied bail, or denied access to a welfare scheme based on algorithmic scoring or risk assessment, but is not informed of the criteria or cannot challenge the basis of the decision, the right to be heard—an essential element of natural justice—is effectively nullified. Further, Article 14, which guarantees equality before the law and equal protection of the law, is potentially violated when AI systems replicate or magnify existing social biases. This concern is not theoretical. AI systems trained on

[13] N. Kaur, "Policy and Regulatory Implications: AI" 8(2)*Indian Journal of Health and Medical Law*21–27 (2025).

historically biased or incomplete data—often reflective of structural inequalities in caste, class, gender, or religion—can produce discriminatory outcomes. For instance, if predictive policing tools disproportionately flag individuals from certain communities based on historical arrest data, they risk reinforcing prejudiced policing practices under the guise of neutrality. Such algorithmic discrimination, when left unregulated, subverts the constitutional mandate for substantive equality and non-discrimination.[14]

Additionally, the right to privacy, now a fundamental right post *Justice K.S. Puttaswamy* v. *Union of India*,[15] is severely compromised by unchecked deployment of AI surveillance technologies. Facial recognition systems, digital profiling, and automated behavioral monitoring technologies used by police and administrative bodies often function without informed consent, data protection safeguards, or judicial oversight. This not only infringes upon informational privacy but also contributes to a climate of self-censorship and fear, which indirectly impairs the freedom of speech and dissent guaranteed under Article 19.

Another critical concern lies in the domain of institutional accountability. Unlike human actors, AI systems lack moral agency and cannot be held responsible for their actions in a court of law. When decisions based on algorithmic outputs lead to wrongful arrests, denial of entitlements, or flawed judgments, the question of who is to be held accountable—developers, deployers, or institutions—remains largely unanswered in the Indian legal landscape. This accountability vacuum becomes particularly problematic in a country like India, where access to legal remedies is already limited for large sections of the population.

## 9. Comparative Legal Frameworks and Global Regulatory Models

As India contemplates the integration of artificial intelligence into its justice delivery and legal governance systems, a comparative examination of global regulatory models becomes essential. Various jurisdictions have adopted distinct approaches in regulating AI, each shaped by its constitutional structure, political economy, and societal values. Among the most comprehensive and forward-looking frameworks is the European Union's Artificial Intelligence Act, proposed in 2021, which seeks to regulate AI based on a risk-tiered approach. The EU AI Act classifies AI systems into unacceptable, high-risk, limited-risk, and minimal-risk categories, imposing strict obligations on high-risk applications such as those used in law enforcement, border control, and judicial decision-making. This regulatory strategy is firmly grounded in fundamental rights protections under the Charter of Fundamental Rights of the European Union. It prioritizes human oversight, transparency, accountability, and the right to an explanation—principles that directly resonate with constitutional

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[14] Anagram Partners (Rautray, Rachana), "AI Governance Guidelines: A Glimpse into Proposed AI Regulation in India," Data Protection – India, Jan 2025.

[15] *Justice K. S Puttaswamy (Retd.) and Anr v. Union of India and others* (2017), 10 SCC 1 (SC).

democracies like India. The EU's emphasis on legal safeguards, impact assessments, and penalties for non-compliance provides a valuable model for India, where AI deployment is accelerating without a corresponding legislative framework[16].

In parallel, the OECD Principles on Trustworthy AI—adopted by over 40 countries including India—serve as a non-binding but influential set of guidelines aimed at promoting human-centric AI. These principles emphasize transparency, robustness, accountability, and respect for democratic values and human rights. While they do not impose legal obligations, the OECD principles are shaping global expectations around AI governance and offer a blueprint for countries like India to align technological innovation with ethical and constitutional commitments. Their voluntary nature makes them especially relevant for developing countries seeking to balance innovation with public interest without stifling growth.[17]

In contrast, the United States has taken a decentralized, sector-specific, and innovation-friendly approach to AI regulation. Rather than adopting a comprehensive national AI law, the U.S. relies on existing legal frameworks, executive guidance, and agency-level interventions. The emphasis in the U.S. is largely on fostering innovation and economic competitiveness, often prioritizing market freedom over regulatory constraints. While this approach has spurred rapid development in legal automation, facial recognition, and AI-based adjudication tools, it has also raised concerns about the absence of strong legal protections against bias, privacy violations, and unaccountable decision-making. For India, this model serves more as a cautionary example—demonstrating the risks of unregulated AI proliferation in sensitive domains such as justice and law enforcement.

On the other end of the spectrum lies China's surveillance-centric AI model, which has garnered global attention for its expansive use of AI in governance, policing, and public monitoring. The Chinese state has deployed AI tools for facial recognition, social credit scoring, predictive policing, and population control, often without judicial safeguards or public consent. While technologically advanced, this model is characterized by centralized state control, opacity, and the instrumentalization of AI for authoritarian governance. For democratic societies like India, China's approach is antithetical to constitutional principles such as individual autonomy, rule of law, and due process. Nonetheless, it illustrates the immense power of AI when wielded without checks—and serves as a stark warning against deploying such systems without adequate rights-based protections.

The comparative landscape offers important lessons for India. First, regulatory approaches must be adapted to the Indian constitutional and institutional context, rather than imitated wholesale. The EU's rights-based framework, the OECD's

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[16] Black, J. & Murray, A. D., "Regulating AI and Machine Learning: Setting the Regulatory Agenda" 10(3) *European Journal of Law and Technology* (2019).

[17] Erdélyi, O. J. & Goldsmith, J., "Regulating Artificial Intelligence: Proposal for a Global Solution", arXiv preprint, May 2020.

principles, and even the shortcomings of the U.S. and Chinese models provide instructive contrasts. India must chart a middle path—balancing innovation with democratic accountability, encouraging legal tech while safeguarding individual rights, and promoting efficiency without compromising justice. A uniquely Indian AI regulatory framework must emerge from constitutional morality, judicial doctrine, and institutional capacity, ensuring that the promise of AI does not come at the cost of the foundational values enshrined in the Constitution.

## 10. Designing a Human-Centric AI Legal Framework for India

As India prepares to institutionalize artificial intelligence within its legal and governance frameworks, the design of a human-centric AI regulatory model must be guided not merely by technological feasibility but by constitutional morality. Anchoring AI governance in constitutional morality ensures that innovation does not erode the fundamental values of dignity, equality, freedom, and justice. In the Indian context, where legal pluralism, social stratification, and institutional asymmetry are prevalent, the mere transplantation of foreign regulatory models will not suffice. Instead, India must craft an indigenous, context-sensitive legal framework for AI that places the individual—particularly the marginalized—at its normative center. This requires integrating judicial principles such as proportionality, non-arbitrariness, procedural fairness, and the right to be heard into the very architecture of AI regulation.[18]

To operationalize this vision, several regulatory measures and institutional innovations must be considered. First, the law must mandate algorithmic audits and impact assessments for all AI systems deployed in the legal, administrative, and public governance spheres. These audits should evaluate whether AI systems replicate social biases, compromise fairness, or violate constitutional rights. Just as environmental impact assessments became a legal necessity for industrial projects, algorithmic assessments must become a prerequisite for technological interventions in governance. This would ensure that systems impacting liberty, entitlement, or livelihood are evaluated through a rights-based lens before deployment. Second, there must be statutory standards for explain ability and public disclosure. Any AI system influencing legal or administrative decisions must be intelligible to its users and reviewable by courts. Black-box algorithms cannot be allowed to influence outcomes where human rights are at stake. Explain ability is not merely a technical feature—it is a democratic requirement. Individuals must have the right to understand the rationale behind decisions affecting them and to challenge those decisions effectively. Third, a human-centric legal framework must clearly delineate liability across the AI ecosystem—including developers, deplorers, and users. Current legal doctrines of tort, negligence, or strict liability must be reinterpreted to account for the complex, collaborative nature of AI systems. If an algorithm used in criminal sentencing or

[18] Chaturvedi A & Gupta R , "Ethics of Artificial Intelligence: Regulatory challanges and Global Responses" 17(1)*IJTHI* 12-27 (2021).

welfare disbursement causes harm, the legal framework must clarify who bears responsibility and what remedies are available. This is especially important in the public sector, where the diffusion of accountability can render affected citizens powerless in the face of systemic malfunction.[19]

To institutionalize these regulatory functions, India should consider the establishment of a Statutory AI Commission, comprising legal experts, technologists, ethicists, civil society actors, and representatives from marginalized communities. This commission should be tasked with developing ethical guidelines, monitoring compliance, advising on AI deployments in the justice system, and facilitating interdisciplinary dialogue. Such an institution would ensure that AI governance is not reduced to technocratic oversight but remains grounded in constitutional values and democratic deliberation. Finally, the regulatory framework must ensure citizen participation and stakeholder consultations. The design, deployment, and review of AI systems must include voices from civil society, academia, affected communities, and the general public. This participatory ethos not only enhances legitimacy but also democratizes technological governance in a country as diverse and unequal as India.[20]

The ultimate challenge lies in balancing innovation, rights, and the rule of law. India's AI journey must not be driven solely by the promise of efficiency or the pressures of global competitiveness. Rather, it must pursue a transformative vision that harmonizes technological advancement with constitutional governance. A human-centric AI framework for India must enable innovation while safeguarding liberty, must promote efficiency without sacrificing empathy, and must ensure that every automated decision remains ultimately subject to human reason, legal scrutiny, and moral responsibility.

## 11. Emerging Legal Debates and Future Pathways

As artificial intelligence continues to penetrate the legal and administrative machinery in India and across the globe, a range of emerging legal debates demand scrutiny and thoughtful regulation. One of the most contentious ideas gaining attention is that of granting legal personhood to AI systems. While some scholars argue that sophisticated AI agents capable of autonomous decision-making should be accorded limited legal personality to enable accountability and contract enforcement, others strongly oppose this notion, warning against the anthropomorphizing of machines and the erosion of human responsibility. In India's rights-based legal order, extending legal personhood to non-human entities must be approached with extreme caution, lest it create a legal fiction that displaces human culpability and confuses

[19] Nandakumar M & Radhakrishnan P, "AI Governance and Regulation : Global And India Perspective" 14(2) *IJLT* 199-218 (2022).

[20] Arifaa, "Regulation of Artificial Intelligence in India : Difficulties and Factors to be Considered"*JLLRD* (Oct. 2024).

lines of liability.[21]

Indeed, allocating liability for AI-induced harms is one of the most pressing challenges in the age of automation. As AI systems become increasingly autonomous and opaque, existing legal doctrines of tort, negligence, and strict liability are proving inadequate to attribute blame and offer redress. When an AI system makes a flawed prediction or discriminatory decision for instance, denying bail or misidentifying a suspect—who should bear responsibility: the developer, the institution that deployed the tool, or the end user? India's legal framework must evolve to introduce layered, shared liability models that can address this complexity while ensuring victims retain access to remedies.

Equally significant is the role of AI in alternative dispute resolution (ADR) and semi-judicial functions. Automated conciliation, AI-assisted mediation, and online arbitration platforms are already being explored for resolving civil disputes, consumer complaints, and small claims. These mechanisms offer significant potential in enhancing access to justice, especially in overburdened court systems. However, they must be carefully regulated to preserve procedural fairness, informed consent, and the right to appeal. In parallel, the expansion of AI into semi-judicial domains such as tribunals and regulatory bodies should not compromise the neutrality and deliberative character of adjudication, which requires sensitivity to facts, context, and individual circumstances.[22]

To responsibly govern such developments, AI literacy must become an essential component of legal education and judicial training. Legal professionals, judges, and bureaucrats must be equipped to understand how algorithms function, what biases they may embed, and how to interrogate their outputs meaningfully. This calls for curricular reforms in law schools, inclusion of interdisciplinary modules, and sustained capacity-building initiatives for sitting judges and administrative officers. Without such preparedness, the legal community may either uncritically defer to AI outputs or reject them without understanding their potential utility. Across all these innovations, a foundational principle must be upheld: preserving human oversight in all automated legal systems. No matter how efficient or advanced, AI must remain a tool under human control—not a replacement for judicial conscience, ethical reasoning, or constitutional scrutiny. The final authority must always lie with accountable human actors, especially when fundamental rights are at stake.[23]

## 12. Conclusion and Suggestions

In conclusion, the road ahead must be navigated with prudence, vision, and

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[21] White & Case LLP , AI Watch : Global Regulatory tracker – India (May 2024).

[22] Chaturvedi A& Gupta R , "Ethics of Artificial Intelligence : Regulatory Challenges and Global Responses"17(1)*IJTHI*12-27 (2021).

[23] Chakraboty A & Paliwal P, "Artificial Intelligence in India : A Case for ethical Regulations" 17(1)*IJTHI* 12-27 (2021).

constitutional clarity. Justice over speed must remain the guiding imperative, especially in a country where access to justice is already uneven and deeply stratified. Efficiency gains from AI must not overshadow the core values of fairness, due process, and equity. This article has outlined key global trends, Indian realities, and comparative frameworks while offering legal and institutional recommendations rooted in constitutional morality. These include mandatory algorithmic audits, statutory oversight bodies, enhanced explainability standards, and stakeholder engagement. A future-proof, rights-based AI ecosystem in India must be built not just on technological innovation but on the foundational ideals of democratic governance and human dignity. The aim should not be to mechanize justice delivery but to augment it meaningfully, ensuring that law remains a human institution—even in an age of intelligent machines.

The integration of artificial intelligence into legal and judicial ecosystems represents a profound transformation in the theory and practice of justice delivery. However, as this article has argued, the speed and scale of technological advancement must not eclipse the foundational constitutional imperative of justice. In a democratic polity like India—anchored in principles of equality, due process, and human dignity—the deployment of AI in courts, law enforcement, and regulatory governance must be guided not merely by the allure of efficiency but by the unwavering commitment to fairness and accountability. Justice delayed may be justice denied, but justice rushed through opaque, unaccountable, or biased algorithms can be equally unjust. Justice over speed must therefore remain a non-negotiable constitutional imperative in shaping India's AI legal landscape.

Through an in-depth examination of global regulatory models, Indian institutional trends, jurisprudential principles, and ethical challenges, this article has sought to present a comprehensive overview of the evolving interface between AI and law. The key findings underscore both promise and peril. On one hand, AI tools such as judicial analytics, predictive policing, and online dispute resolution platforms offer avenues to reduce pendency, enhance legal research, and democratize access to justice. On the other hand, unregulated or poorly governed use of AI threatens to entrench existing biases, undermine due process, and displace human discretion with mechanical objectivity. The constitutional risks of deploying AI without adequate safeguards—especially in a pluralistic society marked by socio-economic inequalities—cannot be overstated. Based on this analysis, several legal recommendations emerge. First, AI deployment in the justice sector must be preceded by mandatory algorithmic audits and human rights impact assessments, ensuring that systems meet thresholds of fairness, transparency, and non-discrimination. Second, all AI tools used in legal contexts should adhere to explainability and public disclosure standards, empowering affected individuals to contest automated decisions and demand reasoning. Third, India must introduce statutory liability regimes that clarify the responsibility of developers, deployers, and users of AI systems in the event of legal or constitutional violations. Fourth, there is an urgent need for a central

statutory authority—an AI Commission—tasked with oversight, standard-setting, and grievance redressed, and coordination across sectors. Such a body must be independent, multidisciplinary, and empowered to intervene where AI use undermines constitutional values. Fifth, the process of AI regulation must be participatory, involving citizen engagement, civil society, technologists, legal scholars, and affected communities, ensuring that the regulatory architecture reflects democratic legitimacy.

Ultimately, building a future-proof, rights-based AI ecosystem for India requires a paradigm shift in how we think about legal technology—not as a substitute for human judgment, but as a tool that must be embedded within constitutional morality and institutional ethics. This ecosystem must be adaptable to technological evolution, resilient against misuse, and anchored in transparency and accountability. India must not blindly import foreign models but craft a context-sensitive framework that balances innovation with inclusion, efficiency with empathy, and automation with democratic control.

As the law confronts the machine age, we stand at a critical juncture. The question is not whether AI will enter the justice system, but how, under what norms, and with what safeguards. This article submits that a principled, rights-respecting, and human-centric approach to AI governance is not only desirable but constitutionally necessary. The future of justice in India depends on getting this balance right—not just for the sake of progress, but for the enduring promise of justice itself.

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# Administration of the Union Territory of Delhi: A Study

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## Abstract

Delhi, the capital of India, is a Union Territory under Part VIII of the Constitution. It holds a special structure which is envisaged under Article 239AA of the Indian Constitution. It is administered by the President through an Administrator, who is designated as the Lieutenant Governor of Delhi. However, unlike other Union Territories, it consists of an elected Legislature, which consists of a Chief Minister along with the Council of Ministers. The elected Legislature has the power to make laws with regard to all the matters in the State List and the Concurrent List except Public Order, Police and Land. The Union Government has the legislative authority with regard to the Concurrent List and the matters excluded from the purview of the State List. In the recent past, there have been many disputes between the Lieutenant Governor and the elected government regarding control over services (transfer and posting of bureaucrats), administrative supremacy (who is supreme –the Lieutenant Governor or the elected Chief Minister) and interpretation of Article 239AA. This paper will delve deeper into the constitutional history of the National Capital Territory of Delhi and will examine its present legal and administrative status as per the judicial interpretations.

The methodology of research that has been followed is doctrinal. It is based on primary and secondary sources like statutory laws, judgments of the Supreme Court and the High Court, books, articles, journals, newspapers and e-sources etc.

**Keywords** – *Delhi, Lieutenant Governor, Union Territories, Article 239AA, Administrator.*

## 1. Introduction

Indian Constitution is of the federal type. It establishes a dual polity, a two-tier governmental system with the Central Government at one level and the State Government at the other level[1]. It means that there is a division of power[2] between

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1 MP Jain, *Indian Constitutional Law*27 (Lexis Nexis, Butterworths, Haryana, 9thedn., 2025).

2 India Const., Seventh Schedule.

the Central and the State Government[3]. We also follow the Parliamentary form of Government in which there co-exist two types of heads of the Government. This system is prevalent at both the Centre and at the State level. One is the head of the State (i.e. the President[4] in case of the Central Government and the Governor[5] in case of the State Government) and other is the head of the Government (i.e. the Prime Minister[6] in case of the Central Government and the Chief Minister[7] in case of the State Government). The head of the State has titular powers and the head of the Government has real powers[8]. This system was adopted by India because it was for a long period of time, a colony of the Britishers and Indians had become accustomed to the then prevailing system[9].India has been characterized as a 'Union of States' as per Article 1(1) of the Constitution. It has delimited the territories of the India into States and Union Territories in the First Schedule of the Constitution.[10] The territory of India comprises of States, Union Territories and any other territory that may be acquired by the Government of India at any time as per Article 1(3)[11].

There exist a few centrally-administered units which do not form part of any State but have been kept as separate and distinct entities because of several cultural, political and historical reasons. These administrative territories are designated as Union Territories[12]. Before 1956, the present-day Union Territories were characterized as Part C States. The States Reorganisation Commission in its report submitted in 1955 suggested that Part C States be converted into centrally administered territories as these States were neither financially viable nor functionally efficient. The States Reorganisation Act and the 7th Constitutional Amendment Act abolished the Part C States and created the present-day Union Territories[13]. As Delhi is the national capital of India, it is maintained as a Union Territory and has not been given the status of full-fledged State[14]. By virtue of 69thConstitutional Amendment Act, 1991, Delhi has been given a special status. It is called as the National Capital Territory of Delhi and the Administrator is designated as the Lieutenant Governor and is appointed by the President[15].

In case of the States, there exists federal division of powers, but in case of the Union

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3 *Supra* note 1 at 526.
4 India Const.,art. 52.
5 India Const.,art. 153.
6 India Const., art. 74.
7 India Const., art.163.
8 Prof. Kailash Rai, *The Constitutional Law of India* 49 (Central Law Publications, 6thedn).
9 Narendra Kumar, *Constitutional Law of India*6 (Allahabad Law Agency, 2018).
10 H.M. Seervai, 2 *Constitutional Law of India*308 (Universal Law Publishing Co., 4thedn).
11 *Supra* note 1 at 554.
12 *Supra* note 1 at 549.
13 *Ibid.*
14 *NDMC v. State of Punjab* (1997) 7 SCC 339.
15 India Const., art. 239AA.

Territories, the unitary system[16] is followed. The Union Territories are under the direct control of the Central Government and are governed by Part VIII of the Indian Constitution. *Prima facie*, it appears that the Union Territories form a homogenous group but it is not so. The Union Territories can be classified into three types :-

1. The Territories which are directly controlled by the Centre[17] and are devoid of Legislative Assembly. In such cases, there is no relevance of federal division of powers under Seventh Schedule of the Constitution. The law-making power vests solely with the Parliament[18].
2. The Territories which have a Legislative Assembly[19]. In such territories, the elected legislature has the power to make law with respect to the State and the Concurrent List i.e. List II and List III. Parliament has the competence over List I and List III.
3. Delhi has a special status as compared to the other Union Territories. It had a Legislature until 1956 which was later on abolished and then it was again revived in 1991 by the 69th Amendment Act, 1991. Presently, it is governed by Article 239AA with a dual control of Union Territory Government and as well as that of the Central Government.

However, the concept of the States and the Union Territories came into existence in 1956. To understand the present scenario vis-à-vis Union Territories, specially Delhi, there is a need for a look at pre-1956 arrangement.

## 2. The Pre-156 Arrangement

During the framing of the Constitution process, one Committee was formed namely the Committee on Chief Commissioners' Province, had recommended that citizens residing in certain geographical small areas Coorg, Ajmer-Merwaha, the Andaman and Nicobar Islands and Delhi should also enjoy responsible government and not be administered directly by the Union as had been the case in colonial India. Specifically for Delhi, it recommended a responsible legislature with a Lieutenant Governor to be appointed by the President.

Dr. Ambedkar and the drafting Committee took exception 'as the capital of India, it can hardly be placed under local administration', he said.[20] Instead, it vested full powers in the President to administer these territories through a Lieutenant Governor

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16 Unitary state is a system of political organization in which most or all of the governing power resides in a centralized government in contrast to a federal State.

17 Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli Daman and Diu, Ladakh and Lakshadweep.

18 Dr J.N. Pandey, *Constitutional Law of India* 660 (Central Law Agency Allahabad, 52nd ed. 2015).

19 Jammu and Kashmir and Puducherry.

20 As quoted in Arghya Sengupta, *The Colonial Constitution*186 ( Juggernaut, New Delhi, 2023).

or a Governor of a neighbouring state in a local legislative, as deemed fit[21]. The draft Constitution divided the States into three categories – Part A, Part B and Part C States. Part A States were the former provinces, Part B States consisted of former princely States and Part C States comprised of centrally administered areas[22]. Even at the time of commencement of the Constitution, the Indian Union was divided into Part A[23], B[24] and C[25] States because it was thought that the country had already suffered the pain of partition and it wasn't right that again the country be divided on linguistic basis. However, the demand for linguistic division kept on strengthening and hence, the then Prime Minister set-up The States Reorganisation Commission.

### 2.1. States Reorganisation Commission, 1955

The States Reorganisation Commission (SRC) was constituted in 1953 and is popularly known as Fazal Ali Commission. Its members were Justice Saiyid Fazal Ali (Chairman), Pandit Hriday Nath Kunzru (Member) and Sardar Kavalam Madhav Panikkar (Member).

The Commission had to analyse the following issues –

1. The then existing organisational structure of the India and to examine whether it was suitable for the Governance in the future.
2. Ascertain the historical, cultural and political reasons which resulted in such organization and to see whether it was by accident or these States were created after a thoughtful process.
3. Trace the issues and conflicts caused by such organization and all the related matters thereof including the reorganization plan, if it regards necessary[26].

The Commission presented its report to the Government in 1955 and recommended the abolition of Part A, B and C States and also recommended that the Union of India must be divided into 2 categories : The States and the Union Territories.

On the basis of recommendations of the States Reorganisation Commission, the Seventh Constitutional Amendment Act, 1956[27] and the States Reorganisation Act,

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21 *Id* at 187.

22 HR Khanna, *Making of India's Constitution* 167 (Eastern Book Company, Lucknow, 2nd edn, 2008).

23 Part A States constituted Assam, Bihar, Bombay, Madhya Pradesh (Central provinces and Berar), Madras, Orissa, Bihar and Punjab (East Punjab), Uttar Pradesh (United Province) and West Bengal.

24 These States were Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union, Rajasthan, Saurashtra and Travancore- Cochin.

25 It consisted of Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipu and Vindhya Pradesh.

26 Report of The States Reorganisation Commission ,1955, Introduction.

27 Bill no. 29 of 1956.

1956[28] were passed. The States were constituted following the federal model of governance, where each State will have an autonomous functioning. Legislative powers were distributed between the Central and State Government as per the Seventh Schedule of Constitution. The Central Government had the power to make law with respect to the matters in the Union (List I) and the Concurrent List (List III). The State Government had legislative competence over the State List (List II) and also over the Concurrent List (List III).

Since, there was an abolition of Part A, B and C States, the Seventh Constitutional Amendment Act, 1956 omitted Part VII of the Indian Constitution which earlier dealt with Part B States. Part VIII of the Indian Constitution which contained provisions regarding Part C States was now substituted to deal with the Union Territories and their administration.

## 3. Part VIII of the Constitution – Post 1956 Amendment

Section 17 of the States Reorganisation Act, 1956[29] provided that the heading 'The States in Part C of the First Schedule' is to be replaced by 'The Union Territories'. Hence, presently the Part VIII of the Indian Constitution deals with Administration of the Union Territories. Article 239-241 in the Constitution were also substituted. We will be discussing in detail the Constitutional scheme regarding Union Territories.

### 3.1 Article 239

A Union Territory is a separate entity under the Constitution. Its Administrator is not a Constitutional functionary like the Governor of a State but is a delegate of the President of India qua the territory and its Administrator[30].A Union Territory is a centrally administered area which is governed by the President through an Administrator[31]. Article 239 provides that every Union Territory 'shall' be administered by the President through an Administrator. The use of the word 'shall' implies that there is no discretion and the President is bound to administer the Union Territories through an 'Administrator'.

This Administrator can be known by different designation in different territories. As per Article 239(2), the President can appoint Governor of an adjoining State as the Administrator of a Union Territory. Example – The Governor of Punjab acts as an Administrator of the Union Territory of Chandigarh. Furthermore, Article 239(2) provides that when Governor of a State acts as an Administrator of some Union Territory, he is bound to discharge his functions, independently of his Council of Ministers. Article 239(2) begins with the words 'notwithstanding anything in Part VI'

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28 Act no. 37 of 1956.

29 The States Reorganisation Act, 1956, Bill no. 29 of 1956.

30 Fali S Nariman, *You Must Know Your Constitution*168 (Hay House Publisher, New Delhi, 2023).

31 Narendra Kumar, *Constitutional Law of India* 882 (Allahabad Law Agency, 2018 edn).

of the Constitution. Part VI deals with the State Legislature where the Governor is bound by the aid and advice of the Council of Ministers, headed by the Chief Minister. The Governor can exercise discretion only when it is expressly provided. Hence, when the Governor of a State exercises power as an Administrator, it has to be his independent exercise of power, without the aid and advice of the Council of Ministers of State[32].

### 3.2 Article 240 and 241

Article 240 vests with the President, the power to make regulations for the governance of those Union Territories where the elected Legislative Assembly is not present. Article 241 provides for the establishment of the High Courts for the Union Territories. Such High Court has the same status as the High Court of a State[33]. Article 242 has been omitted vide Seventh Constitutional Amendment Act, 1956.

## 4. Constitutional Fourteenth Amendment Act, 1962

The 14th Amendment Act was introduced to incorporate certain French Territories into the territory of India[34]. Another reason was that a need was felt to provide representative Government to certain Union Territories. Hence, by 14th Amendment Act, Article 239A[35] and Article 239B were inserted in the Constitution. This amendment vested the power with the Parliament to create a Legislature for certain Union Territories. Accordingly, the Government of Union Territories Act, 1963[36] was enacted. This Act established the Legislative Assemblies for Goa, Daman and Diu, Himachal Pradesh, Puducherry etc. However, presently Article 239A is applicable only to Puducherry and Jammu and Kashmir. Article 239B vested with the Administrator the power to promulgate ordinances when the Legislative Assembly is not in session or has been dissolved.

## 5. The Union Territory of Delhi

Since the paper revolves around administration of Union Territory of Delhi, it is

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32 Jagadish Swarup, *Constitution of India* 2481 (Modern Law Publications, Vol 2, 2nd edn).

33 P.M. Bakshi, *The Constitution of India* 228 ( Universal Law Publishing Company, New Delhi, 11th edn).

34 D.S. Chopra, *Indian Constitutional Law* 2071 (Thomson Reuters, Vol 2, Ist edn.).

35 India Const. art 239A. Creation of local Legislatures or Council of Ministers or both for certain Union territories

(1) Parliament may by law create for the Union territory of Pondicherry.

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or.(b)a Council of Ministers, or both with such Constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution.

36 Act no. 20 of 1963.

important to understand the historical perspective for better understand of the existing set-up.

### 5.1 Constitutional History of Delhi

Delhi became the capital of colonial India in 1912 and at that time it was known as the Chief Commissioner's province[37]. Following independence in 1947, it continued to maintain its status as the capital of free India but was designated as a Part C State. The Part C States were governed by the Part C States Act, 1951 and were under direct control of the President through a Chief Commissioner. Delhi consisted of Legislative Assembly and Council of Ministers.

After the recommendations of The States Reorganisation Commission, Delhi was designated as a Union Territory. The Legislative Assembly was abolished and hence, Delhi came under the direct control of Central Government. It came to be administered by the President through an Administrator under Article 239[38].

This structure resulted in a feeling among residents that there was too much centralisation of power. This ultimately resulted in dissatisfaction among the residents of Delhi, who felt that there is need of a democratic set-up for local governance and voicing the public grievances. Hence, for providing better administration at local level and to provide a representative governance structure, the Delhi Administration Act, 1966[39] was enacted. It established a Metropolitan and an Executive Council which consisted of elected members. It was a middle path between having a full-fledged Legislative Assembly and being under the direct control of the Administrator. This governance structure was in force until 1990 until Balakrishnan Committee's recommendations were followed.

### 5.2 The Balakrishnan Committee and 69th Constitutional Amendment Act, 1991

The Union Territory of Delhi was not covered by Article 239A[40]. Hence, it was devoid of Legislative Assembly post 1956 but already had a Metropolitan and an Executive Councils functioning at the local level. From time to time, various notifications were issued, in which, the Administrator of Delhi was conferred with various powers which were similar to that of a Governor in a State. It was argued that if similar powers are being vested in the Administrator, then what is the real status of Delhi? Whether it is a Union Territory in real sense or a State working under the title of Union Territory? It was also important to examine that what should be the appropriate governance structure of Delhi?

The Union Government, in the year 1987, constituted a committee by the name of

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37 *Govt of NCT of Delhi v Union of India* Para 14.
38 India Const. art. 239.
39 Act no. 19 of 1966.
40 It deals with the power of Parliament to create Legislature for the Union Territories.

Balakrishnan Committee[41] which had to make recommendations about the status to be conferred on the Union Territory of Delhi. Whether it must be made a State or should continue to function as a Union Territory? Its terms of reference were :-

1. To find out the deficiencies in the existing system of administration of Delhi.
2. To examine if there is any overlapping in the functioning of the various local authorities and examine its impact on the local residents.
3. To make recommendations regarding the best suitable structure for the administration of Delhi.

The Committee while submitting its detailed report in 1989 highlighted that there existed two conflicting interests in case of Delhi. The first interest required that since Delhi is the national capital and considering its immense importance, it must be administered by the Central Government only. However, the second interest required that we have a democratic set-up which requires that the residents of Delhi must have an elected representative who will address their grievances[42].

The Commission recommended that Delhi must continue to function as a Union Territory but it must have a democratically elected Government. This recommendation was based on the assumption that if Delhi is made a State, then there will be division of subjects between the Central and the State Government as specified in the Seventh Schedule to the Constitution. The Parliament will be able to exercise complete control over Delhi only in exceptional circumstances[43] and hence, it will become difficult for the Union Government to discharge its duties with regard to the national capital. Thus, it must be kept under the direct control of the Union Government and should continue to function as a Union Territory only.

In order to ensure a long-term stability, the Balakrishnan Committee recommended that this structure should be constitutionally envisaged. Hence, on the recommendations of Balakrishnan Committee, the Parliament came up with 69th Constitutional Amendment Act, 1991[44]. It came into force on Ist February, 1992. It was necessitated because the question of re-organisation of administrative set-up in the Union Territory of Delhi has been under the consideration of the Government for

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41 This Committee was earlier known as Sarkaria Committee and it consisted of following members –
1. Justice R.S. Sarkaria
2. Sh. Ramesh Chandra
3. Sh. S. Balakrishnan.
Later on, Sh. Sakraria resigned and Sh. Balakrishnan was made its Chairman. Hence, the name Balakrishnan Committee.

42 Committee on Re-organisation of Delhi set up, Ministry of Home Affairs, December 1989.

43 Indian const. art. 249-250.

44 Constitution 74th Amendment Bill, 1991.

some time[45]. The 1991 Amendment Act inserted Article 239AA and Article 239AB in the Part VIII of the Constitution.

### 5.3 Article 239AA – Nomenclature and establishment of Legislative Assembly

Article 239AA (1) provided that the Union Territory of Delhi is to be known as National Capital Territory of Delhi. The Administrator which was appointed under Article 239 is to be known as Lieutenant Governor of Delhi. The President who is the executive head of the Union Territory functions as the head of the Union Territory under powers specially vested in him under Article 239[46].Article 239AA(2) provides for the establishment of the Legislative Assembly for the Delhi.

Article 239AA(2)(a) prescribes that there must be Legislative Assembly for the Union Territory and the members can be chosen by direct elections or can be partly nominated and partly elected. The number of seats and territorial constituencies shall be such as are regulated by the Parliament by law.

### 5.4 Legislative Powers of the National Capital Territory of Delhi

Article 239AA (3) provides that the Legislative Assembly of Delhi will have power to make laws with regard to matters in the State List and the Concurrent List except Public Order, Police and Land. Parliament is vested with the power to make laws with regard to matters in the Union List and the matters excluded above i.e. Public Order, Police and Land[47] along with the Concurrent List.

On the similar lines of Article 254, Article 239AA(3)(c) has been enacted. It provides for a situation dealing with repugnancy that in case of conflict between the law made by Parliament and State Legislature, the law made by the Parliament will prevail and the law passed by the Delhi Legislature will be void to the extent of such repugnancy. However, if the law passed by the Delhi Legislative Assembly has been reserved for the consideration of the President and receives his assent, then notwithstanding anything the law made by the Legislative Assembly will prevail. However, Parliament again has an overriding power to amend, modify or repeal such law.

### 5.5 The Chief Minister and Council of Ministers

Article 239AA(4) provides that there must be a Council of Ministers which will be headed by the Chief Minister. As per Article 239AA(5), the Chief Minister is to be appointed by the President and other Ministers shall be appointed by the Chief Minister. They shall hold office during the pleasure of the President. The system which is prevalent at the State and at the Central level in consonance with the structure of the Parliamentary form of Government.

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45 Dr. Subhash C Kashyap, *The Framing of India's Constitution – A Study and Constitution Making Since 1950 – An Overview*190-192 (Universal Law Publishing Delhi, 2004)

46 Durga Das Basu, *Shorter Constitution of India* 1101 (Wadhwa and Company Nagpur, 13th edn 2003).

47 Entry 1, 2 and 18 of the State List and Entry 64, 65 and 66 of the Concurrent List.

The Council of Ministers must not exceed 10% of the Members of Legislative Assembly. The Council of Ministers must aid and advise the Lieutenant Governor. This aid and advice must only be with regard to matters where the Legislative Assembly has the power to make law. In matters not within the scope of Legislative Assembly of Delhi, the Lieutenant Governor can exercise discretion.

Article 239AA(6) provides that there shall be collective responsibility of the Council of Ministers towards the Delhi Legislature. This means that all the Ministers are collaboratively answerable to the Legislature for every act or omission.

**5.6 The Government of National Capital Territory of Delhi Act, 1991**

As per Article 239AA (7), the Parliament can make law for giving effect to the provisions of Article 239AA. The Parliament has enacted the Government of National Capital Territory of Delhi Act, 1991[48]. Section 3 of the Act provides for the establishment of Legislative Assembly and its composition.

Part IV of the Act deals with the Provisions relating to the Lieutenant Governor and Ministers. Section 41[49] provides the matters when Lieutenant Governor can act in his discretion and is not bound by the aid and advice of the Council of Ministers. The matters enumerated are :-

- Matters which are not within the competence of the Delhi Legislative Assembly but have been delegated to the Lieutenant Governor by the President.
- When he is required under some legislative powers to act in discretion
- While discharging judicial functions.

The Lieutenant Governor has been given wide power to decide that whether a matter is within his discretionary powers or not under Section 41(3). Section 44 of the Act vests the power with the President to make rules regarding allocation of business to

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48 Act no. 1 of 1992.

49 The Government of National Capital Territory of Delhi Act, 1991, Section 41
Matters in which Lieutenant Governor to act in his sole discretion-(1) The Lieutenant Governor shall act in his sole discretion in a matter--

(i) which falls outside the purview of the powers conferred on the Legislative Assembly but in respect of which powers or functions are entrusted or delegated to him by the President; or

(ii) in which he is required by any law to act in his discretion or to exercise any judicial or quasi-judicial functions [; or].

(iii) in discharge of his functions under Part IV-A of this Act.

(2) If any question arises as to whether any matter is or is [not a matter in respect of] which the Lieutenant Governor is by or under any law required to act in his discretion, the decision of the Lieutenant Governor thereon shall be final.

(3) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is required by any law to exercise any judicial or quasi-judicial functions, the decision of the Lieutenant Governor thereon shall be final.

the Ministers. Section 44(2) provides that all the executive actions are to be taken in the name of the Lieutenant Governor[50]. Under Section 45, a duty has been cast on the Chief Minister to furnish information regarding all the matters to the Lieutenant Governor. Hence, there exists a duty to 'communicate' which has often been a matter of tussle. The Lieutenant Governor has accused the Government of not communicating the information and the Government has accused the Lieutenant Governor for sitting on the files and not giving his assent leading to hindrance in the work of the Government.

### 5.7 Article 239AB

Article 239AB – It deals with the provision in case of failure of the Constitutional machinery in the National Capital Territory of Delhi. In such a case, the President has the power to suspend the application of Article 239AA of the Constitution and make such provisions as it thinks fit.

## 6. Role of Judiciary in Shaping Delhi's Governance Structure

Judiciary has played an important role in interpreting and defining the provisions of the Constitution. The role and position of the Administrator has been discussed in various judgments. In the case of *Devji Vallabhbhai Tandel and Others* v *Administrator of Goa, Daman and Diu*[51] the Supreme Court addressed the issue that whether the Administrator is supposed to act 'in accordance with the aid and advice' of the Council of Ministers. The Court held that where an Administrator performs

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[50] The Government of National Capital Territory of Delhi Act, 1991 ,Section 44 – Conduct of Business

(1) The President shall make rules (a) for the allocation of business to the Ministers in so far as it is business with respect to which the Lieutenant Governor is required to act on the aid and advice of his Council of Ministers; and

(b) for the more convenient transaction of business with the Ministers, including the procedure to be adopted in the case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a Minister.

(2) Save as otherwise provided in this Act, all executive action of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.

Provided that before taking any executive action in pursuance of the decision of the Council of Ministers or a Minister, to exercise powers of Government, State Government, Appropriate Government, Lieutenant Governor, Administrator or Chief Commissioner, as the case may be, under any law in force in the Capital, the opinion of Lieutenant Governor in term of proviso to clause (4) of article 239AA of the Constitution shall be obtained on all such matters as may be specified, by a general or special order, by Lieutenant Governor.]

(3) Orders and other instruments made and executed in the name of the Lieutenant Governor shall be authenticated in such manner as may be specified in rules to be made by the Lieutenant Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Lieutenant Governor.

[51] AIR 1982 SC 1029.

some judicial or quasi-judicial functions or where he is required to act in accordance with the advice tendered by the Council of Ministers, he is supposed to act accordingly. In other situations, he can act according to his own free will. Section 44 of the Union Territories Act, 1963 provided that in case there exists difference of opinion between the Administrator and his Council of Ministers, in such a case, the Administrator must refer the matter to the President and whose decision shall then be final. If the reference is still pending with the President and the matters requires an urgent action, then the Administrator is free to act according to his own will. This overriding power is neither vested with the President nor with Governor. Hence, a different position of the Administrator is justified.

In the case of *New Delhi Municipal Corporation* v *State of Punjab*[52] the Supreme Court explained the 1991 Amendment pertaining to Delhi. The Court held that the 69th Amendment Act created a legislature for the Union Territory of Delhi but it was never a full-fledged legislature. This amendment did not raise the Union Territory of Delhi to a status equal to that of a State. The Lieutenant Governor of Delhi cannot be kept on the same pedestrian as the Governor of a State. The Lieutenant Governor has only been conferred with a special designation but in reality, he is only an Administrator, who is supposed to discharge his functions under the President.

In 2015, the Central Government issued a notification regarding the control of services and the powers of the Lieutenant Governor. The Anti- Corruption Bureau officials were asked not to take cognizance of offences against the officials of the Central Government. This notification was challenged by the Delhi Government in the High Court of Delhi. In addition to this, there were various orders passed by the Government (like under the Inquiry Act, 1952; prices of agricultural lands were revised, rules under Stamp Act were changed) which were passed without placing them before the Lieutenant Governor as required under Section 45 of the Government of National Capital Territory of Delhi Act, 1991. Hence, there was an apparent conflict between the Lieutenant Governor and the Delhi Government regarding exercise of their functions, each accusing the other for creating hindrance. All the petition were clubbed by the Delhi High Court because they had a common issue to be decided that what is the legislative competence of Delhi Legislature? What is the true interpretation of Article 239AA?

The issue was decided by the Delhi High Court in the case of *Rajendra Prasad* v *Govt of NCT of Delhi*[53]where the Delhi High Court ruled that-

- First of all, it was important to determine that what is the status of Delhi? Whether it is a State or Union Territory? The High Court referred to the report of Balakarishnan Commission which had in clear words stated that the Delhi must be continued as a Union Territory. Hence, legislative intention becomes

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52 Civil Appeal no. 1388-1390 of 1975.

53 W.P. (C) No. 5888 of 2015.

evident that the National Capital Territory of Delhi continues to be a Union Territory even after the 69th Amendment Act, 1991. It cannot be raised by way of fiction to the status of a State.

- Article 239 contained in Part VIII of the Constitution is applicable to the National Capital Territory of Delhi. Article 239 is a general provision applicable to all the Union Territories and Article 239AA is a special provision applicable only to Delhi.
- The Court remarked that there must be strict adherence to Section 45 of the Act. The Council of Ministers headed by the Chief Minister are bound to inform their every decision to the Lieutenant Governor even if the matter relates to the State List and Concurrent List.
- Lieutenant Governor of Delhi is the executive head of theof Delhi and is not bound by the aid and advice of the Council of Ministers.
- The matter of 'Services' falls outside the scope of elected Legislature of NCT of Delhi. Hence, the 2015 notification vesting the powers of 'Services' with the Lieutenant Governor is constitutionally valid.

This judgment established the supremacy of the Lieutenant Governor over the Delhi Legislature. Dissatisfied with the decision, the Delhi Government went in appeal to the Supreme Court. The Supreme Court referred the matter to the Constitution Bench. The Supreme Court in *Government of NCT of Delhi* v *Union of India*[54] overruled the judgment of Delhi High Court and ruled that :-

1. It is the Chief Minister who is the executive head of National Capital Territory of Delhi and not the Lieutenant Governor. It is the Chief Minister who has been elected by the residents of Delhi. Hence, he is accountable to the citizens.
2. Emphasizing on the principle of collective responsibility, it was observed that Cabinet is responsible to the Legislature for the actions done by it. Hence, the Lieutenant Governor is bound by the decision of Council of Ministers and cannot make independent decisions over the matters vested in the competence of the Delhi Government.
3. There exists a unique federal structure between the Delhi Legislature and the Parliament. Both of them must exercise their functions in accordance with the spirit of the Constitution and must make law within their designated field. The Legislative Assembly is competent to enact law with regard to List II and List III. Parliament has legislative competence over List I and List III and the matters excluded from the domain of Legislative Assembly. However, this federal relationship doesnot uplift the National Capital Territory of Delhi to a

54 Civil Appeal no. 2357 of 2017.

'State' but it only remains a 'Union Territory'.

4. The issue regarding 'Services' was not considered at this time by the Supreme Court and was left to be decided in some other case.

The Supreme Court behind its judgment gave the reason that the word 'State' is deemed to include the Union Territories. However, in order to overrule the decision of Supreme Court, a new amendment was introduced in 2021 in the National Capital Territory of Delhi Act[55]. Section 21 of the 1991 Act was changed. The definition of the term 'Government' was altered. Now the word 'Government' means the 'Lieutenant Governor'. Hence the Lieutenant Governor has now been given the power to frame rules regarding imposition of taxes etc. The rule making power which was earlier vested in the elected government is now vested in the Lieutenant Governor. Consequently, the authority and jurisdiction of the Lieutenant Governor has been broadened, amplifying their powers within the National Capital Territory of Delhi.

Under Section 44 of the Act, the opinion of Lieutenant Governor has been made necessary in case of any decision regarding the executive action. While summing up, it can be said that by virtue of this amendment the Lieutenant Governor has been made stronger and more powerful while overruling the 2018 Constitution Bench judgment.

*Issue of Services* -

The issue regarding 'Services' was left undecided by the Constitution Bench of Supreme Court. It was decided by the 2 judge bench of the Supreme Court which gave a split verdict. Hence, the matter was referred to a 3 judge bench and it was decided that in the case of *Government of NCT of Delhi v Union of India*[56], the word 'services' means who will have control over the bureaucrats including the power of appointment and transfer. The Supreme Court clarified that 'Services' was in Entry 41 in List II of the Seventh Schedule. But in 2015 by a notification, such power was vested in the Lieutenant Governor of Delhi. The reason behind such de-vesting of power was that National Capital Territory of Delhi does not have its own Public Service Commission. However, the Supreme Court held that the Government of National Capital Territory of Delhi has the exclusive control over Services because Services falls under the State List. The word 'State' has been defined in the General Clauses Act so as to include the Union Territories. The conferring of rule-making power on the Lieutenant Governor/ President does not in no way exclude the jurisdiction of the Government of National Capital Territory of Delhi.

*One Hundred Thirtieth Constitution (Amendment) Bill, 2025*

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55 The Government of National Capital Territory of Delhi (Amendment) Act, 2021, Act no. 15 of 2021.

56 2023 SCC Online SC 606.

In the recent Monsoon Session of Parliament, a bill was introduced proposing the insertion of Article 239AA(5). The provision aims to enhance ministerial accountability. It stipulates that if a minister is arrested and remains in detention for a continuous period of 30 days, they will be required to resign from office. Failing to do so would result in their automatic removal from the post.

## 7. Conclusion

The Governance of Union Territory of Delhi is a complex issue due to its special status as introduced by the 69th Amendment Act, 1991. All the Union Territories do not form a homogenous class and hence each must be governed according to its own special needs. Delhi, being the capital, has a special status on the basis of its national importance and other administrative considerations. Delhi has a dual form of governance. It has been seen that the tussle between the Lieutenant Governor and the Delhi Government arises only when the political parties with different ideologies are ruling at the Central Government and at the Union Territory level. Hence, the conflicting situation is nothing less than a politically tainted tussle.

The essence of Constitutional morality lies in the fact that there must be adherence to the principles of cooperative federalism, which requires that the constitutional functionaries must act in accordance with the spirit of the Constitution[57]. Once a political party forms a Government, it must rise above the party politics and should focus only upon working in accordance with the spirit of the Constitution. The judiciary has from time to time played an important role in interpreting the Constitution so as to reduce administrative friction between the two functionaries.

The researcher wants to highlight the fact that there is requirement of greater clarity in division of powers, mutual co-operation and respect for the ethos of the Constitution, in order to ensure that the governance in Delhi remains effective and democratic. In this regard, it is a humble suggestion that the Parliament may by statutory amendment clarify the areas of Lieutenant Governor's discretion under Article 239AA, which will ultimately result in lesser conflicts.Further, it is suggested that the circumstances in which Lieutenant Governor can refer the matters to the President, must be specifically provided so as to avoid every matter being referred to the President. The office of the Lieutenant Governor must not be politicised. He should function as a constitutional facilitator rather than acting as a parallel executive authority.

The entire set up of the Union Territory of Delhi envisaged in the Constitution consists of Council of Ministers headed by the Chief Minister on one side, and the Lieutenant Governor on the other side, both of them are integral part of a single governance unit. They both need to work like two wheels of the bicycle and the President must assume the role of a rider. Their relationship must not be adversary but complimentary. The Union Territory of Delhi is a different class among Union

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57 *Supra* note 3 at 772.

Territories, the office bearers of the said Union Territory must act in harmony with each other and should work well within the Constitutional parameters.

Delhi's hybrid status has resulted in manifold problems, some of which were resolved by the Supreme Court of India in *Government of NCT of Delhi* v *Union of India and Ors*.[58] The legal wrangling between the Centre and the Government of the National Capital Territory of Delhi over the contours of their respective powers had been a never-ending saga, highlighting the need for structural clarity, constitutional restraint and a commitment to co-operative federalism[59].

[58] C.A. no. 2357 of 2017.

[59] Fali S Nariman, *You Must Know Your Constitution* 169-171 (Hay House Publisher, New Delhi, 2023).

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# Transition to New Criminal Laws and Its Impact on Cases

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## Abstract

The criminal justice system of India underwent a dramatic change with the passage of the Bharatiya Nyaya Sanhita (BNS), 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and Bharatiya Sakshya Adhiniyam (BSA), 2023, which replaced the Indian Evidence Act, the Code of Criminal Procedure (CrPc), and the Indian Penal Code (IPC), which were all from the colonial era. The goal of this shift is to represent a more victim-centered, citizen-centric, and technologically advanced legal system. The reforms prioritize accelerating the administration of justice, integrating digital evidence, improving police accountability, and fortifying victims' rights. The paper seeks to analyse the effect of this legal change on the administration of justice on pending and under-trial cases and finding gaps if any.

**Keywords**: *Bharatiya Nyaya Sanhita, Criminal Law Reform, Transitional Justice, Legal Framework, Case Impact Analysis*

## 1. Introduction

The Indian Constitution in its preamble ensure justice social, economic, and political to all the people of India. This feature of the preamble makes India a social welfare state as opposed to police state which seeks to cater the needs of people of India though progressive legislations and incorporating necessary amendments to address contemporary issues. One such amendment in this context is passing of new criminal codes by the Parliament, which recognizes the necessity for Indianizing the criminal justice system and preserving its fundamental provisions to serve the cause of justice. It has been pleaded that this introduction of new criminal code is a much-needed paradigm shift for an Independent India. The raison d'être behind this change is to replace an obsolete criminal code of the British era .These earlier replaced codes (Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act) were passed by the British empire in the pre independent India and the basic intent of British government behind these laws were not the people of India but a punitive worldview that put authority before justice. These laws were framed with a colonial set up of criminal justice revolving around the deterrent and punitive theories of punishment.[1] The said laws i.e. substantive law of IPC and procedure in CRPC may

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[1] PRS Legislative Research, "Overview of Criminal Law Reforms", *available at* https://prsindia.org/billtrack/overview-of-criminal-laws (last visited on December 15, 2025).

be relevant in the times covering their era but with the technological advancement and societal changes and most importantly changes in India's political and social atmosphere these laws were being found outdated highlighting the advances in technology, and the growing need for a victim-centered legal system. Since many years these old criminal laws of the country and more specifically, the Indian Penal Code, 1860 and Indian Evidence Act, 1872 were often touted as being shrouded with a strong colonial color and pre-independence mindset and there was a need to frame new rules aiming to make the criminal legal system of the country to work better, making justice better, and lowering punishments.[2]

## 2. Passage to the New Criminal Code

On July 1, 2024, India made a big change to the way it handles crimes by replacing the Indian Penal Code, 1860,Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 with Three new criminal laws viz., with the Bharatiya Nyay Sanhita ('BNS'), Bhartiya Nagrik Suraksha Sanhita ('BNSS') and Bharatiya Sakshya Adhiniyam ('BSA').

The basic moto of these laws is to make our criminal justice delivery system "Nyaya" (justice) centric than to be punitive or punishment. It changed the age-old system that focused on penalties to one that does the same thing fairly. The new rules completely lead to the transformation of India's criminal justice system to make it more in line with modern society, new technology, and rules around the world.[3] The passage to these new laws seems to be not so easy as there are some debatable issues with execution, infrastructure, and possible abuse that needs to be looked at the changes that were meant to be made by the lawmakers, how they really affect the judges, law enforcement, and people. It looks at how they would change the way cases are treated and what good or bad things they might bring. It looks at issues with implementation, infrastructure, and possible abuse, as well as the purpose of the law, changes to structures and procedures, and how these affect judges, police, and people in the real world.[4] They are meant to modernise a system that has been criticised for being slow, hard to understand, and out of date when it comes to justice. With new set up, the government wants to make the judicial system more responsive to modern problems, fair in how it applies the law, and in line with India's changing social and cultural values by putting "Nyaya" (justice) ahead of punishment. This reform of the law is not just a change in the words of the law; it is a daring rethinking of how justice is

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[2] Yeshwant Naik, "The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code"(2024), SSRN, *available at* https://ssrn.com/abstract=4884622 (last visited on December 15, 2025).

[3] Mohd. Akash, "New Criminal Laws in India: Confusing Legislation or Combating New Problems of Nation *"International Journal of Scientific Research and Technology*(2024), *available at:* https://www.ijsrt.com (last visited on December 15, 2025).

[4] Samaddar, Samrat, and Ankita Roy. "Critical Analysis of the Indian Evidence Act in accordance with Bharatiya Sakshya Adhiniyam." 7 (4) *Int'l JL Mgmt. & Human*152 (2024).

served, with big effects on how cases are handled, how the courts work, and how people see fairness in society. But for these changes to work, we need to deal with systemic problems, encourage stakeholders to work together, and earn the public's trust so that the goal of a modern, victim-centered judicial system may be reached.

By looking at the intent and objects of the respective laws it is implied that its major purpose is to make India's judicial system responsive, fair, and up-to-date. For example,

- The BNS focuses on victim-centered tactics and restorative concepts, which shift the focus from punishment to justice. For example, it makes sentences for crimes against women and children tougher in response to public calls for stronger protection of vulnerable populations.[5]
- The BNSS wants to speed up the judicial system and do rid of the problem of case backlogs by setting deadlines for investigations and trials.
- The BSA makes modifications to evidence rules so that the legal system can keep up with developments in technology. As it accepts digital and forensic evidence[6].
- Protecting people's rights by increasing conviction rates, and making people trust the legal system more, all while dealing with modern problems like terrorism, organized crime, and cybercrime [7].

## 3. Major Changes in New Legislations Governing Criminal Justice System

The Bharatiya Nyaya Sanhita takes the place of the IPC. It makes the 511 elements of the IPC easier to understand and handle. It also has new definitions of crimes, heavier sentences for very bad crimes, and more rules for new concerns like cybercrime and financial fraud. The BNS puts a lot of focus on clarity by getting rid of the IPC's unclear parts and repeated parts. This makes it easier for the general public and lawyers to grasp. The Bharatiya Nagarik Suraksha Sanhita replaces the CrPC.[8] It also makes forensic teams visit crime scenes for serious crimes, sets deadlines for investigations, and uses technology to make things easier, like allowing people to register FIRs online and record search and seizure operations with audio and video. The Bharatiya SakshyaAdhiniyam replaces the IEA. It recognizes electronic evidence as primary evidence and has provisions for DNA evidence, expert opinions, and video conference testimony from people who are not in the same room. These laws all work together to use forensic science and technology to raise conviction rates,

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5 Uma, Saumya. "Why the Bharatiya Nyay Sanhita is a missed opportunity for gender justice." *The Wire* (2024).

6 Naik, Yeshwant. "The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code." *available at : SSRN 4884622* (2024).

7 As The BSA's formation of groups like the National Forensic Science University shows how committed they are too scientific and evidence-based research.

8 Akash, Mohd. "New Criminal Laws in India: Confusing Legislation or Combating New Problems of Nation." *International Journal of Scientific Research and Technology* (2024).

make the system more efficient, and make it more humane.[9]

## 4. The Impact of the New Criminal Laws

The new rules fix problems that have been hurting India's criminal justice system for a long time. As of 2023, there were more than 50 million pending cases, which have been a constant hindrance to timely justice and have often made people lose faith in the courts. The BNSS deals with this problem by setting stringent deadlines for investigations and trials. This is meant to speed up the process and cut down on delays. The BSA also updates the rules for evidence by making electronic and forensic evidence main. This lets courts deal with complicated cases involving cybercrime, financial fraud, and other modern crimes. The BNS shows a commitment to protecting vulnerable groups, especially women and children, while also dealing with new concerns like organised crime and terrorism. It does this by updating definitions and making punishments for horrible crimes harsher. These reforms will make a big difference in the number of convictions, which have been low in the past because of problems with the way things are done and gaps in evidence. As the new laws seeks to make the justice system more accessible to regular people by using technology to improve transparency, accountability, and accessibility by resorting to online FIR filing and audio-video recording of search and seizure operations. However, the task is not so easy as it seems to. The most potent impact of this new system will affect the crucial stages of justice delivery system. as being discussed in following heads:

- ***Investigations and Trials***

One of the most important implications of the new rules is that investigations and trials will have simpler processes and stricter timeframes. The BNSS establishes precise deadlines for investigations, especially those involving big offenses, to help speed up India's legal system, which has been known to be slow in the past. For example, the law says that forensic teams must look at crime sites in situations of homicide, sexual assault, and large-scale financial fraud to make sure that all the evidence is collected. This clause is expected to raise the number of convictions, strengthen the evidence, and make investigations more credible. But putting these schedules into action is hard since courts and police have to get used to new rules and procedures. The courts, which already have millions of cases waiting, may have trouble meeting these targets at first without massive improvements to their infrastructure and manpower. [10]

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[9] Rahul K. Gawade& Sarika K. Karanjule, "Replacement of Old Criminal Laws by New: A Reformative Step to Boost Criminal Justice System of India" 7 (6) *International Journal of Law Management & Humanities*2105 (2024).

[10] The Pew Charitable Trusts, "How to Make Civil Courts More Open, Effective, and Efficient" (27 September 2023),*available at*: https://www.pew.org/reports/2023/09/how-to-make-civil-courts-more-open-effective-and-efficient (last visited on December 15, 2025).

- ***Technological Upgradation***

The BSA's decision to accept electronic evidence as primary evidence has changed the way cases are prosecuted in a big way. Section 57 of the BSA says that electronic evidence is any information that a system or device creates or sends and that can be retained or retrieved. This includes emails, texts, multimedia files, and more. This broad definition makes sure that digital evidence can be used in court as long as its integrity and authenticity are kept.[11] Video conferencing makes it easier for people to testify from a distance, which makes it even easier for people to get the information. This is quite useful when dealing with people who are weak or far away.[12]

However, the reliance on technology makes many wonder about problems with infrastructure, especially in rural places where access to digital tools and high-speed internet may be limited. Also, significant cyber security measures are needed to keep digital evidence safe from tampering, which means spending a lot of money on technology and training.[13]

- ***Research in science and forensic evidence***

The BNSS's demand that forensic teams be included in significant criminal investigations is an important step toward justice based on science and evidence. The BSA founded the National Forensic Science University to improve forensic skills through cutting-edge teaching and research. This initiative is expected to minimize the chances of mistakes and tampering while raising the quality and reliability of forensic evidence. For example, DNA analysis and other forensic evidence can be very important in getting convictions in sexual assault cases. However, this provision can only work if there are enough skilled forensic professionals and labs with the right equipment. India's forensic infrastructure is not very well developed right now, which could make it harder to put these guidelines into practice. This is because there are not enough facilities and staff.[14]

- ***Backlog of cases***

India's courts have more than 50 million cases still open as of 2023, which is why the legal system is known for its backlog. The new laws will make things easier, cut

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[11] Akash, Mohd., "New Criminal Laws in India: Confusing Legislation or Combating New Problems of Nation *"International Journal of Scientific Research and Technology* (2024).

[12] Uma, Saumya. "Why the Bharatiya Nyaya Sanhita is a missed opportunity for gender justice." *The Wire* (2024).

[13] Arushi Bajpai, Akash Gupta & Akshath Indusekhar, "Revisiting Criminal Law Bills: An In-Depth Critical Analysis of Bharatiya Nyaya Sanhita Bill and Bharatiya Nagarik Suraksha Bill" 45 *Statute Law Review* 3 (2024).

[14] Negi Advocate, Chitranjali. "Legal Evolution in India: Transitioning from Colonial Legacies to New Frontiers-An In-depth Analysis of Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in 2023." *Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in* (2023).

down on duplication, and speed up trials by using technology. The BNSS's plans for online FIR registration and audio-video recording of search and seizure activities are meant to cut down on paperwork and delays in procedures. But in addition to making changes to the law, decreasing case backlogs requires making changes to the system, such recruiting additional judges, improving court facilities, and making judges more accountable. Without these extra steps, the new laws might not have the desired effect on how long cases take to settle.[15]

## 5. Implementation: Issues and Challenges

The promulgation of the new criminal laws is posing a uphill task for the law enforcement agencies to grapple with the manner of registering criminal complaints and FIR, and maintaining a balance between old regimes and new regimes at crucial stages of trial/evidence/appeals. As There is already a pendency of criminal cases higher than that of civil cases in India. Therefore, all efforts have to be put in by legal colleagues to facilitate smooth implementation of the new legal regime leading to increase the disposal rate and effective judicial dispensation.[16]

The courts will have to be mindful about the two parallel criminal justice delivery systems in India which is primarily regulated from 01 July 2024onwards. The practice and procedure of conducting criminal trials will be tested on first principles of law such as natural justice and protecting life and liberty while bearing in mind the strict timelines introduced under the new laws. To maximize effective implementation as a first step, the investigation agencies will be expected to fairly and intelligibly apply a new regime. In order to do so the state agencies are expected to dispense appropriate and robust training.[17]

The implementation of the new regime can only reap the desired result only if these each court in India is well equipped with the audio-visual facilities. The effective implementation of new laws requires an efficient and flawless sync between bar, bench and the police. These all 3 stakeholders need to understand the letter and spirit of all the 3 new laws which will be a great challenge in initial days[18].

There must be renewed enthusiasm among legal practitioners, judiciary, prosecutors, and law enforcement personnel enabling these new provisions to offer protection to all involved in the criminal justice system. The reformed system should be perceived as a positive step towards enhancing trust and efficiency of the general public in

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[15] *Supra* note 11

[16] Mahalakshmi Pavani, "New Criminal Laws Criticised for Hasty Implementation and Superficial Changes" *Law Street Journal* (2024), *available at* https://lawstreet.co (last visited on December 15, 2025).

[17] S3WaaS, "Paper on Implementation of Three Criminal Laws"(2024), *available at* https://cdnbbsr.s3waas.gov.in/uploads/2024/09/ (last visited on December 12, 2025).

[18] Vedant Shankar, "From Penal Code to Nyaya Sanhita: A Shift from Punishment to Justice" 9(1) *SVP National Police Academy Criminal Law Review* 158 (2023).

justice process. Like the issue of pending investigations and trials, the problem of false litigation, false complaints, prosecution sanction needs to be addressed effectively, thus contributing to the improvement of the criminal justice system. Regarding the infrastructure support required for implementing the legislative changes, initiatives such as the E-Sankalan app and bolstering forensic capabilities should be taken up.[19]

***Here are the few Challenges in proper implementation of new criminal laws in India***

- ***Limited Resources and Infrastructure***

Changing to the new criminal laws will take a lot of money to build up infrastructure and hire more people. Modern forensic labs, high-speed internet, and skilled staff are all needed since forensic evidence and digital tools are used so much. But India's courts and police are often out of date, especially in rural areas where basic services like electricity and internet access are not always available. The National Forensic Science University is a good start, but it will require time and money to improve forensic science across the country. The courts also don't have enough judges and support staff, and high vacancy rates make case backlogs worse. To get the most out of the new legislation, it is very important to get rid of these structural hurdles.[20]

- ***Training and building skills***

For the new laws to work, law enforcement, judges, and lawyers need to be able to learn new procedures and technologies. As The BNSS and BSA set up complicated rules, like requiring forensic investigations and dealing with electronic evidence, that need particular training. But a lot of police officers and court workers don't have the expertise they need to carry out these rules correctly. To make sure that everyone knows what their roles and obligations are under the new regulations, there need to be thorough training programs and public awareness efforts. If people don't get enough training, they could make mistakes in the way they follow procedures, misinterpret regulations, or apply them differently in different places.[21]

- ***Established Procedures***

Stakeholders that are used to following established procedures frequently do not want to make changes of this size. Police may not want to use new ways of investigating, and lawyers may not want to use new legal rules that they do not know about. People

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[19] SCC Online, "India Is Changing: Criminal Laws Direct the Moral Arch", *available at*https://www.scconline.com (last visited on December 12, 2025).

[20] Rishabh Bhola, "Legal Reforms to Improve Conviction Rates in the Context of Criminal Reform Bills in India" *SVP National Police Academy Criminal Law Review* 162 (2023).

[21] *Id* at 163,Kishor, P. (2019). Also see, Challenges in the Indian Criminal Justice System: A Critical Analysis. International Journal of Social Science and Economic Research, 4(2), 992-999.

may also be dubious of the new laws, especially if they think they are hard to understand or hard to get to. To get across this opposition, you need to use a mix of incentives, education, and successful case studies to show how the new approach will help. Pilot projects and staggered adoption could help people trust the changes, but if people do not actively work to deal with resistance, the transition could hit big problems.[22]

- ***Possible for Abuse***

The BNS replaces the colonial term "sedition" with broadly defined crimes such "acts endangering sovereignty, unity, and integrity of India." The lack of the word "sedition" is interesting, but the vague language of these rules makes some worry that they could be used incorrectly. Also, if law enforcement authorities interpret the broad definitions of "organized crime" and "terrorist act" in a subjective way, they could lead to too many crimes being charged. The courts must make sure that these rules are administered fairly and do not violate people's rights. To stop misuse and make sure accountability, strong monitoring and evaluation systems, such as independent oversight organizations, are needed.[23]

**6. Effect on Specific Types of Cases**

*High profile cases*

The new rules make the punishments for horrible crimes like murder, sexual assault, and crimes against women and children harsher and require forensic investigations. These rules should make prosecutions stronger by making sure that all the evidence is collected and by using less circumstantial evidence. For instance, making forensic teams necessary in sexual assault cases could lead to more convictions by giving DNA evidence that can't be disputed. But these rules will only work if there are forensic experts available and law enforcement can follow the rules. Delays in forensic analysis or not enough training could hurt these efforts, especially in high-profile cases when the public is watching closely.[24]

*Cybercrime and Financial Fraud*

The BNS has new parts that deal with cybercrime and financial fraud. This is because these crimes are becoming more common in the digital era. The BSA's identification of electronic evidence as primary evidence is especially important for cybercrime investigations, where digital data including emails, transaction records, and hacker logs are very important. These rules should make it easier to prosecute cybercrime by

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[22] Saumya Uma, "Why the Bharatiya Nyaya Sanhita Is a Missed Opportunity for Gender Justice"(2024) The Wire, *available at:* https://thewire.in (last visited on December 11, 2025).

[23] *Supra* note 13.

[24] Samrat Samaddar & Ankita Roy, "Critical Analysis of the Indian Evidence Act in Accordance with Bharatiya Sakshya Adhiniyam" 7 (4) *International Journal of Law Management & Humanities* 152 (2024).

making it clear what kinds of evidence can be used in court. But cybercrime investigations are complicated and need unique expertise and infrastructure that may not be available in many places. Also, cybercrime happens in more than one place, which makes it hard to coordinate and enforce.[25]

*Terrorism and Organized Crime*

The BNS's rules for organized crime and terrorism try to deal with modern security challenges by making the punishments harsher and the definitions broader. These steps are meant to make the country safer, but the way they are worded makes people worry that they could be misused, especially in cases that are politically sensitive. The courts need to be careful to make sure that these rules are followed wisely, weighing the need for security against the need to protect civil liberties. The success of these rules will depend on whether law enforcement can do thorough and fair investigations, with the use of digital and forensic evidence. [26]

## 7. Effects on society and the law

*Trust and Confidence in the Public*

The new laws are meant to make the judicial system more open, efficient, and focused on victims, which should help people trust the courts more. Online FIR registration and remote testimony are two examples of how the system is easier to use, especially for groups that are often left out. But creating public trust takes more than just changing the law. It also needs persistent enforcement, accountability, and public knowledge. The government needs to spend money on public education programs so that people know what their rights and responsibilities are under the new legislation. If you don't do this, people might be skeptical and resistant, which would make it harder to reach the goals of the reforms. [27]

*Accountability in the courts*

The new laws stress judicial accountability by requiring search and seizure activities to be recorded on audio and video. These rules are meant to cut down on corruption and procedural mistakes, which have historically made people less trusting of the court system. But to make sure that people are held accountable, there need to be strong oversight systems, such as independent groups to watch over implementation and deal with complaints. The courts also need to deal with problems within their own ranks, such excessive vacancy rates and too many cases, to make sure that the new laws are enforced properly and quickly.

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[25] Naga Sathwik &Maghavatpriya, "Impact of Technology on Access to Justice in India: Opportunities and Challenges" 4 (5) *IJIRL* 158 (2024).

[26] D. Moitra, "Criminal Justice Reforms in India: Challenges and Prospects" 7 *IJSARD* 58–67 (2021).

[27] *Supra* note 14.

*Focus on the Victim*

The focus on "Nyaya" shows a change toward a victim-centered strategy that puts the interests and rights of victims above punishment. The BNS's harsher punishments for crimes against women and children and the BNSS's deadlines for investigations are meant to give victims quick justice. But a system that really puts victims first needs support systems like counselling, legal aid, and rehabilitation, which India does not have enough of right now. Without these extra steps, the new regulations might not be able to fully achieve their goals of restoring order.[28]

## 8. Case Studies and Real-World Effects

To show how the new legislation will work, let us look at a made-up case of sexual assault that was investigated by the BNSS. The legislation says that a forensic team must go to the crime scene to gather DNA evidence, which is then sent to a certified facility for analysis. The BSA makes sure that this evidence can be used as primary evidence, which makes the prosecution's case stronger. The inquiry is done on schedule, and the trial goes faster thanks to online procedures. This simpler method might lead to a quick conviction, which would bring justice to the victim and stop more crimes from happening. But if forensic labs are not available or the cops are not trained, the inquiry could take longer, which would hurt the case. The BSA's acceptance of electronic evidence in cybercrime cases lets prosecutors show digital transaction records and hacking logs in court. The BNS's rules about financial fraud make it apparent how to prosecute the person who did it, which could lead to more people being found guilty. But if the agency doing the investigation does not know how to look at digital evidence, the case could fall apart, which shows how important it is to get specialized training.[29]

## 9. Conclusion and Suggestions

The new regime introduces the reformative approach through legislative enactments. The paper has discussed the major systemic changes in criminal law frameworks, to advance the conversation on legal reform in India and assessed how stakeholders are ready to carry out these changes successfully. Regarding the retroactive and prospective implementation of new laws on current investigations, trials, and appeals, the modification has, nevertheless, brought up a number of concerns. The judiciary and legal professionals must interpret transitional provisions so that justice is not postponed or denied. Law enforcement agencies, attorneys, and judges must all quickly and thoroughly comprehend the categorization of some offenses, modifications to procedural standards, and definitions of terms. To conclude is submitted that no doubt the new legislations is a step forward, but it will only work if

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[28] Jyotsana Choudhary, "Law and Society: Examining the Social Impact of India's Criminal Law Reforms" 5 *Int. J. Civ. Law Legal Res.* 128–131 (2025).

[29] Rahul K. Gawade& Sarika K. Karanjule, "Replacement of Old Criminal Laws by New: A Reformative Step to Boost Criminal Justice System of India" 7 (6) *IJLMH.* 2105 (2024).

there are enough qualified professionals and well-equipped facilities. The judiciary is short on judges and support staff, and high vacancy rates make delays worse. The new legislation could end up being more like goals than actual changes if there is not a lot of money spent on infrastructure and people. Another important area of concern is training. Police officers, judges, and lawyers need to know how to use complicated rules, like how to handle electronic evidence or do forensic investigations. To fill this gap and make sure that the rules are administered equally and consistently throughout all jurisdictions, we need both comprehensive training programs and public awareness efforts. The new laws have a big effect on society. The changes' focus on victims is meant to rebuild faith in the legal system, especially for marginalised communities that have not always had access to it. Provisions like registering a FIR online and giving testimony from a distance through video conferencing make justice easier to get to, especially for people who live far away or are in a vulnerable situation. To make a system that really puts victims first, though, we need more than just reforms to the law. We also need support systems like counselling, legal aid, and rehabilitation programs. Consistent implementation, accountability, and responsiveness to people' needs are the only ways to build public trust, which is essential for any justice system to work. The government needs to spend money on public education campaigns to make sure that people know what their rights and responsibilities are under the new legislation. This will help people feel like they are part of the legal system. The road to getting the most out of the BNS, BNSS, and BSA is long and complicated, but it is not impossible. India can construct a fair, efficient, and up-to-date judicial system by filling in deficiencies in infrastructure, focussing on increasing capacity, and encouraging collaboration among stakeholders. The National Forensic Science University and other such institutions are a good start towards improving forensic skills, but they need to be part of bigger changes to the system as a whole. These new criminal laws could start a new era of law in India if people keep working hard, take responsibility, and are committed to justice. This new era would put victims' rights first, use technology to make things more efficient, and follow the rules of fairness and equity. To reach this aim, not only do lawmakers need to be ambitious, but also policymakers, judges, police officers, and citizens need to work together to make India's criminal justice system a shining example of hope and justice for everyone.

To make sure that the new criminal laws go into effect smoothly, the following steps are suggested:

- There is a need to Build up the infrastructure suited to meet the new rules' technological and procedural needs. For this the state should put money into sophisticated forensic labs, high-speed internet, and court buildings.
- The state should conduct regular Training Programs to every officials involved in justice delivery process. There should be detailed and well-coordinated programs to all law enforcement agencies including police, judges, and lawyers thorough training to improve their skills in forensic

investigations, handling digital evidence, and following the rules.

- The general public should be made aware of the new laws through various large scale Public Awareness programs. It should include mass campaigns all around the country to teach people about their rights and responsibilities under the new laws. So as to make these laws easier to understand and build trust.
- The most important and desired step is Judicial reforms. The judges should be well apprised and trained to deal with case backlogs efficiently. this is very crucial to ensure that these laws are applied fairly. The state should increase strength of judges, thereby lessening the burden on the courts.

Finally, the well-equipped Oversight Mechanisms should be set up through independent groups to keep an eye on implementation. There should be provision for regular audits of pending case laws, and complaints. All this is necessary to ensure legal reform to be truly transformative.

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# The Role of Artificial Intelligence in Digital Policing: Emerging Trends for the 21st Century

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## Abstract

The influence of artificial intelligence in law enforcement, as well as other societal sectors, is expanding. By utilizing video technology, robotics, analysis of text-based intelligence, facial recognition, video and audio analysis, vehicle identification and surveillance, this legal technology tool is employed to apprehend criminals and their unlawful activities, thereby bolstering efforts to combat a variety of crimes. Artificial Intelligence has potential to curb the "illegal activities" and involved the establishment of "digital police" that capable of carrying out the duties of both a law enforcement agency (police) and a judicial body (court) independently of human intelligence. This paper proposed a novel methodology for evaluating the performance of artificial intelligence (AI) as an autonomous entity that possesses not only logical deductive ability, but also an affective disposition towards the policing. These trends are considered to be at the forefront of the twenty-first century, making them a contemporary and intriguing subject for scholarly investigation. The utilization of our findings and consequences could enable experts in the creation and development of artificial intelligence systems to implement safeguards against unauthorized actions. Additionally, our findings may be able to direct governmental structures toward the development of a harmonious architecture devoid of an artificial intelligence risk system. In conclusion, the study proposes strategies to enhance the precision and effectiveness of ethical and legal problem-solving in order to establish a better and resilient criminal justice system. The study's findings underscored the significance of AI as a supplementary technology in police, combating crimes and cybercrimes and serving as models for law enforcement.

**Keywords –** *Artificial Intelligence, Police, Crime, Illegal Activities*

## 1. Introduction

Every individual desires to reside in the most secure and protected place. Where all the legal rights are safeguarded? Where the efficient execution of law and order is took place? Due to increased urbanization and technological advancements, the crime rate is likewise increasing at a fast pace. This poses a threat to progress and causes unnecessary worry among individuals. Over the past decade, there has been a significant increase in crime rates in India. Based on data from the National Crime

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Record Bureau (2023), there was a 4% rise in the number of instances reported for crimes against women, in comparison to 2021. The registration of cases involving crimes against minors exhibited a rise of 8.7% compared to the previous year, 2021. In 2022, the majority (64.8%) of the registered cyber-crime cases were motivated by fraud, followed by extortion (5.5) and sexual Exploitation (5.2%). A grand number of 65,893 cyber-crime cases were officially recorded, indicating a notable surge of 24.4% in registrations compared to the previous year, 2021. Consequently, the idea of Digital police is progressively emerging in the Indian setting. Over time, the NCRB has developed and implemented sophisticated technologies such as the Crime and Criminal Tracking Networking System (CCTNS) in 2009 and the Digital Police Portal in 2017**.**It is crucial to acknowledge that even within highly industrialized democratic societies; the job of the police is fraught with contradiction and controversy. Therefore, it is imperative to assess the operational efficiency of the police apparatus in that specific state. The police are a state organization responsible for maintaining law and order. Therefore, it is imperative for the police to stay ahead of technological advancements. Consequently, it is crucial to address the existing disparity between policing and technology.

## 2. Historical Analysis of Digital Policing: Global Trends

Digital policing represents a transformative shift in law enforcement practices, marked by the integration of information and communication technologies (ICTs), data analytics, artificial intelligence (AI), surveillance systems and digital platforms into policing functions. Globally, digital policing has evolved in response to changing crime patterns, technological advancements and demands for efficiency, accountability and security. In India, this transformation has occurred within the context of rapid digitization, expanding cybercrime and state-led e-governance initiatives. The initial phase of digital policing in developed countries focused on the computerization of police records. Law enforcement agencies in the United States and Europe began using computers to store criminal records, fingerprints and case files. This period emphasized administrative efficiency rather than proactive crime prevention (Manning, 1992). The 1990s marked a shift towards inter-agency connectivity. National criminal databases and communication networks enabled information sharing across jurisdictions. Systems such as the National Crime Information Center (NCIC) in the United States facilitated real-time access to criminal data, transforming investigative policing (Ericson & Haggerty, 1997). The 2010 saw the rise of big data analytics and predictive policing. Algorithms were used to forecast crime hotspots and allocate police resources. While promoted as tools for efficiency, predictive systems raised concerns about racial bias, transparency and accountability, particularly in the United States and the United Kingdom (Brayne, 2017). In the contemporary phase, digital policing incorporates AI, facial recognition, real-time surveillance, social media monitoring and integrated command centers. Law enforcement increasingly relies on automated decision-making systems, prompting global debates on privacy, civil liberties and democratic oversight (Zuboff, 2019).

## 3. Historical Development of Digital Policing in India

India's digital policing initiatives emerged alongside broader state-led e-governance reforms. Early efforts focused on digitizing FIRs, criminal records and police administration, though implementation remained uneven across states (Singh, 2015). Launched in 2009, **CCTNS** represents a milestone in Indian digital policing. It aimed to connect all police stations through a centralized digital network, enabling real-time crime data sharing and citizen-oriented services. CCTNS laid the foundation for nationwide data-driven policing (Ministry of Home Affairs, 2019). The establishment of the Indian Cyber Crime Coordination Centre in 2018 signaled recognition of cybercrime as a major internal security challenge. Digital policing expanded to include online complaint mechanisms, cyber forensics and inter-state coordination (Kumar, 2021).In the 2020s, India entered an advanced phase of digital policing with initiatives such as facial recognition systems, predictive analytics and AI-enabled command and control centers. Programs like NATGRID and state-level smart policing projects integrate multiple databases for intelligence-led policing. However, scholars highlight concerns regarding data protection, consent and algorithmic governance in the absence of a comprehensive privacy law (Ramanathan, 2020).

India's digital policing trajectory mirrors global developments like digitization, networking and AI integration; but it differs in scale and governance context. The centralized nature of Indian digital policing systems affects a vast and diverse population, intensifying ethical concerns. Unlike some Western democracies, regulatory frameworks governing police use of digital technologies in India remain limited and fragmented.

## 4. Digital Policing (Smart Policing) In India

A significant portion of police work, such as crucial aspects of the investigation process and the processing of crime reports, is conducted at a desk and primarily involves bureaucratic tasks. The increasing volume of paperwork results in reduced resources available for fieldwork and communication with others. The presence of citizens can create a sense of disconnection between police personnel and civilians. This divergence may give rise to issues regarding the job satisfaction and productivity of police personnel, perhaps leading to a negative influence on the overall efficiency of the police organization. The police organization views AI as a means to address the disconnect, enhance job happiness and improve overall efficiency and effectiveness of the police force. The organization's overarching goal is to develop artificial intelligence (AI) to assist with bureaucratic procedures and integrate these procedures into a network of automated systems. This will result in the establishment of a somewhat self-governing business process within the police organization. In order to strengthen this goal, AI scientists inside the police force are now developing prototypes for specific components.

In this dynamic world, various innovations have emerged, such as smart devices like smartphones, smart cities and smart schools. In India, the introduction of technology

and the internet has made it imperative to implement improvements in the field of technical police management. In order to enhance the effectiveness of achieving desired objectives and outcomes when resources are scarce, implementing smart policing is a crucial measure. This approach involves the systematic collection of evidence, utilizing data to inform law enforcement decisions, and implementing efficient and intelligent police administration methods that are cost-effective. When it comes to India, the police force is characterized by its strictness, sensitivity, modernity, mobility, vigilance, accountability, dependability, responsiveness, technology awareness and well-trained personnel. At the **49th Annual meeting of Directors General and Inspectors-General in 2014,** India's Prime Minister introduced the idea of SMART POLICE in Guwahati. Prime Minister Narendra Modi aims to revolutionize the police force of the country by creating a 'SMART' police force vision holds **(Strict but Sensitive, Modern and Mobile, Alert and Accountable, Reliable and Responsive, Techno-Savvy and Trained Police)**

He advocated for the police force to demonstrate sensitivity and responsiveness towards the public. Equipping the police force adequately with advanced technology helps them to swiftly and accurately combat crime in any location. His vision aligns with the current police framework of India. ***Digital policing is a strategic approach that incorporates new applications of analysis, technology and evidence-based procedures to enhance the scientific aspects of police operations. The objective of the Digital Policing Initiative is to ascertain law enforcement tactics and strategies that are efficacious, streamlined and cost-effective.*** The present systems for addressing cyber-crimes, radicalization, and narco-threats, which involve worldwide organized crime mafias, are being strained by emerging issues. Over the next decade, state and central Police forces in India will encounter significant challenges in maintaining national security and upholding the democratic system of governance. It is imperative for all Police units to update and incorporate new technologies in order to effectively address and overcome these difficulties.

## 5. The Role of Artificial Intelligence in Policing

It is commonly recognized that intelligence involves logical reasoning, problem-solving and thorough learning (Stanovich 2016). Intelligence integrates observation, attention, memory, language and planning by nature. Natural intelligence (human intelligence) incorporates a conscious awareness of the world. Regarding the aforementioned, human thinking is usually emotive and cannot be isolated from body. Individuals are social beings, thus society always influences their thinking. Artificial intelligence is not socially oriented because it is not emotional. Future information and technology growth blur the boundaries between natural and artificial intelligence (Makridakis 2017). A rival is not always bona fide, yet artificial intelligence surpasses natural intellect and competes in many fields (Cockburn et al. 2018).AI now plays a crucial role in assisting police agencies since crime has evolved and got more complex and challenging to solve. The primary function of AI in Policing is as follows: Crime detection and prevention and surveillance and

monitoring.

### 6. Crime Detection and Crime Prevention

Crime detection involves three independent stages: recognizing that a crime has been committed, identifying a suspect and gathering sufficient evidence to present the suspect in court. Crime prevention involves the anticipation, identification, and assessment of a crime risk, as well as the initiation of efforts to eliminate or reduce it. In India, the police and other law enforcement organizations have the responsibility of detecting and preventing crimes. Implementing technology in crime detection and prevention alleviate the workload of police organizations. Police employ several technical techniques to identify and prevent crime including:

Biometrics refers to measurable biological (including anatomical and physiological) and behavioral characteristics that can be utilized for automated recognition. Police have utilized fingerprints as a means of identifying suspects for over a century. Police and the intelligence community are currently employing a growing array of biometric (including behavioral) characteristics, in addition to facial recognition and DNA analysis. These include heartbeats, speech recognition, wrist veins, iris recognition, gait analysis and palm prints. Predictive policing refers to the application of mathematical models, predictive analytics and other analytical methods by law enforcement agencies to identify potential criminal behavior. Predictive policing utilizes data analysis of historical crime patterns including the timing, locations and characteristics of the crimes, to tell police strategists on the most effective allocation of resources and the optimal timing and locations for police patrols or presence. This approach aims to maximize resource utilization and enhance the deterrence and prevention of future crimes. Delhi's CMAPS (Crime Mapping Analytics and Predictive System) gathers data every three minutes from satellites operated by the Indian Space Research Organization and the "Dial 100" helpline to identify specific locations where crimes are most likely to occur known as "crime hotspots." The Hyderabad police utilize the data from the "Integrated People Information Hub" to identify individuals with a higher propensity for committing crimes. This hub contains several types of information including family details, biometric details, passport details, address and even bank transaction details. Data and information are the crucial elements of any study. Big data enables the integration of information from diverse sources such as social media platforms, financial institutions, travel records, hotel stays, call detail records (CDRs) and criminal histories. It helps to facilitate the formation of a comprehensive profile of the perpetrator and the establishment of links with criminal accomplices.

### 7. Surveillance and Monitoring

Surveillance is the act of closely monitoring an individual or group, especially while they are under investigation or being observed. India has implemented numerous reforms to its information technology policy, but, there is still a significant amount of work that has to be accomplished. Crime analysis and monitoring involve the

integration of data from several government organizations, collected from diverse sources in different formats and platforms, including NCRB in India. Law enforcement agencies require state-of-the-art technology for analysis, surveillance and administration to effectively control criminal activities. The government has numerous legitimate methods to carry out monitoring. The Indian Telegraph Act of 1885 and the Information Technology (IT) Act of 2000 are the legislations that govern call interception and data interception, respectively. Both statutes restrict private entities from engaging in surveillance, permitting it solely under particular circumstances by the government.

Moreover, the IT Act explicitly prohibits hacking. Data theft and hacking are categorized as civil and criminal offenses, respectively, under Sections 43 and 66 of the IT Act. Section 66B of the law addresses the penalties for the act of knowingly acquiring a stolen computer resource or communication by dishonest means. The penalty involves a prison term that can extend for a maximum of three years. In addition, the government has made efforts to provide a clear definition of privacy, establish the circumstances in which it is authorized to conduct surveillance and specify the consequences for the improper use of data obtained through surveillance in the Right to Privacy Bill, 2011 which was submitted to the parliament. As to this legislation, the Home Secretary of India's Ministry of Home Affairs possesses exclusive authority to provide permission for surveillance.

The utilization of Surveillance cameras is extensively common in the major urban areas of India. If these devices are functioning properly, they can greatly assist police in achieving effective outcomes. Closed-circuit television (CCTV) cameras strategically positioned along roadways and at toll booths have aided in the resolution of criminal cases by monitoring suspicious activities. Surveillance cameras in public areas such as marketplaces, banks, hospitals, theaters, hotels, airports, trains and bus terminals have the ability to recognize potential criminals and detect suspicious behavior, such as the placement of explosive devices like bombs and improvised explosive devices (IEDs).

**CASE 1**- An individual was identified as Hitendra Singh, a 35-year-old former employee of an auditing firm. On January 10, his body was discovered at Golden Jubilee Park. After identifying him the police analysed his mobile phone and internet activity, scanned footage from 800 CCTV cameras and focused on three of his friends: Annie, James and Rocky. Singh was allegedly slain by the three over a money disagreement and his body was later dumped. They've been taken into custody.

**CASE 2**- In a case in **Noida** involving a **veteran Army Colonel** who was allegedly assaulted, detained, handcuffed, and tortured on false charges by an **ADM, Muzaffarnagar**, and his wife **under the SC/ST Act,** the officer was granted bail during the first hearing after six days because CCTV footage amply demonstrated the arrogance of the ADM, his aides, and the police.

**CASE 3-** In the widely publicized Hyderabad Police Encounter in the Disha Case (2019), four accused persons in a rape and murder case were killed by police during an alleged escape attempt. While initially celebrated in public discourse as swift justice, subsequent examination using CCTV footage, mobile phone location data and digital forensic reconstruction raised serious doubts about the authenticity of the encounter. A Supreme Court-appointed inquiry later concluded that the encounter was not justified. This case demonstrates how digital and forensic technologies can challenge dominant narratives of policing and highlight the tension between popular support for punitive justice and constitutional safeguards.

**CASE 4-** The death of George Floyd during a police arrest in Minneapolis became a global symbol of police brutality and racial injustice. Although initial police statements minimized the role of force, bystander-recorded mobile phone videos, body-worn camera footage and CCTV recordings provided incontrovertible visual evidence of excessive force. These digital recordings directly contradicted official reports and were central to the criminal conviction of the police officer involved. The case demonstrates the transformative role of citizen-generated digital evidence in holding law enforcement accountable, even within highly technologized policing systems.

Automatic Number Plate Recognition (ANPR), also known as Automatic License Plate Recognition (ALPR), is software that uses advanced optical character recognition to automatically read license plates in photos of automobiles. Automated licence plate readers (ALPRs) are rapid, computerized camera systems that are commonly affixed to roadway poles, lamps, overpasses, mobile trailers or attached to police cars. ALPR cameras are commonly used in conjunction with automated speed and red-light enforcement systems, as well as for toll collection on roads and bridges. In 2021, the Gurugram (Haryana) police successfully retrieved over 50 stolen vehicles using the utilization of ANPR technology. Police are increasingly using drones, also known as Unmanned Aerial Vehicles (UAVs), to obtain aerial views for various tasks such as crime scene investigation, search and rescue missions, accident reconstruction, crowd surveillance, and other objectives. Certain advanced models can be equipped with thermal imaging or 3D mapping technologies to offer GPS enhanced precision to the areas being surveyed. Zoom cameras are frequently seen on police drones and UAVs, as they are highly valuable for delivering timely and actionable intelligence in high-risk situations involving individuals who are armed and pose a threat. The Delhi Police has admitted to use commercially acquired drones during the violent riots that occurred in February 2020 and the Delhi Assembly elections.

## 8. AI Apps Used by Police in India

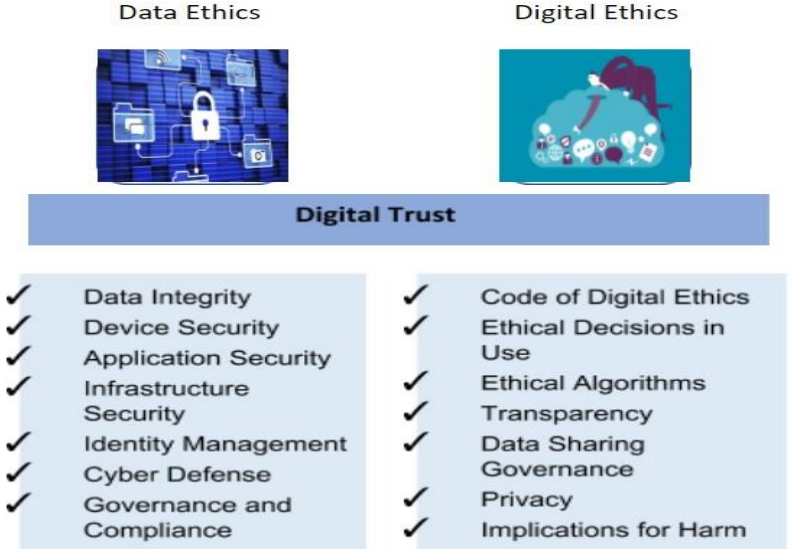
**PAIS software (Punjab Artificial Intelligence System)** - The PAIS software enabled the Punjab police to digitize criminal records and automate criminal search as well as perform several essential analyses at the ground level. Utilizing facial

recognition technology, PAIS promptly accessed and collected real-time information on criminals from the records. Additionally, it provides help to police professionals through the use of novel features such as gang analysis and phonetic search. Currently, the PAIS possesses an extensive digital repository with information on more than 90,000 individuals with criminal records. This database has been instrumental in assisting the state police in apprehending over 100 criminals.

**ASTraM App (The AI-backed Actionable Intelligence for Sustainable Traffic Management)** - The Bengaluru traffic police agency has introduced an artificial intelligence-based application to enhance traffic control in the city. The ASTraM app powered by AI provides comprehensive insights into road traffic situations, in line with the goals of the Road Safety Awareness Week.

**KSP.AI** - Capulus Technologies has partnered with the Karnataka State Police Department to introduce KSP.AI, a cutting-edge AI-powered platform, in an effort to transform law enforcement in India. This collaboration is a major step towards leading the way in AI-Enabled Policing, introducing a new era of cutting-edge technology in the field of law enforcement.KSP.AI is powered by a sophisticated GPT LLM (Generative Pre-trained Transformer Long-Form) model, which has been trained by Capulus Technologies. The KSP.AI platform utilizes advanced AI technology to provide the Karnataka State Police with exceptional natural language processing skills, making it the foundation of their operations. This effort is positioned to revolutionize the field of police operations by utilizing cutting-edge AI and machine learning technology to improve crime prevention, allocate resources more efficiently, conduct data-driven analysis and make more intelligent decisions.

**Digital Trust Framework:** It is necessary to adopt digital ethics which encompasses technology, transparent data and digital ethics in order to establish trust in society.



To ensure responsible usage of AI, it is necessary to change basic and abstract ethical ideas into specific and tangible needs. The requirements for such an approach are based on three pillars that are equally important. 1) Technical requirements for the AI system include factors such as system integrity, task efficacy, transparency, and interoperability with other systems. 2) On an individual level, the focus is on the rights, agency, and well-being of the people impacted by the AI system, such as civilians and police personnel. 3) From a sociological perspective, the impact of the AI system on society as a whole is a crucial consideration. This includes evaluating its influence on crime levels, clearance rates, and public perceptions of the police.

## 9. The Benefits of Using AI Technology in Police

Every phenomenon possesses dual aspects. The police have derived advantages from AI technology, by enhancing their capabilities in conducting criminal investigations. AI Technology enhances the productivity and efficiency of police. An effective collaboration between police and technology would expedite criminal investigations, significantly diminish crime rates and contribute to the maintenance of peace and order. Technological aid enables the police to alleviate the workload of their daily physical chores. Big Data is highly valuable for discovering patterns and focal points of criminal activity. The smartphone applications are linked to centralized databases, providing the investigating officer with immediate and up-to-date access to information about missing individuals, vehicles, bodies and criminal histories. Minimize instances of unethical behavior: Implementing technology such as body-worn cameras will decrease the extent of misconduct by police while on duty. Technology facilitates the connection between the general population and police, reducing the distance between them. The digital services offered by the police enable the public to conveniently access and utilize these services from the comfort of their own homes. As an illustration, individuals in **Punjab Police's SAANJH initiative have the option to electronically file their issues through the State public grievance redressal portal specifically designed for the state police.** The primary objective of this portal is to enable citizens to submit complaints electronically, monitor their progress and obtain prompt reports from the comfort of their own homes. Technology enables seamless data collection from all components of the criminal justice system, including law enforcement, judiciary, prosecution, correctional facilities, and forensics. This facilitates police investigations by providing comprehensive information. Utilize innovative AI technology in policing is a highly beneficial asset to our nation's security.

## 10. The Disadvantages of Using AI Technology in Police

The increasing reliance on technology in policing has generated a range of disadvantages that pose serious ethical, social and institutional challenges. Extensive use of surveillance technologies such as CCTV networks, facial recognition systems, drones and mass data collection tools raises profound concerns about the erosion of privacy and civil liberties. Continuous monitoring of public spaces can normalize

intrusive surveillance practices, potentially leading to the misuse of power and weakening democratic oversight. Technological systems, particularly predictive policing and algorithm-based decision-making, often depend on historical crime data that reflect existing patterns of social inequality and discriminatory policing. As a result, these systems may reinforce racial, caste, class and gender biases, disproportionately subjecting marginalized communities to increased police scrutiny and control.

Moreover, the adoption of advanced policing technologies requires substantial financial investment in infrastructure, software, maintenance and specialized training, which can strain public budgets and divert resources from essential community policing initiatives. In many contexts, especially in developing countries, unequal access to technological resources can widen disparities between urban and rural policing. Over-dependence on technological tools may also reduce the role of human discretion, professional judgment and interpersonal skills, leading to mechanical decision-making that overlooks the social context of crime. Additionally, police information systems store vast amounts of sensitive personal data, making them vulnerable to cyber-attacks, data breaches, and unauthorized access. The lack of robust legal frameworks, ethical guidelines, and accountability mechanisms further intensifies concerns regarding data security, transparency, and public trust. Together, these limitations highlight the need for cautious, regulated, and ethically grounded use of technology in policing.

## 11. The Challenges of Using AI Technology in Police

In October 2019, the National Strategies for the Development of Artificial Intelligence were approved by over thirty countries, including the Russian Federation. The norms and standards governing artificial intelligence in the Russian Federation are always being improved and updated. The global standard for "Artificial Intelligence: Concept and Terminology" aligns with the standards developed in Russia. Professor Stephen Hawking stated -***"I'm afraid that artificial intelligence will completely replace humans. If people can create computer viruses, someone will create artificial intelligence that can improve and reproduce themselves. He will become a new form of life that will surpass humanity"***.

We cannot disregard the problems AI has raised. The absence of comprehensive data security regulations may lead to data breaches and the subsequent exploitation of this data for acts of terrorism and other illicit activities. The disparity in infrastructure allocation between rural and urban areas in India poses challenges for the general implementation of technology. Rural areas have insufficient internet connectivity to access the technological resources provided to the general public by police. The current police reforms have failed to educate about the impact of AI technology and integrate it into crime investigation. Financial constraints pose a challenge at numerous police stations nationwide, rendering the implementation of new technology economically unfeasible. The Indian law enforcement authorities are

unable to keep pace with rapid technological advancements due to insufficient training and limited access to technology, resulting in a significant technological gap. Several agencies do not have the requisite mobile or software capabilities to improve communication between different agencies or keep officers present in the neighborhood. There are situations where police personnel may lack the necessary motivation or willingness to understand the intricacies of new technologies. Technology can be utilized for unsuitable political objectives. For instance, the ruling party employs the police to carry out extensive surveillance on its political opponents and dissidents. The majority of the general populace is unaware of these Law Enforcement applications and portals.

## 12. Suggestions for better use of Technology in Policing

Strict and transparent digital legislation should be enacted to tackle the privacy concerns of the general public and ensure data security. It is imperative to execute police reforms that are compatible with technology. The implementation of the reforms should prioritize providing early training to the legal enforcement agency regarding the AI technology and its application in the public domain. Regular training sessions could help address the technological deficiencies of officers. To enhance the management of digital evidence records, it is imperative for police authorities to allocate resources towards the adoption of technologies that facilitate the long-term preservation, regulated distribution, and seamless integration with record management systems. This is particularly crucial as police increasingly rely on the collection and analysis of digital evidence in virtually every investigation. Archiving, protecting and retaining digital evidence necessitates adherence to the same requirements as physical evidence. Research and development should be conducted to explore the technology, find ways to minimize its costs and provide training on its use. Implement computer cafes or establish corresponding support mechanisms to address the lack of infrastructure in rural areas of India. Thus, residents of remote places take benefit from technology improvements without leaving their homes. It is essential to choose an officer who will be responsible for overseeing technology components, including their operation, training and effective implementation. Acquiring and assimilating additional technologies from foreign nations to facilitate criminal investigations. The importance of digital ethics is crucial at this time. To establish digital trust in society, it is imperative to adopt digital ethics, which encompasses technology, open data and ethical principles in the digital realm. Establishing a feedback mechanism between police officers and civilians who utilize these technologies is vital in order to facilitate enhancements to the existing apparatus. To bridge the technological divide among the general population, it is possible to carry out public education and awareness initiatives on citizen-friendly law enforcement applications and portals, as well as provide training on their use.

## 13. Future Implications: Exploring the Evolution of AI in Policing

The ongoing progress in incorporating artificial intelligence (AI) into police raises

both promising and worrisome prospects for the future. The advancement of AI has the capacity to significantly improve police operations and tackle intricate issues in crime prevention and detection. As AI become more advanced, predictive policing models can be improved, resulting in better allocation of resources and more focused measures for preventing crime. Furthermore, surveillance systems driven by artificial intelligence provide enhanced monitoring and analytical capabilities, facilitating the rapid detection of possible threats and assisting in the prevention of illegal acts. Nevertheless, the advancement of AI in police raises substantial ethical and privacy problems in addition to its potential advantages. The collection and examination of extensive data by AI systems give rise to concerns over individual privacy rights and the possibility of bias in decision-making procedures. It is imperative to implement strict regulations and monitoring systems for emerging technologies like facial recognition and predictive algorithms to guarantee justice, accountability and adherence to ethical standards. Ensuring an optimal equilibrium between security and privacy is essential for fully utilizing the capabilities of AI while safeguarding civil rights. The future of AI in police will depend on strong safeguards and ethical frameworks to ensure its responsible and beneficial implementation.

## 14. Artificial Intelligence: A Human Rights Perspective

The rapid advancement of AI and its integration into key domains has outpaced the development of corresponding legislation. This technology is being developed and employed without doing a thorough analysis and comprehension of its impact on human rights. It might be argued that the obscurity and intricacy of the AI technology have instead served as a cover that lends credibility to the outcomes. The absence of digital literacy and the incapacity to scrutinize the outcomes of this AI technology has given rise to a multitude of concerns regarding human rights. The advent of AI has provided states with an immensely potent instrument, rendering the concept of comprehensive surveillance states no longer confined to the realm of fantasy. Excessive dependence on this technology without enough corrective actions has prompted numerous human rights and technology organizations to advocate for legal reforms on a global scale. These groups are diligently striving to address the human rights breaches that are implicitly linked to this technology. Curiously, these violations are not specific to any particular nation, but rather specific to certain technologies. Therefore, it is reasonable to assume that if a technology is violating human rights in one nation, the same technology will produce similar outcomes when used in other nation. Hence, it is crucial to comprehend how this technology infringes upon essential human rights and determine the necessary actions to address this issue, thereby maximizing the advantages of the technology. It is important to recognize that the consequences of implementing AI in law enforcement are significantly distinct because of the inherent authority of the police to apprehend, detain and perhaps employ lethal force in specific situations. Unregulated AI in law enforcement can be utilized by authoritarian governments to harm human rights. Therefore, the use of AI in police must undergo more rigorous scrutiny than in any other industry. The

primary peril posed by AI is the perpetuation of discrimination resulting from biased algorithms. AI technology developers have consistently maintained that algorithms operate independently of human prejudice while processing data, resulting in completely impartial outcomes that do not contribute to any form of discrimination. Several international human rights and technology groups have since successfully challenged this claim. Artificial intelligence inevitably poses the potential of sustaining and magnifying the pre-existing social biases. The underlying cause of this phenomenon is the data, as artificial intelligence systems are programmed to analyze and subsequently reproduce the patterns they acquire from the data. The problem lies in the fact that when AI duplicates the historical pattern, it will inevitably continue the existing social biases. This ultimately led to the occurrence of what is commonly referred to as data bias. Regrettably, biased data is a common occurrence rather than a rare exception, resulting in the continuation and intensification of bias in society.

## 15. Conclusion

Emerging trend of Artificial Intelligence are revolutionizing law enforcement practices, enabling police agencies to enhance crime prevention efforts and expedite crime resolution. It is necessary to stay updated with worldwide law enforcement technologies and implement them in the Indian context. AI is revolutionizing crime prevention and law enforcement by utilizing sophisticated algorithms and predictive analytics. Through the analysis of extensive datasets, AI technology has the capability to detect patterns, trends and anomalies that human analysts may have overlooked. This ability offers significant insights that may be used to improve law enforcement methods. An essential function of artificial intelligence in police is to prevent and identify crimes. Artificial intelligence algorithms have the capability to examine past crime data in order to pinpoint places with a high likelihood of criminal activity and forecast potential criminal incidents. This enables police authorities to efficiently manage resources and strategically deploy officers, thereby effectively deterring crime proactively. In addition, AI-driven tools, including as facial recognition and video analytics systems, facilitate rapid identification of suspects and improve the effectiveness of investigations. These innovations not only accelerate the process of detecting and apprehending offenders but also improve the general safety and security of communities.

The police have gained advantages from the implementation of technology, which has enhanced their capabilities in carrying out criminal investigations. However, we cannot disregard the challenges it has presented. The advent of technology has significantly diminished the need for physical labor and digitized data, so facilitating the retrieval of archived materials and enhancing the understanding of a criminal's or accused person's history. Social media has also played a role in enhancing the comprehension of an individual's past. Due to technological advancements, the criminal investigating technique has become increasingly transparent. Technology facilitates a link between the general public and police. It assists police in safeguarding public safety and protecting property. Public complaints are addressed

efficiently and expeditiously. An effective collaboration between police and technology would expedite criminal investigations, significantly decrease crime rates, and assist in maintaining peace and order. In order to enhance and expedite the policing, it is imperative that persist in advancing AI technology.

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# Balancing Innovation and Regulation: A Legal Perspective on AI in Insurance Contracts

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## Abstract

Artificial Intelligence (AI) is transforming the insurance industry, shifting the focus from traditional models towards dynamic, data-driven systems. The integration of AI into insurance sector has marked a paradigm shift in the industry, by enabling personalized underwriting contracts, real-time risk assessment, and automated claims settlement. However, this has also introduced significant legal and ethical challenges concerning transparency, accountability and consumer protection demanding close regulatory scrutiny. Traditional principles of contract such as offer, acceptance, good faith, consent are strained by algorithmic decision making raising significant concerns about enforceability and fairness. This article examines the dynamic and evolving landscape of AI-driven insurance market in India. In this article an interplay of existing laws like Indian Contract Act, 1872, Insurance Act, 1938 and the Digital Personal Data Protection Act, 2023 with emerging technologies and safeguarding the policy holder rights within the Indian insurance framework has been done. It criticises the regulatory gaps and assesses the challenges to the frameworks like the IRDAI's Regulatory Sandbox and cyber security guidelines. The need for regulatory reforms such as mandatory AI audit ability, insurer disclosure standards, and grievance redress mechanisms are highlighted in the article. The article suggests that a hybrid legal framework is crucial for harmonising AI innovation with the fundamental principles of contract law and consumer fairness in India's insurance industry.

**Keywords***: artificial intelligence, data protection and consent, insurance contract, regulatory sandbox*

## 1. Introduction

The emergence of Artificial Intelligence (AI) has profoundly transformed the global insurance sector. The field of AI is progressing rapidly, with generative AI particularly eliciting significant interest. AI driven tools are transforming the insurance sector from traditional human centric approach into a domain which is governed by algorithms and data analytics. The tasks which were once reliant on human expertise are now managed by technologies such as machine learning, predictive modelling and natural language processing and they offer efficiency,

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accuracy, and scalability. Post-COVID-19 pandemic, insurance clients' priorities are evolving, increasingly favouring on-demand and personalised services. In this environment, next-generation AI solutions are essential for insurers to deliver services that satisfy client requirements.[1]This shift towards using technology has brought about paradigm change in insurance contracting- where decision making, policy issuance and risk assessment are being automated increasingly. Generative AI is profoundly transforming the insurance sector, affecting underwriting, risk assessment, claims processing, and customer service. As a result, Insurance companies are transitioning from human centric processes towards algorithmic systems, creating a complex legal mechanism where contracts are drafted, executed, interpreted, and enforced by machines. These developments have enhanced operational capacity of the Insurance companies and improved the customer experience and at the same time they also introduce new legal and regulatory challenges. Some of the key concerns are contract formation, transparency, algorithmic accountability, data privacy and discrimination or bias in automated decisions. AI operating as 'black box' sometimes complicate the traditional legal principles of offer, acceptance, and consent when consumers are unaware or they are unable to contest machine made determinations. The relationship between AI and insurance is characterised by longevity and success. Despite being perceived as conservative in adopting new technologies—particularly in comparison to sectors such as big tech, finance, or banking—the reality is that the sector has progressively embraced the opportunities presented by AI since it began fulfilling its potential in machine learning and deep learning. There are challenges regarding liability as to who is responsible when AI makes an unfair or flawed decision and how existing insurance laws adapt to accommodate emerging technologies.[2]

## 2. Traditional Insurance Contracts: Legal Doctrines and Structure

### 2.1 *Formation: Offer, Acceptance, Consideration*

Insurance contracts are based on the principles of Law of Contract, like any other legally binding agreement. Before studying the transformative role of AI, it is important to understand the legal doctrines defining the traditional insurance contracts in India. An insurance contract is governed by three primary principles of general law of contract of offer, acceptance, and consideration. Insurance contract being special form of contracts have some additional legal obligations such as utmost good faith, insurable interest, indemnity, proximate cause, etc.

#### 2.1.1 Offer in Insurance Contracts

In order to be legally enforceable, a contract must be established by one party's unqualified, definite proposal (offer) and the adoption of its exact terms by the other.

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1 Radhakrishnan v. "Artificial Intelligence in Insurance Contracts: Time for a New Legal Framework?" 10*Law and Technology Digest* 45(2023).

2 D. M. Rao, "Liability Clauses in AI-Driven Insurance Policies"7 *Insurance Contracts Review*9 (2023).

The applicant typically submits the initial premium with the application, which constitutes the offer of an insurance contract. The insurance company issues the policy as applied for when it accepts the offer.[3] In insurance contracts, the proposal to enter into a contract is made by the insured person that the applicant and not by the insurer whereas in commercial contracts, an offer is made by the party initiating the terms and conditions.

For instance, when a person submits a completed proposal form to an insurance company, accompanied by the premium or an undertaking to pay the premium, it is considered a valid offer to the insurer. The insurer, upon receiving this offer, may accept or reject it. The proposal form, along with any medical examinations or supporting documents, serves as the basis of this offer.

In *Life Insurance Corporation of India* v. *Raja Vasireddy Komalavalli Kamba*[4] the Supreme Court of India held that mere submission of a proposal form does not amount to the formation of a contract unless it is accepted by the insurer. Thus, the legal position is clear: the insurance contract comes into existence only when the insurer accepts the proposal and communicates it to the insured. This nuanced understanding is vital when assessing the digitization of insurance processes. AI-driven systems often blur the boundaries between proposal and acceptance, especially in instant underwriting or click-to-insure platforms, where the line between offer and acceptance becomes algorithmically condensed.

### 2.1.2 Acceptance in Insurance Contracts

Acceptance refers to the unqualified agreement to the terms of the offer. In the case of insurance, once the insurer accepts the offer and communicates such acceptance, a valid and binding contract is formed.[5] However, acceptance must fulfil certain criteria:

- It must be absolute and unconditional.
- It must be communicated effectively to the proposer.
- It must be made within a reasonable time, or as stipulated by the terms of the offer.

In practice, the acceptance is usually communicated through a cover note, policy document, or digital communication (email/SMS), marking the commencement of the contractual relationship. If the insurer modifies any terms of the proposal before acceptance—such as loading the premium or excluding specific risks—this constitutes a counter-offer rather than an acceptance, requiring the assent of the proposer.[6] The case of *Oriental Insurance Co. Ltd.* v. *Sony Cheriyan*[7] reinforces this,

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3 The Indian Contract Act, 1872, s. 2(a) (definition of proposal).
4 AIR 1984 SC 1014.
5 The Indian Contract Act, 1872, s. 2(b) (definition of acceptance).
6 Avtar Singh, *Law of Contract and Specific Relief* 145 (Eastern Book Company, 13th edn., 2022).

holding that until the insurer accepts the proposal and issues the policy, there is no binding contract. This principle ensures that insurers are not arbitrarily held liable for risks not yet assumed or agreed upon.

AI tools now often automate the acceptance process, particularly in retail insurance. However, questions arise regarding how "acceptance" is understood when bots or algorithms process the offer. Can a machine-generated response amount to legally binding acceptance? The legal system is yet to fully address this conundrum.

### 2.1.3. Consideration in Insurance Contracts

The third essential component of a valid insurance contract is consideration, defined under Section 2(d) of the Indian Contract Act, 1872, as something in return for a promise. In insurance, the consideration is the premium paid by the insured in exchange for the insurer's promise to indemnify against a specified risk or pay a benefit upon a defined event.

Payment of premium may be made:

- In full, at the time of application (in most general insurance policies);
- Periodically, as in the case of life insurance policies; or
- Post acceptance, under specific underwriting protocols.

The timing and method of payment of the premium are crucial in determining the enforceability of the contract. If the premium is not paid, or if the cheque issued is dishonoured, the insurer is generally not bound to honour the contract. In *LIC of India v. Consumer Education & Research Centre*[8], the Court highlighted that the insurer must clearly communicate the terms related to premium payment, and any ambiguity will be interpreted against the drafter (insurer), under the doctrine of contra proferentem.

Additionally, renewal premiums and their payment dates also carry legal consequences. Lapsed policies, due to non-payment of consideration, may lose enforceability unless revived within a stipulated period, often subject to fresh underwriting.AI-based platforms have made premium payment processes seamless—enabling auto-debits, predictive lapse management, and reminders. Yet, questions about validity of contracts when AI miscalculates premiums or fails to record payments are rising in courts and regulatory forums. While automation offers convenience, the sanctity of consideration as a contract-forming element must still be safeguarded.

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7 (1999) 6 SCC 451.
8 (1995) 5 SCC 482.

### 2.2 Key Doctrines in Insurance Contract Formation

Insurance contracts are governed not only by the general principles of contract law that is offer, acceptance and consideration but also by certain general doctrines of insurance contract such as utmost good faith, insurable interest, indemnity, and proximate cause. These general principles of insurance ensure transparency, fairness, and smooth functioning of insurance sector.

#### 2.2.1 Utmost Good Faith (Uberrimae Fidei)

Both parties, particularly the insured, are under an obligation to disclose all material facts relevant to the risk.[9] Failure to do so may result in repudiation of the policy. The doctrine of uberrimae fidei, or utmost good faith, is the cornerstone of insurance law. Unlike ordinary commercial contracts[10], where each party is expected to look after their own interests, insurance contracts require both parties—especially the insured—to disclose all material facts truthfully and completely. Material facts are those which would influence the judgment of a prudent insurer in deciding whether to accept the risk and on what terms.[11] Failure to disclose or misrepresentation—whether innocent, negligent, or fraudulent—can give the insurer the right to avoid (cancel) the contract from inception.[12]

This duty arises at the pre-contractual stage and continues until the policy is issued. In LIC v. *Asha Goel*[13], the Supreme Court of India observed that concealment of medical history by the proposer amounted to breach of this doctrine and justified denial of the claim.

With the rise of AI-powered underwriting and automated proposal systems, disclosure is often automated or based on data analytics.[14] This raises important legal questions:

- Can an insured be penalized for nondisclosure if AI already had access to the information through third-party data?
- If AI fails to prompt for a critical material fact, does the burden still fall solely on the proposer?

These questions suggest a need to recalibrate the traditional doctrine in light of digital transformation, where data asymmetry may no longer be one-sided.

#### 2.2.2 Principle of Indemnity and Insurable Interest

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9 S. K. Patel, "AI Risk Assessment Tools for Life Insurers" 2*Actuarial Science in India*66 (2024).

10 B. N. Desai, "Ethical AI in Commercial Insurance: A Framework" 6 *Business & Ethics Law Review* 45 (2023).

11 The Insurance Act, 1938, s. 45 (addresses misstatement and suppression of facts).

12 M. N. Srinivasan, *Principles of Insurance Law* 51 (LexisNexis, 10thedn., 2021)

13 (2001) 2 SCC 160.

14 A. L. Menon, "Blockchain, AI, and Smart (Insurance) Contracts" 5 *JOLETS* 80 (2024).

***a. Principle of Indemnity***

The principle of indemnity aims to restore the insured to the financial position they were in before the loss occurred, without allowing them to profit.[15] This principle applies primarily to property, fire, marine, and liability insurance.

The rationale is that insurance is a mechanism of compensation, not enrichment. For example, if a car worth ₹5,00,000 is damaged and the loss is ₹2,00,000, the insurer is liable only up to ₹2,00,000. Any attempt by the insured to claim more would violate this doctrine.

There are two key consequences of this doctrine:

1. Subrogation – After compensating the insured, the insurer gains the right to step into the shoes of the insured and recover from third parties responsible for the loss.[16]
2. Contribution – If the same risk is covered by multiple policies, the insured can claim from any insurer, but insurers can share the liability proportionately.[17]

AI systems are now automating loss estimation and subrogation recovery. However, concerns remain about AI overpaying or underestimating claims due to algorithmic biases or data insufficiency. Thus, human oversight remains essential to uphold the indemnity principle.

***b. Insurable Interest***

Insurable interest is a legal requirement that the insured must have a financial or pecuniary interest in the subject matter of the insurance policy. Without such interest, the contract becomes a mere wager, and is void under Section 30 of the Indian Contract Act, 1872.In *Gajanan Moreshwar* v. *Moreshwar Madan*[18], the Bombay High Court noted that the insured must stand to suffer a direct loss if the insured event occurs. Examples include:

- A person insuring their own life.
- A creditor insuring the life of a debtor.
- A company insuring the life of a key employee.

This doctrine protects against moral hazard and ensures that insurance remains a contract of risk mitigation, not speculation. With AI, verifying insurable interest is increasingly automated using government databases, financial links, or employment

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15 The Insurance Act, 1938, s. 64VB.
16 *Union of India v. Sri Sarada Mills Ltd*., AIR 1973 SC 281.
17 Avtar Singh, *Law of Contract and Specific Relief* 242 (Eastern Book Company, 13th edn., 2022).
18 AIR 1942 Bom 302.

records.[19] However, legal responsibility to ensure its presence remains with both the insurer and the proposer.

***c. Causation and Proximate Cause***

- Doctrine of Causation

In insurance law, establishing causation means proving that the loss suffered by the insured was caused by a peril covered under the policy. Not every loss will be compensable—only those directly linked to insured risks. There may be multiple causes leading to a loss, and determining which one is legally significant becomes crucial.[20] This leads to the need for identifying the proximate cause.

- Proximate Cause (Causa Proxima)

Proximate cause refers to the dominant, effective, or most immediate cause of a loss, not necessarily the last in time. It is a test used to limit insurer liability only to those losses that fall squarely within the terms of the policy.[21]

In *New India Assurance Co. Ltd.* v. *Zuari Industries Ltd*.[22] SC held that proximate cause does not mean anything nearest in time or place, but the efficient cause that sets in motions a chain of events without independent intervening causes.

Insurers utilise AI-driven claim assessment technologies that employ data modelling and event-sequencing algorithms to ascertain proximate cause. However, these technologies must be calibrated to prevent arbitrary or unreasonable claim denials, especially in intricate situations such as pandemic-related business interruptions, when several contributing factors are present.

### 2.2.3 Contract of Adhesion: Insurer's Dominance in Drafting

Contracts of adherence are the outcome of an agreement between two parties with unequal bargaining power. These dynamics are frequently observed in situations where an inferior party is unable to negotiate any modifications to the terms established by the party with greater bargaining power. Adhesion contracts are typically a standardised contract form that is entirely prepared and offered by the party with the greater bargaining power to insured persons in Insurance contracts.[23] This relationship is often referred to as a "take-it-or-leave-it" contract. They are typically produced by insurance companies, who are in a more advantageous position, before being presented to the insured party.[24] The insured party has the

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19 R. P. Ghosh, "Standards for Explainable AI in Indian Insurers" 3 *IRDAI* 22 (2023).

20 The Insurance Act, 1938, s. 64UM

21 IRDAI (Protection of Policyholders' Interests) Regulations, 2017, Reg. 15(2) (insurers must communicate the reasons for repudiation with reference to cause).

22 (2009) 9 SCC 70.

23 IRDAI (Protection of Policyholders' Interests) Regulations, 2017, Reg. 6(1) (requires clear, transparent language in insurance policies).

24 *Oriental Insurance Co. Ltd. v. Mahendra Construction*, (2019) 11 SCC 118.

option to accept the document as is or reject it fully. This results in significant legal and ethical implications that affect the enforceability of the contract and the protection of the insured.

## 3. Role of AI in Modern Insurance Contracting

The assimilation of AI in the insurance sector has ushered an era of profound transformation in not only how premium for the policies is decided but also how the insurance contracts are drafted, underwritten, executed, and enforced. There has been a tremendous shift from traditional paper-based system to algorithm driven platforms.[25] AI is redefining the nature of insurance contracts by improving efficiency, transparency, consent, fairness, and accountability.[26]

### 3.1 AI in Underwriting: Predictive Analytics and Behavioural Profiling

Earlier underwriting was relying on actuarial models, judgement of the experts, and historical data to assess the risks. Today AI is capable of doing predictive analytics, taking into account the structured and unstructured variables such as age, medical history, place of work, credit score, driving behaviour, location, social media activities, wearables, etc.[27] AI continuously improves its predictions by learning from real time data and emerging trends from time to time. Behaviour profiling of an insured enables personalised risk assessment, even in predicting policy lapses or future claims.

### 3.2 AI in Policy Drafting: Dynamic and Personalized Insurance Contracts

One of the most innovative applications of AI is in the drafting of insurance contracts. Traditional insurance policies are same printed documents based on pre-approved templates prepared by Insurance companies. AI has enabled the moving towards dynamic and customized contracts tailored towards the insured's profile, risk behaviour, and preferences. Policies generated through AI adjust coverage, premium, exclusions, and deductibles in real time. Chatbots and AI advisors help the Insurers to draft personalized insurance contracts based on user inputs.[28]"Smart policies" can modify automatically based on behavioural triggers of the insured persons, example reduced premiums for safe driving.

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[25] Shubham Kumar Nigam *et al.*,"Structured Legal Document Generation in India: A Model-Agnostic Wrapper Approach with Vidhik Dastaavej" arXiv:2504.03486 (2025).

[26] IRDAI (Protection of Policyholders' Interests) Regulations, 2017, Reg. 6 (transparency in automated decisions).

[27] Dipankar Chakrabarti *et al.*,"Use of Artificial Intelligence to Analyse Risk in Legal Documents for a Better Decision Support" arXiv:1912.01111 (2019).

[28] Paul H. Rubin, "Artificial Intelligence and the Future of Insurance Contracting" 18 *Ins. L. J.* 45 (2022).

### 3.3 AI in Claims Processing: Automated Approvals and Denials

Claims processing has traditionally been a paper-intensive, delay-prone function, often marred by human error, misjudgement, or inefficiency. AI has revolutionized this function by enabling real-time, rules-based claims settlement.

Image recognition tools assess vehicle or property damage using uploaded photos. Natural language processing (NLP) reads and evaluates claim documents or hospital records.AI cross-checks submitted information with policy terms and either approves or denies the claim within seconds. The benefits of using AI are faster turnaround time, reduced fraud, lower administrative costs.

### 3.4 AI in Fraud Detection and Pricing Algorithms (Usage-Based Models)

Insurance fraud is a persistent issue, costing companies billions annually. AI offers powerful tools for fraud detection by identifying patterns that human investigators might miss. Anomaly detection algorithms flag unusual claim patterns, social network analysis evaluates links between claimants, hospitals, garages, or repair vendors and AI compares claims data with external sources (e.g., police reports, geolocation data) to detect inconsistencies.AI also drives usage-based pricing, where the premium is calculated based on how, when, and where the insured uses the insured asset.[29]

- In motor insurance, telematics devices track driving behaviour (speeding, braking, time of travel).
- In health insurance, wearable devices monitor heart rate, sleep, or physical activity.

## 4. Legal Implications of AI on Insurance Contracts

Traditional contract law is being reshaped with the use of AI in formation of insurance contract particularly through e-consent mechanisms, algorithmic decision making and smart contracts. While digital tools can enhance accessibility and efficiency, they also pose new risks to consent, fairness, and accountability.[30]

To safeguard contractual legitimacy in the AI age, insurers and regulators must:

- Ensure that electronic consent is truly informed and voluntary.
- Mandate transparency in algorithmic logic, especially for adverse decisions.
- Clarify the legal recognition of smart contracts and establish liability frameworks for errors.
- Provide users with human oversight and appeal mechanisms, even in automated systems.

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[29] R. K. Singh, "Explainable AI for Fair Pricing in Life Insurance" 11 *JOAP* 101 (2024).

[30] Ministry of Electronics and IT, 'Responsible AI for All' Strategy Report (2021), *available at* https://www.meity.gov.in (Last visited July 25, 2025).

### 4.1 Consent and Contract Formation

With the use of AI in the insurance sector there has been a fundamental re-examination of principles of contract law, especially those related to contract formation, autonomy, and consent. AI-powered platforms have replaced the human insurance agents with bots, predictive algorithms and automated decision-making tools and work at the interface between insurers and consumers.[31] These advancements have brought about operational efficiency but at the same time raise pertinent legal questions about the validity of consent, the transparency of AI reasoning, and the role of smart contracts in modern insurance contracting.

The proposal forms in the traditional insurance model obtain consent through signed proposal forms through interaction with agents and physical documentation in place. Modern AI-based insurance systems revolve around chatbots, automated digital forms and click-wrap or browse-wrap agreements where the nature of consent is in electronic form.[32] Under the Information Technology Act, 2000, recognises electronic records and digital signatures, allowing contract formation through electronic means. Sections 10-A and 11 of the Act recognize electronic agreements and attribution of electronic records, thereby supporting the shift to e-consent.

However, the effectiveness of such consent is conditioned by two requirements:

- Informed consent: The insured must understand the terms they are agreeing to.
- Free consent: The consent must be given voluntarily, without coercion, mistake, or misrepresentation.

AI complicates both requirements. Machine-led interactions may involve automatically filled forms, default options, or one-click approvals, which do not always ensure meaningful engagement with the contract terms.

### 4.2 Algorithmic Decision-Making and Transparency

Automated decision making pose a challenge to theory and practice as it disrupts the ability to enter into contracts and influence decision making relating to premium, coverage, inclusions, exclusions, claims, and edibility. Indian courts have not yet directly addressed AI-led insurance decisions, but the judiciary has consistently held in consumer protection cases that non-disclosure, unfair treatment, or arbitrary rejection of claims violates fair contracting standards.[33] If algorithmic opacity leads to

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[31] S. S. Srivastava, "Consent in Online Contracts" 9 *JOCLP* 45 (2023).

[32] Satish Kumar, "Doctrine of Free Consent in Automated E-Contracts: Re-evaluating Indian Contract Law in the Age of Algorithmic Negotiation" 5(1)*Int. J. Civ. Law Legal Res.* 142-149(2025) – concept of "algorithmic consent" and challenges to Sections 13–14 ICA where consent is mediated by AI agents.

[33] Pawan S. S. &Madhumita L., *The Impact of Artificial Intelligence on the Insurance Industry and Related Legal Issues* (April 2025) – emphasises insurer duty to explain algorithmic

unfair denial of coverage, courts may extend existing consumer protection principles to hold insurers accountable.

### 4.3 Role of Smart Contracts

Smart contracts—self-executing code that automatically enforces contractual obligations when pre-defined conditions are met—are gaining attention in parametric insurance models (e.g., weather-based crop insurance, travel delay coverage). These contracts are typically built on block chain technology, and once triggered by a defined data input (such as rainfall level or temperature), they autonomously disburse claims without human intervention. Smart contracts eliminate delays in claim verification and payment; reduce dependency on intermediaries and transactions are recorded on immutable ledgers.[34] However, Indian law does not yet formally recognize smart contracts, though the IT Act enables digital contracts in a broader sense. Liability issues may arise due to flaw in the code triggering a claim wrongly or deny a rightful claim at all. There may be cross border legal issues if smart contracts are hosted on decentralized platforms or involve international elements.

### 4.4 Differential Pricing and Coverage Exclusions

Underwriting models driven by AIcan lead to personalized premiums based on real-time and historical data, such as driving behaviour, wearable health devices, or credit scores. Such dynamic pricing enhances actuarial precision and it can also penalize individuals unfairly:

- For instance, two individuals with similar health conditions may receive drastically different health insurance premiums if one lives in a high-risk area flagged by AI models, irrespective of their personal health choices.
- In motor insurance, AI may set higher premiums for drivers from lower-income zip codes even if they have clean driving records, under the assumption of systemic risk.

### 4.5 Indirect Discrimination through Proxies

AI often uses information like type of employment, postal codes, or consumer behaviour etc that often correlate with sensitive features such as religion, caste, gender, or socio-economic class. While these variables are not explicitly discriminatory, they lead to "disparate impact": AI may quote higher premiums to women based on biased training data showing higher health costs during maternity years, despite individual profiles differing. Certain jobs predominantly held by marginalized communities (e.g., manual labour) may be treated as high-risk, even

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decisions to policyholders, mandate constant auditing/human oversight and prevent bias in underwriting and claims decisions.

[34] S. K. Gupta, "Smart Contracts and AI in Motor Insurance" 2 *Indian Insurance Law Review*15 (2024).

without context-sensitive adjustments. This form of indirect discrimination violates the substantive equality framework under Article 14 of the Indian Constitution, which mandates equal treatment not only in form but also in effect.

### 4.6 Constitutional and Anti-Discrimination Concerns

The use of AI in insurance is largely unregulated under Indian law, yet must still operate within the constitutional framework. Article 14[35] guarantees equality before law and prohibits arbitrariness in state action. Private insurers are usually not considered "State" under Article 12[36], the courts have interpreted fundamental rights to influence public-private interactions when they affect constitutional values.In *K.S. Puttaswamy* v. *Union of India*[37] the Right to Equality intersects with the Right to Privacy. So, use of personal information by opaque algorithms without informed consent or adequate safeguards could violate these constitutional rights.

### 4.7 Claims and Settlement in AI-Driven Insurance

AI plays a very progressive role in claims processing, using algorithms to detect fraud, assess eligibility, and determine claims. Such automation raises concerns about due process, fairness, and access to remedies. One of the major challenges of AI-based claims processing is the potential for automatic denial of claims without reasonable explanation or opportunity for redressal.[38] This violates a very pertinent principle of natural justice and administrative fairness principle of audi alteram partem — the right to be heard —Courts in India have repeatedly emphasized that any quasi-judicial decision must be supported by reasoned orders.

### 4.8 Burden of Proof and Transparency

AI complicates the evidentiary framework in insurance litigation. Traditionally, the burden to prove claim denial rests on insurers. However, if the decision was made by a non-transparent AI system, policyholders may struggle to access the rationale, let alone dispute it.[39] The lack of explainable AI mechanisms means users cannot challenge errors effectively. Without disclosing the datasets and training logic, insurers escape scrutiny on whether the AI model was biased or used flawed proxies.[40] Indian courts are slowly adapting to technological complexities.

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35 The Constitution of India, art. 14.

36 The Constitution of India, art. 12.

37 AIR 2017 SC 4161.

38 Shubham Kumar Nigam et al., 'Structured Legal Document Generation in India: A Model-Agnostic Wrapper Approach with Vidhik Dastaavej' arXiv:2504.03486 (2025).

39 P.N. Iyer, "Dispute Resolution Mechanisms in AI Insurance Contracts" 4*ADR & Insurance Journal*50 (2024).

40 Kapur, L., "Robotic Claims Handlers and Legal Oversight: Challenges in India" 2 *JOLETS* 88 (2024).

## 5. Indian Legal and Regulatory Framework for AI-Powered Insurance Contracts

Artificial Intelligence is often embedded in insurance operations these days — particularly in contract formation, risk assessment, fraud detection, and claims processing. The Indian legal framework is evolving to address contractual, privacy, regulatory, and consumer protection issues.

### 5.1 Indian Contract Act, 1872: Consent, Validity, and Liability

AI-generated insurance contracts, especially those formed digitally through apps and websites, must satisfy the foundational requirements under the Indian Contract Act, 1872; Valid contracts must involve free consent, lawful consideration, and competent parties[41]; Consent must not be obtained through misrepresentation, fraud, or undue influence[42].

#### 5.1.1 *Challenges in context of AI*:

- Informed Consent: AI-powered platforms often use complex interfaces and clickwrap agreements.[43] If the AI generates or modifies the terms dynamically (e.g., personalized premium quotes), questions arise about whether consent was truly "free" and "informed."
- Vitiation by Algorithmic Misrepresentation: If an AI engine fails to disclose underwriting logic or uses proxy data (like zip codes as a surrogate for race or socio-economic status), such concealment may amount to misrepresentation under Section 18.[44]
- Liability for Automated Decisions: Under traditional contract law, liability is attributed to humans. But in AI-mediated contracts, where decisions are taken by algorithms, it becomes unclear whether the insurer, software provider, or third-party vendor is liable.

  While Indian courts have yet to rule directly on AI in insurance contracts, the principles from LIC v. Consumer Education & Research Centre[45] clarify that insurers have a duty to act in good faith and disclose all material facts, which must logically extend to algorithmic processing.

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41 The Indian Contract Act 1872, s. 10.
42 The Indian Contract Act 1872, ss. 13-19.
43 Eric Posner, "Smart Contracts and AI: Legal Accountability in Automated Insurance Transactions" 32*Yale J.L. & Tech*. 9 (2021).
44 The Indian Contract Act 1872, s.18.
45 (1995) 5 SCC482.

### 5.2 Insurance Act, 1938 and Insurance Regulatory and Development Authority of India Guidelines

The Insurance Act, 1938 is the principal legislation governing insurers in India. Its provisions, along with Insurance Regulatory and Development Authority of India guidelines, mandate transparency, solvency, fair underwriting, and consumer protection. Insurers must receive premium before assuming risk, a principle now enforced digitally via apps and UPI-integrated platforms[46].Regulates commission payments and intermediary practices, increasingly automated via AI.[47]Allows repudiation of policies only on grounds of fraud within three years, relevant to AI-led fraud detection.[48]

#### 5.2.1 *IRDAI Guidelines Related to Technology*:

- IRDAI (Protection of Policyholders' Interests) Regulations, 2017[49]: These require that policy documents be clear and that claim decisions are reasoned—key in context of algorithmic decisions.
- Corporate Governance Guidelines (2016)[50]: Require insurers to maintain oversight over outsourcing and third-party service providers, including AI vendors.
- Guidelines on Outsourcing of Activities by Indian Insurers (2017)[51]: Stress accountability, even when core activities are outsourced to tech platforms or AI startups.

AI models used for underwriting or claims processing often lack transparency. If policyholders cannot understand or challenge a decision, it may violate Section 45[52] protections. IRDAI has not yet issued clear norms prohibiting discriminatory AI practices, though such practices may be indirectly regulated under existing consumer protection and anti-fraud clauses.

### 5.3 Digital Personal Data Protection Act, 2023 (DPDP)

The DPDP Act, 2023 lays down India's comprehensive data protection regime, highly relevant in AI-driven insurance operations that rely on massive personal datasets.

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46 The Insurance Act, 1938, s. 64VB.

47 The Insurance Act, 1938, ss. 40B–40C.

48 The Insurance Act, 1938, s. 45.

49 IRDAI (Protection of Policyholders' Interests) Regulations, 2017, Gazette Notification No. IRDA/Reg/11/134/2017, issued under the Insurance Regulatory and Development Authority Act, 1999, notified on 22 June 2017. Rule 6(1),8,13,15(2), 17

50 IRDAI (Corporate Governance Guidelines for Insurers in India), 2016, Ref: IRDA/F&A/GDL/CG/100/05/2016, issued under the powers conferred by s. 14(2) of the IRDA Act, 1999, notified on 18 May 2016.

51 IRDAI Guidelines on Outsourcing of Activities by Indian Insurers, 2017, Ref: IRDA/INT/GDL/OUTSRC/059/03/2017, issued under s. 14 of the IRDA Act, 1999, notified on 31 March 2017.

52 The Insurance Act, 1938.

### 5.3.1 Key Provisions Relevant to Insurance AI:

Requires that data be collected only for a lawful purpose with consent — insurers must explain the purpose of AI data processing clearly.[53] Limits processing of sensitive personal data like health records, biometric data, and financial history, all of which are common in insurance underwriting and claims.[54]Requires data minimization, accuracy, storage limitation — principles that challenge the "data hunger" of AI models.[55] Provide the right to correction and grievance redressal, which becomes complex if an AI denies claims and the user cannot understand or contest the logic.[56]

### 5.3.2 Practical Concerns

AI often engages in profiling, which may affect coverage or pricing. Profiling without consent, or leading to discriminatory outcomes, could violate the Act. AI systems used by insurers often lack explainable mechanisms, making compliance with the data principal's right to information difficult.

### 5.4 Consumer Protection Act, 2019 (CPA)

The CPA, 2019 includes provisions related to unfair trade practices, e-commerce, and deficiency in services, all of which apply squarely to AI-powered insurance platforms.

### 5.4.1 Key Definitions:

- Unfair Trade Practice: Includes misleading advertisements and false representations—potentially relevant where an AI engine displays misleading premium quotes.[57]
- Deficiency in Service: Applies when an AI system wrongly denies a claim or applies inconsistent underwriting logic.[58]
- Product Liability: Makes sellers liable for harm caused by defective digital services, which may include flawed algorithmic decisions.[59]

### 5.4.2 AI-Specific Concerns:

Many Insurtech apps (e.g., Policy Bazaar) integrate AI for real-time quotes and claim status. These fall under e-commerce rules framed under CPA 2019.If AI rejects a claim and the consumer cannot access human support or redress, it may be seen as a deficiency in service.

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53 The Digital Personal Data Protection Act, 2023, s. 4.
54 The Digital Personal Data Protection Act, 2023, s. 7.
55 The Digital Personal Data Protection Act, 2023, s. 9.
56 The Digital Personal Data Protection Act, 2023, ss. 11-12.
57 The Consumer Protection Act, 2019, s.2(47).
58 The Consumer Protection Act, 2019, s.2(11).
59 The Consumer Protection Act, 2019, ch. VI.

Judicial Trend. In *National Insurance Co. Ltd. v. Harsolia Motors*, 2023, the NCDRC reiterated that insurers must act reasonably and transparently. Courts could apply similar reasoning if AI is involved in claim denials.

### 5.5 IRDAI's Regulatory Sandbox Framework

The IRDAI's Regulatory Sandbox Framework, 2019[60]encourages innovation in the insurance sector, including AI and machine learning experiments, under a relaxed regulatory regime. It allows insurers and Insurtech startups to test new products and technologies in a controlled environment, for limited duration and geography, without full compliance obligations.

#### 5.5.1 Key Features of the framework include the following[61]:

This framework is applicable to innovations in underwriting, policy servicing, fraud detection, and distribution. Testing is done in time-bound (6–12 months) manner and must include consumer protection safeguards. There is a provision that entities must submit detailed risk disclosures, explain ability models, and impact assessments. It allows AI tools to be tested for underwriting efficiency, fraud minimization, and claim automation. It encourages co-innovation between insurers and tech startups while ensuring consumer protection through oversight. For example: Acko General Insurance used the sandbox framework to test an AI-based health claims app. IRDAI granted a limited-use exemption, provided Acko maintained human audit of claims rejections.

## 6. Challenges and Opportunities in AI-Driven Insurance Contracts

Artificial Intelligence (AI) is transforming the insurance industry at breakneck speed, ushering in a new era of intelligent underwriting, personalized policies, and real-time claims management. AI-driven insurance contracts—often embedded in digital platforms and even smart contracts—are redefining how risk is assessed and how insurers and policyholders interact. But as with all revolutions, this one brings both dazzling opportunities and daunting challenges.

### 6.1 Opportunities

**6.1.1 Hyper-Personalization of Policies***:* AI enables insurers to offer tailored coverage based on real-time data from wearables, IoT devices, and online behaviour. A fitness tracker can influence health premiums;[62] a driving app can adjust motor insurance rates dynamically. This makes insurance more relevant, efficient, and customer-centric.

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[60] IRDAI (Regulatory Sandbox) Regulations, 2019, Ref: IRDAI/Reg/14/146/2019, issued under s. 14(2) of the Insurance Regulatory and Development Authority Act, 1999, notified on 26 July 2019.

[61] IRDAI (Regulatory Sandbox) Regulations, 2019, clause 3(f),4,5,7,9,11.

[62] A. Verma, "Liability in AI-Assisted Health Insurance Policies" 3*Health Law & Technology*59 (2023).

**6.1.2 Predictive Risk Assessment:** Machine learning algorithms analyze massive datasets to detect risk patterns better than traditional models. This allows early detection of fraud, accurate pricing of premiums, and pro-active customer risk advisories.

**6.1.3. Claims Automation and Speed:** AI-powered systems can process claims faster, reduce manual errors, and enhance customer satisfaction. Chatbots, image recognition tools, and natural language processing help streamline claims from First Notice of Loss (FNOL) to payout—sometimes within minutes.

**6.1.4. Operational Efficiency**: AI slashes administrative costs and speeds up processes through Robotic Process Automation (RPA) and virtual assistants, enabling insurers to focus more on strategic decisions and client relationships.

**6.2 Challenges**

a. *Legal Enforceability and Interpretation*: AI-generated insurance contracts—especially smart contracts—raise novel questions of enforceability under current legal frameworks. Who is liable if an algorithm malfunctions? What if a contract auto-executes erroneously? Courts still grapple with these grey areas.[63]

b. *Informed Consent and Transparency*: Many policyholders struggle to understand how AI decisions are made. When an AI denies a claim or sets a high premium, the logic is often opaque—a phenomenon known as the "black box" problem. This erodes trust and raises compliance concerns under consumer protection and data privacy laws.[64]

c. *Bias and Discrimination*: Algorithms trained on biased data can inadvertently discriminate based on race, gender, or geography, potentially violating anti-discrimination laws. Fairness in AI decision-making remains an unresolved regulatory and ethical minefield.[65]

d. *Data Security and Privacy:* AI systems rely heavily on personal data. Any breach—whether due to cyberattacks or algorithmic leaks—can expose sensitive information, making insurers vulnerable under data protection regimes like India's DPDP Act or Europe's GDPR.

Insurance contracts driven through AI present a dual-edged future that is offering unparalleled efficiency, personalization, and fraud detection, while posing serious legal and ethical challenges around fairness, transparency, and liability. A pre-emptive, adaptive regulatory framework is essential to harness innovation without compromising rights of the policyholder and upholding the fundamental principles of insurance law.

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[63] The Indian Contract Act, 1872, ss. 2(a), 10; Avtar Singh, *Law of Contract* (EBC, 2022).

[64] T. R. Jain, "Data Privacy and AI Underwriting" 7*Privacy & Data Law Journal*112 (2022).

[65] S. Rao, "Regulatory Gaps in AI-Based Policy Issuance" 9*Insurance Law Quarterly*34 (2023).

## 7. Conclusion and the Way Forward

The deployment of AI in insurance contracts signals a tectonic shift—not just in how insurance is administered but in what it fundamentally means to contract in the 21st century. From data-driven underwriting to automated claims processing and predictive risk assessment, AI has quietly become the underwriter's digital assistant, the claims officer's brain, and—perhaps controversially—the lawyer's headache.AI-infused insurance contracts—often coded into smart contracts or guided by intelligent systems—represent a significant leap in efficiency, personalization, and consumer engagement. Yet this transformation is not without its legal, ethical, and operational complexities. These are no longer hypothetical concerns. They manifest in real-world situations: a denied claim based on opaque algorithms; a premium increase determined by behavioural nudges; or worse, a smart contract that self-executes without human oversight in a context that calls for empathy and discretion.

Legally, these contracts stretch the traditional doctrines of offer, acceptance, free consent, and privity. What happens when a virtual assistant makes an offer that a consumer blindly accepts? Is there informed consent when the terms are curated in algorithmic shorthand? How do courts interpret liability in contracts executed not by humans, but by intelligent systems? Moreover, AI tools are trained on large datasets that often reflect societal biases.[66] When such tools are used in underwriting or risk profiling, they risk institutionalizing discrimination under the veneer of technological neutrality. Regulatory concerns are equally pressing—especially around data privacy, explain ability of algorithmic decisions, and cross-border data flows. It is clear, then, that while AI unlocks new avenues of innovation and efficiency, it also demands a recalibration of our legal and ethical compasses. Like a sophisticated GPS, AI can guide the insurance sector to its next destination—but without proper checks, it might just drive us off a cliff.

### 7.1 The Way Forward

To harness the benefits of AI without compromising on justice, transparency, and consumer rights, the road ahead must be paved with robust legal frameworks, institutional readiness, and ethical AI design.

#### 7.1.1 Codifying AI-Insurance Jurisprudence

India needs a clear, codified legal framework for AI in insurance. While existing laws such as the Indian Contract Act, 1872; Information Technology Act, 2000; and the new Digital Personal Data Protection Act, 2023 (DPDP) offer some guidance, they are not sufficient to address the unique issues posed by AI-enabled contracts.

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[66] P. Sharma, "Machine Learning, Bias, and Regulatory Compliance in Insurance" 4 *Insurance Regulation Review*29 (2023).

There is a pressing need for:

- Sector-specific legislation or regulatory guidelines by the IRDAI to govern AI usage in underwriting, claims management, and contract formation.
- Statutory recognition of smart contracts, with clarity on enforceability, party liability, and exceptions for human override.
- Mandatory audit trails to ensure AI decisions can be explained in court and regulatory forums.

Judicial pronouncements, too, must evolve to accommodate algorithmic decision-making within traditional legal doctrines—possibly through a techno-legal interpretation of consent, causation, and liability.

### 7.1.2. Explainability and Human Oversight

The “black box” nature of many AI systems must give way to a “glass box” model—transparent, accountable, and explainable. Insurers must be required to:

- Provide clear explanations for AI-generated decisions affecting premiums, policy rejections, and claims denial.
- Maintain human-in-the-loop systems, particularly in high-stakes or sensitive areas like health and life insurance.
- Allow consumers the right to appeal or request manual review of algorithmic decisions, preserving procedural fairness.

### 7.1.3. Ethical AI Design and Non-Discrimination

AI systems must be trained on diverse, representative datasets and regularly tested for bias, fairness, and unintended consequences. To operationalize this:

- IRDAI or a neutral AI Ethics Board could publish guidelines for responsible AI in insurance, much like SEBI's AI usage regulations in trading systems.
- Mandatory impact assessments and bias audits should be incorporated before deployment of AI tools in policy administration.

This becomes especially important in a country like India, where algorithmic discrimination can inadvertently deepen existing social inequalities.

### 7.1.4. Data Sovereignty and Privacy Compliance

The DPDP Act, 2023 emphasizes consent, purpose limitation, and data minimization. Insurance companies—especially those adopting AI—must treat data not as a goldmine, but as a trust deposit from the consumer. AI systems must be privacy-compliant by design:

- Implementing anonymization, pseudonymization, and encryption practices rigorously.

- Ensuring data localization, particularly for sensitive health and financial data.
- Offering users granular consent dashboards to control how their data is collected, processed, and shared.

### 7.1.5. Consumer Education and Digital Literacy

For AI to truly democratize insurance, it must be comprehensible to the common policyholder. Insurance companies and regulators must:

- Provide plain language summaries of AI-driven contract terms.
- Launch awareness campaigns on how AI is used in policy pricing and claims evaluation.
- Develop mobile tools that allow users to interact with AI in a transparent and intuitive way—particularly in Tier II and Tier III cities.

As AI continues to script the future of insurance, the challenge is to ensure that algorithms do not replace accountability, and efficiency does not come at the cost of equity. The goal is not to resist AI, but to regulate it wisely, design it ethically, and deploy it humanely. India stands at a unique inflection point—armed with an evolving tech ecosystem, an aspirational consumer base, and a proactive regulatory climate. If we get this right, we could create an AI-powered insurance model that's not just smart, but also just.

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# Algorithmic Influence:

# Exploring AI's Impact on Consumer Perception and Behaviour in Adolescents and Young Adults

***Dr. Abha Sethi**** & ***Dr. Supreet Gill*****

## Abstract

This research paper examines the profound impact of Artificial Intelligence (AI) on consumer perception and behavior in the modern marketplace. As AI technologies continue to advance rapidly, they are reshaping how consumers interact with products, brands, and purchasing experiences. The study analyzes the multifaceted relationship between AI and consumer behavior, exploring factors such as personality, attitude, engagement, decision-making, and trust. It highlights the transformative role of AI-driven systems like chatbots and recommendation algorithms in personalizing consumer experiences. The paper also addresses critical concerns surrounding algorithmic bias and its potential to perpetuate societal stereotypes, emphasizing the need for ethical AI development. Furthermore, it investigates how AI influences broader consumer trends through targeted advertising and social media, potentially creating filter bubbles and echo chambers. The research considers the implications of AI integration in retail, such as cashier-less stores and virtual assistants, on consumer convenience and data collection. By critically assessing these developments, the paper aims to contribute to the ongoing discourse on AI's impact on consumerism, offering insights into the opportunities and challenges for organizations, individuals, and society at large.

**Keywords**: *consumer perception, social media, stereotypes, echo chambers, consumerism*

***"The customer's perception is your reality." - Kate Zabriskie***

## 1. Introduction

Kate Zabriskie's quote highlights a crucial aspect of business: the perception of your product or service by customers is more important than its objective reality[1]. This perception influences their experience, loyalty, and ultimately, your success. Therefore, understanding and managing customer perceptions is vital for thriving in any market.

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1 Kate Zabriskie, *Business Communication Insights*, widely cited in management literature.

In today's era of rapidly advancing technology, Artificial Intelligence (AI) has become a transformative force, significantly impacting commerce and consumption. AI affects how consumers perceive products, brands, and their overall purchasing experience[2]. This article delves into the various ways AI influences consumer behavior and perception, demonstrating how AI technologies shape consumer preferences and decision-making processes.

Traditionally, consumer behavior research focused on understanding the cognitive and emotional factors driving purchases[3]. However, the rise of AI-driven systems, such as chatbots and recommendation algorithms, has introduced new complexities. Jain et al. (2024) reported that the relationship between artificial intelligence and consumer behavior has been influenced by many factors such as personality, attitude, engagement, decision-making, and trust[4]. These technologies can analyze vast amounts of data, provide personalized recommendations, and even mimic human interactions, thereby significantly affecting how consumers interact with and perceive products and brands.

Algorithmic bias, which suggests that AI systems might unintentionally amplify existing societal biases, is a crucial topic[5]. As AI learns from historical data, it risks perpetuating stereotypes or marginalizing certain demographic groups, potentially impacting consumer perceptions negatively. Understanding the implications of algorithmic bias is essential for policymakers and businesses, highlighting the need for ethical AI development and deployment[6].

Moreover, AI's impact on consumer perception extends beyond individual preferences to broader societal trends. Targeted advertising and AI-driven social media have revolutionized how consumers discover, evaluate, and engage with brands and products[7]. Through personalized content creation and micro-targeting, AI can create filter bubbles and echo chambers, potentially influencing consumer behavior in ways that may not always align with their best interests[8].

Additionally, AI integration in retail, such as cashier-less stores and virtual assistants,

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2 T. Davenport, & Ronanki, R. *Artificial Intelligence for the Real World*, Harvard Business Review, (2018).

3 M. Solomon, *Consumer Behavior: Buying, Having, and Being*, Pearson, (2017).

4 R. Jain, et al. *Artificial Intelligence and Consumer Behavior: Trust, Personality, and Decision-Making*, (2024).

5 S. U. Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism*, NYU Press, (2018).

6 L. Floridi, et al. *AI 4 People—An Ethical Framework for a Good AI Society*. Minds and Machines, (2018).

7 A. Kaplan, & Haenlein, M. *Siri, Siri, in my Hand: Who's the Fairest in the Land?*, Business Horizons, (2019).

8 E. Pariser, *The Filter Bubble: What the Internet Is Hiding from You*, Penguin Press, (2011).

has redefined efficiency and convenience in shopping[9]. These advancements not only streamline the purchasing process but also collect extensive data on consumer preferences and behaviors, enabling retailers to refine their product offerings and marketing strategies. Rohden and Zeferino (2023) reported that AI-driven recommendation agents also impact consumer perceptions, particularly in relation to consumer trust and data privacy risks[10].

Given these advancements, it's essential to critically assess how AI affects consumer perception and behavior. The impact of AI technologies on consumer preferences and decision-making enables organizations to optimize their use to enhance customer experiences while addressing privacy and algorithmic bias issues[11]. This research paper aims to contribute to the ongoing discussion about AI's impact on consumerism by analyzing the opportunities and challenges it presents for organizations, individuals, and the wider community[12].

## 2. Consumer Perception

Consumer perception helps us to understand how individuals interpret information about products, brands, services, and experiences in the marketplace. It involves how consumers assess the attributes, benefits, and drawbacks associated with a particular product or service. Various factors influence consumer perception, including social influences, marketing communications, personal experiences, cultural background, and the context in which products or services are encountered. Since perception is subjective, the same product or brand can be viewed differently by different people based on their unique preferences, biases, and perspectives. Additionally, as individuals acquire new knowledge or revisit past experiences, consumer perception is dynamic and can change over time.[13]

A comprehensive conception of consumer perception is imperative for enterprises due to its direct influence on consumer behaviour, encompassing brand allegiance, purchasing choices, and word-of-mouth endorsements. Olan et al (2021) reported that consumer behaviour has a favourable effect on consumer attitude and can enhance customer interactions and satisfaction, provided that the technology is used thoughtfully and ethically.[14] Organizations can enhance customer experiences, product development initiatives, and marketing strategies by acquiring knowledge regarding consumer perceptions of their products and services.

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9 D. Grewal, Roggeveen, A. L., & Nordfält, J., *The Future of Retailing*. Journal of Retailing, (2017).

10 L. Rohden & A. Zeferino, *AI Recommendation Agents and Consumer Trust*, (2023).

11 E. Brynjolfsson, & A. McAfee, *The Second Machine Age*. W.W. Norton, (2014).

12 V. Shankar, *How Artificial Intelligence (AI) is Reshaping Business*. Journal of the Academy of Marketing Science, (2018).

13 Leonard G Schiffman and Leslie L Kanuk, *Consumer Behavior* (10th edn, Pearson 2010).

14 F Olan, 'Consumer Behaviour and Technology Ethics', *Journal of Business Research,* (2021).

Perception of the consumer can be affected by several variables, including aspects of the product that consumers assess such as its design, features, functionality, and perceived quality.[15] Consumers develop their perceptions of brands through the lens of their reputation, values, identity, and affiliations.[16] Marketing communications encompass various strategies such as branding, packaging, and advertising, which collectively mould consumer perceptions through their impact on the presentation and positioning of products within the marketplace.[17]

Consumer opinions can be significantly impacted by word-of-mouth and online reviews, as well as recommendations from acquaintances, relatives, and fellow consumers.[18]These sources of information can offer social validation and provide insights into the quality and performance of the product. Personal experiences, social, and cultural influences indeed play a significant role in how consumers perceive and interact with brands and products.

3. **Personal experiences**:

- **Prior encounters**: Positive or negative past experiences with a brand can heavily influence future purchasing decisions.
- **Customer service interactions**: Quality of service can enhance or diminish a consumer's perception of a brand.
- **Post-purchase experiences**: Satisfaction or dissatisfaction after buying a product can affect repeat purchases and brand loyalty.

4. **Social and cultural influences**:

- **Cultural norms and values**: These can dictate what is considered acceptable or desirable, influencing consumer choices.
- **Trends**: Social trends can sway consumer preferences, often driven by media, influencers, and peer groups.

Businesses can refine their strategies to align more closely with consumer needs, lead ing to enhanced customer satisfaction and better market performance. This holistic ap proach ensures that organizations remain competitive while fostering stronger consu mer relationships.

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[15] Michael R Solomon, *Consumer Behavior: Buying, Having, and Being* (12th edn, Pearson 2017).

[16] Kevin Lane Keller, *Strategic Brand Management* (4th edn, Pearson 2013).

[17] Judith A Chevalier and Dina Mayzlin, 'The Effect of Word of Mouth on Sales: Online Book Reviews' (2006) *Journal of Marketing Research* 345.

[18] Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions, and Organizations Across Nations* (2nd edn, Sage 2001).

**Consumer Behaviour**

Consumer behaviour is undeniably a complex and Intricate sector. It involves: **Searching** (how consumers look for information about products or services), **Purchasing** (decision-making process leading to the actual buying of goods or services), **Utilizing** (Consumers use the products or services they purchase), **Assessing** (evaluating the satisfaction or dissatisfaction with the product or service), **Discarding (**disposing of products once they are no longer needed or wanted).These activities are shaped by multiple factors, such as psychological, social, cultural, and economic influences. By comprehending these behaviors, businesses can customize their marketing strategies to more effectively address consumer needs and preferences.

Consumer behaviour is shaped by adiverse array of internal and external determinants. Internally, individual characteristics such as perceptions, attitudes, motivations, beliefs, values, personality traits, and lifestyle preferences play a significant role. These psychological elements shape how consumers perceive products and make decisions. Externally, social factors like family, friends, peers, reference groups, social networks, and cultural norms impact purchasing decisions through socialization processes and adherence to group norms. Cultural factors, including subculture, culture, and cultural values, also shape preferences and consumption patterns, influenced by language, religion, traditions, and cultural symbols. Economic variables such as income, price, affordability, purchasing power, and overall economic conditions affect consumers' ability and willingness to purchase products. Personal factors, including demographics like age, gender, ethnicity, education, occupation, and marital status, influence individual needs and lifestyle choices. Lastly, situational factors such as time constraints, location, occasion, urgency, and the physical environment can affect consumer behavior and decision-making processes. Understanding these diverse influences helps business to customize their strategies to meet consumer needs and improve market performance by providing valuable insights into what consumers want, prefer, and motivated. This knowledge allows companies to create more engaging and satisfying customer experiences by developing effective marketing strategies and customize their products and services to align with consumer needs.

Artificial Intelligence (AI) plays a significant role in this process. Businesses are increasingly adopting various AI techniques to influence consumer behaviour and enhance their ability to sell products and services.[19]Some of these AI techniques help in analysing vast amounts of data to predict future behaviours and make strategies by personalising marketing efforts with the help of machine learning, deep learning, and real-time sentiment analysis.[20]This has been observed frequently on social media

[19] Thomas H Davenport and Rajeev Ronanki, 'Artificial Intelligence for the Real World' (2018) 96(1) *Harvard Business Review* 108.

[20] Ian Goodfellow, Yoshua Bengio and Aaron Courville, *Deep Learning* (MIT Press 2016).

platforms, where AI-driven tools monitor consumer interactions and preferences.[21] By integrating these AI-driven insights, businesses can stay ahead of market trends and competitive forces, ultimately creating more personalised and satisfying customer experiences.[22]

## 5. How AI Influences Consumer Behaviour

Artificial Intelligence (AI) is revolutionising consumer behaviour by significantly altering how people discover, evaluate, and purchase products and services. One major impact is the **customisation of products**, where AI-powered recommendation systems analyse browsing history, past purchases, and demographic information of the customer to provide personalised product suggestions.[23]This personalisation enhances product offerings, increases the likelihood of conversions, and fosters customer loyalty.

Additionally, AI's **predictive analytics** use historical data and behavioural patterns to forecast future consumer behaviour.[24]By anticipating consumer needs and preferences, businesses can adjust their marketing strategies, inventory levels, and product assortments to better align with market demand, leading to improved resource allocation and higher customer satisfaction.

AI-powered **chatbots and virtual assistants** allow organisations to offer scalable, personalised customer service and support.[25] Customer experience is shaped by analysing customer journeys, covering all aspects of a company's offerings—from service and advertising to packaging and product reliability. By adding a personal touch through AI, a positive customer experience can be developed.

Technologies such as **augmented reality (AR)** and **virtual reality (VR)** are becoming popular in user experiments, while chatbots facilitate process automation, quick responses, service adoption, and product recommendations.[26] Many companies have adopted AI assistants to deal with customer inquiries, recommend products, and assist with transactions in real time, enhancing the overall shopping experience and reducing friction throughout the customer journey. This has saved firms both money and time, reducing the need for human customer care executives.

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[21] Shintaro Okazaki, Charles R Taylor and Enrique P Bigné, 'Social Media Marketing: Theory and Practice' (2019) 53(4) *Journal of Advertising* 363.

[22] Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age*

[23] Thomas H Davenport and Rajeev Ronanki, 'Artificial Intelligence for the Real World' (2018) 96(1) *Harvard Business Review* 108.

[24] Erik Brynjolfsson and Andrew McAfee, *The Second Machine Age: Work, Progress, and Prosperity in a Time of Brilliant Technologies* (WW Norton 2014).

[25] A Parasuraman and others, 'Service Automation through AI: Customer Experience Implications' (2019) *Journal of Service Research*.

[26] Yogesh K Dwivedi and others, 'Artificial Intelligence (AI): Multidisciplinary Perspectives on Emerging Challenges, Opportunities, and Agenda for Research, Practice and Policy' (2019) 48(1) *International Journal of Information Management* 49.

AI algorithms also enable **dynamic pricing** by analysing market conditions, competitor pricing, and consumer demand.[27]Airlines, for example, have adopted dynamic pricing models where prices change automatically with demand fluctuations. This allows businesses to adjust prices in real time, maximising revenue and profitability while staying competitive. However, it has also reduced the human emotional touch in customer experience.

Moreover, **sentiment analysis** uses AI-driven tools to monitor online channels like social media and review platforms to gauge consumer sentiment and identify patterns, opinions, and feedback about specific brands and products.[28] Organisations can gain key insights into consumer attitudes, preferences, and thoughts, enabling them to customise products and marketing communications.

AI-powered **visual search and image recognition** technologies further increase product discovery by allowing users to locate products seamlessly through image uploads or photographs.[29] This improves product discoverability, fosters customer engagement, and optimises the purchasing experience across channels and devices.

The influence of AI on consumer behaviour is significant, enabling organisations to offer more personalised, efficient, and engaging experiences at every stage of the customer journey. By leveraging AI-powered technologies and insights, businesses can gain a competitive advantage, enhance customer satisfaction, and strengthen long-term loyalty and advocacy. The incorporation of AI within the retail sector has transformed the customer experience, offering both opportunities and challenges. Moore et al (2022) reported that AI-driven digital assistants have significantly enhanced the shopping journey; however, they have also raised concerns regarding their psychological effects on consumers, including stress and confusion.[30]

As the use of AI in retail continues to grow, it is imperative to optimise operations while addressing potential risks and uncertainties associated with rapid AI implementation. Dwivedi et al (2019) emphasised that, in addition to practical challenges, critical ethical and governance issues must be taken into account.[31] There is an urgent necessity for comprehensive policy frameworks and ethical guidelines. Furthermore, the potential for job displacement due to heightened automation has sparked discussions about the future workforce and the interplay between humans and AI in the retail sector.

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[27] Robert Phillips, *Pricing and Revenue Optimization* (Stanford University Press 2005).

[28] Bing Liu, *Sentiment Analysis and Opinion Mining* (Morgan & Claypool 2012).

[29] Robert Moore and others, 'AI-Driven Digital Assistants in Retail: Opportunities and Psychological Challenges' (2022) *Journal of Retailing and Consumer Services*.

[30] Yogesh K Dwivedi and others (n 4).

[31] Ramesh Jain, 'Visual Information Retrieval: AI and Consumer Engagement' (2019) *ACM Transactions on Multimedia Computing*.

## 6. Empirical Study: A Study of Consumer Perception

It is evident from review of literature on the role of AI in consumer experience, that artificial intelligence is affecting the society in positive as well as negative manner. This research is based on the following RESEARCH QUESTIONS:

Q1. How does AI influence consumer purchase decisions?

Q2. Are consumers aware of influence AI on their Purchasing experience?

Q3. How do consumers perceive AI-driven recommendations and suggestions?

Q4. What are the ethical considerations of using AI in customer experience management?

Q5. What are the potential biases in AI algorithms, and how do they affect consumer behavior?

### 6.1 Need and significance of Study

Need and significance of study This study has emphasised on understanding how technology influences purchasing decisions and overall customer experience. Here are some key points:

1. To identify the level of awareness among consumers of AI
2. To understand the perception of consumers of AI.
3. To understand the impact of AI on consumers.

### 6.2 Research Methodology

In order to identify the level of awareness among different sections of the society, a questionnaire was developed. This questionnaire was divided into two:

(i) Section I deals with the understanding the level of awareness among consumers of Artificial Intelligence.

(ii) Section II deals with the perception of consumers/users of AI in their daily life.

### Data Collection

The data was collected through questionnaire and administered to consumers of various age group and different demographic profile. It was shared with more than 300 consumers and there was response was 205 consumers. Out of 205 consumers, 186 were valid responses and rest were invalid.

### Analysis

**SECTION I**: This section deals with the Awareness among the consumers in different age group.

**(i) Demographic Profile:** Three age groups were created i.e. 14 years to 17 years, 18

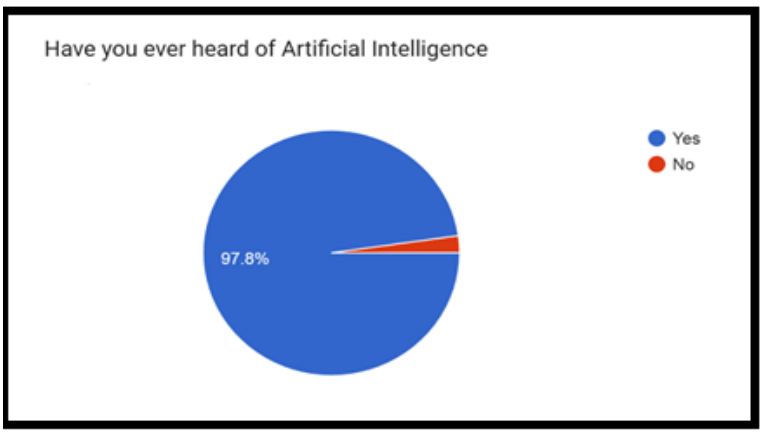
years to 25 years and 25 years and above. It was analysed that majority of the respondents belong to 18 years to 25 years age group. The table shows summary of demographic profile of the respondents and the number of respondents in each group.

**TABLE 1**

| **Demographic Profile (Respondents)** | | | |
|---|---|---|---|
| **Age** | **14yrs-17yrs (65)** | **18 yrs-25yrs (40)** | **25yrs and above (81)** |
| Gender | Male (91) | Female (95) | Others (0) |
| Education | Below UG (80) | UG (58) | Above UG (48) |
| Occupation | Student (97) | Self Employed (25) | Job (64) |

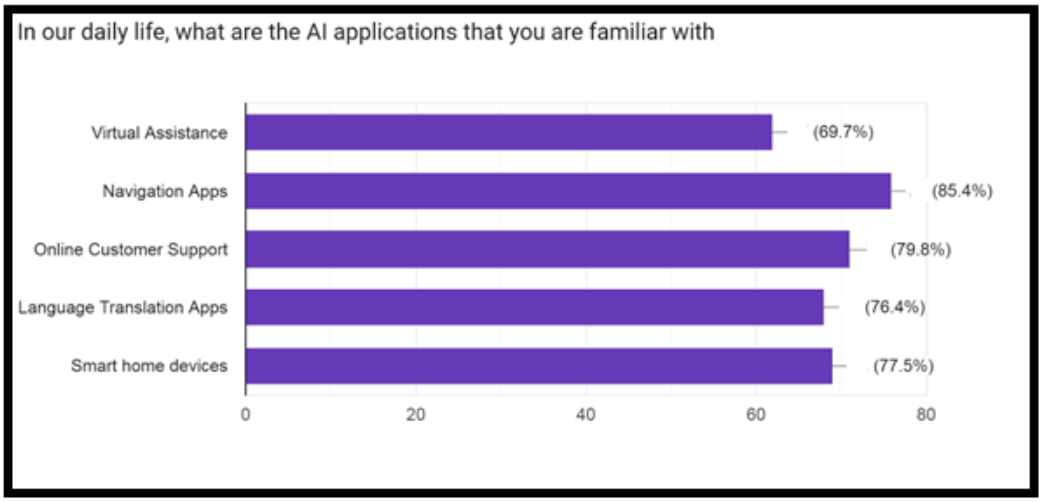
**(ii) Awareness (Familiarity):** When the respondents were asked that if they were aware of the term Artificial Intelligence. Then majority of the respondents i.e. 97.8% have confirmed that they have heard of the term AI. Figure I show that the respondents are well aware of this term.

**FIGURE 1**



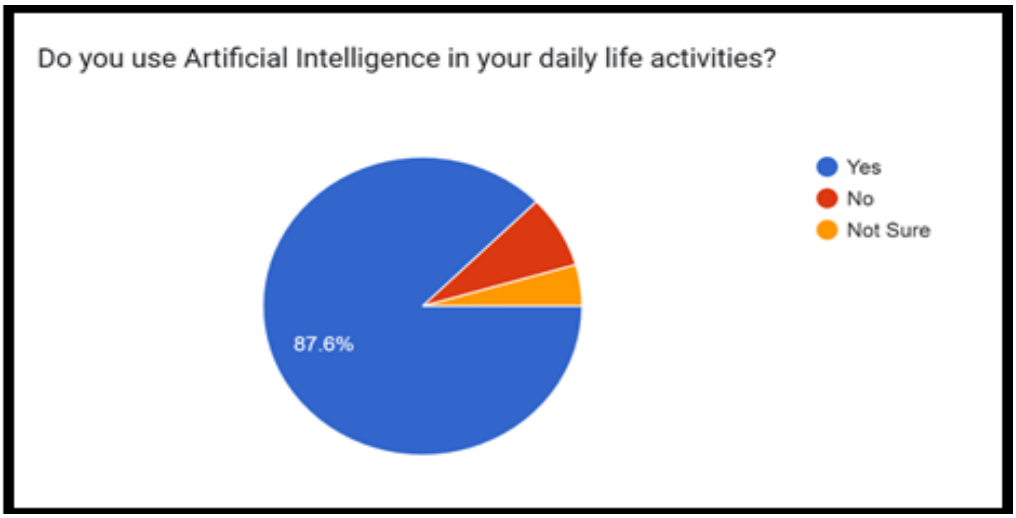

The next figure highlights the respondent familiarity with the AI in their daily life. This question had multiple check boxes where respondents could choose the more than option. Figure 2 show that respondents are using AI in Navigation apps (85.4%) followed by online Customer Support (79.8%) giving least percentage to virtual assistance.

**FIGURE 2**



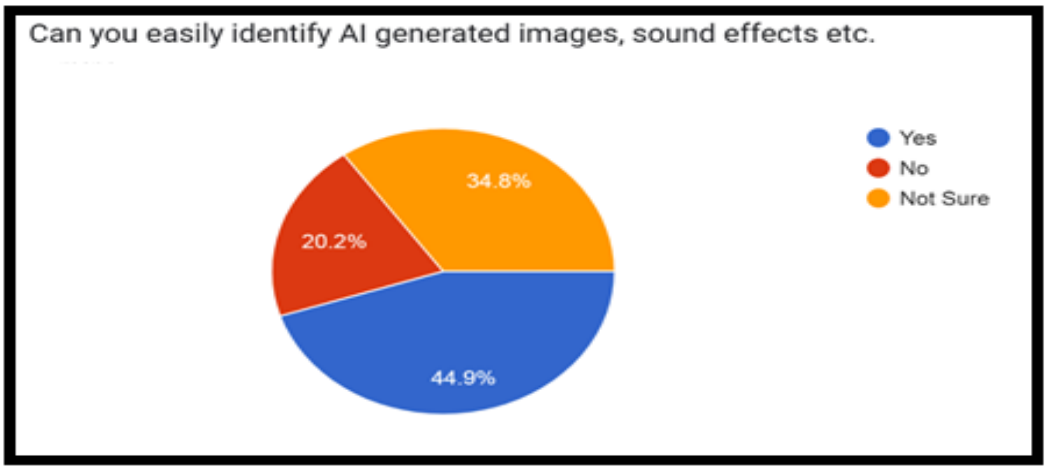

**Awareness (Usage):** Figure 3 below indicates the use of AI in daily life of respondents, and it was found that majority (87.6%) of the respondents use AI in their daily life in one way or the other.

**FIGURE 3**



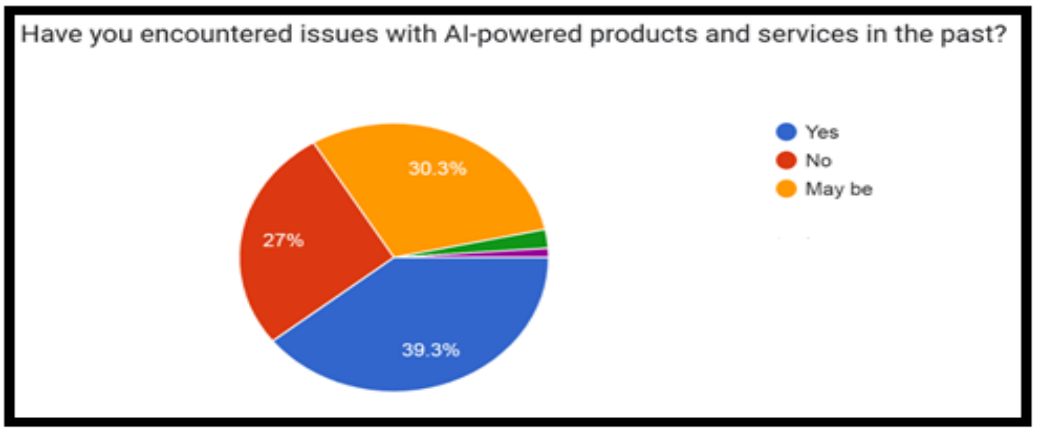

Awareness (Identification): When the respondents were asked if they could identify AI generated images, sounds etc. There was a mixed response i.e. 34.8% are not sure whereas 20.2% refused to recognise whereas 44.9% said yes. It can be stated that respondents are aware and familiar to the concept of AI but they cannot easily identify AI generated effects.

**FIGURE** 4




Awareness (Usage): 39.3% of the respondents have agreed that they have encountered issues while using AI powered products and services but 27% have not faced any problem whereas 30.3% are not sure.

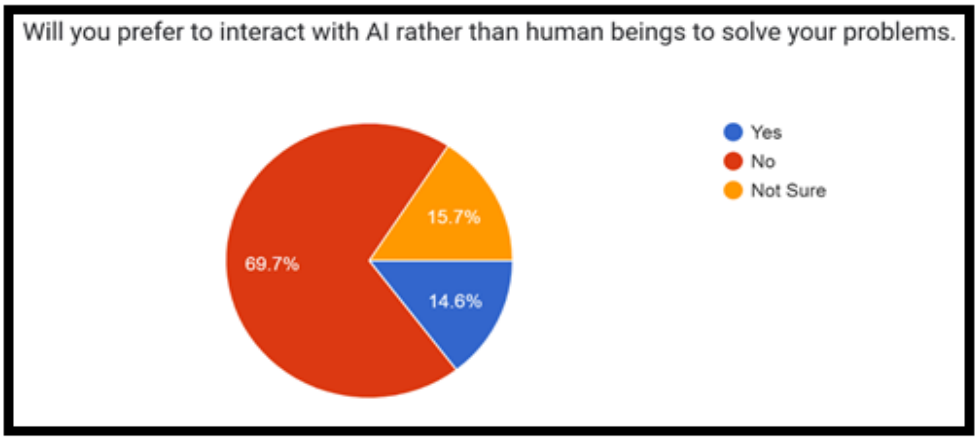
**FIGURE 5**




**SECTION II:** This section deals with the perception of respondents towards AI powered products and services.

**Perception (Trust):** The figure below analyse the trust of respondents on AI. 69.7% do not trust AI in solving the problem. It can be analysed that people still believe humans rather machine on solving their issues.

**FIGURE 6**




Further the perception was studied on the basis of some statements asked from the respondents. The table below shows the summary of the response received from various respondents. Only majority responses have been shown on the table below. It can be analysed from the table that the respondents are either confused or neutral but they believe that there is no law related to deal with the issues related to AI till date.

**TABLE 2**

| Statements to study Perception | Response(Majority) |
|---|---|
| AI poses threat to Job security | Agree 66.3% |
| AI has potential to solve Global Issues | Neutral 48.3% |
| AI can help people feel better | Mix response(31.5% Neutral and 31.5% Agree) |
| AI can help address societal issues | Disagree (32.6%) |
| AI can violate rights by copying images and sounds | Agree (43.8%) |
| Privacy of Data is at stake | Strongly disagree (46.1%) |
| AI perpetuates biasness and discrimination | Neutral (43.6%) |
| AI can be used for malicious purpose | Strongly Agree (40.4%) and Agree (44.9%) |
| AI increases efficiency and accuracy | Agree (58.4%) |

| | |
|---|---|
| AI saves cost and time | Agree (58.4%) |
| AI is end of human kind | Disagree (30.3%)and Neutral (23.6%) |
| AI is an overhyped phenomenon | Agree (36%) and Neutral (27%) |
| Enough laws to manage problems arising out of AI | Strongly Disagree(75.3%) |

Based on review of literature and empirical study it was observed that AI has become popular, and consumers are using it in daily life, but it has led to various issues related to data protection, misuse of data by companies. There have been various cases of fraud where the consumers were cheated of their money due to misuse of data by hackers. Not only this, but the marketing companies are also misusing data to understand the consumer and strategize their marketing to tap consumers. It is very evident that the speed of cybercrimes is way more than the regulations to deal with these issues. Moreover, when consumers also believe that there are not enough laws to manage problems arising out of AI. Different countries have different stance on AI. Since its release in November, ChatGPT, created by the U.S. technology company OpenAI, has attracted worldwide interest due to its capability to swiftly generate text that closely resembles human writing. The influence of AI applications extends far beyond mere text generation; they actively shape the digital landscape by determining the information individuals are exposed to online. This is achieved through sophisticated algorithms that predict and analyze which content will capture a person's attention.

## 7. Legal Aspects of AI

AI technologies are increasingly utilized for a range of purposes, including law enforcement, where they capture and analyze facial data to enhance security measures and identify individuals. In the advertising domain, these tools personalize marketing efforts by tailoring ads to the interests and behaviors of consumers. In the medical field, AI's role is especially transformative, as it aids in the early diagnosis and treatment of conditions such as cancer, improving patient outcomes through data-driven insights. AI's influence permeates numerous aspects of daily life, from interactions on digital platforms to critical applications in healthcare and security, underscoring its significance in modern society. With this huge capability of AI, it has raised concern about privacy of consumers/users of applications due to limited awareness and capability of consumers. This has led to various scams/frauds/ unethical hacking of data etc. making the consumers vulnerable to large extent.

The above empirical analysis made it very clear that though consumers are aware of AI and its uses but they feel insecure as there are no regulations or ACT to deal with the issues arising from the use of AI without complete knowledge. On one hand AI can lead to huge growth in economy but on the other hand we do not have sufficient laws to deal with the problems arising out of use of AI.This has led to need of

regulatory measures all over the world. The proactive approach of the Italian government of temporary suspension of OpenAI's ChatGPT, predicated on alleged violations of the EU's General Data Protection Regulation (GDPR), exemplifies regulatory approach to mitigating potential risks associated with AI deployment.

In contrast, while some legislative apprehension regarding AI has been voiced in the United States, comprehensive regulatory frameworks remain comparatively underdeveloped. India, however, presents a divergent perspective, characterizing AI as a catalyst for economic growth and digital innovation within its national strategy. The Indian government actively leverages AI to enhance citizen services via digital platforms, underscoring a fundamentally different approach to AI governance and implementation.

Some of the case studies highlight the legal cases against the companies who were misusing AI to enhance profitability.

A. **Case Study 1**: *Federal Trade Commission* v. *DoNotPay [File No. 232 3042]*[32]

The FTC initiated legal proceedings against *DoNotPay*, an AI-powered legal services company, alleging misrepresentation of its capabilities. The complaint alleged that *DoNotPay* falsely advertised its ability to provide legal services equivalent to those of human attorneys, including representing clients in legal proceedings without requiring legal representation, and generating legally valid documents, without possessing the necessary legal expertise or employing licensed attorneys. Further, the complaint challenged the efficacy of a service purportedly identifying legal infractions on small business websites based solely on email addresses, despite claiming potential cost avoidance of significant financial penalties. The matter was resolved via a consent order mandating financial restitution and notification of affected consumers regarding service limitations.

B. **Case Study 2:** *Federal Trade Commission* v. *Ascend Ecom (et al.);* FTC Matter/File Number 242 3023[33]

The FTC filed suit against *Ascend Ecom* and its affiliated entities, alleging a fraudulent business opportunity scheme deceptively marketed as leveraging AI to facilitate substantial passive income generation through online storefront establishment. The complaint alleges misleading representations concerning profitability, proprietary AI technology, and guaranteed buyback provisions, coupled with suppression of negative consumer feedback. The court-ordered receivership of

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[32] *In re Do Not Pay, Inc.*, No. C-4812, 2025 FTC LEXIS ___ (F.T.C. Feb. 11, 2025) (consent order), *available at* https://www.ftc.gov/system/files/ftc_gov/pdf/ 2323042_donotpay_ decision_and_order_0.pdf

[33] *Federal Trade Commission v. Ascend Ecom LLC*, No. 2:24-cv-07660 (C.D. Cal. 2025) (consent order), complaint *available at* https://www.ftc.gov/system/files/ftc_gov/pdf /2423023ascendecomcomplaint.pdf (File No. 242 3023).

the operation underscores the severity of the alleged consumer harm.

C. **Case Study 3:** *Federal Trade Commission* v. *Ecommerce Empire Builders (EEB);* Civil Action Number: 2:24-cv-04949[34]

Similar to the Ascend Ecom case, the FTC's action against Ecommerce Empire Builders (EEB) alleges deceptive marketing practices centered on AI-powered ecommerce solutions promising high-profit margins. The complaint asserts that EEB's CEO misappropriated consumer funds and failed to deliver on its promised earnings, further highlighting the misrepresentation of AI capabilities to justify significant consumer expenditure. A court-ordered receivership is currently in effect.

D. **Case Study 4:** *Janecyk* v. *International Business Machines* and *Mutnick* v. *Clearview AI* [35]

The cases of (both filed January 22, 2020, in the Northern District of Illinois) exemplify the application of the Illinois Biometric Information Privacy Act (BIPA) to AI datasets. Janecyk alleges that IBM's 'Diversity in Faces' dataset, compiled from publicly available images, violated BIPA by obtaining and utilizing Illinois residents' biometric identifiers without their consent. Similarly, Mutnick challenges Clearview AI's massive facial recognition database, arguing that the collection and use of millions of Americans' biometric data, including those from Illinois residents, without consent constitutes a BIPA violation. Both cases seek substantial monetary damages per violation and, in Mutnick, injunctive relief demanding cessation of data use and enhanced security measures.

E. **Case Study 5:** *Burke* v. *Clearview AI*, filed on February 27, 2020, in the Southern District of California.[36]

This case expands on the claims against Clearview AI, adding a new dimension to the legal challenges faced by the company. Unlike the *Mutnick* case, which primarily focused on BIPA violations, Burke v. Clearview AI introduces allegations under the California Consumer Privacy Act (CCPA) and leverages California's Unfair Competition Law (UCL). Specifically, the plaintiffs have utilized the UCL to circumvent the CCPA's lack of a private right of action for notification failures. The complaint alleges that Clearview AI violated the CCPA by failing to provide proper notification at the point of data collection regarding the collection and use of biometric data.

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[34] *Federal Trade Commission v. Empire Holdings Grp. LLC*, No. 2:24-cv-04949 (E.D. Pa. 2025) (stipulated permanent injunction).

[35] *Janecyk v. Int'l Bus. Machines Corp.*, No. 1:20-cv-00577 (N.D. Ill.) (BIPA class action complaint).

[36] *Burke v. Clearview AI, Inc.*, No. 3:20-cv-00370-BAS-MSB (S.D. Cal. Feb. 27, 2020).

### 7.1 Analysis of above cases

- These cases highlight the **complexities of privacy law** across different jurisdictions and the creative legal strategies employed to address perceived gaps in legislation. It also underscores the evolving nature of privacy regulations and the challenges faced by both consumers and companies in navigating this complex legal landscape. The biometric data cases (*Janecyk*v. *IBM*, *Mutnick* v. *Clearview AI*, and *Burke* v. *Clearview AI*), paints a comprehensive picture of the **multifaceted challenges in data privacy law**. These cases collectively illustrate the diverse ways in which personal data - from facial features to medical histories - can be collected, accessed, and potentially misused by technology companies
- These cases collectively demonstrate **the increasing scrutiny of corporate practices** related to biometric data collection and use, as well as the growing public concern over privacy rights in the digital age. As these cases progress, they are likely to have significant implications for **how companies handle biometric data** across different states, potentially influencing future legislation and corporate policies on a national scale. The outcomes may also provide important precedents for interpreting and applying recently enacted privacy laws like the CCPA in the context of emerging technologies such as facial recognition.
- These cases collectively underscore the increasing legal scrutiny surrounding the use of personal data in AI development. The diverse legal frameworks invoked – BIPA, CCPA, HIPAA, and state consumer protection laws – highlight **the complexity of the regulatory landscape** and the potential for substantial liability for companies failing to adequately address data privacy and security concerns in their AI projects. The significant monetary damages sought and the requests for injunctive relief further emphasize the high stakes involved in navigating this evolving legal terrain.

All these cases are classic example of misuse of data in the hands of corporates without consent of consumers. These companies are collecting and utilization data for the purpose of training machine-learning algorithms and artificial intelligence models to earn more and more profits. It is essential on the part of companies to take permission of consumers before using their biometrics. They should also document the intellectual property rights and privacy consents that are related with each data collection. This will help limit the risks they face. As these various cases progress through the legal system, they are likely to have far-reaching implications for data privacy regulations, corporate practices in data handling, and the future of AI and big data applications in sensitive sectors like healthcare. The outcomes may influence not only how companies approach data privacy but also how legislators shape future privacy laws to address the rapidly evolving technological landscape.

## 8. Legal Framework across the Globe

### A. European Union

Several significant legal frameworks govern the processing of personal data in the context of AI-powered legal services, reflecting a global trend toward strengthening data privacy protections. These regulations provide individuals with greater control over their personal information and impose obligations on organizations utilizing AI in this sector. The General Data Protection Regulation (GDPR), applicable across the European Union, establishes a comprehensive framework for the processing of personal data, emphasizing principles of lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality, and accountability. It grants individuals extensive rights, including the right of access, rectification, erasure ("right to be forgotten"), restriction of processing, data portability, and the right to object to processing. The GDPR's extraterritorial reach extends its application to organizations processing EU residents' data, regardless of their location. While not specifically focused on data privacy in the same manner as the aforementioned regulations, the EU Artificial Intelligence Act represents a landmark effort to address the broader societal implications of AI. Its focus on risk assessment and mitigation, along with establishing requirements for high-risk AI systems, contributes to a safer and more responsible deployment of AI, including within the legal sector, by promoting transparency and accountability in AI development and deployment. The EU AI Act's influence is expected to extend beyond Europe's borders, shaping global standards for AI governance. The Act's emphasis on reducing negative impacts and promoting beneficial societal effects represents a significant departure from purely data-centric regulatory approaches.

### B. United States of America

In the U.S., the California Consumer Privacy Act (CCPA) and its successor, the California Privacy Rights Act (CPRA), provide California residents with similar rights to access, correct, and delete their personal data, as well as the right to opt out of the sale or sharing of their data. The CPRA expands upon the CCPA, strengthening consumer rights and introducing a new enforcement agency, the California Privacy Protection Agency. Similar consumer protection laws, such as the Consumer Data Protection Act (CDPA) and the Colorado Privacy Act (CPA), are emerging in other U.S. states, mirroring the CCPA's core principles and providing individuals with increased control over their data. These state-level regulations are creating a patchwork of data privacy laws across the United States, demonstrating a trend toward greater alignment with the comprehensive approach adopted by the GDPR.

### C. India

In India, Data Protection Act, formally known as the Digital Personal Data Protection Act, 2023 (DPDPA), was passed by the Indian Parliament in August 2023 and received presidential assent on August 11, 2023. This landmark legislation aims to

protect the digital personal data of individuals in India and regulate its processing. In the context of consumer data leaks, the DPDPA introduces several crucial provisions and measures to safeguard personal information. Under the DPDPA, personal data is broadly defined as any information related to an identified or identifiable individual, encompassing various types of consumer data. Organizations collecting and processing personal data, termed as "Data Fiduciaries," are mandated to implement reasonable security safeguards to prevent data breaches and unauthorized access. The Act also emphasizes the importance of obtaining explicit, informed consent from individuals (Data Principals) before collecting or processing their personal data, with the provision that this consent can be withdrawn.

In the event of a data breach, the DPDPA requires Data Fiduciaries to promptly notify both the Data Protection Board of India (the regulatory body established under the Act) and the affected individuals. This timely notification is crucial for mitigating potential damages and allowing individuals to take necessary precautions. The Act also grants individuals significant rights over their personal data, including the right to access, correct inaccuracies, and request erasure under certain circumstances.

While the DPDPA does not mandate strict data localization, it empowers the government to specify countries or territories to which personal data may be transferred. This provision allows for some flexibility in international data flows while maintaining control over data sovereignty. The Act also prescribes substantial financial penalties for non-compliance, with fines that can reach up to ₹250 crore (approximately $30 million) for severe breaches, serving as a strong deterrent against negligent data handling practices. The establishment of a Data Protection Board under the DPDPA is a key feature, providing oversight for compliance and addressing grievances related to personal data protection. The Act also emphasizes purpose limitation and data minimization principles, ensuring that personal data is collected only for specified, clear, and lawful purposes and retained only for as long as necessary. In the context of consumer data leaks, the DPDPA places a strong emphasis on preventive measures. Organizations are required to implement robust security protocols to prevent data leaks and unauthorized access. The Act's comprehensive approach, combining preventive measures, strict penalties, and individual rights, aims to create a more secure digital ecosystem for personal data in India.

## 4. Conclusion

Organizations should thoughtfully assess whether integrating AI is necessary or if it merely offers marginal gains relative to the incurred expenses. Careful cost-benefit analyses should be conducted to determine the best approach, considering both new AI-based solutions and established traditional methodologies. Ultimately, the decision should aim to balance innovation with practicality, ensuring that whichever approach is adopted enhances rather than detracts from client outcomes and satisfaction.

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# Execution of Civil Decree: Legal Framework and Procedural Challenges

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## Abstract

Trial Courts are focussing on disposing of cases rather than ensuring that the litigant gets the relief. But the focus should not only be on early disposal of cases, but also on providing early and easy relief for which the party approaches the court. So has also been observed by the Hon'ble Courts. Justice delayed is justice denied should not be confined to disposal of the cases but should be until he gets the fruits. The paramount duty of court is to provide justice by adjudicating the matter in dispute. To just give a formal judgment on disputed matter by court is not justice. The Benefits provided by courts through decree should reach the litigants. So, enforcement of or giving effect to the judgment is one of the most important factors of proper adjudication. The law of civil procedure is a vital bridge connecting two separate wards, the substantive law, and rules of procedures. The procedures relating to execution of decrees and orders aim at reaching the fruits civil litigation to the justice seekers.[1]

**Keywords:** *Decree, Execution, Justice, Judgment, Procedure.*

## 1. Introduction

In all civilized societies, administration of justice is a state obligation. Law can be classified into two categories- substantive and procedural. Substantive law primarily defines the rights and duties of a person while procedural law deals with procedures for enforcing those rights and duties. Rendering of justice depends upon the procedural law. If procedural law is inefficient and time consuming, no matter how good the substantive law is, the purpose of administering justice will not be meted out in strict sense. Cases are either criminal or civil in nature. Courts are bearing the obligation of imparting fair and equitable justice to the parties in law suits[2]. The decisions of criminal courts are being enforced through police and prison administration and the decisions of civil courts are being enforced by court itself by following execution procedure with the help of court executing agencies. In civil cases, despite the fact that a judgment has been awarded in one's favor, does not mean that there is an automatic enforcement. No enforcement proceeding shall take place

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1 Y.P Bhagat, *Law of Execution Proceedings* 12 (Universal Publication, New Delhi, 2013.

2 Uko Worku "Executions of civil judgment and the need to Reform the enforcement system in Ethiopia", Abssiyina Law, *available at:* www.abssiyinia.com (last visited on May 2, 2025).

unless the judgment creditors applies for its enforcement to the court passing the decree.

The difficulties of a litigant in India begin when he has obtained a decree because the same is hardly executed.[3] There is a need for Indian courts to see that process of court and procedural law are not be abused and the court should not become an instrument in the hands of judgment-debtor to defraud the creditors[4]. The Execution of decree is a very peculiar feature of civil litigation as by virtue of this only; decree holder is able to execute decree effectively. In absence of these provisions, the decree obtained by him would be nothing more than a piece of paper. It has been complained several times that decree –holders are unable to reap the fruits of the decree Everyone seeks an early justice in the form of a judgment by the court. However, the journey till to the fullest and sometimes even partial satisfaction is not possible.

Due to long delay and procedural deficiencies in the execution of civil judgment in the court, the right to fair trial within a reasonable time has been undermined and has resulted in compromising with the rule of law. Delay is the biggest obstruction in way of fair and effective implementation of the decree. Principles of separation of powers and independence of judiciary enable the courts to protect the rights and freedoms of the individuals as enshrined in law. Undermining credibility of legal system and loss of confidence of individuals will result in prevalence of anarchy. There will be reduction in reliance over courts for dispute resolution and public may turn to unofficial and private means in order to have justice[5].

## 2. Meaning of Execution

The word execution is derived from the Latin word "ex sequi" which means, "to follow out, follow to the end, or to perform".[6] As per Dictionary meaning Execution means "the act of doing or performing something in a planned way". But the existing code of civil procedure i.e. the Code of Civil Procedure, 1908 is silent as to the meaning and definition of "execution". However, Code of Civil Procedure, 1877 in its Chapter XIX speaks about execution and provides that "the word 'execute' from the Latin *ex-seq,* follow to the end, denotes the continuation or accomplishment of the following or pursuing one's rights: the bringing the *'suit '*to its desired and legitimate end, actual relief against the injury"[7]. The term "enforce" means in general, "to cause to be executed or performed"," to cause to take effect, to compel obedience to", "as to enforce laws or rule; to control; to execute with vigor; to put in force; also exact, or to obtain authoritatively". As per Civil Rules of Practice, as applicable in State of Andhra Pradesh, "Execution Petition"[8] means a petition to the Court for the execution

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3 *Courts of Wards* v. *Maharajah Coomar Ramaput Singhad*, {PV} 1872.

4 *Juer Jang Bahadur* v. *Bank of Upper India Ltd., Lucknow* AIR 1925 Oudh 448.

5 *Ibid.*

6 Kant Mani, *Law of Execution of Decree And Order* 2(Kamal publisher, New Delhi,2017).

7 Code of Civil Procedure, 1877, Chapter XIX.

8 Civil Rules of practise of State of Andhra Pradesh, Rule 2 (e).

of any decree or order. "Execution Application:"[9] means an application to the Court made in a pending execution petition, and includes an application for transfer of a decree. The word is used in diverse ways and has been given different meaning and applicability, but it does not necessarily imply actual force or coercion. As applied to judicial process, it implies execution and embraces all the legal means of collecting a judgment, including proceedings supplement to execution.[10]

### 3. Statutory Framework of Execution of Decree: Core Principles

Code of Civil Procedure, 1908 is divided into two parts substantive and procedural law. Substantive portion as to Execution is covered under sections 36 to 74 and procedural part is covered by Order 21[11]. The relevant provisions on execution as used in the courts are:

1. Section 36 to 74, Section 144,146 and 148 and Order 21 of Code of Civil Procedure,1908.
2. Articles: 125 to 129,134 to 137 of Limitation Act.
3. Part A, Chapter 12, Volume I, Punjab and Haryana High Court Rules.

The whole procedure of execution can be divided into three parts.

1. General principles of execution.
2. Mode of Execution;
3. Execution procedure to different kinds of decrees.

General which contains only two sections namely 36 and 37 which mention applicability of provisions of execution of decree. Sections 38 to 46 which deals with the subject as to which courts can execute and sending decrees to other courts for execution and their powers. Then section 47 which empowers the executing court to decide the disputes between parties and their representative. The study also reflects the second part as to the statutory modes of execution. There are seven different modes of execution of decree. Execution can be done by

1. By detention of JD in civil prison
2. Attachment of property and then sell of same for payment to DH through said sale proceeds
3. Seizer of movable property and delivery of possession thereof to DH
4. In case of specific performance of contract and injunction, by arrest and detention and in addition by attachment and sell of property and getting the performance of contract or mandatory Injunction done as per decree, if possible

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[9] Civil Rules of Practise of State of Andhra Pradesh, Rule 2 (f).

[10] Kant Mani, *Law of Execution of Decree And Order* 2 (Kamal publisher, New Delhi, 2017).

[11] Y.P Bhagat. *Law of Execution Proceedings*1 (Universal Law Publishing, New Delhi, 2016).

5. In case of decree for restitution of conjugal rights, by attachment and then sell and in case of husband court may order periodical payment which can be recovered as money decree.
6. Getting the document executed as per decree
7. Delivery of possession of immovable property

Decree/order can also be executed in any such other manner as the nature of the relief granted requires. Rules 30 to 36 speaks of modes of execution in respect of different kinds of decree. There are group of Rules in Order 21, the implication of which cause long delays in execution proceedings. These Rules 58 to 63 relating to the investigating of claims and objections to the attachment property and rules 97 to 103 relating to investigation into resistance or obstruction to the delivery of possession of immovable property to the decree-holder or auction purchaser. In our system, the decree-holder becomes a puppet in the hands of the Nazirs, bailiffs, process servers, and other court staff giving undue benefit to the judgement-debtor to create obstruction and ultimately delaying the handing over of the possession.

## 4. Modern and Traditional Perspective of Execution

Approaches to execution can be divided in two categories. First is the traditional approach which is of the view that function of courts ends with the determination of rights of parties by the court and modern approach which is in disagreement with traditional approach consider it inefficient and stresses upon the effective implementation of decrees.

### Traditional Perspective

Under the traditional approach, the only purpose of just and effective judicial system is closing of cases and end of litigations within short period of time. The process is known as adjudicatory process in which determination of rights and liabilities of parties is made. The process starts from initiation of files and ends with a final and binding judgment. And everything which has happened before, and what will happen after, was left out of the purview of discussion in the traditional approach. Under this approach, the guarantee to fair trial ends where enforcement process begins i.e. after adjudicating upon the rights of the parties, fair trial ends. In other words, a narrow approach is given to the fair trial without any scope for enforcement proceeding within it.[12]

### Modern perspective

Supporter of this approach believes that awarding a judgment does not mean its automatic enforcement. Modern approach tends to give the concept of complete justice. i.e. complete justice takes place only when effective implementation of orders

[12] UkuWorku, "Executions of Civil Judgement and the need to Reform the Enforcement system in Ethiopia"Abssiyina Law, p. 3, *available at*www.abssiyinia.com(last visited on June 2, 2025).

of the courts takes place. This approach finds lot of inefficiencies in procedure adopted by the courts because of failure to implement decrees. Since traditional approach has met with various inefficiencies, therefore countries over the world, especially European Countries have realized that enforcement is the important part of legal system. It is not over when it will be over, it is over when it has been put into life. This could be one of the slogans to the new approach, which starts from the assumption that the legal process does not end with pronouncing a final and a just decision, but only when such decision is, in fact, implemented[13]. The new enforcement approach, has its basis in maxim *Ubi Jus Ibi Remedium* meaning thereby that there is no right without an effective remedy and holds a center role and a fresh meaning as a lack of proper enforcement leads to a situation in which, no matter how firmly declared by law and strongly uttered by courts, civil rights and obligation are in practice, rendered inoperative and illusory[14].

All this shows the seriousness of supporters of modern approach in addressing the issue of ineffective execution proceedings. These are taken as serious issues and steps are evolved in order to curb the hindrances leading to inefficient execution proceedings. Situations are being assessed on the timely basis to deal with the problem. Thus, in comparison to traditional approach modern approach suits our system and it is also best suited to the concept of rule of law and complete justice.

## 5. Expeditious Disposal of Executions: A Fundamental Right

The Right to fair and effective Enforcement is included within the right to a fair trial and access to justice. Backlog of execution cases is resulting in compromising with the rights of litigants to have fair trial and justice within a reasonable time and will not only violate National legal framework but also international Human Rights law. Failure to have implementation of orders of the court is a serious threat to Human Rights[15]. The separation of powers and judicial independence as guaranteed by Constitution enable judges to protect rights and freedoms of individuals as enshrined in law. But guarantees granted by Constitution and legal protections are of no significance when judicial decisions are not enforced. Non-enforceability of judgments gives rise to anarchy. People lose their confidence in judicial framework and show less reliance upon courts to resolve their disputes. Litigants start adopting unfair means to seek justice. This will undermine the values of rule of law.[16] Article 10 of Universal Declaration of Human Rights provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in

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[13] *Ibid.*

[14] *Ibid.*

[15] "Flawed Enforcement of Court Decisions Undermines the Trust in State Justice", Thomas Hammarberg, Council of Europe Commissioner for Human Rights, August 31, 2009, *available at:* www.coe.int/t/commissioner/viewpoint/090831 en.asp. (last visited on October 23, 2018).

[16] "Execution of Judgments",Organisation for Security and Co-operation in Europe- Mission in Kosovo, January 2012, p.3, *available at:*www.osce.org(last visited on October 25, 2018).

the determination of his rights and obligations and of any criminal charge against him. Besides, Article 14 of International Covenant on Civil and Political Rights give recognition and protection to right to justice and a fair trial. Further Article 14.1 provides for the ground rules that everyone must be equal before the courts, and any hearing must take place in open court before a competent, independent and impartial tribunal, with any judgment or ruling made public. I.e. it provides for fair and public hearing Article 14.3 further mandates that litigants must be informed promptly and in detail in a language which they understand[17]. It is also provided in Article 11 of International Covenant on Civil and Political Rights that No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation. Hon'ble Allahabad High Court while deciding a writ petition has held that delay in executing the decree amounts to denial of benefit of the decree to the decree-holder and is antithesis to justice[18]. Right to speedy justice is an established fundamental right of individuals[19]. The aim behind Right to speedy justice is to inculcate the justice in the society. Justice Krishna Iyer has remarked that "Our judicial system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision Effective justice dispensation system includes three things i.e. Accessibility to Courts, Concluding the dispute and reaching a Decision by Judges and third is enforceability of these decisions[20]. Pendency of large number of execution petitions throughout the country is a great challenge being faced in the way of Right to Justice. Justice does not end merely with the determination of rights of the parties but extends till the time when rights determined are duly enforced. So, delay in the execution proceedings means delay in justice delivery.[21] Right to speedy justice is guaranteed by virtue of Article 21 of Constitution of India guarantees right to life and personal liberty to every person, citizen, or non-citizen. The Indian Judicial system has given its best for the purpose of interpretation of Article 21 and has given wide amplitude to the aforesaid Article of Constitution of India varying from situation to situation. Article 21 has been a torch bearer for the development of rights whenever need has arisen and ensuring fairness in justice delivery of system[22].In Ranjan Dwivedi case[23], Hon'ble Supreme Court viewed that right to speedy trial is a fundamental right. It was held that a judicious and expeditious trial is an integral and indispensable part of the fundamental right to life and liberty as enshrined in Article 21 Indian Constitution.

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17 *Ibid.*

18 *Suresh Pal v. Tek Chand*, 2012 (6) R.C.R (Civil) 360.

19 *Animesh Chander Sengupta v. State of West Bengal*.

20 Dr. Payal Jain, "Delay in judicial Process: A Call for Reforms in Indian Justice Delivery System" 46(2)*Indian Bar Review*147(2019).

21 *Babu Singh v. State of UP*, 1978 AIR 527, 1978 SCC (1) 579.

22 Dr. Dharminder Singh, "Judicial pronouncements on Speedy Trial in India: An Analysis", Open Access Journal, The Law Brigade Publishing, p.72 *available at* http://thelawbrigade.com/(last visited on July 22, 2025).

23 *Ranjan Dwivedi v. CBI*, SCC (2012) 8 495.

## 6. Execution of Decree: Judicial Insight

Higher judiciary has taken timely steps to curb the delay caused in disposal of execution petition. At administration level, Hon'ble High Court while exercising power under Article 214 of Constitution of India have framed rules and even made certain amendments time to time if and when required. Not only these Hon'ble High Courts are devising different techniques such as making execution as a part of an action plan, disposal of oldest cases as earliest possible, but are also Hon'ble Courts give timely directions to the subordinate courts for disposal of execution by way of various judicial decisions.

The Privy Council has noticed the inefficiency in enforcement procedure in 1872 in case of Maharaja Darbhanga's[24] and it has been stated that the difficulties of a litigant in India begin when he has obtained a decree. Now a day stress is being laid on the harmonious construction between two principles i.e. Justice Delayed is Justice Denied and Justice hurried is justice buried. It is stressed that best efforts should be made for the purpose of timely enforcement of decrees, so that enforcement proceedings do not become infructuous and at the same time it should not be so hurried that it ultimately leads to the destruction of rights of the parties and leave such loopholes, which give opposite party an opportunity to challenge whole execution process and sometimes, even lead to the quashing of whole process.

Recently Supreme Court ruled that Procedural Irregularity can't defeat Substantive Rights. Further, the Supreme Court directed the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions, and to proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the presiding officer concerned would be answerable to the High Court on its administrative side[25]

Justice Midha from Delhi High Court has issued certain guidelines for expeditious disposal of execution in M/S Bhandari Engineers and Builders Pvt. Ltd v. M/S Maharia Raj Joint Venture[26]. The court recorded the findings that there is an urgent need for formulation of detailed form as to the assets, income, and expenditure of the judgment-debtor at the very inception of the execution proceedings to tackle the delay. It was made mandatory by Delhi High court to file the affidavit of assets and expenditures by the judgment-debtor in execution cases. After filing of the affidavit, the onus is shifted upon the decree-holder to verify the assets either himself or by the investigator appointed in this regard. In the case of investigation, if it is found that

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[24] The general Manager of the Raj Darbhanga v. Maharaj Coomar Ramput Singh, 14 Moor's Indian Appeals 612,taken from Dr. Justice A.R. Lakshmanan, "Reports of the Law Commission of India", Universal Compendium, 14thReport p.376.

[25] *Periyammal Through LRS v. Rajamani and anr,* Civil Appeal No. 3640-3642 of 2025.

[26] EX.P.275 and 276/2012 and EX.APP 9(OS) 193/2020.

judgment-debtor has not disclosed his assets correctly, then, the decree-holder has an option to seek interrogatories from judgment-debtor. In such a situation, duty is also cast upon the executing court to do a personal examination of the judgment debtor upon oath to elicit the truth. Directions were issued to the district judges with the immediate effect to follow the aforesaid guidelines. It was directed that judgment-debtor must file an affidavit as to his assets and income on the day of the accrual of the cause of action, date of the decree, and date of filing of the affidavit. While giving the directions, the report was also sought from the district judges regarding the existing status of the pendency of the execution petitions.

The bench consisting of three judges the Supreme Court of India, in 2013[27], has made the observation that the Decree Holders must enjoy the fruits of the decree obtained by them in an expeditious manner. Justice Dave, speaking for the bench has observed that the unscrupulous strategies used by Judgment Debtors to avoid the process of law leads to frustration of the entire efforts of a Decree Holder in getting the decree executed. In the judgment, the entire paragraph of observations made by the Privy Council in 1872 has been reiterated as "**.....the difficulties of a litigant in India begin when he has obtained a Decree.....**" Bench viewed that even today i.e. in 2013 (when aforesaid judgment was delivered) the position has not improved and decree-holder is facing the same problems which he was facing in the past. It has been opined that "Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights*."* Besides, referring to the observations made by the Privy Council, Apex Court also referred to the observation made by it in year 1982 in case titled as Babu *Lal* v. *M/s. Hazari Lal Kishori Lal & Ors.*[28], wherein in Para no. 29 it is observed that *"*Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections." Judgment of three judge bench also finds the mention of its own decision passed in the case of *Marshall Sons & Co. (I) Ltd.* v. *Sahi Oretrans (P) Ltd. & Anr*[29]. Wherein in para 4 it is perceived that proceedings are being dragged unnecessarily for long time on one or other ground, making the situation hyper technical and ultimately leading to a legal trap to unwary. Undue advantage of procedural complexities is being taken. Thus, it can be said that in view of various decisions of Privy Council and own decision of Apex Court, it has been observed by three judge Bench in 2013 that the position pertaining to the execution has not been improved much till date. Apex court condemned the unreasonable delay being caused in the enforcement of the decree as due to this, decree-holder is unable to enjoy the fruits of the decree. It put the entire effort of successful litigant in vain. It has been

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[27] *Satyawati v. Rajinder Singh and Anr* (2013)9 SCC491.

[28] (1982) 1 SCC 525.

[29] (1999) 2 SCC 325.

held that for complete justice, it is necessary to have complete enforcement of the decree that too in expeditious manner.

Besides, in various other judgements of Hon'ble Apex Court and various High Courts like ***Sahapati Yadav* v. *Bhawani Devi***[30], ***Ayodhya Sahai* v. *District Jaunpur and another***[31], **Buknu *Ram* v. *Mantur Rahman***[32], ***Inderjeet Singh* v. Onkar *Singh***[33], ***Fakira* v. *Jasmer Singh***[34], ***Bhagwan Devi* v. *Sunil Kumar Rajput etc.***[35], it has been observed that:

(a) It has been viewed that keeping some special day for execution work would lead to early disposal of execution petitions. It is laid down that one day in a week should be kept for works related to execution to make sure that it gets adequate attention.

(b) It was observed that provisions as to execution should be strictly construed. There must be strict compliance of constructive res-judicata in matters of execution. The legal objections like objection to jurisdiction, limitation, joinder of parties, etc. Which were available with the parties at the time of trial but were not pleaded, ought not to be allowed at the time of execution. If execution petition is filed within two years from decree, then there is no need to send notice Order XXI Rule 22 of C.P.C.

(c) It was directed that, if Court is satisfied that appeal is pending, then no purpose in keeping the execution proceeding pending. Execution proceeding can be dismissed with liberty to file fresh execution petition after disposal of appeal. The limitation will be saved since decree will merge in appellate Court decree and time will run afresh after disposal of the appeal.

(d) Direction has been given for presiding officers of the court to see that execution petitions should not be unnecessarily prolonged or neglected. It is directed that execution petitions should be disposed of with same care and regularity as given to the original suits.

(e) It was also observed that judicial officers are not taking interest in disposal of execution. Delay in disposal of execution petitions resulting in long pendency not only causes hardship to litigants but also causes multiplicity of litigation. It was directed that effort should be made for early disposal of executions.

(f) It has also been observed that stay of proceeding is the obstacle for early disposal of execution proceeding. Stay by appellate and revisional court is the factor that contributes substantially to delay in disposing execution.

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30 2008 (4) BBCJ 430.
31 1997 (SUPP) All WC 525.
32 2005 (20) RCR (Civil) 296.
33 2002 (1) CLJ (H.P.) 22.
34 2005 (1) R.C.R (Civil) 825.
35 2012 (14) SCC 420.

## 7. Impediments in Way of Effective Implementation of Decree

Researcher before moving ahead with his study wanted to check what actually is preventing the decree- holders from enjoying the fruits of their decree to the fullest. Excessive delay along with immunities granted to judgement-debtor, excessive cost, failure of sanction, work load of courts, callous and ignorant attitude of judges, lack of executing staff, ambiguous judgements and excessive formalism are some of the factors which are preventing decree- holders to have satisfaction of the decree in terms of decree itself. These all factors make the existing system for execution inefficient. With the study of these impediments, researcher has come across actual reasons which cause inefficiency and excessive costs in implementation of decrees and judgments of the court.

These impediments can be discussed as follows:

**a. Excessive Delay:** On the delivery of judgment, it is assumed by the layman that the case has come to an end. However, delivery of judgment is mere a declaration of respective rights without providing how these rights are to be enforced. After getting a decree, next thing which successful party has to think about is to enforcement. However, delay in execution of decree stands in way of successful litigant to enjoy the fruits of his decree[36]. Justice is foundation goal of civilized society. For peace, harmony, and progress of the society it is necessary that timely and quality delivery of justice must be there. But, unfortunately Indian Judicial System despite many successes, suffers from severe structural problems which prevents it from functioning properly. Delay in judicial decision is not hidden from anyone[37]. A litigant who has earned the decree with great difficulty has to fight one more battle for enforcement of his rights which he has obtained in form of decree. For the purpose of social justice, it is obligatory for courts to deliver quick and inexpensive justice[38]. Most of the respondents replied that it is delay in enforcement of decree which is preventing the implementation of decree in exact terms to its fullest. Owing to delay, decree-holder even agrees for less on the terms of judgment-debtor. This not only defeats the decree but is also evident of failure of present enforcement system.

**b. Frivolous claims and objections**: Judgement-debtor adopts delaying tactics almost at every stage of execution. Both judicial officers and advocates have stated that these tactics are the hurdles in the way of enforcement procedures for the execution of the decree. Though the Code of Civil Procedure provides for filing of objections/claims by JD under section 47 of C.P.C but this provision is being misused to a greater extent and is resulting into abuse of law. A very substantial body of opinion has agreed that the claims or objections to attachment under rule 58 and

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[36] David Barnard, *The Civil Courts in Action, Enforcement of Judgments* 259 (Butterworth publication, England,2014).

[37] Hindustan Times, 13 November 2019.

[38] Bhaskar De, "Justice Delayed Justice Denied in India", *available at:* www.legalservices india.com. (last visited on August 8, 2025).

resistance or obstruction to the delivery of possession under rule 97 and subsequent suits filed under rule 63 and 103 are often frivolous are made at the instigation of the judgment-debtor, who takes advantages of these provisions as one more opportunity for defeating or delaying the decree-holder or postponing the sale of his property. Adjudication of any claim or objection under order 21 Rule 58 and rule 97 is appealable like a decree which waste a lot of time.

**c. Non-disclosure of assets and exempted assets**: From the files scrutinized by the researcher and from the interviews conducted with the respondents, the non-filing of a list of property for several dates is a responsible key factor in the delay of execution. Generally, a list of property is sought from decree-holder, and during the research, it has been observed that there is minimal/negligible use of order XXI rule 41 of C.P.C which provides for examination of judgment debtor as to his property. It requires that where a decree for money has remained unsatisfied for 30 days then on the application of the decree-holder, judgment-debtor can be directed to furnish the details of his property on affidavit. But in reality, nothing of this sought is being done, rather whole burden to bring the record of the property of judgment-debtor is on the shoulder of the decree-holder. As a result, the decree-holder is made to move from pillar to post to get information regarding the details of the property of the judgment-debtor. Resultantly, the whole execution procedure is delayed.

**d. Stay in execution proceeding**: Stay of execution serves as one of the major causes for delay in execution of the decree. Rule 26 and Rule 29 to Order XXI C.P.C along with rule 5 to order XLI C.P.C deals with a stay in execution. Because of the stay of Proceedings, execution gets struck off without progress. Non-compliance of provisions and decisions of Hon'ble Supreme Court and High Courts often leads to delay. From the study of files as well as from the response of respondents it is observed that stay granted especially by the appellate court halts the execution proceedings for months and sometimes for years and ultimately causes a delay in the disposal of execution petitions.

**e. Work load in Courts:** Impediment of Excessive delay is followed by excessive work load in courts. Due to excessive workloads, execution petitions are being ignored by the courts. As per the data available on National judicial Data Grid almost 2 crore 50 lakhs total cases are pending in the subordinate courts and out of this almost one crore are civil cases[39]. However, unfortunately, number of judges to deal with this number of cases is inadequate. Their number is far less than actual requirement. On visit to various courts, it was found that approximately 900-1200 files are pending in each court and their cause list consists of more than 80-100 cases per day. In such situation, it becomes quite difficult for courts to pay attention to each and every case adequately. As a result, execution petitions suffer the most. Furthermore, during interview with the respondents it is revealed that incentives or units for disposal of execution petition are far less than the main suits. Executions are

[39] National Judicial Data Grid, *available at*: http.//njdg.ecourts.gov.in.

treated as miscellaneous work. Due to work load, courts are more inclined towards deciding the main suits as it would fetch them more units and are not brain storming as execution. Thus, excessive work load is second problem in the effective implementation of decree.

**f. Inadequate number of Executing staff:** Besides, delay and work load, lack of executing staff also stand as a major impediment in the way of effective enforcement of decree. There is no exclusive staff for enforcement of decree and orders of the executing court. Summons. notices and warrants in execution proceedings are served through process servers and bailiff. These process servers and bailiff are the same officials who are responsible for execution of notices, summons and warrants in the main suit. Bailiffs who are the senior process server are generally limited in number ranging from 1 to 2 and sometimes 3 to 4 for bigger districts. There is an acute shortage of the staff for purpose of service of processes of executing court. There is also tendency amongst the executing staff to ignore the process of execution proceedings over the regular suits. In a situation, when execution in itself is a complete code, it is required to have separate and sufficient staff for the same.

**g. Excessive Formalism in execution procedure:** Our system is marred by complexities and lot of formalities. These formalities are major obstacle to a fair and effective enforcement process. In the instant system, there are opportunities for raising technical procedural objections at every stage of process. These objections are often false and frivolous.[40] Procedure which initiates with the notification and ends up with the disposal of execution consists of lot of formalities. These formalities are adhered to even when these are not mandatory. For instance, issuance of notice is not mandatory if execution is preferred within two years of decree but despite this, notice is being issued as a matter of routine. Unnecessary objection is made by the parties. Issues are being framed on those objections. Even evidence is taken on same. Likewise, procedure for sale is also lengthy and complex. After attachment of property, notice under order XXI rule 66 CPC is again issued to the judgment-debtor. Judgment- debtor takes the benefit of these formalities and intentionally avoids the service of notice, so that he can delay the process of execution. All these formalities and complexities are also the reason due to which judgment- debtor are not able to reap the fruits of decree efficiently.

**h. Immunities to Enforcement Proceedings:** Code of Civil Procedure provide lot of immunities to judgment-debtor. Section 47 of Code provides for general objections which Judgment debtor can take before the executing court. Rule 58 to Order XXI CPC provides for objections which can be taken at the stage of attachment. Rule 97 to Rule 106 to order XXI CPC provides for objections taken by third party. These immunities in form of objections provide lot of opportunities to judgment-debtor to defeat the execution proceedings of the decree and orders. This makes whole process

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[40] Alan Uzelac, *Goals of Civil Justice and Civil Procedure in Contemporary Judicial Systems* 7 (Springer International Publishing, Switzerland, 2014).

infructuous. Objections are being raised by judgment-debtors or third parties on one or other ground in order to make execution a failure. Respondents are of view that almost at every stage of execution, objections are raised and sometimes it defeats whole proceedings and stand in way of effective implementation of decree[41].

**i. Ambiguous Judgments:** Ambiguity in judgment and decree to be executed is one of the reasons due to which decree could not be implemented properly. It often causes a predicament for executing court as executing court is not able to understand the actual relief for which decree-Holder is entitled. Lot of time and energy is wasted in finding what trial court intended while passing the judgment and decree. Sometimes wrong interpretations are drawn making decree and judgment ineffective.

**j. Unwillingness of court to deal with the execution:** Lethargic, biased, and callous attitude on the part of the court towards the execution is also identified as problem creator in the way of effective implementation of decree. During the pilot study, researcher was informed by the respondents that units for contested execution are half the units for the contested civil suits. As per the existing norms of Hon'ble Punjab and Haryana High Court, there are 6 units for contested civil case and 3 units for execution. Due to this courts prefer to decide civil suits over the execution. Executions are ultimately ignored in the race for units. Lack of attention on the part of courts gives chance to fraudulent judgment-debtors and corrupt officials to defeat the process.

## 8. Way Forward: Streamlining Decree Execution in India

Speedy execution of the decree in a civil suit is the most ignored area of civil jurisprudence. Delay in the disposal of execution petition is a major impediment in the way of satisfaction of decree in favour of the decree-holder. The discriminatory judicial attitude, lack of proper management, and insufficient executing staff along with obstructions caused by the judgment-debtor or at his instance are responsible factors for delay in execution.

Order 21 of the Civil Procedure Code, 1908 prescribes a lengthy and cumbersome procedure for the execution of the decree. The executing court has to follow the long procedure of already contested cases which undoubtedly prejudices the rights of decree holders. The procedure of execution of the decree is almost retrial of already determined rights and liabilities of the decree-holder. Application by the decree-holder for the execution of the decree or the order. The question here arises as to why courts straightway do not continue with the proceedings after passing of the decree, on the disposal of the suit by judgement? When the party has paid requisite court fees and followed the due process of law in the disposal of the suit that led to the decree, it remains unexplained as to why the party should be required to file written applications for its execution. No doubt, rule 11 of order 21 provides for oral application for payment of money, but this provision is hardly in practice.

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[41] Shodhganga, *available at* inflibnet.ac.in (Last visited on June 23, 2025.

Concerning the execution of money decrees, the process of the suit should be a continuous process consisting of the first stage relating to the determination of liability and then the second stage of execution and recovery, without any pause or stop or need for the plaintiff to initiate a separate proceeding for the execution. It is recommended that the attention of legislature must be bestowed towards the issue and the amendment must be made that the execution becomes a continuous process of suit till the securing of the actual relief instead of the initiation of execution proceedings on a separate application.

Strict compliance of the execution procedure as per C.P.C, 1908: Provisions as to the execution should be strictly construed. Legal provisions when properly construed and used, undoubtedly strengthen the cause of justice. If these provisions are misused, it will surely be detrimental. The procedure is to be interpreted in such a way as to make the process of court certain, effective, satisfying, and quick. The law begins and ends with a fair trial only. In Salem Advocate Bar Association v. Union of India, it has been observed that there should be harmonious construction between "Justice delayed is justice denied and justice hurried is justice buried". To this, the researcher opines that at this stage, the rights of parties are to be determined and maximum stress should be on the fair trial. Maximum care of the rights of the parties should be taken. It needs strict compliance with the provisions of the execution. "Shall" must be read as "Shall" when it comes to execution. The liberal interpretation of the provisions at the time of execution will dilute the concept of fair trial and will amount to delay in the enjoyment of fruits of justice received.

There must be strict compliance of constructive res-judicata in matters of execution. The legal objections like an objection to jurisdiction, limitation, joinder and non-joinder of parties, etc. which were available with parties at the time of trial but were not pleaded, ought not to be allowed at the time of execution. Any such objections should be dismissed at first instance even without taking a reply and framing of issues on the same. This will not only curtail delay but will discourage the filing of the frivolous objections filed with the clear motive of delaying the execution.

The execution court must give effect to the terms of the decree. It has no power to go beyond its terms. Though it has the power to interpret the decree, it cannot make a new decree for the parties under the guise of the interpretation. It can neither add something in the decree already passed nor can alter the decree. Section 47 CPC requires that the executing court alone must determine all the questions arising between the parties or their representatives relating to the execution, discharge, or satisfaction of the decree and authorizes it even to treat the proceeding as a suit. The root cause of this abuse is partly the scope of section 47 of CPC which empowers the executing court to decide all questions arising between the parties. There is a need to mention or make it clear on the part of the legislator regarding the type of questions the court may decide. It should also be made clear about the questions which are not to be allowed to be raised at the time of the execution. Discretionary power under section 47 of CPC should be reduced by imposing restrictions or limitations. Section

47 of the CPC must either be repealed or bridled with a proviso thereto, requiring the judgement-debtor to file a comprehensive objection against all the reliefs sought, within the stipulated period of 30 days. Such objections must be heard and decided by the executing court summarily.

Law is a medium for securing justice and its procedure is handmade. The availability of ready and quick justice very much depends upon the procedure prescribed by the law. Law today is a complex aspect of the living process. The procedure has, therefore, become and is ever becoming more and more complicated; consequently, justice is receding to a distant point. Everywhere around the world there is a demand for an easy and simple procedure for ensuring quick justice. The degree of public confidence and trust in the justice system is, to an extent, also dependent on how effective, quick, and efficient execution procedure is.

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# Legal Challenges in Enforcing Climate Change Mitigation Policies in India

***Dr. Ritu Salaria****

## Abstract

This paper examines the legal and institutional barriers to enforcing climate change mitigation in India. It outlines the statutory framework, enforcement mechanisms, and major challenges at national and sub-national levels. Drawing on case studies from the energy and transport sectors, it highlights legislative gaps, resource constraints, and governance issues. The paper concludes with targeted reforms to strengthen compliance and accelerate India's transition to a low-carbon economy.

**Keywords:** *Climate change, mitigation, enforcement, legal framework, India*

## 1. Introduction

India ranks among the world's top greenhouse gas emitters while confronting severe climate vulnerabilities. Over the past decade, New Delhi has rolled out ambitious policies to curb emissions and boost renewable. Yet, translating these laws into on-ground action remains problematic due to enforcement gaps. This research explores why enforcement lags behind policy ambitions and proposes legal reforms to bridge the divide. There are Ambiguities in climate change laws and their Implications for Enforcement of the climate change laws in India, despite being pivotal for addressing environmental issues, often suffer from ambiguities in their language and scope. These ambiguities complicate the enforcement of laws and hinder effective climate change mitigation. The broad and sometimes vague definitions in climate change-related statutes can create confusion in their application and interpretation, leading to inconsistent enforcement and judicial rulings. One of the key ambiguities in climate change laws arises from the lack of precise definitions for terms such as "climate change," "greenhouse gases," and "sustainable development." Many of the laws governing environmental protection in India are primarily concerned with pollution control and conservation of biodiversity, but they do not explicitly address climate change as a distinct issue with specific legal provisions. For instance, the Environment Protection Act, 1986 (EPA) and the Air (Prevention and Control of Pollution) Act, 1981focus on controlling pollutants and environmental degradation but do not specifically outline provisions for tackling climate change. While these laws are broadly intended to protect the environment, they fail to create a direct legal obligation for industries to reduce greenhouse gas emissions, making their

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enforcement in the context of climate change challenging.[1]Another challenge posed by ambiguities is the lack of clear mandates for specific emission reduction targets or timelines in many of India's environmental laws. While the National Action Plan on Climate Change (NAPCC) and Nationally Determined Contributions (NDCs) under the Paris Agreement set broad goals for emission reduction, the regulatory framework lacks specific, enforceable targets for key sectors like energy, transportation, and industry. The general nature of these targets, such as the commitment to reduce carbon intensity by 33-35% by 2030, does not provide the granular detail required to hold entities accountable for non-compliance. Furthermore, without clear emission reduction obligations specified in domestic legislation, enforcement agencies often lack the legal tools to compel compliance.[2]

**The overlap and inconsistency:** The overlapping and inconsistencies between federal, state, and local laws on climate change and environmental protection further exacerbates the ambiguity. Different states have their own policies and strategies to combat climate change, and there is often no uniformity in the implementation of national policies at the regional level. For example, while the State Action Plans on Climate Change (SAPCCs) align with the NAPCC, states may prioritize different sectors or set their own emission reduction targets, leading to inconsistent standards and regulations across the country. This variation in climate policies at the state level can create confusion among industries and regulators, undermining efforts to achieve national climate goals.[3]

Moreover, the lack of clear legal frameworks for climate adaptation remains another ambiguity in India's environmental laws. Adaptation to climate change impacts, such as rising sea levels and extreme weather events, requires specific regulatory actions, yet Indian laws are often silent on this matter. [4]The absence of an adaptation-focused legal framework means that many climates change-related issues, especially those involving vulnerable communities and sectors, are not adequately addressed in law, making enforcement more difficult. These ambiguities create significant barriers to enforcement. Regulatory bodies struggle to interpret vague legal provisions, leading to inconsistent enforcement practices and delays in taking action against violators. Courts, too, face challenges in determining the applicability of certain laws to climate change-related cases, resulting in uncertain jurisprudence on climate change law. This lack of clarity and certainty not only hampers enforcement but also discourages industries from taking voluntary action to mitigate climate impacts, as they are unsure about the legal consequences of non-compliance. The solution to these ambiguities

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1 S. Kapoor, Environmental Policies in India: Evolving Challenges and Legal Frameworks (Oxford University Press, 2017)

2 N. Wani, The Role of National Green Tribunal in Environmental Protection in India.(Eastern Book Company, 2019).

3 R. Sharma, Regulatory Approaches to Climate Change in India(Cambridge University Press, 2020).

4 A. Agarwal, Enforcing Climate Change Laws in India: A Critical Analysis(Springer, 2013).

lies in reforming existing laws to make them more precise and comprehensive. This would include the introduction of specific legal definitions of key terms, clear emission reduction targets, and mechanisms for climate adaptation. Additionally, a unified and consistent approach to climate change law across states and regions is necessary to avoid conflicts and confusion. Strengthening the legal framework for climate change can provide the regulatory clarity needed to enforce laws more effectively and encourage industries to adopt sustainable practices.

**Enforcement Gaps:** Lack of Coordination between Agencies and Policy Deficiencies One of the critical challenges to enforcing climate change laws in India is the lack of coordination between various regulatory agencies. Climate change laws and policies require the involvement of multiple stakeholders, including federal, state, and local authorities, along with various ministries and departments. However, the existing institutional structure often leads to fragmented efforts, overlapping responsibilities, and gaps in the enforcement.

## 2. Climate Change Mitigation Policies in India

India's mitigation efforts are anchored in the National Action Plan on Climate Change (NAPCC) launched in 2008.[5] State Action Plans mirror the NAPCC at regional levels. Sectoral initiatives include the Perform, Achieve and Trade (PAT) scheme targeting energy-intensive industries.[6] and increasingly stringent Bharat Stage emission norms for vehicles.[7] Ambitious solar and wind capacity targets further diversify India's low-carbon portfolio.

At the national level, the Ministry of Environment, Forest, and Climate Change (MoEFCC) plays a central role in formulating climate change policies and regulations. However, enforcement is often left to other agencies, such as the Central Pollution Control Board (CPCB), the National Green Tribunal (NGT), and the State Pollution Control Boards (SPCBs). These agencies are not always adequately equipped or empowered to enforce climate laws. For example, while the MoEFCC is responsible for formulating climate policy, its role in monitoring and enforcement is limited. On the other hand, agencies like the CPCB and SPCBs primarily focus on pollution control and lack the capacity to tackle broader climate change issues, such as emission reductions and energy efficiency.[8]

Moreover, the lack of inter-ministerial coordination exacerbates enforcement gaps. Various ministries such as the Ministry of Power, Ministry of Agriculture, and Ministry of Transport all play crucial roles in mitigating climate change. However,

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5 National Action Plan on Climate Change, Prime Minister's Council on Climate Change, 2008.

6 Perform, Achieve and Trade (PAT) scheme, Bureau of Energy Efficiency, Ministry of Power, Government of India.

7 Bharat Stage emission standards, Ministry of Road Transport and Highways.

8 A. Singh, "The Air Pollution Control Laws in India: An Analytical Perspective" Environmental *Law Review*(2012*).*

these ministries often operate in silos, with limited communication and collaboration on climate action. For instance, while the MoEFCC may issue guidelines on emission reduction, the Ministry of Power may not necessarily align its policies to these guidelines, leading to gaps in implementation. Similarly, climate change adaptation strategies are often disconnected from agricultural policies, despite the strong links between climate impacts and the agricultural sector.[9]

The policy deficiencies also contribute significantly to enforcement gaps. While India has made commitments under international agreements like the Paris Agreement, the domestic policies to support these commitments are often inadequate. The National Action Plan on Climate Change (NAPCC) and the State Action Plans on Climate Change (SAPCCs) are important frameworks, but their implementation is often hindered by a lack of clear targets, funding, and institutional support. These plans often remain underfunded or not fully executed, leaving gaps in the on-the-ground enforcement of climate change laws. For example, although renewable energy is a priority area under the NAPCC, there is still inadequate infrastructure, incentives, and regulatory frameworks to promote large-scale renewable energy adoption.

The lack of financial and technical support for climate change mitigation and adaptation is another critical issue. While certain international funding mechanisms like the Green Climate Fund (GCF) exist to support climate projects in developing countries, the flow of funds into India's climate initiatives remains insufficient. This financial gap hampers the capacity of enforcement agencies to implement climate change policies effectively and forces them to rely on fragmented and often inconsistent financial support from multiple sources.[10]

To address these enforcement gaps, institutional reforms are required. This includes better coordination between ministries and regulatory agencies, clearer delineation of responsibilities, and the establishment of dedicated climate change enforcement bodies. Additionally, stronger mechanisms for inter-agency collaboration, enhanced funding for climate initiatives, and a more integrated policy approach are essential to ensure enforcement.[11]

### 3. Legal Framework for Mitigation

Although the Constitution does not explicitly mention environmental rights, it imposes duties on both state and citizens. Article 48A mandates the state to protect and improve the environment.[12] while Article 51A(g) enjoins citizens to safeguard natural resources.[13] Key statutes include the Environment (Protection) Act, 1986. [14],

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9 D. Bose, *Global Climate Change and National Legal Responses: A Comparative Study* (Cambridge University Press, 2018).

10 S. Patil, *Climate Change and Indian Law: Issues and Solutions* (Lexis Nexis, 2019).

11 P. Gupta, Legal Strategies for Climate Change Mitigation in India (Indian Law Institute, 2021).

12 The Constitution of India, art. 48A.

13 The Constitution of India, art. 51A(g).

Air (Prevention and Control of Pollution) Act, 1981[15], and the Energy Conservation Act, 2001.[16] States supplement these with their own regulations, resulting in overlapping mandates and coordination challenges. Over the period of time the Supreme Court of India has declared right to healthy environmental as a fundamental Right under Article 21ss Right to life of the Indian Constitution. India's Constitution has evolved to strongly support environmental rights, weaving them into both citizens' duties and state obligations and Article 14 – Right to Equality ensures that environmental laws and actions by the state are applied fairly and without discrimination and Article 19(1) (g) – Freedom of Trade and Occupation is subject to reasonable restrictions, especially when business activities harm the environment.

Indian courts have played a pivotal role in expanding environmental rights:

- In Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh[17], the Supreme Court treated environmental degradation as a violation of Article 21 A.
- In Vellore Citizens' Welfare Forum v. Union of India[18], the Court emphasized sustainable development and the need to incorporate international environmental norms.

**4. Enforcement Mechanisms**

A network of regulatory bodies underpins enforcement: the Central Pollution Control Board (CPCB) at the national level and State Pollution Control Boards (SPCBs) locally[19]. These agencies wield powers ranging from issuing environmental clearances and imposing fines to initiating criminal proceedings. Courts, through public interest litigations (PILs), have also influenced enforcement trajectories, though judicial directives can sometimes outpace administrative capacity.[20]

**5. Issues in Monitoring and Accountability of Climate Change Mitigation Efforts**

The effectiveness of climate change laws largely depends on monitoring and accountability mechanisms. However, there are several significant issues related to monitoring and accountability that undermine the enforcement of climate change mitigation efforts in India. One of the primary issues is the lack of comprehensive and accurate data on greenhouse gas emissions, energy consumption, and environmental impacts. Climate change mitigation requires the collection and analysis of large volumes of data to track progress, identify problem areas, and ensure compliance. However, in India, the absence of robust data collection systems makes it

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14 The Environment (Protection) Act, 1986.

15 The Air (Prevention and Control of Pollution) Act, 1981.

16 The Energy Conservation Act, 2001.

17 AIR 1985 SC652..

18 AIR 1996 SC 2715.

19 Central Pollution Control Board: Mandate and organizational structure.

20 Public Interest Litigation in India: Evolution and impact on environmental governance

difficult to assess whether industries, states, and other stakeholders are meeting their mitigation targets. For instance, while the National Action Plan on Climate Change (NAPCC) and Nationally Determined Contributions (NDCs) set broad goals for emission reductions, there is no consistent and comprehensive system to measure and report emissions across different sectors. The fragmentation of data collection efforts further exacerbates this issue. Different agencies may collect data on pollution, energy consumption, or deforestation, but these datasets are often not integrated or standardized. This lack of coordination makes it difficult to create a unified and accurate picture of the country's overall progress in mitigating climate change. Furthermore, accountability mechanisms to ensure compliance with climate change laws are often weak. Enforcement agencies like the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) are responsible for ensuring compliance with environmental standards, but they often lack the capacity to effectively monitor emissions and impose penalties. Industries and businesses, particularly those in sectors like power generation, manufacturing, and transportation, often do not face stringent penalties for failing to meet environmental standards. Moreover, voluntary compliance measures, which are widely promoted under India's climate policies, do not always result in the desired reductions in emissions.[21]

The solution to these monitoring and accountability issues lies in the development of better data collection and reporting systems. Implementing a national emissions inventory system that tracks emissions across all sectors, coupled with transparent reporting mechanisms, would enhance accountability. Additionally, creating more stringent compliance and penalty systems and ensuring that agencies are adequately resourced to monitor and enforce climate change mitigation efforts are crucial for improving accountability.

### 6. Political and Economic Barriers to Effective Enforcement of Climate Laws

The enforcement of climate laws in India faces significant political and economic barriers that hinder effective action. These barriers stem from competing interests, political ideologies, and economic constraints that prioritize short-term growth over long-term sustainability. Politically, climate change laws often become a subject of partisan debate, with different political parties prioritizing economic growth over environmental protection. Climate policies that may impose restrictions on carbon emissions or push for a transition to renewable energy can be politically contentious, especially in regions where coal and fossil fuels dominate the economy. For instance, states that heavily rely on coal-based power generation are often resistant to national policies that aim to reduce emissions or promote renewable energy.[22] These political obstacles delay the passage of crucial legislation, reduce the ambition of climate policies, and hinder the enforcement of climate laws. Economically, the cost of

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[21] *Supra* note 9.

[22] S. Kapoor, *Constitutional Dimensions of Environmental Law in India* (Eastern Book Company, 2017).

transitioning to a low-carbon economy is a significant barrier. India's growing economy relies heavily on coal, oil, and gas, and the transition to cleaner energy sources requires massive investment in renewable energy infrastructure, technology, and research.[23] The economic dependence on high-carbon industries such as coal mining and heavy manufacturing makes it politically difficult to implement stringent climate laws. Industries in these sectors often resist regulatory measures that would increase their operating costs, such as emissions trading systems, carbon taxes, or environmental taxes. Similarly, the reliance on fossil fuels for transportation and heating makes it difficult for consumers and industries to switch to low-carbon alternatives.

Moreover, the lack of economic incentives for businesses to comply with climate change laws further hampers enforcement. While industries may comply with environmental standards to avoid fines, they often lack the motivation to go beyond basic compliance, as the economic benefits of doing so are not immediately apparent. The lack of financial mechanisms, such as subsidies, tax incentives, or grants for clean technologies, limits the ability of businesses to invest in climate-friendly alternatives. Additionally, the high upfront costs of transitioning to greener technologies often discourage industries from adopting sustainable practices.[24]

To overcome these barriers, India needs to integrate climate change into broader economic and development strategies. This includes aligning economic incentives with environmental goals, such as creating a green economy through investment in renewable energy, sustainable industries, and energy efficiency technologies. Additionally, political consensus on the urgency of addressing climate change and overcoming short-term economic concerns is crucial to ensure that climate laws are enforced effectively.[25]

## 7. Key Legal Challenges

### 7.1 Institutional and Governance Issues

- Fragmented authority between central and state bodies hinders uniform standardization.
- High turnover and skill deficits in regulatory agencies degrade monitoring efficacy.
- Sparse adoption of digital tools limits transparency and real-time compliance tracking.

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[23] R. Nair, "Environmental and Climate Change Law: A Policy Review" *International Environmental Law Journal*(2018).

[24] S. Singh, "The Role of Technology in Enforcing Climate Change Laws in India" *Journal of Environmental Technology* (2020).

[25] S. Mehta, "The Environmental Impact of India's Development: Legal Approaches to Mitigation" Routledge (2017).

### 7.2 Legislative Gaps and Fragmentation

- Outdated provisions in legacy statutes fail to accommodate emerging technologies and markets.
- Divergent state regulations impose multi-jurisdictional compliance burdens on businesses.
- Lack of explicit liability for climate damages complicates enforcement of adaptation measures.

### 7.3 Judicial Constraints

- Reliance on courts for environmental governance yields ad hoc remedies rather than systemic reforms.
- Protracted litigation and limited technical expertise in courts delay crucial enforcement actions.

### 7.4 Enforcement and Compliance Shortfalls

- Monetary penalties often remain too low to deter large polluters and may be treated as business costs.
- Absence of standardized inspection protocols undermines credibility of compliance assessments.
- Corruption and political influence can derail prosecutions and permit enforcement lapses.

### 7.5 Financial and Resource Constraints

- Chronic under-funding leaves agencies understaffed for inspections and prosecutions.
- Dependence on industry fees for budgets creates conflicts of interest.
- Limited capacity for scientific assessments impedes evidence collection and case building.

### 7.6 Public Participation and Stakeholder Engagement

- Low public awareness of legal rights reduces whistleblower activity.
- Inadequate inclusion of indigenous and marginalized communities weakens participatory governance.
- Sparse network of environmental courts at district levels restricts access to justice.

## 8. Case Studies

### 8.1 Coal Mining and Air Pollution Control

In coal-rich states, mining firms frequently sidestep environmental clearances, fueling air quality crises. Despite strict conditions under the Air Act, SPCBs struggle to monitor extensive mining sites and enforce corrective measures.[26] Litigation has stalled expansion, yet enforcement of remediation orders remains elusive.

### 8.2 Renewable Energy Adoption

India's surge in solar parks illustrates both progress and pitfalls. While capacity has soared, land acquisition disputes and weak enforcement of power purchase agreements (PPAs) undercut project timelines. State utilities often default on PPAs, eroding investor confidence and slowing renewable growth.[27]

## 9. Discussion and Recommendations

To fortify enforcement, India should:

- Harmonize central and state regulations through model legislation and clear demarcation of powers.
- Ring-fence regulatory budgets and invest in digital monitoring for real-time compliance.
- Calibrate penalties to reflect the true social cost of carbon and environmental harm.
- Establish specialized environmental courts with technical support for climate cases.
- Institutionalize community-led monitoring to leverage local oversight and knowledge.

## 10. Conclusion

Robust enforcement is the linchpin of effective climate mitigation. By addressing legal fragmentation, resource inadequacies, and governance deficiencies, India can ensure that its ambitious policies yield tangible emissions reductions. Targeted reforms and empowered stakeholders will align legal practice with climate ambitions, positioning India as a global leader in sustainable development.

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[26] Coal mining environmental clearance guidelines, Ministry of Environment, Forest and Climate Change.

[27] Solar Parks Scheme, Ministry of New and Renewable Energy.

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# Maternity Leave Laws in India: The Middle-Class Paradox and the Limits of Legal Protection

***Sumanpreet Kaur* & Dr. Manveer Kaur*****

## Abstract

The Maternity Benefit (Amendment) Act, 2017 significantly expanded maternity leave entitlements in India by extending paid leave from twelve to twenty-six weeks for women employed in the formal sector. While widely praised as a progressive reform, its socio-economic consequences remain under-examined. This paper critically analyzes India's maternity leave regime through a doctrinal and socio-legal approach, drawing on statutory analysis, judicial precedents, government data, and comparative international models.

The study identifies a "middle-class paradox," wherein formally employed women despite statutory protection experience indirect workplace discrimination, career stagnation, and hiring bias, while women in the informal and gig economy remain entirely excluded from legal coverage. The findings reveal that the employer-funded structure of maternity benefits, absence of mandated paternity leave, and weak enforcement mechanisms undermine the law's egalitarian objectives.

By situating India's maternity framework within global best practices from Sweden, Canada, and South Africa, the paper argues that maternity protection without universal coverage and shared care giving policies may reinforce, rather than dismantle, gender inequality. The study contributes to existing scholarship by highlighting how formally generous maternity laws can produce regressive outcomes when divorced from institutional support and social security mechanisms. The paper concludes with policy recommendations aimed at universalizing maternity benefits, introducing paternity leave, and shifting financial responsibility from employers to the state.

**Keywords:** *Maternity Leave, Gender Equality, Labour Law, Middle-Class Women, India*

## 1. Introduction

The intersection of gender, labour rights, and social policy in India has long been marked by structural contradictions. While India has enacted progressive legislation to protect women workers most notably the Maternity Benefit (Amendment) Act, 2017, which extended paid maternity leave from twelve to twenty-six weeks for women in formal employment female labour force participation has continued to

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decline, falling from nearly 32 per cent in 2005 to below 20 per cent by 2021.[1] This disjunction between legal reform and labour market outcomes raises important questions about the effectiveness of maternity protection as an instrument of gender equality.

This paper argues that India's maternity leave regime has produced what may be described as a *middle-class paradox*[2]. On the one hand, formally employed, middle-class women are the primary legal beneficiaries of extended maternity leave. On the other, they frequently encounter indirect forms of workplace discrimination, including hiring bias, career stagnation, and exclusion from leadership trajectories following maternity. At the same time, the vast majority of women workers engaged in agriculture, informal employment, gig platforms, and domestic work remain entirely outside the statutory framework. Consequently, a reform intended to advance women's labour rights risks entrenching new hierarchies among women themselves, while reinforcing patriarchal assumptions regarding care giving roles.

Existing scholarship on maternity benefits in India has largely focused either on legislative progress or on the exclusion of informal-sector workers. However, insufficient attention has been paid to the differentiated consequences of maternity leave for women *within* the formal sector, particularly the professional and socio-economic penalties experienced by middle-class working mothers despite formal legal protection. By foregrounding this overlooked dimension, the present study contributes to feminist labour law scholarship by demonstrating how formally generous maternity provisions can generate regressive outcomes in the absence of universal coverage, shared care giving norms, and institutional support.

Methodologically, the study adopts a doctrinal and socio-legal approach.[3] It examines the statutory evolution of maternity benefits in India, relevant judicial interpretations, and compliance practices across key sectors such as information technology, banking, healthcare, and education.[4] The analysis draws on government reports, labour force

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1 labour.gov.in/sites/default/files/maternity_benefit_amendment_act2017_.pdf (Last visited on August 08, 2025).

2 This term denotes a situation in which formally progressive legal or institutional frameworks produce outcomes that contradict their stated objectives, resulting in the coexistence of legal protection and structural disadvantage. **See** Thomas S. Kuhn, The Structure of Scientific Revolutions (University of Chicago Press, 1962), explaining "paradox" as a situation where established frameworks generate outcomes that contradict their stated objectives; see also Oxford English Dictionary, "Paradox" (defining it as a condition in which apparently contradictory realities coexist).

3 Upendra Baxi, Socio-Legal Research in India (Oxford University Press, 1985) (explaining the integration of doctrinal legal analysis with social and empirical inquiry); see also B.N. Mani Tripathi, Legal Research and Methodology (Allahabad Law Agency, 2016).

4 The Maternity Benefit Act, 1961 (as amended by the Maternity Benefit (Amendment) Act, 2017); see also *Municipal Corporation of Delhi v. Female Workers* (Muster Roll), (2000) 3

survey data, and comparative international models to assess how India's maternity framework operates in practice.[5] Through this analysis, the paper seeks to evaluate whether maternity leave, as currently structured, advances substantive gender equality or merely offers symbolic protection.

The paper proceeds as follows. The next section reviews existing literature on maternity protection and gendered labour outcomes. This is followed by an analysis of India's legal framework and its implementation across sectors. The discussion then situates India's experience within a comparative global context, before concluding with policy recommendations aimed at addressing the structural limitations of the current regime.

## 2. Maternity Leave in India: Legal Framework and Structural Limits

The origins of maternity protection in India can be traced to the colonial era, when early labor laws were enacted to regulate industrial and plantation work. However, these statutes were largely focused on working hours, safety, and wages; the specific needs of women workers— particularly maternity protection—remained neglected. Women were frequently dismissed upon pregnancy and denied any form of income or medical support, underscoring the absence of recognition of maternity as a social right.

A decisive shift occurred with the enactment of the **Maternity Benefit Act, 1961[6]**, which for the first time offered women employed in factories, plantations, and establishments with ten or more workers the right to **twelve weeks of paid maternity leave** (six before and six after childbirth). The statute embodied India's commitment to the **International Labour Organization's (ILO) Convention No. 103 (1952)[7] on Maternity Protection**, though its scope was limited primarily to the formal sector.

Subsequent amendments gradually broadened protections, but the **Maternity Benefit (Amendment) Act, 2017[8]** stands out as a landmark. It increased paid leave from twelve to twenty-six weeks for biological mothers, extended twelve weeks of leave to adoptive and commissioning mothers, and mandated **crèche facilities** in establishments employing fifty or more workers. Additionally, it allowed mothers the option to **work from home** where the nature of the job permitted.

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SCC 224 (recognising maternity benefits as part of social justice and gender equality).

5 Ministry of Labour and Employment, Government of India, Annual Report 2018–19; see also National Sample Survey Office, Periodic Labour Force Survey 2017–18; see further International Labour Organization, Maternity Protection *Convention, 2000 (No. 183)*; Hyland and Shen, *The Evolution of Maternity and Paternity Leave Policies over Five Decades* (World Bank, 2022).

6 *Supra* note 4

7 *Id* at 5.

8 The Maternity Benefit (Amendment) Act, 2017 (Act No. 6 of 2017), India.

The **Code on Social Security, 2020** seeks to consolidate the Maternity Benefit Act with other labor laws under one umbrella. Although it envisions universal maternity benefits, concerns persist about weak enforcement mechanisms and ambiguous definitions, raising fears that the law's promise may not translate into practice.

The limitations of the current framework become evident when its key provisions are examined alongside their practical consequences. As shown in Table 1, extended maternity leave applies only to establishments employing ten or more workers, effectively excluding nearly eighty per cent of women engaged in informal, agricultural, domestic, and gig-based work.

**Table-1 (major provisions of the 2017 Amendment alongside their limitations)[9]**

| **Provision** | **Coverage** | **Limitations/Gaps** |
|---|---|---|
| **26 weeks paid maternity leave** | Applies only to formal-sector workers in establishments with ≥10 Employees | Excludes ~80% of women in informal sector (agriculture, gig work, domestic labor) |
| **Crèche facility (mandatory for firms with 50+ employees)** | Formal establishments with sufficient workforce | Poor enforcement; many firms non-compliant or provide inaccessible facilities |
| **Adoption/Surrogacy Leave – 12 weeks** | Adoptive and commissioning mothers | Creates inequality vis-à-vis biological mothers; assumes less care giving is required |
| **Work-from-home Option** | Available where nature of work Permits | Subject to employer discretion; uneven implementation |
| **Paternity leave** | Not mandated | Reinforces stereotype of women as sole caregivers |
| **Financial burden** | Entire cost borne by employers | Creates disincentives for hiring/ promoting women; hits SMEs hardest |

Source *

This structure illustrates that the **breadth of the law is narrow** and its implementation fragmented. While it is progressive for those in the formal sector, it entrenches disparities between formal and informal women workers.

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[9] *Ibid*

* The Maternity Benefit (Amendment) Act, 2017 (Act No. 6 of 2017), India.

**Table - 2, Judicial Contribution to Maternity Protection in India**

| Case | Year | Key Issue | Judicial Contribution to Maternity Rights |
|---|---|---|---|
| **Air India v. Nargesh Meerza[10]** | 1981 | Discriminatory service conditions | The Supreme Court struck down rules requiring retirement upon first pregnancy, holding them violative of Articles 14 and 15 and recognising maternity as integral to equality and dignity. |
| **Neera Mathur v. LIC[11]** | 1992 | Pregnancy disclosure at recruitment | The Court held that mandatory disclosure of pregnancy violated dignity and privacy, reinforcing constitutional protection against gender discrimination. |
| **Municipal Corporation of Delhi v. Female Workers[12]** | 2000 | Maternity benefits for casual workers | Maternity benefits were extended to casual and contractual women workers, grounding maternity protection in social justice and Article 21. |
| **K.S. Puttaswamy v. Union of India[13]** | 2017 | Right to privacy | Though not a maternity case, recognition of privacy as a fundamental right strengthened the basis for reproductive autonomy and workplace protection. |

India's maternity framework must also be understood in light of international labor norms. Though India has ratified several ILO conventions[14], it has **not ratified ILO Convention No. 183 (2000)**, which prescribes a minimum of 14 weeks' leave, equal treatment, and non- discrimination.[15]

Additionally, as a signatory to CEDAW (1979)[16], India has an obligation to eliminate employment discrimination linked to maternity. The **Sustainable Development**

[10] (1981) 4 SCC 335.
[11] (1992) Supp (1) SCC 286.
[12] (2000) 3 SCC 224.
[13] (2017) 10 SCC 1.
[14] International Labour Organization, Convention No. 103 on Maternity Protection (1952).
[15] International Labour Organization, Convention No. 183 on Maternity Protection (2000).
[16] Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

**Goals (SDGs)**[17] notably Goal 5 (Gender Equality) and Goal 8 (Decent Work) further require India to align domestic law with international commitments.[18]

A comparison with selected countries reveals that while India's leave duration is among the highest, its exclusions, lack of paternity leave, and weak state support reduce its effectiveness:

**Table- 3, (Comparative Overview of Maternity and Paternity Leave Provisions Across Countries)**[19]

| Country | Maternity Leave | Paternity Leave | Coverage & Support |
|---|---|---|---|
| **Sweden** | 480 days parental leave (80% paid); shared | 90 days reserved for fathers | Universal, state-supported |
| **Canada** | 15 weeks maternity + 40 weeks parental (55% pay) | Shared parental leave available | Funded through Employment Insurance (social insurance model) |
| **France** | 16 weeks (up to 26 for 3rd child), nearly full Pay | 28 days (11 compulsory) | Strong public childcare network |
| **South Africa** | 4 months leave, unpai (UIF provides partial wage) | 10 days | Social insurance for broader coverage |
| **India** | 26 weeks maternity leave (paid by employer)[20] | None mandated | Restricted to formal-sector women; weak enforcement of crèche mandate |

Source**

[17] United Nations, Sustainable Development Goals Report (2015).

[18] *Ibid*

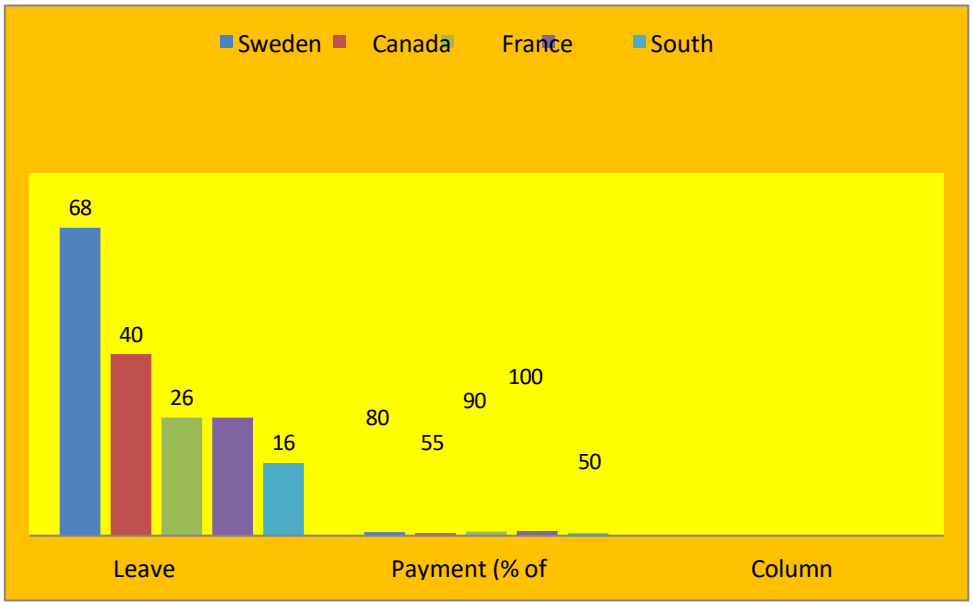
[19] M. Hyland, and L. Shen, *The evolution of maternity and paternity leave policies over five decades: A global analysis*. Policy Research Working Paper No. 10215. Washington, DC: World Bank, (2022).

[20] Ministry of Labour and Employment, *Annual Report 2018–19*. Government of India, New Delhi, (2019).

** *Policy Research Working Paper No. 10215. Washington, DC: World Bank.*

This comparison underscores India's paradox: **formally generous but substantively exclusionary**.

**Diagram -1**




While the **Maternity Benefit (Amendment) Act, 2017** reflects progressive intent, its exclusions and design flaws undermine its impact. By omitting informal-sector workers, the law entrenches class-based inequalities. By neglecting paternity leave, it reproduces gender stereotypes.[21] By placing the financial burden solely on employers, it fuels discriminatory practices in hiring and promotions. Weak enforcement mechanisms and inaccessible judicial remedies further weaken its effectiveness.[22]

In essence, India's maternity law regime offers "progressive form but regressive outcomes." It protects a privileged minority while rendering millions of women invisible. The judiciary has expanded protections incrementally, but without systemic reform including universal coverage, shared financial responsibility, and gender-neutral care giving policies maternity protection will remain a formal entitlement rather than a substantive right.

## 3. The Middle-Class Paradox: Compliance and Workplace Reality

At first glance, the Maternity Benefit (Amendment) Act, 2017 appears to have been widely accepted by corporate India. Large multinational companies and established firms in sectors such as information technology, banking, and healthcare were among

[21] Ministry of Labour and Employment, Report on Implementation of the Maternity Benefit (Amendment) Act, 2017 (Government of India, 2018).

[22] *Ibid*

the earliest to revise their human resource policies to reflect the extended twenty-six-week maternity leave entitlement. Many organisations publicly highlighted their compliance as part of corporate social responsibility initiatives, presenting themselves as inclusive and gender-sensitive employers.

However, this surface-level compliance conceals more complex and troubling realities. Empirical studies and post-2017 labour market trends point to the persistence of the so-called "motherhood penalty" a form of indirect discrimination faced by women of childbearing age. Employers, mindful of the financial and operational implications of prolonged maternity leave, often exhibit reluctance in hiring or promoting women who may potentially avail such benefits. Even where legal compliance is formally observed, women may be subjected to what has been described as "defensive discrimination," wherein they are viewed as organisational liabilities rather than long-term investments.[23]

Sector-specific patterns further illustrate this contradiction. In the information technology sector, compliance rates tend to be higher due to global exposure and established human resource frameworks. Yet women frequently report being sidelined upon returning from maternity leave, excluded from high-visibility assignments, or reassigned to less demanding roles that restrict career progression.[24] In banking and finance, although maternity leave is formally recognised, workplace cultures characterised by long hours and performance pressure often discourage women from availing the full duration of leave. Informal signals such as concerns raised during appraisals suggest that extended absence may negatively affect career prospects.[25] In education and healthcare, where women's participation is comparatively high, compliance is generally better; nevertheless, a substantial proportion of teachers and nurses are employed on contractual terms and remain excluded from statutory maternity benefits.

These sectoral experiences demonstrate that even where maternity laws apply, middle-class women frequently navigate organisational cultures that treat maternity as a professional disadvantage. Formal legal rights, therefore, do not necessarily translate into substantive workplace equality.[26]

The paradox becomes more pronounced when contrasted with the experiences of women outside the formal employment sector.[27] Nearly 80% of Indian women

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[23] Ministry of Labour and Employment (2018). *Implementation status of the Maternity Benefit (Amendment) Act, 2017*. Government of India, New Delhi.

[24] FICCI and EY (2019). *Women at work: Policies and practices in corporate India*. Federation of Indian Chambers of Commerce and Industry, New Delhi.

[25] *Ibid*

[26] NASSCOM (2018). *HR best practices in the IT–ITeS sector*. National Association of Software and Service Companies, New Delhi.

[27] National Sample Survey Office, *Periodic Labour Force Survey 2017–18* (Ministry of Statistics and Programme Implementation, Government of India); see also Jayati Ghosh,

workers are engaged in informal employment[28], including domestic work, agriculture, home-based enterprises, and the gig economy. For these women, the Maternity Benefit Act has little practical relevance.[29] Freelancers and self-employed women often experience complete income loss during maternity, forcing many to return to work prematurely, with serious implications for maternal and child health[30]. Small enterprises and start-ups frequently evade compliance altogether, citing financial constraints and the absence of effective inspection mechanisms. Domestic workers and gig-economy participants such as delivery and ride-hailing workers fall outside statutory definitions of "employees," rendering them legally invisible despite their growing contribution to the platform economy[31].

The outcome is a deeply unequal, two-tiered system of maternity protection. A limited group of women in formal employment enjoy partial legal protection, while the overwhelming majority remain entirely excluded. Middle-class women occupy an intermediate position within this structure: legally protected in theory, yet penalised in practice.[32]

This structural imbalance has significant implications for women's career trajectories. For many middle-class women, maternity leave becomes a site of conflict between professional advancement and motherhood. Concerns about career stagnation encourage delayed childbirth, particularly among urban professionals. Others withdraw from the workforce altogether due to unsupportive organisational environments or family expectations that prioritise care giving roles. Re-entry into the labour market is often difficult, especially in competitive sectors where skills rapidly become obsolete. Even women who remain employed commonly experience stalled promotions and slower career progression, as informal evaluations label them as less committed than male colleagues or unmarried peers.

Beyond professional consequences, the maternity framework also shapes women's psychological and social experiences. Middle-class working mothers frequently

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'Informalisation and Women's Work in India', *Indian Journal of Labour Economics* 62(1) (2019) 1–15.

[28] International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (3rd edn, ILO 2018); see also Martha Chen, *The Informal Economy: Definitions, Theories and Policies* (WIEGO Working Paper No. 1, 2012).

[29] N. Neetha, 'Gendered Informalisation and Maternity Benefits in India', *Economic and Political Weekly* 53(17) (2018) 44–52 (noting the exclusion of informal, self-employed and contractual women workers from statutory maternity protection).

[30] World Health Organization, *Maternal, Newborn, Child and Adolescent Health in India* (WHO 2016); see also Institute of Social Studies Trust, *Maternity Entitlements and Women in Informal Employment* (New Delhi, 2020).

[31] Fairwork India, *Fairwork India Ratings 2021: Labour Standards in the Platform Economy* (Oxford Internet Institute & IIM Bangalore); see also Judy Fudge and Shae McCrystal, 'Regulating the Gig Economy', *Australian Journal of Labour Law* 32(2) (2019) 1–28;

[32] *Ibid*

report heightened stress and anxiety related to job security during maternity leave. Patriarchal expectations continue to define "ideal motherhood" in ways that stigmatise professional ambition. Prolonged absence from the workplace can result in professional isolation, weakened networks, and reduced long-term opportunities. Economic dependence on spouses or families may also increase, undermining the promise of financial autonomy that formal employment initially offered.

Organisational practices play a decisive role in shaping these outcomes. While some progressive employers have introduced flexible work arrangements, phased re-entry programmes, and mentoring support for returning mothers, such initiatives remain limited. Most organisations adopt a compliance-oriented approach, meeting statutory requirements without addressing deeper questions of gender equity. Crèche facilities, although mandated, are often poorly implemented or made impractical for regular use.

The absence of mandated paternity leave further entrenches inequality by reinforcing the assumption that care giving responsibilities rest primarily with women. Men's uninterrupted career trajectories, combined with women's maternity-related penalties, reproduce gendered divisions of labour across sectors. This dynamic gives rise to what may be described as a "paradox of privilege": middle-class women possess legal entitlements, yet these very entitlements expose them to new forms of disadvantage.

Interviews and NGO reports[33] reveal that women are frequently discouraged often subtly from availing extended maternity leave, with references made to team efficiency or client expectations. Upon returning to work, many are reassigned to lower-responsibility roles or excluded from leadership tracks. These experiences highlight a fundamental contradiction: rights exist on paper, but penalties persist in practice.[34]

The middle-class paradox thus captures the dual reality of India's maternity regime. While the law offers progressive entitlements to a narrow segment of the workforce, it simultaneously produces hidden biases and structural penalties that undermine women's long-term economic participation. Without reforms addressing employer incentives, enforcement mechanisms, and deeply embedded gender norms, maternity protection will remain uneven, exclusionary, and limited in its transformative potential.

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[33] *Ministry of Labour and Employment, Government of India, Annual Report 2018–19 (chapter on maternity benefits);*

[34] Institute of Social Studies Trust (ISST), *Working Motherhood in Urban India: Experiences after the Maternity Benefit (Amendment) Act, 2017* (New Delhi, 2018) (interview-based study documenting subtle discouragement from availing maternity leave and post-return career penalties); **see also** Ministry of Labour and Employment, Government of India, *Report on the Implementation of the Maternity Benefit (Amendment) Act, 2017* (2018), noting uneven compliance, weak enforcement mechanisms and employer resistance, available at https://labour.gov.in

## 4. Comparative Analysis: India in Global Perspective

Maternity protection is internationally recognised as a core element of gender equality and decent work. At the global level, the International Labour Organization's Convention No. 183 (2000)[35] establishes minimum standards, including at least fourteen weeks of maternity leave, protection against dismissal, and safeguards for women's health in the workplace. Many countries have moved beyond these minimum requirements, yet the structure and effectiveness of maternity policies differ significantly depending on welfare regimes, labour market organisation, and prevailing gender norms.

When situated within this global context, India's maternity framework reveals both notable strengths and significant limitations. The provision of twenty-six weeks of paid maternity leave places India among countries offering comparatively long leave durations. However, this formal generosity is undermined by restricted coverage, the absence of paternity leave, and limited state involvement in financing and enforcement. As a result, India's maternity regime struggles to deliver substantive gender equality.

The Nordic model, particularly Sweden, is frequently cited as an exemplar of gender-sensitive parental leave policy. Sweden offers 480 days of parental leave, with 390 days paid at approximately 80 per cent of previous earnings. Crucially, ninety days are reserved exclusively for fathers under a **"use-it-or-lose-it"** arrangement, ensuring paternal participation in childcare. This design directly challenges traditional gender roles and normalises shared care giving responsibilities. The outcomes of this approach are reflected in Sweden's high female labour force participation, relatively low gender wage gaps, and improved work–life balance indicators. In contrast, India's failure to mandate paternity leave reinforces the assumption that care giving is primarily a woman's responsibility, thereby intensifying the motherhood penalty in the labour market.

Canada provides a contrasting model based on social insurance rather than employer liability. Under its Employment Insurance scheme, women are entitled to fifteen weeks of maternity benefits, followed by shared parental leave of up to forty weeks, paid at a fixed proportion of earnings. Importantly, these benefits are funded through a contributory social insurance mechanism rather than borne directly by employers. This structure significantly reduces employer resistance and mitigates incentives to discriminate against women in hiring and promotion. India's employer-funded maternity system, by comparison, has generated hidden costs that are often transferred to women through reduced career opportunities.

France illustrates the importance of coupling maternity leave with broader state responsibility and childcare support. Women are entitled to sixteen weeks of maternity leave for the first child, with extensions for subsequent births, alongside

[35] *Supra* note at 15

near full wage replacement. Fathers receive twenty-eight days of paternity leave, a portion of which is compulsory. Beyond leave entitlements, France has invested extensively in public childcare infrastructure, enabling women to return to work without disproportionate care giving burdens. India's statutory requirement for crèche facilities represents a step in this direction, but weak enforcement and lack of public investment limit its effectiveness.

Japan offers a cautionary example of how progressive legal provisions may falter in the face of entrenched social norms. Although Japanese law provides up to twelve months of childcare leave for each parent, paid through social insurance, uptake among fathers remains low due to workplace stigma and cultural expectations. Women who avail long periods of leave often face career stagnation upon return. This experience underscores the limits of legal reform in isolation a challenge that closely mirrors India's own struggle to translate formal maternity rights into substantive equality.

Among developing economies, South Africa presents a relevant parallel. Its legal framework provides four months of maternity leave, typically unpaid, but partial wage replacement is available through the Unemployment Insurance Fund. This contributory model enables broader coverage, including for women outside standard formal employment. India, by contrast, lacks a comparable social insurance mechanism for maternity, resulting in the exclusion of most informal-sector women. Extending social security coverage through contributory schemes could significantly reduce this gap.

The United States represents the opposite end of the spectrum, offering minimal statutory maternity protection. Under the Family and Medical Leave Act, eligible employees are entitled to twelve weeks of unpaid leave, subject to employer size and tenure requirements. While some states have introduced paid family leave programmes, there remains no federal mandate for paid maternity leave. Although India performs better than the United States in terms of leave duration, it continues to lag behind global best practices in universality of coverage, state support, and care giving equity.

Taken together, these comparative models highlight a central tension within India's maternity regime. While the law is progressive in form, its design places excessive responsibility on employers, neglects shared care giving, and excludes a substantial portion of women workers. International experience suggests that maternity protection is most effective when supported by state financing, universal coverage, and gender-neutral parental policies. Without such structural reforms, India's maternity framework risks remaining symbolically advanced yet substantively limited.

## 5. Conclusion

The enactment of the Maternity Benefit (Amendment) Act, 2017 marked an

important milestone in India's labour law framework by extending paid maternity leave from twelve to twenty-six weeks. On paper, the reform placed India among countries offering comparatively generous maternity protection. However, as this paper has demonstrated, the transformative potential of the law has been significantly limited by restricted coverage, weak enforcement, and structural design flaws. What was intended as a measure of empowerment has, in practice, produced a set of contradictions captured in this study as the *middle-class paradox*.

For women in formal, middle-class employment, maternity benefits exist as legal entitlements, yet these benefits frequently carry hidden professional costs. Subtle forms of discrimination such as reluctance in hiring women of childbearing age, delayed promotions, and exclusion from leadership trajectories continue to shape workplace outcomes. The motherhood penalty has thus shifted from overt exclusion to indirect and informal mechanisms embedded within organisational practices. Middle-class women remain legally protected, but structurally disadvantaged.

For the vast majority of women working in the informal economy, including gig work and domestic labour, maternity protection remains largely absent. Excluded from statutory coverage, these women face income loss, health risks, and heightened economic dependence during maternity. This exclusion reinforces deep class-based inequalities among women themselves, creating a two-tier system in which a small minority enjoys rights on paper while the majority remains invisible to the law.

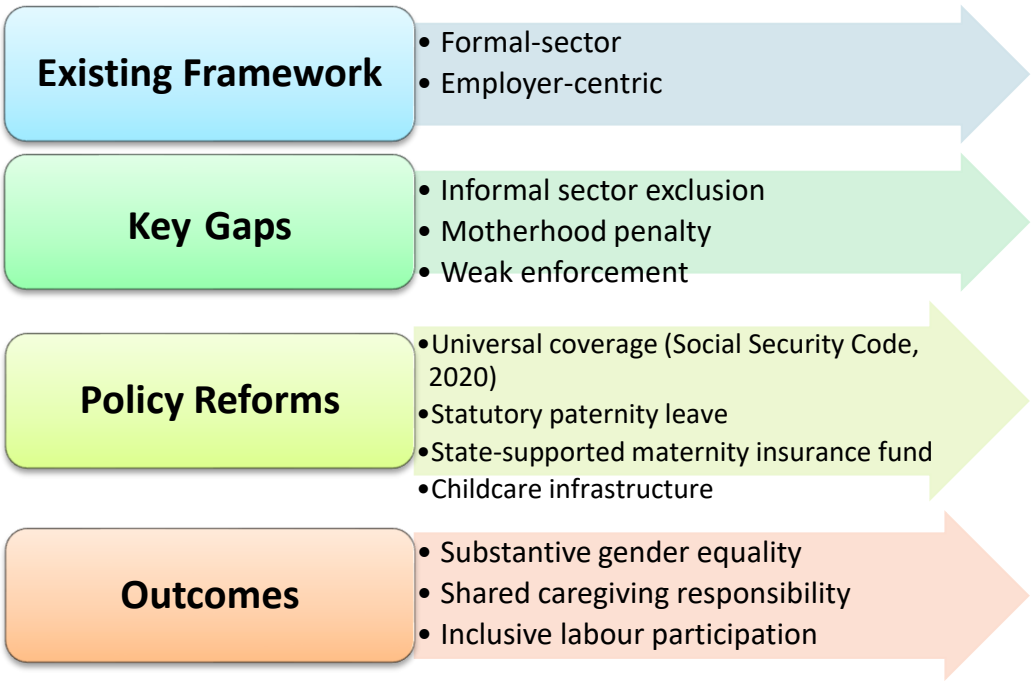
Judicial interventions have played a significant role in expanding the constitutional understanding of maternity protection by linking it to equality, dignity, and social justice under Articles 14, 15, and 21 of the Constitution. Nevertheless, litigation remains a slow and inaccessible remedy for most women, particularly those outside the organised workforce. Without systemic reforms in coverage and enforcement, judicial protection alone cannot resolve the structural limitations of the maternity regime.

Comparative analysis further reveals that maternity protection is most effective when supported by universal coverage, state-backed financing, gender-neutral caregiving policies, and robust childcare infrastructure. Countries such as Sweden, Canada, and France demonstrate that shared responsibility between the state, employers, and families is essential to reducing gender inequality in the labour market. India's approach, while generous in form, remains narrow in reach and regressive in outcome.

The central contribution of this paper lies in highlighting that maternity law is not merely a question of entitlement, but of institutional design, implementation, and social context. Unless the gap between legal promises and workplace realities is addressed, maternity protection will continue to privilege a few while penalising many. Bridging the middle-class paradox is therefore not only a legal necessity but a broader social imperative essential to achieving gender equality, economic participation, and constitutional justice.

## 6. Policy Recommendations

The chart below, drawn from the preceding analysis, highlights the limitations of the existing maternity protection framework in India and identifies the key areas requiring reform. It provides a clear basis for the policy recommendations discussed in this section.




In light of the findings discussed above, comprehensive policy reform is required to ensure that maternity protection in India moves beyond symbolic progress to substantive equality. Addressing the middle-class paradox demands a multi-pronged approach that combines legal reform, institutional support, and cultural transformation.

A primary priority is the extension of maternity protection to women employed in the informal and gig economy. With nearly eighty per cent of Indian women engaged in informal work, the exclusion of this group severely undermines the effectiveness of maternity legislation. The Code on Social Security, 2020 provides a legislative framework for extending maternity benefits to gig workers, platform workers, and the self-employed; however, its implementation must be strengthened through clear definitions and enforceable mechanisms. Establishing a contributory maternity insurance fund, financed jointly by the state, employers, and workers, would allow maternity benefits to be extended beyond formal employment. Explicit inclusion of domestic workers within such social protection schemes is particularly necessary

given their vulnerability and historical marginalisation.

Introducing statutory paternity leave is equally essential to achieving gender equality. The absence of mandated paternity leave reinforces the assumption that care giving is solely a woman's responsibility, thereby intensifying workplace discrimination against mothers. A minimum period of paid paternity leave, with a non-transferable component reserved for fathers, would encourage shared care giving and reduce the motherhood penalty. Legislative reform should be accompanied by public awareness initiatives aimed at normalising men's participation in childcare and reducing stigma around care giving roles in the workplace.

There is also a pressing need to shift the financial burden of maternity benefits away from individual employers. The current employer-centric model creates incentives for discriminatory hiring and promotion practices, particularly in the private sector. Greater state involvement through tax incentives, subsidies for small and medium enterprises, and pooled funding mechanisms administered by public institutions would reduce these distortions and promote broader compliance.

Strengthening enforcement and grievance redressal mechanisms is critical to ensuring that maternity rights are meaningful in practice. Digital compliance monitoring, fast-track labour tribunals for maternity-related disputes, and mandatory public disclosure of compliance data would improve accountability and deter violations. Without effective enforcement, statutory rights remain largely aspirational.

Investment in childcare infrastructure must complement maternity leave reforms. While the statutory requirement for crèche facilities is a positive step, weak enforcement and lack of public investment have limited its impact. State-supported and subsidised childcare centres, particularly in urban and semi-urban areas, would facilitate women's return to work and reduce long-term career penalties associated with motherhood. Partnerships between employers and the state in developing shared childcare facilities could further strengthen this support system.

Finally, sustained efforts toward legal awareness and cultural change are indispensable. Many women remain unaware of their maternity entitlements, while patriarchal norms continue to frame caregiving as incompatible with professional commitment. Legal literacy programmes, community-level engagement, and workplace sensitisation initiatives are essential to translating formal rights into lived realities of empowerment.

Taken together, these reforms underscore the need to move from a narrow, employer-centric model of maternity protection to a broad, inclusive, and state-supported system. Only through universal coverage, shared caregiving responsibility, effective enforcement, and cultural transformation can maternity leave policies become genuine instruments of gender justice and inclusive economic growth.

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# Caste, Identity, and Discrimination in the Indian Medical Profession

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## Abstract

Navigating caste identity in the medical profession can be a complex and sensitive issue in India, where caste dynamics have a long history and continue to impact various aspects of professional and social life. The promotion of social justice, the provision of social welfare, and the protection of human dignity are matters of concern. Therefore, education is crucial in achieving justice and equality in any society (Khushwaha, 2013). In a country like India, which is known for its diversity and complexity based on social inequality and hierarchy drawn from the caste system, education becomes even more crucial to achieving justice. The Scheduled Castes are among the most marginalized groups in Indian society, having been historically and systematically denied socio-economic opportunities and educational rights (Kumar, V. 2014). The structure of society is exploitative rather than functional for them. There are various Constitutional provisions in the Indian Constitution, such as Article 15 (part of Fundamental Rights in Part III of the Indian Constitution) which prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, Article 17 (part of Fundamental Rights in Part III of Indian Constitution) which abolishes and forbids its practice in any form. Caste discrimination manifests in subtle and overt forms in the daily lives of Scheduled Caste (SC) doctors. This research paper explores the issue of caste identity in the medical profession.

**Keywords:** *Caste Identity, Medical Profession, Inequality, Discrimination, Doctors, Scheduled Caste*

## 1. Introduction

Although the Indian Constitution[1]guarantees to eradicate caste discrimination, caste continues to serve as a fundamental identification of an individual, and caste discrimination remains a pervasive phenomenon in Indian society. Several research studies have revealed that caste-based discrimination still exists in higher education, particularly in elite institutions (Subramanian, 2015; Thorat & Kumar, 2008). Nambissan and Rao's (2013) study on the Indian Institute of Technology (IIT) found

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[1] The legal provisions such as Anti-Untouchability Act (1955), Protection of Civil Rights Act (1975) and Prevention of Atrocities Act (1989). These acts are facilitated by the Article 17 of the Constitution that considers the practice of untouchability in any form as an offense.

that students from lower castes, especially Dalits, encounter both subtle and overt forms of discrimination within the institution. Nambissan and Rao examined the notion of stigma[2] (Goffman, 2009) in a context of polluted caste identities and their impact on social relations in the institution. Nevertheless, these studies neither provided a framework for analyzing the structural dimensions of discrimination nor addressed micro aggressions, which are often subtle and easily overlooked. Moreover, no systematic study has been conducted in the Medical Profession that explores the journey of Scheduled Caste doctors from the day they enter medical school until they achieve faculty positions in medical colleges.

It is pertinent to understand that education plays a significant role in the socio-economic betterment of weaker sections of society, including the Scheduled Castes, the Scheduled Tribes, and people with disabilities. For decades and in contemporary times, Dalit men and women area the bottom of the educational pyramid, despite the claims of the Indian government to uplift this disadvantaged group (Rao, 2002).

## 2. Caste System in Indian Society

*Caste is the bones, race the skin* ~ Wilkerson.

The caste system has existed for centuries. There was clear-cut differentiation in groups, and the four 'Varnas' hierarchical system was firmly established. In ancient times, different nomenclatures or terminologies were used for the Scheduled Castes, like 'Mlechha', 'Chandal' (used by Manu), 'Avarna', which is outside the four varnas, 'Nishada', 'Danlaksha', 'Antyaja', 'Atishudra' (Michael, 1999). These offensive words and social stigma about Dalits are particularly mentioned in the Hindu scriptures, sacred books or texts. Manusmriti (ancient legal text or Dharma shastra of Hinduism) made the caste system very rigid. It mentioned segregation, restriction, hierarchy, derogatory, discriminatory, lopsided, purity and impurity against Dalits (Ghurye, 1979; Dumont, 1999; Srinivas, 1992).

Dr. B.R. Ambedkar viewed education as a means to liberate Dalits from illiteracy, injustice, and exclusion. Yet, in India, many Dalit children have continued to face a high risk of exclusion from their school years onwards, largely due to discriminatory practices and adverse socio-economic conditions. According to Sukumar (2023), often the language used against the Scheduled Caste students is very offensive and abuses their identity. Stereotypes and prejudices, which reflect the cultural perceptions and practices of the broader society, are a crucial determinant of educational access for children belonging to marginalized groups. A negative and biased attitude of teachers fosters an atmosphere of fear and discourages active

[2] The concept of stigma (Goffman, 2009) is associated with an identity of a person, group, ethnicity, caste, religion, nation, race, gender and physical and mental condition. A stigmatised person is an undesirable character in public spaces as well as in social relationships. A person with a stigmatised identity is considered not quite human disqualified from full social acceptance and prone to discrimination and physical assault.

participation among children. The teacher's bias against students is reflected in verbal abuse related to their caste identity, like 'Churha', 'Chamar', and 'Bhangi', etc. These kinds of derogatory terms affect the mental status of Dalit children (Indian Exclusion Report, 2013-14). The literacy rate for Scheduled Castes in 2011 was 66.1 percent, below the national average of 73 percent (Census of India, 2011). In 2012–13, the transition from primary to upper primary level witnessed a dropout rate of 54.4 percent among Scheduled Caste children, which was higher than the overall dropout rate of 51.8 percent.[3] Despite high enrolment levels, most children, mainly from Dalit, Adivasi, and children with disabilities, drop out without completing elementary education or school education (India Exclusion Report, 2013-14). According to the AISHE (All India Survey in Higher Education, 2018-19) Report, the percentage of Scheduled Caste students at the undergraduate level was 14.9 percent out of the total enrollment which was 79.8 percent across India. According to the All-India Survey of Higher Education (AISHE) conducted by the Ministry of Human Resource Development, the enrolment of Scheduled Castes in 43 medical courses over the past seven years stood at 13.42 percent (The Print, 2019).With particular reference to Medical Education, enrolment of Scheduled Caste students in MBBS (Bachelor of Medicine and Bachelor of Surgery) is 8.96 percent (total number=297856, Scheduled Caste number=26712), in M.D (Doctor of Medicine) is 7.99 percent (total number=60615, Scheduled Caste number=4845), in M.S (Master in Surgery) is 7.18 percent (total number=17867, Scheduled Caste number=1283) of the total enrolment (AISHE Report, 2020-21) which is relatively low. Additionally, the enrollment of Scheduled Caste candidates in D.M. (Doctor of Medicine) is 2.78 percent of the total enrollment of candidates (total number = 1004, Scheduled Caste number = 28). The enrollment of Scheduled Caste candidates in M.Ch (Master of Chirurgiae) is 1.89 percent of the total enrollment (total number of candidates: 582, Scheduled Caste number: 11), which is relatively low. There is a close relationship between one's socio-economic background and educational attainment (Bourdieu, 1986).

Likewise, students from the Scheduled Caste community, historically subjected to neglect, encounter multiple barriers in accessing higher education, such as adverse socio-economic conditions, limited cultural capital, and discriminatory practices on campuses, which contribute to their underrepresentation in higher education. One of the most respected professions, the medical profession, is no different and immune to casteist practices (The Wire, 2019). According to Judge (2009), reservation policy and educational enhancement have changed the lives of Dalits in a way. The literacy rate of Scheduled Castes increased from 54 percent in 2001 to 66.1 percent in 2011 (Census of India, 2011). Despite the increase in educational level, it has not provided those with occupational mobility, as very few can succeed based solely on their educational qualifications. In India, the nature of discrimination is strongly associated with the social institution of caste, which makes it challenging to pull the roots of

[3] National University of Educational Planning and Administration (2013), *Elementary Education in India*

discrimination against them, and it continues to exist in contemporary India.

Students from the Scheduled Castes encounter multiple barriers in accessing higher education, largely due to adverse socio-economic conditions, limited cultural capital, and historical marginalization (Aikara, 1980). Even when they succeed in entering higher education, they are frequently reminded of their caste identity and stereotyped as passive or incapable. Coming from families with weak socio-economic backgrounds, Dalit students often face constraints that hinder their academic performance. Moreover, they have restricted access to networks that facilitate the creation of social capital (Tierney et al., 2018). Instead of high-status disciplines like Engineering, Medicine, and other professional fields, Scheduled Castes and Scheduled Tribes are concentrated mainly in the "traditional disciplines" of the arts and humanities (Deshpande, 2006; Rao, 2006). Their journey to reach higher education becomes challenging due to the obstacles they face because of their caste identity and socio-economic factors. The journey of higher education with the obstacles of the Scheduled Caste students can be understood from the background of their school education. Scheduled Caste children experience multiple forms of discrimination in schools, rendering education a distressing experience for them and ultimately discouraging their continuation in schooling (Nambissan, 2010; Ramachandran, 2004).

## 3. Medical Education: Experiences of Scheduled Castes

Students from lower castes face hurdles and discrimination in the medical profession due to their caste identity (Lavanya, K, 1997). Due to the reservation system, their ability and merit are questioned. India has witnessed the suicide of promising doctors who were alleged to have been bullied because of their caste. The cases like the suicide case of Dr. Payal Tadvi (MD student from Bhil community committed suicide due to several instances of caste-based discrimination in 2019 at AIIMS, Delhi), Dr. Bhagwat Devangan (Orthopaedic doctor from Dalit community committed suicide in 2020), Dr. Supriya (MD doctor from Paediatrics in DMCH, who committed suicide in 2014) and many more incidents of caste-based discrimination against Dalit doctors forces us to think about the internal turmoil in the system. It is essential to note that the dominance of upper castes in the medical profession is not a recent phenomenon.

### 3.1 Theoretical Framework

**Tajfel &Turner (1970)** developed the Social Identity Theory (SIT), located within the socio-psychological framework, to explain the conditions under which social identity gains precedence over individual identity and how it shapes intergroup relations. The theory posits that individuals tend to show favouritism toward their in-group while developing prejudice against out-groups, resulting in discrimination. This framework is useful in understanding caste-based discrimination in India, where Upper Caste groups perceive themselves as superior to Scheduled Castes, fostering prejudice, exclusion, and discriminatory practices.

**Erving Goffman (1963)-** Erving Goffman (1963), one of the leading sociologists of the twentieth century and a key proponent of the symbolic interactionist perspective, emphasized the social origins of the self. In his seminal work *Stigma* (1963), he defines stigma as an 'undesired differentness'. This concept is particularly relevant in understanding the experiences of Scheduled Castes, whose identities are stigmatized in Indian society because of their position in the lowest strata of the Hindu social order. According to Goffman, the second and third types of stigma are associated with the Scheduled Castes, as these are inherited through lineage and subject them to enduring challenges in securing dignity and respect within society.

**Phenomenology: Alfred Schutz's Typifications (1962): -** Alfred Schutz (1899-1959), one of the most important figures in the field of phenomenology, gave the concept of typifications- how experienced phenomena are classified according to previous experience. Typical constructs are frequently institutionalised as a standard of behaviour, warranted by traditional and habitual mores and sometimes by specific means of so-called social control, such as the legal order.[4] Schutz's concept of typifications helps to understand the stereotypes related to the Scheduled Castes. Scheduled Caste people have not only been historically neglected and exploited, but also in contemporary times.

**C.H. Cooley (1902). -** Charles Horton Cooley (1902), an American sociologist, introduced the concept of the 'looking-glass self' in his book *Human Nature and the Social Order*, a notion consistent with the symbolic interactionist perspective. He argued that an individual's sense of pride or shame arises not from a direct reflection of oneself but from the imagined perception of how others view them. This concept helps in understanding the self-development of Scheduled Caste students, who often internalize societal perceptions and consequently develop feelings of inferiority.

**Pierre Bourdieu's theory (1986): -** Pierre Bourdieu (1930–2002), the French sociologist and public intellectual, focused on culture—its reproduction, transformation, and its role in sustaining social stratification and power relations. A significant aspect of his work lies in examining the interconnections among different forms of capital, such as economic, social, and symbolic. Bourdieu highlighted how structural constraints and unequal access to institutional resources are shaped by class, gender, and race. Bourdieu's conceptualisation of *social capital* is based on acknowledging that capital is not only economic but also a property of the individual derived primarily from one's social position and status. In the 1970s, Pierre Bourdieu developed the idea of *cultural capital* to explain how power was transferred and how social classes were maintained. Bourdieu's concept of cultural capital refers to collecting symbolic elements such as skills, tastes, posture, clothing, mannerisms, material belongings and credentials which one acquires through being part of a particular social class; therefore, it creates a sense of collective identity and group

[4] Alfred Schutz, Collected Papers, Vol. 1: The problem of Social Reality, The Hague: Martinus Nijhoff, 1962, p.19.

positions. The positions in the social field are classes, each defined by its relative balance of economic and cultural capital and its overall volume of the two kinds of capital combined (Bourdieu, 1984). Bourdieu's theory of cultural capital helps to understand the backwardness of the Scheduled Caste people. They come from poor socio-economic backgrounds, which lead to poor cultural capital and vice versa.

**3.2 Sociology of Everyday Life:** Sociology of **everyday life** refers to the routine activities and interactions that shape individuals' experiences and social realities. It encompasses the mundane, day-to-day behaviours and practices that might seem trivial but are crucial for understanding social norms, values, and structures. In daily life, individuals form typificatory schemes through mirror-like self-reflections and the exchange of cultural meanings embedded in language. The established sociology of education places strong emphasis on structural inequalities, which is essential for understanding how individuals experience inequality in their everyday lives (Madan & Pathak, 2020)[5].

## 4. Review of Literature

Tierney et.al (2018) discussed that university students from Scheduled Castes (SCs) face many challenges that prevent them from graduating and being strong university performers. They tried to understand the lived realities of four male Indian adolescents from different Scheduled Caste groups in their 3rd year of graduation. The findings revealed that students from lower castes had restricted access to networks that facilitate the creation of social capital. Furthermore, institutional initiatives to build or strengthen such capital were found to be minimal. The study emphasized the need for systematic reforms to enable students from marginalized backgrounds to overcome discrimination and achieve success both in college and beyond.

Dhende, L.D. (2017), analysed that several factors influence higher education attainment among Scheduled Caste category students, like adverse economic conditions, family background, and discrimination in Higher Education, language, privatisation, government provisions, and cultural disparities.

Pallical, B. (2017), discussed how caste discrimination against Dalit students functions in educational institutions. Most Dalit students who go to a university are first-generation learners and from a poor socio-economic background with a lack of resources. However, students cross these barriers and reach college, but there again, they are discriminated against.

Kumar, V. (2016), talked about social exclusion in the context of caste and tried to understand the problems Dalits faced on higher education campuses due to their caste

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[5] Madan, A., & Pathak, A. (2020). *Sociological perspectives on everyday life and the social construction of school failure: A literature review* (Working Paper No. 18). Azim Premji University. Retrieved from https://publications.azimpremjiuniversity.edu.in/2380/1/APU%20201877%20Working%20Paper%20Series%2018.pdf

identity. Dalits have historically been excluded in all spheres of life- socially, economically, politically, and educationally, which emerges out of the Hindu Social Order and the social structure of the society. Social exclusion based on caste is dependent on collective identity. They could not accumulate social capital due to the stigmatisation of their identity. In the context of education, they feel discriminated against in campuses of higher learning. Teachers and their fellows do not appreciate their efforts, and their caste identity influences the level of interaction with teachers and classmates. Educational institutions are democratic institutions that are supposed to function on universalistic principles, but these are influenced by particularistic values of caste, which is a sad reality of India.

Jenkins and Barr (2006) study highlighted the structural factors of social exclusion, with persistent poverty identified as a major barrier. They argued that poverty should not be understood merely as a lack of material resources but as a condition of deprivation, and similarly, social exclusion should be viewed not only as a development concern but also as a human rights issue.

Thorat, S. & Madheswaran, S. (2018) analysed that graded caste inequality, the most stubborn feature of the ancient caste system, continues with its worst features even today. Scheduled Caste people still face discrimination in socio-economic aspects. Their study reveals that access to various rights decreases as we move downwards in the caste hierarchy. Scheduled Caste people are at the bottom of the caste hierarchy, which creates many hurdles for them. Much of the per capita consumption expenditure inequality is due to inequality in asset ownership (agricultural land and enterprise) and higher education. The study reveals that low income and a high level of poverty amongst the Scheduled Castes are due to exclusion and discrimination.

Subramanian, A. (2015), in her study 'The IIT & the social life of caste', discussed that an individual's socio-economic status plays an essential role in determining educational and occupational opportunities. She analysed that so called uppercaste students' merit is not evaluated based on accumulated caste privilege and cultural capital. However, those who fall within the 'reserved category' are evaluated by their caste. Scheduled Caste students' intellectual ability is often doubted. She argued that upper-caste privilege is a structural determinant of opportunities and success, and caste capital becomes modern capital.

Vidyasagar (2021) opined that higher education institutes have been practising structural discrimination, which is continuing. For Dalit students and faculty, only the initial step is facilitated through the reservation. However, the rest of their academic journey is affected by the social stigma of caste and other factors like lack of resources and poor socio-economic status (Sukumar, N. 2016). The discrimination in contemporary times is linked to the historical caste structure; the upper castes have dominated most higher education spaces.

## 5. Research Methodology and Sample

This research study intends to explore the issues of caste identity in the medical profession through the academic and social journey of the Scheduled Caste doctors. Therefore, the descriptive and exploratory research method is used. The broad area of the study taken for this study was Punjab. Thus, three Government medical colleges were selected for the study, where the sample consisted of 200 Scheduled Caste doctors as respondents. The census method, which is a process of collecting data from every member of a population, was used. As the Census method was applied in the present research study, i.e. all 205 respondents (Scheduled Caste Doctors: Senior Residents and Faculty) in all three Government Medical Colleges of Punjab were taken for the study. However, 15 doctors (constituting 7.3%) refused to give a response. Thus, 10 retired faculty members were also included in the study. Therefore, the sample consisted of 200 Scheduled Caste doctors as respondents. The sample was a purposively sampled one. Purposive sampling (because only Scheduled Caste doctors were chosen for the study) and the snowball technique were used (Snowball sampling is a widely employed method in qualitative research, specifically when it is hard to reach the population).

## 6. Results and Discussion

### (a) Sex

**Table 1**
**Distribution of Respondents by Sex**

| Sex | Frequency | Percentage |
|---|---|---|
| Female | 91 | 45.5 |
| Male | 109 | 54.5 |
| **Total** | **200** | **100** |

**Source:** Computed from Primary Data, 2024

The study comprised 45.5 % female and 54.5% male respondents (Table 1).

### (b) Sub-Caste of the Scheduled Castes

The Constitution (Scheduled Castes) Order, 1950, as incorporated within the Indian Constitution, officially enumerates 1,109 castes across 28 states in its First Schedule, thereby providing a legal framework for their recognition and protection. There are 39 sub-castes of the Scheduled Caste in Punjab as per the Scheduled Castes Land Development & Finance Corporation (set up by the Punjab State Legislative Assembly under the Punjab Scheduled Castes Land Development and Finance Corporation Act, 1970). Those sub-castes of the Scheduled Castes are Ad-Dharmi, Berar, Bangali, Batwal, Bewaria, Bazigar, Balmiki, Chura or Bhangi, Bhanjara, Chamar, Chanal, Dagi, Dhanak, Dumna, Darain, Dhaya, Dhogri, Gagra, Ganadhila, Kabirpanthi, Khatik, Marecha, Kori,

Mazhabi, Megh, Mochi, Nat, Od, Pasi, Parna, Pherera, Sanhai, Sanhal, Sansoi, Sansi, Sapala, Sarera, Sikligar, Sirkiband, Raisikh, Ramdasia[6]. In Punjab, the Mazhabis, the Ravidasias/Ramdasias, the Ad Dharmis, the Valmikis, and the Bazigars together make up around 87 per cent of Punjab's total Scheduled Caste population (India Today, 2022). Out of the total 39 Scheduled Castes in Punjab, two major groupings, Ad Dharmis and Balmiki, constitute 80 per cent of the total scheduled castes (Awasthi, 2003). Table 2 also highlights the fact that Ad-dharmi, Ramdasia and Balmiki constitute 84.5% of the total strength.

**Table 2**
**Distribution of Respondents by Sub-caste**

| Sub-caste | Frequency | Percentage |
|---|---|---|
| Ad-dharmi | 28 | 14 |
| Balmiki | 24 | 12 |
| Kabir-panthi | 11 | 5.5 |
| Megh | 19 | 9.5 |
| Ramdasia | 117 | 58.5 |
| Sirkiband | 1 | 0.5 |
| **Total** | **200** | **100** |

**Source:** Computed from Primary Data, 2024

**(c) Whether Respondents Were First-Generation Doctors or Not**

It has been explained by Pierre Bourdieu (1986) that social capital is manifested through benefits taken from social networks, which Scheduled Caste people lack due to historical denial of equal opportunities in employment stemming from the notion of untouchability. In this study, it was unveiled that 197 respondents out of 200 were first-generation doctors, which could be seen in Table 3.

**Table 3**
**Whether Respondents Were First-Generation Doctors or Not**

| First-Generation Doctor | Frequency | Percentage |
|---|---|---|
| Yes | 197 | 98.5 |
| No | 3 | 1.5 |
| **Total** | **200** | **100** |

**Source:** Computed from Primary Data, 2024

[6] Social Justice data, *available at:* https://socialjustice.gov.in/writereaddata/UploadFile/scorders-updated-30062016.pdf

It can be observed that, out of 200 respondents, only three respondents (constituting 1.5 per cent) had doctors in their family (they were respondents' younger brothers and sisters). There were 197 respondents (constituting 98.5 per cent) who did not have any family member from the medical profession, meaning that the majority of the respondents were first-generation doctors. They shared that they faced hindrances in understanding the subjects of MBBS as they were the first doctors in their whole family. According to Pierre Bourdieu, social capital is realized through the advantages individuals gain from their social networks. However, Scheduled Caste people historically lack access to such networks and equal employment opportunities due to the entrenched system of untouchability, which has denied them these resources. It is important to know the background of the family's profession. In a report on the Indian Institute of Technology (IIT) Madras, Indersen and Nigam (1993) pointed out that 'most of the Scheduled Caste students were unable to cope with their studies in IITs and some felt that their (IIT's) education standards were too high'. Similarly, in medical education, Scheduled Caste students face hurdles in their journey to becoming doctors (during MBBS and MD/MS).

**(d) Caste Identity: A Matter of Concern among Scheduled Caste Doctors**

Caste functions as a deeply entrenched social identity in Indian society, often taking precedence over class identity, making it one of the most pervasive forms of social identification (Jodhka, 2012). Concerning this study, following table shows how caste identity plays a role in academic and social relations during the professional life of Scheduled Caste doctors.

**Table 4**

**Respondents Ever Tried to Hide their Caste Identity from their Fellow Doctors from Other Institutions**

| Respondents Ever Tried to Hide their Caste Identity from their Fellow Doctors from Other Institutions | Frequency | Percentage |
|---|---|---|
| Yes | 104 | 52 |
| No | 46 | 23 |
| Sometimes | 50 | 25 |
| **Total** | **200** | **100** |

**Source:** Computed from Primary Data, 2024

It has been revealed that out of 200 respondents, 104 (constituting 52 per cent) tried to hide their caste identity during their work life, meetings and academic gatherings. However, 46 respondents (constituting 23 per cent) confirmed that they didn't try to hide their caste identity, and the remaining 50 respondents (constituting 25 per cent) asserted that they sometimes have tried to hide their caste identity according to the situation.

A doctor (Department of Dermatology) said- *"Many fellows used to comment that- Tusi Scheduled Caste lagdeni, tusikinnesohneho"*(You don't seem like you are from the Scheduled Caste because you are so beautiful).*"My ancestors were from Lahore, and I am fair-skinned. If I interpret this statement, it shows that people believe that Scheduled Caste people can't look good."*

A doctor from Department of Physiology said,*"Now I revolt back against casteist slurs, as it has been 25 years of my service. Due to my position, people often do not speak to me directly, but rather behind my back. Due to my surname, DOGRA, people get confused and sometimes talk badly about the Scheduled Castes, not knowing that I also belong to the same category. It shows the mentality of today's times." She said* 'Though we sit together amongst officers, it is still the same, we don't get the dignity.

From the above data and narratives of the respondents, it can be interpreted that the Scheduled Caste faculty tried to hide their caste identity in meetings, while meeting new doctors, academic meetings, and presentations (hiding their surnames) in fear of getting judged and unfair treatment. The trauma associated with being a Scheduled Caste in a caste-ridden society is distressing. It is clear that theoretical strands from Social Identity Theory (Tajfel, 1982) are useful in understanding the psychological connection that an individual has to their caste group and, indeed, how members of one caste group interact with members of another. Scheduled Caste faculty in Medical Institutes try to hide their caste identity and use it as a coping strategy to avoid differential behaviour of colleagues and administration.

As Table 4 highlights, 52 percent of respondents attempted to conceal their caste identity at the workplace, specifically in meetings and academic gatherings. Thus, Table 5further explains the various reasons behind the respondents' concealment of their caste identity.

**Table 5**
**Respondents' Reasons behind Hiding Caste Identity**

| Respondents' Reasons behind Hiding Caste Identity | Frequency | Percentage |
|---|---|---|
| to avoid judgmental behaviour | 140 | 70 |
| to avoid humiliation | 90 | 45 |
| to avoid debates on the reservation | 40 | 20 |
| Other reasons | 44 | 22 |

**Source:** Computed from Primary Data, 2024 **(**Respondents marked more than one response)

Table 5 revealed that out of 200 respondents, 140 respondents (constituting 70 percent) shared that the reason behind hiding their caste identity is the judgmental behaviour of their colleagues. While 90 respondents (constituting 45 per cent) shared

that the reason behind hiding caste identity is that they get humiliated in front of people by casteist comments of colleagues, and are neglected in academic meetings and college activities. While 40 respondents (comprising 20 percent) stated that the reason was to avoid debates on the reservation system in India and Medical education, particularly. Additionally, 44 respondents (comprising 22 percent) reported that there were other reasons for hiding their surnames.

Masoodi (2015) recounted that at age 15, Siddhant Paswan from Ghorghat village, Bihar, changed his name to Siddhant Kumar. Before his 12th-grade examination, Siddhant and his friends rented a room away from their village for study, but faced repeated discrimination when landlords asked about their caste and refused to rent to them. The situation became so dire that Siddhant and his friends resorted to wearing the Janeu, a sacred thread traditionally worn by Brahmins, as a means to conceal their caste identity. This was another way of hiding caste identity[7], which illustrates the sensitivity surrounding caste concealment in academic and professional spheres.Henceforth, in academia or in professional life, if someone is hiding their caste, then it becomes a sensitive issue.

**(e) Interpersonal Faculty Relations**

Interpersonal faculty relations refer to the communication relationship between Scheduled Caste and non-Scheduled Caste faculty members of medical colleges. Discrimination in medical college campuses varies from physical exclusion to a more subtle denial of entitlements, and to seemingly neutral practices which disproportionately affect Scheduled Caste faculty members, but Indian medical institutes are falling short on addressing caste discrimination and exclusion in their professional life. The following tables highlight the respondents' experiences and ways of discrimination by their colleagues, i.e. their interpersonal relations.

**Table 6**
**Respondents Feel Discriminatory Behaviour from Colleagues/Faculty Members**

| Respondents Feel Discriminatory Behaviour from Colleagues/Faculty Members | Frequency | Percentage |
|---|---|---|
| Yes | 100 | 50 |
| No | 36 | 18 |
| Sometimes | 64 | 32 |
| **Total** | **200** | **100** |

**Source:** Computed from Primary Data, 2024

Table 6 revealed that out of 200 respondents, 100 respondents (constituting 50

[7] Masoodi, A. (2015, December 17th), Breaking the caste barrier, *available at:* https://www.livemint.com/Politics/9PeqfxmdWmbSjcZXCgOxWM/Breaking-the-caste-barrier.html

percent) confirmed that they have experienced discriminatory behaviour from colleagues/faculty members. 36 respondents (constituting 18 per cent) shared that they didn't face any kind of discriminatory behaviour from their colleagues, and the remaining 64 respondents (constituting 32 per cent) said that they sometimes felt like they were being ignored and neglected by fellow faculty, but not very often.

Doctor from the Department of Gynaecology- "At the *workplace, more work was assigned to me. In other words, the workload was comparatively more on me than on others. The body language could tell the general category of people's attitude towards me. During clinical (OPDs), administrative, and academic duties, I was treated differently and always used to feel left behind. I felt excluded from common gatherings, such as dinners and seminars. Sometimes I do feel pressure due to caste stigma apart from my work pressure, and I believe that this sick mentality of casteism is never going to change."*

*"I filed a formal complaint against my denied promotion, and it was also reported in the news. In that complaint, I alleged that the department wanted to adjust the daughter of a former senior professor and made continuous efforts to push me out of the job (*Doctor from the Department of Physiology).

A doctor from the Department of Medicine said *that Scheduled Caste faculty members always have a fear of receiving a wrong ACR (Annual Confidential Report) from seniors and the administration.*

The data and personal accounts reveal that caste-based discrimination against the Scheduled Castes persists even in prestigious fields like medicine. This study aims to highlight the various ways respondents have experienced caste-based discrimination in their workplaces, both overtly and subtly. Many respondents felt that doctors from uppercastes displayed bias against their Scheduled Caste colleagues.

**Table 7**
**Ways of Discrimination by Colleagues/Faculty Members**

| Ways of Discrimination by Colleagues/Faculty Members | Frequency | Percentage |
|---|---|---|
| make them feel Isolated | 104 | 52 |
| don't involve them in gatherings/groups | 112 | 56 |
| casteist slurs passed by colleagues | 106 | 53 |
| Other ways | 110 | 55 |

**Source:** Computed from Primary Data, 2024 (Respondents marked more than one response)

Table 7revealed that out of 200 respondents, 104 respondents (constituting 52 percent) stated that upper-caste faculty members make them feel isolated when interacting during meetings or otherwise. Whereas 112 respondents (constituting 56 per cent) asserted that their colleagues deliberately do not involve them in groups and avoid them. Furthermore, 106 respondents (constituting 53 per cent) shared that they receive casteist slurs from their colleagues while performing surgeries, academic meetings, discussions, and informal interactions. 110 respondents (constituting 55 per cent) shared that there were other indirect ways of ignoring them by their colleagues, which they didn't feel comfortable sharing because of the fear factor amongst them.

One of the doctors from the Department of Surgery said, 'My cases were sent to PAC (pre-anaesthesia check up) before surgery, and the faculty members (from non-SC category) tried to spoil my PAC.' *My patients were also misled into thinking that I am not a capable doctor.*

Another doctor (Department of Anaesthesia) alleged *that I had felt discriminated by my colleagues when I got promoted as a senior Assistant Professor. One of my colleagues got transferred to another medical college as she didn't want to work under me.*

A doctor (Department of Surgery) said- *One of my juniors told me, 'Sir, when I came to know you are a Scheduled Caste, my perspective towards you changed'. You are always labelled on the basis of your caste. Sometimes, people from the general category comment and speak derogatory words behind your back or in front of you by mistake.*

The respondents expressed growing disappointment that upper-caste doctors and departmental authorities often hold stereotypes doubting the competence of Scheduled Caste doctors, believing they are less capable of fulfilling their roles or providing comparable patient care. This bias leads to feelings of humiliation among Scheduled Caste doctors. Bhanot and Verma (2020) explain this phenomenon as rooted in the fear among upper-caste doctors that the success of Scheduled Caste doctors threatens their longstanding dominance and power within the profession and they exercise their supremacy over the Scheduled Caste doctors[8].

## 7. Implications of Discrimination

The present study substantiates the theory of discrimination and, particularly, the Covert Discrimination, which consists of "unequal and harmful treatment" that is hidden, purposeful, and often maliciously motivated. It is behavior that consciously attempts to ensure failure, as in hiring or other employment situations" (Benokraitis & Feagin, 1995). This type of discrimination helps to understand the indirect ways of exclusion and discriminating against the

[8] Bhanot, D., & Verma, S. K. (2020). Lived Experiences of the Indian Stigmatized Group in Reference to Socio-Political Empowerment: A Phenomenological Approach. The Qualitative Report, 25(6), 1414-1435. *available at:* https://doi.org/10.46743/2160-3715/2020.4143

Scheduled Caste doctors in medical colleges and hospitals. The covert discrimination also includes Interpersonal Discrimination, Organizational Discrimination and Institutional Discrimination.

Everyday experiences of discrimination affect one's socio-emotional adjustment amongst their/peer group, which further negatively impacts the mental health of an individual. Mental health encompasses emotional well-being, the capacity to live a full and creative life, and the flexibility to adapt to life's inevitable changes. The WHO (World Health Organization) defines mental health as "a state of well-being in which the 198 individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community" (WHO, 2005).

**Table 8**

**Every day Experiences of Discrimination Affect Respondents' Mental Health**

| Every day Experiences of Discrimination Affect Respondents' Mental Health | Frequency | Percentage |
|---|---|---|
| Yes | 96 | 48 |
| No | 48 | 24 |
| Sometimes | 56 | 28 |
| Total | 200 | 100 |

Table 8 revealed that out of 200 respondents, 96 respondents (constituting 48 percent) shared that their mental health gets disturbed by daily life experiences of discrimination. While 48 respondents (constituting 24 percent) shared that they do feel discrimination, but it doesn't affect their mental health because they have become used to it and now, they know how to cope with it. Whereas, 56 respondents (constituting 28 percent) shared that they sometimes feel like their mental health is getting affected, but not very often. They also accepted that because of differential behaviour, they lost concentration from the study, developed inferior feelings, doubts, depletion in the encouragements, decline in enthusiasm, nervousness, and a lethargic sense of depression. Hence, it can be said that discrimination in Medical Institutes is injurious to the respondents for their mental well-being. Pandey (2006) conducted a study examining the perceived inferior social identity of a social group (the oppressed caste) and its interaction with higher social identity groups (privileged castes) in rural India. He found that when the lower (subordinate) social identity of a group is publicly revealed, their self-esteem decreases; they perceive themselves as inferior, and their self-confidence declines. In other words, they experience "cognitive

dissonance," in which they feel a lower desire to succeed and compete against a dominant identity, and it causes them enormous psychological harm (Rathod, 2023). This form of day-to-day harassment carried out by non-Scheduled Caste against Scheduled Caste students can be psychologically disabling. It may affect the educational achievement and progress (Shinde, 2005).

The stigma of race, explained by Goffman, is attached to the Scheduled Castes, which is transmitted through lineages and puts them in a position to face challenges in living with dignity in society. This concept was useful for understanding how caste-based discrimination operates at both the individual and societal levels in medical colleges. In this study, the respondents confirmed that they had received casteist comments during school due to their stigmatized identity (of being a Scheduled Caste). The experiences included the discriminatory behaviour of teachers towards the respondents during their MBBS, which resulted in them receiving fewer marks in examinations, vivas, and internal assessments. Also, the discriminatory behaviour of the college administration towards the respondents was due to their stigmatized caste identity. The study highlighted the respondents' experiences of discrimination by their colleagues at the workplace (Government Medical colleges in Punjab). Hence, Goffman's concept of stigma helped to understand the reasons behind the discriminatory behaviour of classmates, teachers, administration, and colleagues (at the workplace) of Scheduled Caste doctors in Government Medical colleges.

Even after the number of Constitutional provisions, the deeply rooted caste system is still operational in India. For Dalit students, only the initial step is facilitated through the reservation, but the rest of their academic journey is affected by the social stigma of caste identity and other factors like lack of resources and poor socio-economic status (Sukumar, N. 2016). Many incidents of caste-based discrimination against Dalit doctors reveal the harsh reality of discrimination in 51 higher educational institutes (Teltumbde, 2017). The Indian government constituted a committee, known as the Thorat Committee, to investigate matters of caste discrimination at AIIMS in 2006. This committee was the first to examine caste discrimination cases in any medical institute. It revealed the reality of caste based discrimination in AIIMS. It is mandated that every medical college have an SC/ST grievance committee, which most institutes lack (Hindustan Times, 2019).

The study illuminates the persistent caste-based discrimination faced by Scheduled Caste doctors in medical institutions, with significant implications for their social and professional lives.

1. **Lack of Social Capital and Structural Barriers:** The finding that 98.5% of respondents were first-generation doctors underscores the systemic challenges faced by Scheduled Castes in accessing higher education and elite

professions. Bourdieu's concept of social capital aptly explains how the absence of familial or professional networks exacerbates these challenges, making it harder for Scheduled Caste doctors to navigate professional environments.

2. **Psychological Distress and Coping Mechanisms:** Scheduled Caste doctors often resort to hiding their caste identity as a coping mechanism to avoid humiliation, judgment, and professional exclusion. Social Identity Theory (Tajfel, 1982) highlights the psychological toll of maintaining a marginalized identity in a predominantly hierarchical and caste-driven society. The fear of being stereotyped or humiliated manifests in attempts to neutralize their identity, which further perpetuates feelings of isolation.
3. **Prevalence of Discrimination:** The narratives reveal overt and covert forms of discrimination. Instances of being assigned disproportionate workloads, denied promotions, or receiving casteist slurs highlight the entrenched biases within the medical fraternity. Respondents expressed frustration and disappointment at being treated as less competent due to their caste identity. These experiences echo findings in previous studies (e.g., Bhanot and Verma, 2020), which suggest that the success of Scheduled Caste professionals threatens the established power dynamics of higher castes.
4. **Impact on Professional and Personal Identity:** Discriminatory practices extend beyond professional spaces, affecting Scheduled Caste doctors' self-perception and confidence. The intersection of professional exclusion and caste-based humiliation creates a dual burden, impacting their ability to perform and thrive in their careers.

## 8. Conclusion

The aspiration to become a doctor, regardless of one's caste, is a widely held dream among many. Aspiring doctors face intense academic pressures during their undergraduate and medical school years, often accompanied by long hours of studying, rigorous examinations, and clinical rotations. The concept of "first-generation doctors" highlights the unique challenges and experiences faced by individuals from backgrounds where they are the first in their family to pursue a career in the medical profession. Even within the General Category, individuals who are the first ones in their family to pursue a medical career may face significant educational and financial hurdles. Particularly for Scheduled Castes, the barriers can be more pronounced due to systemic disadvantages, including lower access to quality education at the primary and secondary levels, socio-economic constraints, and the impact of caste-based discrimination. They may face additional challenges in accessing resources, support systems, and opportunities. These challenges are not merely individual obstacles but are deeply embedded in broader social and institutional structures that perpetuate inequality. In contemporary society, the Scheduled Castes are still struggling to live with dignity, even though they have

entered into a reputed profession like a doctor. There is a myth about social mobility, but actually, the scheduled castes are still discriminated against and excluded, even if they are financially sound or earn well. Even when Scheduled Caste doctors achieve financial stability or professional success, they frequently encounter systemic biases and social prejudices that continue to exclude them in medical colleges and hospitals.

The narratives of the respondents revealed that even after holding a renowned position as a doctor, the Scheduled Caste faculty faced exclusion from the academic and professional setting of Medical Colleges. Holding their caste identity, they cannot escape discrimination in their professional life. Casteism can be subtle, as it can be thinly veiled in a joke, expressed in admonishment, or through a casual remark- all serving the purpose of making a person feel inferior. It was pertinent to know that, passing MBBS and MD (Doctor of Medicine)/ MS (Master of Surgery) examination is same for all students irrespective of one's category, so it is not fair to say that Scheduled Caste students are less talented, if they were less talented, they would not have passed the exams and would fail at MBBS level only, so this came out as just a pre-conceived notion that Scheduled Caste candidates are incapable of becoming doctors. It was observed that only Scheduled Caste students are blamed for using caste certificates, but candidates from the General Category and other categories also use money to get paid seats, though they are average performers; however, stigma is attached only to Scheduled Caste students. The findings of the study depicted that Scheduled Caste doctors often end up being victims of institutionalized discrimination, and caste disparities leave them in a situation where they are discriminated against. A hidden category bias of an individual always prevails, although not publicly evident. After centuries of sanctioned exclusion due to caste hierarchy, reservation provides an invaluable opportunity to Scheduled Caste students to enter higher learning, but they still have to face hurdles in their academic and professional journey in medical colleges and hospitals. There persists a general feeling that secular institutions, such as educational institutions, are relatively free from caste discrimination, being places of education and learning. Campuses, such as medical colleges, are governed by educated individuals. However, the findings of the present study revealed a different picture. The findings revealed that medical colleges and hospitals are not immune from discriminatory practices at the academic and professional levels. Many suicidal deaths of Scheduled Caste Medical students reveal the harsh reality of caste-based discrimination in Medical Institutes in India. This signifies that there was a dire need to explore the academic journey of Scheduled Caste students in Medical Institutes. This paper illustrates the daily life experiences of discrimination of the respondents which explains the operationalization of caste in medical education and profession in detail.

Article 46 of the Indian Constitution, part of the Directive Principles of State Policy in Part IV, mandates the State to promote the welfare of Scheduled Castes (SCs) and Scheduled Tribes (STs) by safeguarding their educational and economic interests and protecting them from social injustice and all forms of exploitation. Additionally,

legislative measures such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Protection of Civil Rights Act, 1955, specifically address the eradication of untouchability and caste-based discrimination. In spite of all these being legislations, the study highlights that caste-based discrimination remains a critical issue within the medical profession, affecting Scheduled Caste doctors' social integration, mental health, and professional opportunities. Addressing these systemic issues requires structural reforms, sensitisation programs, and institutional mechanisms to foster equity and inclusivity in medical institutions. Furthermore, there is a need for additional research into caste-based dynamics in elite professions to develop targeted interventions for promoting social justice and equality.

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# Right to Services Act, 2017 Vis-à-Vis Administrative Accountability and Citizens' Rights

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## Abstract

The lives of citizens today are intricately connected with the administration. While citizens demand services, the administration is tasked with delivering them. In contemporary democratic governance, these interactions transcend mere transactional exchanges; they must be efficient, citizen-centric, and aligned with the principles of good governance. In this context, Public service delivery acts play a crucial role in achieving this objective. Legislation such as the Public Service Guarantee Act ensures that services are provided within stipulated timeframes and holds officials accountable through penalties for non-performance without valid reasons (Darji, 2017). This study focuses on one such legislation—the Chandigarh Right to Service Act, 2017—and examines whether citizens perceive it as a tool for empowerment or if systemic inefficiencies persist, leaving them disillusioned. Additionally, it investigates whether the administration views the Act as a mechanism for enhancing accountability or merely as a bureaucratic formality with limited practical significance. By addressing these dimensions, the research seeks to evaluate the effectiveness of the RTS Act in bridging the gap between its intended objectives and real-world outcomes. Employing a mixed-methods approach, the study reveals several key findings. Achievements such as a significant reduction in service delays—only 7.5% of cases reported delays— highlight the Act's positive impact. However, challenges remain, particularly in raising awareness; only 17.5% of citizens are aware of the Act's provisions. These findings are accompanied by a comparative analysis that highlights both strengths and areas requiring improvement. The paper provides actionable recommendations to optimize governance, emphasizing the need to view citizens as active participants in the service delivery process, rather than passive beneficiaries. It underscores the importance of recognizing public services as a fundamental right rather than a privilege, and offers insights into how governance mechanisms can be strengthened to better serve citizens and uphold the principles of accountability and transparency.

**Keywords:** *Right to Service legislation; Service delivery mechanisms; Citizen-centric governance; Accountability; Transparency; Public service reforms*

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## 1. Introduction

Service Delivery Acts are transformative legislative frameworks that aim to enhance the efficiency, transparency, and accountability of public service delivery systems. By institutionalizing the right to timely and effective public services, these acts address systemic issues such as delays, bureaucratic inefficiencies, and corruption (Darji, 2017). They signify a paradigm shift in governance, empowering citizens to demand services as a right rather than a privilege and fostering greater accountability within public administration. In a welfare state, where the government is committed to the well-being of its citizens, the Service Delivery Acts are critical. They ensure that essential services- such as healthcare, education, and social security—are accessible to all, especially marginalized and vulnerable populations. Timely delivery of these services not only addresses immediate needs but also contributes to long-term social equity and economic development. For instance, when benefits like pensions or health services are delivered efficiently, they directly improve the quality of life for citizens, reinforcing the state's commitment to their welfare (Jonathan, 2007**)**. The acts also play a fundamental role in a democratic state. They operationalize the principle of accountability, a cornerstone of democracy, by making the government answerable to its citizens. When citizens are empowered to demand services and hold officials accountable for lapses, the dynamic between the state and its people is transformed. This fosters a participatory approach to governance, where citizens are no longer passive recipients but active stakeholders. In doing so, Service Delivery Acts strengthen the social contract, ensuring that the state functions in the interest of its people.

One of the most significant contributions of the Service Delivery Acts is their alignment with the principles of good governance. Good governance, characterized by transparency, accountability, efficiency and inclusiveness, is critical for the legitimacy and effectiveness of public institutions. These acts institutionalize these principles by mandating time-bound service delivery, setting up grievance redressal mechanisms, and ensuring equitable access to services. By automating processes and reducing bureaucratic discretion, they minimize opportunities for corruption and promote fairness **(**Grant Thornton, 2019). In doing so, the not only enhance the credibility of public institutions, but also build trust between citizens and the state, a fundamental requirement for stable and effective governance. Moreover, Service Delivery Acts reflect the principles of New Public Management (NPM), a governance paradigm that emerged in the late 20th century. NPM emphasizes efficiency, responsiveness, and customer satisfaction in public administration, borrowing practices from the private sector to improve service delivery. Service Delivery Acts embody this approach by treating citizens as clients and prioritizing their needs and satisfaction. Mechanisms such as digital portals, citizen service centres, and mobile applications streamline processes, making them user-friendly and efficient (Saxena et al., 2022). The emphasis on accountability and performance measurement, through penalties for delays and public monitoring of services, aligns

with NPM's focus on results-oriented governance.

Service Delivery Acts, by defining clear timelines for services like issuing certificates, processing permits, or disbursing benefits, eliminate bureaucratic delays that often frustrate citizens. Public officials are held accountable for adhering to these timelines, and penalties for non-compliance create a direct incentive for performance. This shift from a discretionary to a rule-based system enhances administrative accountability, ensuring that governance operates in a predictable and efficient manner.

**2. Service as a Citizen's Right**

Service Delivery Acts have fundamentally redefined the relationship between citizens and the state by promoting the idea of service as a right. Traditionally, access to public services was often seen as a favor granted by bureaucratic discretion, leaving citizens dependent on the goodwill or efficiency of officials (Public Sector Research Centre- Price Waterhouse Coopers, 2007). This dynamic fostered a culture of inequality, delays, and corruption, where citizens were often powerless to challenge the system. Service Delivery Acts have shifted this narrative by codifying the delivery of public services as a legal entitlement rather than a privilege. They recognize that services such as healthcare, education, social security, and basic administrative processes are integral to the dignity and well-being of every individual and should be guaranteed as part of the state's commitment to its citizens. The legislative provisions within these act force time-bound service delivery, transforming it into an obligation for public officials. By introducing penalties for delays or failures, the acts ensure that citizens are no longer subjected to indefinite waiting periods or arbitrary refusals. This has created a rule-based system where every citizen, regardless of socio-economic status, can demand services with the assurance that the law supports them. Moreover, grievance redressal mechanisms empower individuals to challenge lapses in service delivery, holding officials accountable and reinforcing the idea that the state is answerable to its people (Grant Thornton, 2019).

Through these measures, the Service Delivery Acts have made it clear that the government exists to serve its citizens. By recognizing services as a right, these acts not only enhance the efficiency of public service delivery but also strengthen democratic principles. They emphasize equality and fairness, ensuring that no individual is deprived of essential services due to systemic inefficiencies or corruption. This paradigm shift has redefined public governance, transforming it into a citizen-centric model where the right to access timely and efficient services is enshrined as a fundamental pillar of the state's responsibilities.

**3. Chandigarh Right to Service Act, 2017**

While this has been a global phenomenon, it also finds its application in the Indian scenario. The evolution of the Right to Service Acts in India marks a transformative

shift in governance, prioritizing transparency, accountability, and citizen empowerment. The journey began in 2010 when Madhya Pradesh enacted the Madhya Pradesh Lok Sewaon Ke Pradan Ki Guarantee Adhiniyam[1], becoming the first state to introduce time-bound service delivery legislation. This act laid the foundation for ensuring that essential public services, such as birth certificates, land records, and welfare benefits, were delivered efficiently. Following Madhya Pradesh, states like Bihar, Punjab, Maharashtra, and Uttar Pradesh adopted similar frameworks, each tailoring the legislation to their regional administrative needs. These acts commonly include provisions for fixed timelines, grievance redressal mechanisms, and penalties for non-compliance by public officials. Over time, the scope of these acts expanded incorporating an increasing number of public services and leveraging digital platforms to streamline processes. This evolution reflects India's commitment to enhancing administrative efficiency, reducing corruption, and empowering citizens to demand their rights, fostering a more equitable and transparent governance ecosystem (Singh, 2016).

The Chandigarh Right to Service Act, 2017, exemplifies the extension of the principles of Right to Service legislation to a Union Territory, aiming to deliver public services to its residents transparently, efficiently, and in a time-bound manner. The act was introduced to maximize citizen benefits and curb bureaucratic arbitrariness, promoting the principle that access to public services is a citizen's right, not a privilege. It was extended to Chandigarh by the Government of India, Ministry of Home Affairs, through NotificationNo.G.S.R.1015(E) dated 14th August 2017, adapting the Punjab Right to Service Act, 2011, and its 2014 amendment with minor modifications. To operationalize this legislation, the Chandigarh Right to Service Commission was constituted via Chandigarh Administration Notification No. 28/67-IH(11)-2018/1631 dated 23rd January 2018, with Sh. K.K. Jindal, IAS (Retd), was appointed as its first Commissioner on 26th April 2018. The Chandigarh Administration further framed the Chandigarh Right to Service Rules, 2019, which were officially published on 11th October 2019 (Right to Service Act, Chandigarh, 2017)[2]. The Act mandates the delivery of over 500 public services across 28 departments of the Chandigarh Administration through two mechanisms: traditional department-specific methods and an integrated single-window system. Notifications issued on 8th October 2020 detail the services offered, the designated officers responsible for their provision, and the first and second appellate authorities to address grievances regarding delayed or denied services. In cases where citizens do not receive appropriate relief at the level of these appellate authorities, they can escalate their grievances through a final appeal or revision petition to the

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1 The Madhya Pradesh Lok Sewaonke Pradhan ki Guarantee Adhiniyam, 2010, *available at:*https://prsindia.org/files/bills_acts/acts_states/madhya-pradesh/2010/2010MP24.pdf (Last visited October 13, 2025).

2 Chandigarh Right to Service Commission, *available at:* http://rtsc.chd.gov.in/index.php/page/index/1 (Last visited October 14, 2025).

Commissioner of the Chandigarh Right to Service Commission. The act ensures that departments prominently display information about services, timelines, application procedures, and required documents on official websites and office premises, as mandated by Section 11 of the Act and Rule 8 of the Rules. This approach aims to enhance transparency, accessibility, and efficiency in service delivery. The department-specific method warrants that citizens have to come directly to the respective department to avail services. The integrated system, or the e-sampark system, which emerged in 2004, has been more streamlined and made more effective by bringing it under the ambit of the Right to Service Legislation. Project Sampark provides a "one-stop-shop" webportal offering 45government-to-citizen (G2C) and 4business-to-citizen(B2C)services.Unifiedunderthee-SamparkCentres(e-SC),alongwith Jan-Sampark and Gram-Sampark Centres, these facilities streamline citizen interactions by processing over 200,000 monthly transactions. They reduce service delivery times and facilitate online transactions and information dissemination, making service access more convenient. Both these initiatives transformed traditional service delivery model processes by enabling users to access multiple services under one roof, and access them in a time-bound manner, thus reinforcing the act's commitment to citizen empowerment.

A study by Monga and Mehta (2007) highlighted the initiative's success, reporting that 94% of respondents found the e-Sampark Centres simplified procedures, and 88% believed they made tasks easier. However, the study also noted areas that require improvement to fully optimize the system.

## 4. Problem and Rationale

While the Right to Service (RTS) Acts are revolutionary in their text and spirit, embodying the principles of accountability, transparency, and citizen empowerment, their implementation faces significant challenges. Despite their promise to simplify and streamline service delivery, the existence of multiple access points for services has not significantly eased the burden on citizens. Many of the over 400 notified services still require physical visits to various departments at geographically dispersed locations, making the process cumbersome and counterproductive to the act's objective of citizen convenience. Also, even at the e-sampark level, Monga and Mehta (2007) note several areas that require improvement to fully optimize the system. The scale of applications submitted under the RTS framework highlights its utilization, yet also underscores persistent inefficiencies. For instance, in 2022-23 alone, more than 1.3 million applications were submitted across departments in Chandigarh, with 36,035 applications still pending. Among these, the police department accounted for 29,463 unresolved cases, followed by the labor department with 5,139 pending applications. These figures expose gaps in the timely delivery of services and reveal the administrative bottlenecks that continue to hinder the act's effectiveness. (HT Correspondent, 2023)

Moreover, the underutilization of the grievance redressal mechanisms raises

concerns about citizen empowerment and awareness. Despite over 30,000 unresolved applications, only 209 cases were escalated to the Right to Service (RTS) panel, highlighting a lack of awareness among citizens about their rights and the procedures for holding the administration accountable. This gap not only limits the potential of the act to empower citizens but also allows inefficiencies to persist unchecked. Penal provisions, which are central to ensuring accountability within the RTS framework, have also proven inadequate. In 2023, despite the high number of unresolved cases, only two officials faced penalties for non-compliance. Such minimal enforcement undermines the credibility of the act's mechanisms and casts doubt on the administration's commitment to accountability. The lack of significant consequences for delays or inefficiencies dilutes the incentive for officials to adhere to the timelines mandated by the legislation.

## 5. Objectives

Given the above problems:

5.1. To examine the RTS Act's effectiveness in empowering citizens for timely and effective service delivery.

5.2. To assess the RTS Act's role in ensuring administrative accountability.

5.3. It aims to uncover the apparent disconnect between the theoretical provisions of the act and its practical implementation.

## 6. Methodology and Data Collection

This study utilises a mixed-method research design to assess the implementation of the Chandigarh Right to Service Act, 2017, concentrating on two specific services: (i) the application process for a driver's license, and (ii) the issuance of old-age identity cards. These services were intentionally chosen because they exemplify two unique methods of service delivery advocated by the Act: department-specific services (driver's licence via the Transport Department) and Single Window service (old-age identity cards through e-Sampark Centres).

This comparative framework enables an evaluation of how various institutional arrangements influence citizen experiences, satisfaction, and perceptions of accountability. Rationale for Service Selection. There are many reasons why these two services were chosen. First, the process of applying for a driver's license is a high-volume, demand-driven, and technology-enabled service that is available to almost everyone. This makes it a good way to test the Act's goals of efficiency and transparency. Second, the old-age identity card service is a social welfare service that is provided through e-Sampark Centres. This shows how far the Single Window system has reached. Third, the elderly population (60 years or more), exceeding the minimum eligibility age of 18 years for a driver's license, was uniquely positioned to offer comparative insights on both services. Also, respondents who were interviewed while availing the service of driver's licenses were also asked about their perception

of e-Sampark services made it possible to compare the two types of service delivered.

**7. Data Sources and Tools**

The methodology utilised both primary and secondary data. Structured questionnaires were used to get primary data from both service officials and citizens who used the two chosen services. For the driver's license application process, respondents were chosen using a systematic purposive sampling method at service centres to make sure that applicants of all ages, genders, and time slots were represented. For the old-age identity card service, snowball sampling was used, starting with a small group of elderly people and then growing through their recommendations. This worked especially well because this group of people is spread out and hard to reach. The questionnaires given to the officers and citizens were meant to get their opinions that were directly related to the research questions:

7.1. The Act's effectiveness in establishing service delivery as a citizen's right (time-bound, transparent, efficient).

7.2. How people see accountability and the enforcement of penalties, and ways to file complaints.

7.3. The effect of the service delivery mode (department-specific vs. e-Sampark Centres) on accessibility, satisfaction, and efficiency.

7.4. How citizens feel about the Act as a whole, including how it could give them more power.

The Chandigarh Administration's official websites, government reports, and policy papers were used to get secondary data. These sources gave us information about the Act's legal frameworks, procedural rules, and institutional mechanisms, such as how to file a complaint and what the penalties are.

**8. Sample Size**

The total number of people in the sample was set at 100. This number was chosen because it was feasible with the resources available and because the study was exploratory. It was also high enough to get a wide range of responses. From these, 70 respondents were selected from the driver's license application process, and 30 respondents were selected from the old-age identity card service. The driver's license service gets a bigger share because it has more transactions and is more relevant as a service that is based on demand and technology. The smaller but focused sample for old-age identity cards made it possible to get a lot of qualitative insights from a vulnerable and spread-out group of people. It is important to remember that statistical formulas for figuring out the right sample size suggest a pool of more than 500 respondents. Because of time, money, and the study's exploratory nature, the sample size was set at 100. This number still made sure there was enough variation to get useful results.

## 9. Analysis of Data

Data analysis utilised both quantitative and qualitative methodologies in accordance with the research objectives. Quantitative analysis utilised descriptive statistics, including percentages and cross-tabulations, to evaluate time-bound delivery, accessibility, efficiency, and satisfaction levels. Qualitative analysis entailed thematic coding of open-ended responses, focusing on perceptions of accountability, grievance redressal, and citizen empowerment.

This mixed-method approach made sure that the study not only measured levels of satisfaction and efficiency, but also got at the deeper feelings of citizens and officials about how the Right to Service Act could change things.

*Citizen Specific Findings*

The findings of this study are presented with reference to the four research questions. They draw upon the responses of 100 citizens (70 applying for a driver's license through the Transport Department and 30 applying for old-age identity cards through e-Sampark Centres) as well as insights gathered through interviews with officials involved in the delivery of these services.

**9.1.** Has the Chandigarh Right to Service Act, 2017 effectively transformed service delivery into a citizen's right, ensuring time-bound, transparent, and efficient services?

**Table 1: Service Received within Timeline**

| Service Type | Yes (On Time) | No (Delayed) | Total |
|---|---|---|---|
| Driver's License (Dept.) | 66 (94%) | 4 (6%) | 70 |
| Old-Age ID (e-Sampark) | 26 (87%) | 4 (13%) | 30 |
| **Total** | 92 (92%) | 8 (8%) | 100 |

As seen from Table 1, across both services, 92 respondents (92%) indicated that they received their services within the stipulated timeframe, while 8 (8%) reported delays. However, the experiences of accessing these services differed significantly depending on the mode of delivery. For driver's license applicants dealing with the Transport Department, 66 out of 70 respondents (94%) acknowledged that their applications were ultimately processed on time, yet the process was described as cumbersome. Long queues, repeated visits, multiple document verifications, and procedural opacity created an impression that service delivery was not fully rights-based but instead subject to the discretion of officials. In contrast, 26 of the 30 old-age identity card applicants (87%) using e-Sampark Centres reported receiving their services on time. Their experience was more standardized and predictable, though accessibility issues such as travelling to centres and navigating crowded spaces created barriers,

especially for elderly citizens. Thus, while the Act has broadly ensured time-bound delivery, departmental services were perceived as bureaucratic and burdensome, whereas e-Sampark services were viewed as smoother, though not fully inclusive for vulnerable groups.

**9.2.** To what extent has the Act enhanced accountability within the administration, particularly through the enforcement of penalties and grievance redressal mechanisms?

**Table 2: Do Penalties Improve Accountability?**

| Service Type | Yes (Deterrent) | No Effect | Total |
|---|---|---|---|
| Driver's License (Dept.) | 60 (86%) | 10 (14%) | 70 |
| Old-Age ID (e-Sampark) | 22 (73%) | 8 (27%) | 30 |
| **Total** | 82 (82%) | 18 (18%) | 100 |

When asked whether penalties act as a deterrent against delays, 82 respondents (82%) agreed, while 18 (18%) believed they had little effect. Among driver's license applicants, 60 of 70 (86%) felt that penalties could improve accountability, but they also highlighted that grievances were typically resolved by escalating matters to senior officials rather than using formal redressal mechanisms. This indicates that hierarchical pressure within departments plays a greater role than statutory provisions. Among old-age identity card applicants, 22 of 30 (73%) agreed that penalties deter delays, but most were unaware of how penalties or grievance procedures function in practice. Officials themselves admitted that penalties were rarely enforced, undermining their deterrent value. Thus, while accountability is formally embedded in the Act, it is weakly institutionalized in practice, relying more on administrative culture than on citizen-driven grievance mechanisms.

**9.3.** How does the mode of service delivery (department-specific versus e-Sampark Centres) influence citizen access, satisfaction, and overall service efficiency?

**Table 3: Preferred Mode of Service Delivery**

| Service Type | e-Sampark Preferred | Department Preferred | Total |
|---|---|---|---|
| Driver's License (Dept.) | 55 (79%) | 15 (21%) | 70 |
| Old-Age ID (e-Sampark) | 25 (83%) | 5 (17%) | 30 |
| **Total** | 80 (80%) | 20 (20%) | 100 |

As seen from table A striking 80% of respondents (80 out of 100) expressed preference for e-Sampark Centres, while only 20% (20 respondents) favoured

departmental delivery. Among driver's license applicants, only 15 of 70 (21%) preferred departmental services, with the rest expressing a preference for e-Sampark had it been available for their service. Departmental delivery was widely described as bureaucratic, cumbersome, and overly dependent on official discretion, with applicants often enduring long queues, repeated visits, and opaque procedures. This reduced satisfaction despite timely delivery, with only 45 of 70 (64%) satisfied overall. In contrast, e-Sampark Centres were preferred by 25 of 30 old-age identity card applicants (83%). Citizens valued their single-window structure, standardized processing, and extended hours of operation. However, elderly applicants faced accessibility issues such as physical strain in reaching the centres and the absence of dedicated support counters. Even so, 16 of 30 (53%) expressed satisfaction, attributing it to reduced bureaucratic hurdles compared to departmental offices. Overall, departmental delivery was viewed as procedurally heavy and discretionary, while e-Sampark offered efficiency and predictability, though with inclusivity gaps.

**9.4.** How do citizens perceive the overall architecture of the Act, including its accessibility, grievance mechanisms, and its role in empowering them to demand timely services?

**Table 4: Citizen Awareness of the Act**

| **Service Type** | **Aware** | **Not Aware** | **Total** |
|---|---|---|---|
| Driver's License (Dept.) | 15(21%) | 55(79%) | 70 |
| Old-Age ID (e-Sampark) | 4(13%) | 26(87%) | 30 |
| **Total** | 19(19%) | 81 (81%) | 100 |

Data as seen from table no 4 points out that Citizen awareness of the Chandigarh Right to Service Act, 2017 to be very low. Only 19 respondents (19%) had heard of the Act prior to the survey, and even fewer possessed procedural knowledge of how to file complaints or escalate delays. Awareness was higher among younger, educated applicants seeking driver's licenses, while elderly respondents applying for old-age cards were least aware, with only 13% recognizing the Act. Once informed of its provisions, however, 65 respondents (65%) acknowledged that the Act had the potential to empower citizens to demand services as a right rather than as an administrative favour. Yet, skepticism remained regarding the practical enforcement of penalties and grievance redressal mechanisms. Among elderly applicants, empowerment was defined more in terms of physical accessibility and assistance (e.g., home visits, mobile units) than in terms of legal entitlements. These findings suggest that the transformative potential of the Act is constrained not by legislative design but by limited citizen awareness and weak enforcement mechanisms.

**9.5.** Does imposing a penalty act as a deterrent and improve service delivery?

**Table 5: Do Penalties Improve Service Delivery?**

| Service Type | Act as a Deterrent | No Effect | Total |
|---|---|---|---|
| Driver's License(Dept.) | 61 (87%) | 9 (13%) | 70 |
| Old-Age ID (e-Sampark) | 24 (80%) | 6 (20%) | 30 |
| **Total** | 85 (85%) | 15 (15%) | 100 |

Eighty-five respondents (85%) agreed that penalties act as a deterrent and improve service delivery, while 15 (15%) disagreed. Among departmental applicants, 61 of 70 (87%) affirmed the deterrent role of penalties, while 24 of 30 (80%) old-age identity card applicants shared the same view. The results suggest that the threat of penalties creates a strong incentive for officials to comply with timelines, even if penalties are rarely applied in practice.

Yet, secondary data reveals that the deterrent effect is undermined by weak enforcement. Despite over 30,000 unresolved applications in 2022–2023, only 209 cases were escalated to the RTS panel, and just two officials faced penalties (RTS Annual Report, 2023). Interviews with officials highlighted mixed perceptions: while many recognized penalties as necessary for accountability, they also described them as adversarial and argued that some service delivery timelines were unrealistic given administrative constraints. Officials further emphasised that greater citizen awareness could reduce frivolous complaints and strengthen the legitimacy of penalties when imposed.

## 10. Findings

The findings from Chandigarh reveal that while the RTS Act has effectively institutionalized procedural rights, it has not yet translated into substantive rights for citizens. On the one hand, timelines are largely met—92 out of 100 respondents received services on time—demonstrating the Act's success in enforcing efficiency through procedural safeguards such as reporting systems and penalties. However, substantive empowerment remains weak: only 19% of citizens were even aware of the Act, 66 of 70 applicants for driver's licenses reported repeated visits despite eventual delivery, and 80% expressed preference for e-Samparkcenters over departmental offices, citing ease of access. This contrast between efficiency and empowerment suggests that the Act secures procedural guarantees but does not foster a robust sense of entitlement among citizens. Thus, the Chandigarh RTS Act ensures citizens' rights in a narrow procedural sense, and its transformative potential as a framework for substantive empowerment and dignity remains underrealized.

### 10.1. Findings from Interactions with Higher Officials

Through semi-structured interviews with multiple officials and administrative heads,

the researcher identified critical insights into the functioning of the Chandigarh Right to Service Act, 2017. Officials consistently maintained that services were delivered within stipulated timelines, citing internal hierarchical controls and external oversight, particularly monthly reporting to the Right to Service Commission, as mechanisms that safeguard timely delivery. They also highlighted the synergy between the Chandigarh Right to Service Act and other legislative tools, such as the Right to Information Act (RTI), which collectively promote transparency and empower citizens to seek timely services.

However, these official perceptions contrast with citizen feedback. For example, while 92% of respondents reported receiving services on time (Table 1), 32.5% of citizens still felt that service delivery depended on the discretion of officials, requiring multiple visits. This gap indicates that while timelines are largely met, the experience of accessibility and responsiveness differs between what officials perceive and what citizens actually encounter. In particular, departmental services such as driver's licenses were frequently described by 66 out of 70 respondents (94%) as cumbersome, requiring repeated visits and navigating bureaucratic hurdles, even when the service was ultimately delivered on time. In contrast, services accessed via e-Sampark Centres—such as old-age identity cards—were smoother, with 26 of 30 respondents (87%) reporting timely delivery and easier access.

Officials also expressed caution regarding the expansion of e-Sampark Centres due to data privacy and operational control concerns, noting that only services not requiring specialised approvals could be safely routed through these centres. This reflects citizen preferences: 80% of respondents across both services indicated a preference for e-Sampark Centres (Table 3), citing convenience and accessibility, particularly for elderly applicants. Nonetheless, issues like server downtime, crowded centres, and limited awareness about the Act sometimes undermined the perceived efficiency of these platforms.

Comparative studies support both perspectives. Bangalore One and Haryana SARAL Centres demonstrate that single-window models can significantly improve citizen satisfaction and reduce transaction costs, aligning with the citizens expressed preference for e-Sampark-style access. Passport Seva Kendras provide additional evidence that privacy and efficiency can coexist under centralized guidelines, addressing the concerns raised by Chandigarh officials.

Taken together, the data show a nuanced picture: administration-led accountability ensures timeliness, yet citizen satisfaction and perceptions of rights-based delivery depend heavily on mode of access, service complexity, and awareness of entitlements. Bridging the gap requires expanding e-Sampark coverage where feasible, strengthening awareness campaigns, and implementing operational guidelines to protect data privacy while improving service experience, especially for vulnerable groups like the elderly.

### 10.2. Findings of Front-line Officials

Through semi-structured interviews with front-line officials, known as Data Operators, and observational studies in service delivery institutions, the researcher identified critical insights into the challenges and dynamics of public service delivery under the Chandigarh Right to Service Act, 2017. Data Operators, as the first point of contact for citizens, play a pivotal role in shaping service delivery experiences. They reported that citizens rarely inquire about their rights under the Act, indicating a general lack of awareness. When files are complete, operators emphasized that they process requests promptly, adhering to stipulated timelines without delays, guided by the internal hierarchy that holds them accountable. However, they highlighted systemic challenges, suggesting the need for more staff and additional help desks to streamline operations and improve service delivery efficiency.

Observations conducted by the researcher further corroborated these challenges. Data Operators were found to be overworked, with no time for breaks other than lunch, leading to visible fatigue and diminished responsiveness. Studies, such as the one conducted by Sharma (2023 on the challenges of front-line bureaucracy in India, emphasize how understaffing and excessive workloads negatively affect both performance and citizen satisfaction. Additionally, operators displayed a lack of knowledge about ancillary services, often dodging related questions, which eroded citizens' trust. Citizens frequently described their interactions with Data Operators as impersonal and transactional, reflecting a lack of empathy in their approach, a finding consistent with the World Bank's (2016) report on improving service delivery in developing countries, which highlighted the importance of humanizing citizen interactions to foster trust.

Technical issues, such as server breakdowns and system shutdowns, were also common, further disrupting services. Moreover, the lack of an inclusive approach, such as separate service lines for women, persons with disabilities (PWD), or the elderly, compounded the difficulties faced by vulnerable populations. Such gaps mirror findings from studies like (Flecha,2019) which underscore the need for inclusive frameworks in public service delivery to ensure equity and accessibility. Higher level officials acknowledged these challenges and recommended actionable measures. They suggested hiring additional staff to reduce workloads and conducting frequent training modules to enhance Data Operators' knowledge of services, including ancillary ones. Furthermore, they emphasized the importance of sensitization workshops aimed at fostering citizen-centric governance and promoting empathetic interactions with the public. These recommendations align with findings from Sharma (2023 who demonstrated how capacity-building and sensitization initiatives significantly improve the quality of interactions between citizens and street-level bureaucrats.

## 11. Suggestions

The study highlights that while the *Chandigarh Right to Service Act, 2017* has

significantly improved timeliness in service delivery—with 92% of citizens receiving services within stipulated timelines—the broader goal of creating a rights-based, citizen-centric delivery system remains only partially realized. Based on survey data, interviews with front-line officials and administrative heads, and observational studies, the following suggestions emerge.

**11.1. First,** citizen awareness of the Act is critically low, with only 19% respondents reporting familiarity (Table 4), and front-line officials confirming that citizens rarely inquire about their rights. Awareness campaigns must therefore be prioritized through information drives, integration of citizen rights into application forms, and digital/mobile reminders. The Act's synergy with the Right to Information Act could be leveraged to promote a culture of rights-based entitlements rather than administrative Favors.

**11.2. Second,** while timely delivery is being achieved largely through internal hierarchies and reporting requirements, service experiences remain cumbersome, particularly in departmental offices. With 94% of driver's license applicants receiving services on time but 66 of 70 describing the process as cumbersome, reforms must go beyond timeliness to reduce transaction costs. Here, expanding the scope of e-Sampark Centres for routine services is key, since 80% of respondents across both services preferred them (Table 3). Lessons from Bangalore One, Haryana SARAL, and Passport Seva Kendras show that single-window delivery models improve satisfaction while protecting data privacy. Chandigarh could similarly introduce clear operational guidelines to balance efficiency with privacy and specialized approvals.

**11.3. Third,** accountability mechanisms need reinforcement. Although 85% of respondents agreed that penalties act as a deterrent (Table 2), interviews revealed that penalties are rarely enforced and grievance redressal remains underutilized (only 3–5% reported using it). Simplifying grievance procedures, enabling online complaint portals, and conducting routine awareness workshops could bridge this gap. Crucially, grievances must be tracked transparently, with penalties enforced consistently, to shift accountability from internal hierarchy alone to institutionalized citizen empowerment.

**11.4. Fourth,** capacity-building of front-line staff is essential. Semi-structured interviews with Data Operators revealed heavy workloads, lack of breaks, limited knowledge of ancillary services, and transactional behaviour that citizens perceived as impersonal. These challenges mirror Sharma (2023), which linked understaffing and overwork to reduced responsiveness. Hiring additional staff, creating more help desks, and providing continuous training on both core and ancillary services are urgent needs. Further, sensitization workshops can foster empathetic, citizen-centric interactions, in line with World Bank (2016) findings on the importance of humanizing service delivery.

**11.5. Finally,** inclusivity and accessibility must be strengthened. Observations revealed that elderly citizens, women, and persons with disabilities face greater

challenges in accessing departmental services and navigating crowded e-Sam park centres. Dedicated service lines, mobile service units, and home-visit facilities for vulnerable groups could address this equity gap. Flecha (2019) underscores that inclusivity is not an add-on but a prerequisite for meaningful service reform.

## 12. Conclusion

The Chandigarh Right to Service Act, 2017, marks a significant step in transforming governance by embedding service delivery within a rights-based framework. By institutionalizing clear timelines, establishing accountability mechanisms, and offering citizens multiple access channels—both through department-specific offices and e-Sam park Centres—the Act has advanced efficiency and transparency, ensuring that public services are no longer discretionary favours but enforceable entitlements. Frontline staff further confirmed that citizens rarely ask about their rights under the Act, while officials emphasized compliance and reporting over citizen experience, reflecting an administrative orientation rather than a rights-based one. These patterns echo Amartya Sen's capability approach, which stresses that rights must expand actual freedoms and agency, while the World Bank (2016) and Flecha (2019) remind us that service delivery must be humanized and inclusive, not just timely.

Yet, the study shows that the Act's transformative potential as a framework for citizen empowerment and dignity remains underrealized. Persistent gaps in awareness, the underutilization of grievance redressal mechanisms, staff capacity constraints, and challenges of inclusivity weaken its impact. To bridge these gaps, Chandigarh must expand e-Sam park coverage with safeguards, strengthen awareness campaigns and grievance systems, and invest in staff training and sensitization. Learning from successful models such as Bangalore One and MeeSeva, the city can refine its architecture to balance timeliness, accessibility, and accountability. Thus, while the Act ensures citizens' rights in a narrow procedural sense, its promise of substantive empowerment and dignity is yet to be fulfilled.

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# Biometric Scrutiny and the Fluidity of Gender: Examining the Legal Implications of AI-Enabled Facial Recognition Technology and the Discursive Misrecognition of Transgender Identity in India

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## Abstract

Mutatis mutandis, the axiom that "Change is the Law of Nature" is undeniably finding stark resonance in the rapid advancement of the digital age, wherein Artificial Intelligence (AI) tools, particularly facial recognition technology (FRT), are simultaneously empowering and imperilling marginalized communities in the highly gender-diverse society. While advancements in AI, ostensibly promise transformative justice – demystifying legal institutions and bridging access gaps, conversely, they also, by constructing the image of abnormal behaviour, shut out certain groups, merely hold others in place, and threaten the stability of the very systems they can improve, entrenching systemic inequities. The Transgender Persons (Protection of Rights) Act, 2019, though progressive in nature, fails to take into account the intersectional nature of discrimination, as AI systems reflect both intentional biases, that is, those inherent in developers, and unintentional biases, namely, stereotyping that conforms to existing prejudices. Such biases compound the difficulty for the already historically disenfranchised community, reducing non-conforming identities to cyber marginalization, thus erasing self-identification and perpetuating epistemic injustice. Use of FRT must be fair in form, but it often proves to be discriminatory in operation, affecting a far greater number of lives. This paper, therefore, investigates the inherent paradox of AI-enabled surveillance in India, particularly FRT, and its impact on transgender identities, to lift the veil on how FRT exacerbates misgendering and hyper-surveillance in public spaces, contravening fundamental rights that are enshrined in our Higher Law, and attempts to put effective recommendations before researchers to overcome it.

**Keywords:** *Algorithmic Surveillance, Cyber Marginalization, Constitutional Safeguards, Facial Recognition Technology (FRT), Misgendering, Transgender Rights etc.*

## 1. Introduction

Facial Recognition Technology (FRT), as we will explore in this paper, is often hailed as a panacea to make a real dent in the proliferation of crimes, including those

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involving digital imagery.[1] While the exponential rise of self-generated content has overwhelmed law enforcement agencies which are also struggling to identify new images, support victims, and stem their flow, yet the deployment of cutting-edge FRT, though successful in domains like public spaces, inevitably raises complex challenges.[2] This paper elucidates the intricacies of FRT and its operational mechanics, and also reviews how FRT has impacted the rights of transgender persons. Through a legal prism, the study further considers the legal implications of FRT with special emphasis upon algorithm bias, discriminatory outcomes, detriments arising from data aggregation within welfare programs, inadequate redressal mechanisms, and personal autonomy in terms of consent and choice. Following the available scientific literature, we have argued through exploratory research, in this paper, that its application in law enforcement matters, which is purely technical in its operation and devoid of socio-legal nuance, risks exacerbating further systemic discrimination at all levels, particularly against marginalized groups such as transgender person, where misgendering due to algorithmic bias could further alienate transgender identity, an identity that has been recognized by the Apex Court as well as Statutory enactment.

## 2. A Bird's Eye view of FRT: Functionality and Underlying Mechanisms

As is indubitably clear from the very construction of the acronym FRT, it is a biometric system that diligently scans or comprehensively analyses a person's face, as has been shown in the **Figure 1.1**, with the express purpose of either unequivocally confirming their identity or figuring out who they are by matching their face to stored photos and data. By employing advanced pattern recognition, the first system checks a person's face against a database of existing faces to confirm they are who they claim to be – just as unlocking a phone with one's face does. Similarly construed, the second method works like a quick fact-check: it compares a person's face to a specific photo that is tied to the identity they are claiming, almost like asking, "Is this person really who they say they are?" and subsequently verifies whether the two images match or not.[3]


**Fig. 1.1:** *A chart showing the steps in the FRT process*

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1 Anthony Carter, "Facing Reality: Benefits and Challenges of Facial Recognition Technology for the NYPD" *HOMEL. SECUR. AFF.*40 (2018).

2 Sara Solarova, "Reconsidering the regulation of facial recognition in public spaces" 3*AI and ETHICS*625-635 (2023).

3 Ian Berle, *Face Recognition Technology* 9-25 (Springer, 2020).

The functionality of the system is progressing through defined stages. Capturing of an image or video is the first step in the stage and enables the system to enable the preparation of image. The salient features are then joined at the hip, creating a one-of-a-kind "biometric template" for data comparison. Following the creation of this and interrogation, a conclusive decision will be handed down, either affirming identity with computer-level certainty or dismissing it outright. To put it simply, it is a way whereby the singular visnomy of any individual, through arcane algorithmic processes, is inextricably concatenated to their pre-existent compendium of catalogued data within a capacious and systematically indexed repository.[4]

## 3. Harnessing Facial Analytics: Strategic Applications of FRT Within India

Over the past seven years, India has been steadily integrating the system into its public infrastructure, profoundly reshaping operations in governance, law enforcement, and public services. This journey, for instance, was undertaken by the Unique Identification Project (UID), which had been leveraging biometrics, including fingerprints, irises, and facial data, to ensure robust de-duplication for Aadhaar enrolments. Shortly thereafter, UIDAI was contemplating the use of FRT for authentication among telecom firms, though these plans were temporarily halted pending the Supreme Court's deliberation on Aadhaar's legality. Likewise, various states have incorporated facial recognition technology or other biometric mechanism within the system.

| **State or UT** | **Purpose** |
|---|---|
| Bihar | Street Surveillance |
| Chandigarh | Data Collection and Street Surveillance |
| Delhi | Street Surveillance |
| Gujarat | Fraud Detection |
| Haryana | Fraud Detection |
| Jammu and Kashmir | Street Surveillance |
| Maharashtra | Biometric Profiling and Forensic Identification |
| Orissa | Street Surveillance |
| Punjab | Biometric Profiling and Forensic Identification |
| Uttar Pradesh | Biometric Profiling and Forensic Identification |
| Uttarakhand | Biometric Profiling and Forensic Identification |
| Tamil Nadu | Biometric Profiling and Forensic Identification |
| Telangana | Data Collection and Street Surveillance |

**Table 1.1** *Application of AI in forensic identification across various States and UTs*[5]

[4] R.A. Waelen, "The struggle for recognition in the age of facial recognition technology" 3 *AI ETHICS*,215–222 (2023).

[5] Common Cause & Lokniti – Centre for the Study Developing Societies (CSDS),"Status of Policing in India Report 2023 Surveillance and the Question of Privacy" 39-70 (2023)

For example, in 2017, the Telangana Police were deploying the "Smart Robocop" to enhance public safety, while Delhi Police had been utilizing Automated FRT to identify missing children and secure high-profile events. Meanwhile, the State of Uttar Pradesh was implementing the "Jarvis" platform to transform prison management, and the "Trinetra" app was empowering police forces across multiple States, such as Rajasthan, Uttar Pradesh and Punjab, with real-time criminal identification. Furthermore, initiatives like the Crime and Criminal Tracking Network and Systems (CCTNS) and the Artificial Intelligence Based Human Efface Detection (ABHEDA) system have been fostering inter-departmental collaboration and accountability. Culminating these efforts, the Ministry of Home Affairs launched the sophisticated (the National Automated Face Recognition System (NAFRS) in 2020, which has been excelling at identifying criminals despite disguises.

## 4. Statutory and Constitutional Safeguards for the Transgender Community

As a signatory to various international instruments affirming basic fundamental rights, including the International Covenant on Civil and Political Rights 1966 (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Government has unequivocally shown its commitment to the protection of their rights, yet leaving room for doubts. As we all know, the Constitution, through its foundational Articles 14, 15, 16, 19, 21, 38, 39, 39A, 41, and 42 actively works to safeguard a bunch of fundamental rights and directive principles of state policies by ensuring that every citizen, including transgender person, is afforded with adequate protection. In fulfilment of its both International and constitutional obligations, the Transgender Persons (Protection of Rights) Act, 2019, was passed by the Government of India, which is a major legislation and prohibits the discrimination and recognize self-identified gender, ensuring social inclusivity of this marginalized community.[6] While the Act has bravely moved beyond simple prohibition to explicitly ban discrimination and provide crucial welfare to them, yet its definition of "transgender," unfortunately, has overlooked non-binary and gender fluid identities.[7] It has also conflated being intersex with being transgender. Though it has recognized self-identification process,[8] at the same time, it creates bureaucratic hurdles, which is somehow also contradicting to the NALSA judgement.[9] Further, it has failed to address technical biases that may in further misidentify and exclude people from essential services. As far as privacy is concerned, the Digital Personal Data Protection Act, which seeks to regulate digital

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*available at:* https://www.commoncause.in/wotadmin/upload/REPORT_2023.pdf (last visited on December 27, 2025).

6 The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 0f 2019), *See Preamble.*

7 *Id.*, s.2(k).

8 *Id.*, s. 4.

9 *Id.*,ss. 5, 6, and 7.

personal data,[10] has also left them and make non-binary more vulnerable by not recognizing gender data as personal sensitive data and also by exempting government agencies from consent requirement for State functions.[11] This exemption has been fostering stresses about strict surveillance and data abuse or misuse. Moreover, the Act does not cover the provisions for AI fairness testing which may likely to encourage discriminatory misclassifications, and it does not address the denial of services caused by gender mismatches in Aadhaar-linked welfare systems, a major issue that is more likely to plague the community in coming days. Having established largest biometric data bases, another major legislation, namely the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, is also playing crucial role in facilitating targeted subsidy delivery. However, it has been consistently failing the transgender community. Many persons, having undergone physical changes form gender-affirming care, are frequently facing biometric mismatches, which could result in their exclusion from very essential services that they require to live dignified life.[12] The studies mentioned below in the part on issues and challenges are giving us clear-cut indication that existing systems are not effective at all, as the developers claim. Even though the DPDP Act has been allowing collection of sensitive data and also purportedly protecting it, but the provisions allowing surveillance for national security have been raising significant privacy concerns, particularly for vulnerable transgender groups. In order to further fulfil objectives of protection of privacy, the Information Technology (IT) Act, 2000, along with the Rules of 2011[13] and 2021,[14] has also been establishing a groundwork for cybersecurity and digital authentication, but it is also being devoid of robust privacy safeguards, especially for transgender communities like transgender and non-binary persons. Sections 3 to 6 of the IT Act have legitimatized electronic signatures and biometric authentication, which have also been deployed in Aadhaar-based facial recognition technology (FRT) system without ensuring accuracy or inclusivity. Notably, widespread application of the same could result in a denial of services due to misidentification, a problem that is exacerbated by different climatic conditions. Regardless of the fact that Sections 66 A to 66D of the IT Act have also penalized identity theft and impersonation, they have been again blurring the scope of concerning AI errors rather than human omissions.

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[10] The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), See *Preamble.*

[11] *Id*.,s. 3.

[12] Arushi Raj &Fatima Juned, "Gendered identities and digital inequalities: an exploration of the lived realities of the transgender community in the Indian digital welfare state" 30(3) *Gender & Development* 531–549 (2022).

[13] The Information Technology (reasonable Security Practices And Procedures And Sensitive Personal Data Or Information) Rules, 2011.

[14] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

## 5. Potential Advantages of FRT

Within this brief section, we must also first unpack the advantages. Through FRT, authorities can swiftly identify criminals and missing persons by matching faces against vast databases, a capability already being leveraged by agencies like the Delhi Police. For transgender persons, if FRT systems become more sophisticated and are trained with heterogeneous datasets that include transgender individuals, they could potentially enable transgender persons be accurately identified according to their affirmed gender in various systems and domains. For State users, the FRT can support them in analyzing evidence from CCTV footage and other sources to identify individuals involved in heinous crimes while also helping to track criminal networks, especially in the absence of sufficient human resources. In aviation sector, initiatives like "Digi-Yatra" have been envisioning seamless, contactless travel. The prowess of tech in managing immense crowds and preventing fraud in welfare schemes has also been demonstrating its profound utility, as was quite evident during its deployment at the Kumbh Mela in Uttar Pradesh.

## 6. Analysis of the Issues and Challenges Surrounding the Use of FRT

The guarantee of equality, by its very nature a principle which has been meticulously enshrined within the hallowed halls of Indian constitutional jurisprudence, and a bedrock upon which the edifice of our justice is constructed, has been consistently and unequivocally recognized – like a beacon light – as substantive, a dynamic concept,[15] not a mere decorative flourish in black and white,[16] but the very nucleus,[17] the vital and indispensable core, of the watchwords of social and economic justice, the intertwined and diligently pursued aims that animate the constitutional vision. And keeping these different jurisprudential notions in mind, the Apex Court in *NALSA* case,[18] recognized them as a third gender apart from male and female and thus have been given constitutional safeguards specifically under Articles 14, 15, 19, and 21 of our constitution. The aforementioned legislative framework as also conferred an obligation upon the State's to prohibit any kind of discrimination and ensure equal access to public spaces. However, these laws, policies, or rules, are remained silent on the intersection of emerging technologies like FRT and their disproportionate impact on them.[19]

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15 *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

16 *Minerva Mills Ltd. & Ors v. Union Of India* & Ors,(1981)1 SCR 206.

17 *Janhit Abhiyan v. Union of India, 2022 Live Law* (SC) 922.

18 *National Legal Services Authority v. Union of India* & Ors., (2014) 5 SCC 438.

19 Marcus Smith & Seumas Miller, "The ethical application of biometric facial recognition technology" 37(1) *AI & SOCIETY* 167-175 (2022).

### 6.1 Algorithmic Bias and Misgendering: Infringement of Gender Self-Identification Rights

What is key here is that FRT systems, trained predominantly on binary gender datasets, i.e., male or female, are also increasingly vulnerable to breaches or attacks as their adoption grows greater day by day in our daily lives. It has been highlighted in several studies that these systems not only misclassify transgender and non-binary individuals due to their inability to account for hormonal transitions, surgical alterations, or non-conforming appearances but at same time also pose ethical risks.[20] In 2021, the Delhi Transport Department announced that it would be testing a fully anonymous services designed for the e-learner's driving license process. The overall aim was to establish a service where e-learners driving license application process is entirely devoid of personal interface and the centre noted an 82% success rate for its facial recognition system for driving licenses.[21] Owing to limitations in the software's capacity to accurately map facial features of applicants, an 18% rate of unsuccessful recognition was reported for aged between 18 to 21.[22] This, therefore, stands to reason that the perceived nexus between facial features and emergence of age-related difficulties has not been definitively ironed out, particularly when one considers the fluid and dynamic nature of young adult facial development across all genders. It has also been observed, through another notable study, that the academic treatment of gender in Automated Gender Recognition System (AGRS) often ossifies into rigid taxonomies, akin to statutory overreach, wherein lived diversity is eclipsed by computational dogma, a dissonance demanding urgent redress.[23] It was brought to fore that gender was predominantly presented as a binary construct in 94.8% of the examined works, held to be unchanging in 72.4% of them, and viewed as purely a biological construct in 60.3% only.[24] So, this paints a clear picture of gender being reduced to an "operational parameter."Moreover, if compromised, such type of systems is in operation in various domains could expose personal sensitive data, and a critical question that could be asked here is: What happens if biased algorithms may take over "identity verification" in critical systems like Aadhaar, healthcare services, ration schemes, or policing databases? This may have illustrated the institutional erasure perpetuated by misgendering that is to say, forcing them into highly rigid categories antithetical to their self-identified identities.[25] Moreover, those

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[20] Aimee Kendall Roundtree, "Ethics and facial recognition technology: An integrative review" *WSAI* 10-19 (2021).

[21] Sweta Goswami, "82% success rate for facial recognition system for driving licences, says NIC" *Hindustan Times*, Sept 02, 2021.

[22] *Ibid.*

[23] Giovanni Pennis, "Operationalization of (Trans) gender in Facial Recognition Systems: From Binarism to Intersectionality" 2(3) *Future Humanities* e17 (2024).

[24] *Ibid*.

[25] *Supra* note 6, s.4.

misclassified cases could routinely be subjected to humiliation[26] or shunned in public services that can further, instead of inclusion, entrench systemic exclusion.[27] It could reasonably be said that it is in direct conflict with the Article 14, 15, 16, 19, and 21 of our Constitution as well as obiter dicta of *NALSA case,* wherein Radhakrishnan, J., observed "gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person." Importantly, biased algorithmic system could be in conflict with the Section 3 of the TP Act.

### 6.2 Surveillance and its Chilling Effects on Privacy vis-a-vis Public Participation

The use of FRT in policing and public surveillance – such as "Safe City" initiatives – disproportionately subjects transgender persons to heightened scrutiny, targeting innocent transgenders persons through untested mechanisms which may involve incongruence between their current appearance and historical records, e.g., pre-transition photographs. This also bring us to point that control has been siphoned from the grasp of transgender persons, as the mosaic of "personal information," splintered and archived within countless repositories, has transformed privacy into a relic. Thus, its sanctity fractured by the silent machinery of aggregation.[28]As already indicated, there seems to be no reason to legitimize such systemic overreach or transgression into essential rights such as inalienable right to life and liberty imbued with dignity, the sacrosanct right to privacy and the unabridged freedom of expression, right to education and empowerment, right against violence, right against exploitation and right against invidious discrimination albeit with reasonable restrictions,[29] giving a stamp of approval to tools that cannot be pigeon-holed singularly as neutral or very objective in terms of determination of various things. However, historical marginalization and over-policing of transgender communities amplify risks of harassment, profiling, and wrongful detention, often resulting in different interpretations of their gender identities by authorities – a perilous dynamic where dignity must not be denied basic human rights, at any cost.[30] For instance, FRT-linked databases may flag transgender individuals as "suspicious," a practice the Apex Court and the High Courts have stated that entrenches bias and exclusion from society; otherwise, they would become easy prey to algorithmic errors, further alienating a community at different levels. In case of *K.S.*

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[26] Soumitra Bose, "Humiliation everywhere, but transgender people must learn to fight" *The Times of India*, Jan 22, 2023.

[27] PTI, "Delhi police facial recognition software has only 2 per cent accuracy: HC told" *Business Standard*, Aug 23, 2018.

[28] Michel Perilo & George Valença, "How Facial Recognition Technologies Affect the Transgender Community? A Systematic Mapping Study"*SAC*1153-1160 (2024).

[29] *Navtej Singh Johar v. UOI* (2018) 1 SCC 791.

[30] Laurel Anderson, "Punishing the innocent: How the classification of male-to-female transgender individuals in immigration detention constitutes illegal punishment under the Fifth Amendment" 25 *Berkeley J. Gender L. & Just.* 1(2010).

*Puttaswamy*,[31] the court categorically held:

> "*without the enjoyment of these basic and fundamental rights, individual identity may lose significance, a sense of trepidation may take over and their existence would be reduced to mere survival."*
>
> (emphasis supplied)

Therefore, it is not a sustainable way to deny a community that has already suffered a range of substantive rights, as has also conferred under Section 5 read in conjunction with Section 4 of the TP Act, which are essential for a dignified life. When discussing the importance of public participation, worthwhile it would be to explicitly reference the study titled "A Typology of Privacy,"[32] which was also cited by the Supreme Court in the case of *K.S. Puttaswamy*, which illustrates the concepts of privacy, linking them to the ideas of freedom and public participation. Also, out of the nine types of privacy, a few major such as behavioural privacy, bodily privacy, and communicational privacy hold immense importance.[33] By interlinking these three with the DPDP Act,[34] the IT Act[35] and its rules,[36] the FRT system also excessively infringes on the right to privacy. Mass surveillance through FRT, especially without any kind of safeguards, as of now, against gender bias, constitutes a major disproportionate intrusion into the private lives of transgender persons. Such surveillance may reinforce systemic stigma, deterring individuals from accessing public spaces, healthcare, or legal services and thus can be considered as a direct affront to their rights under Articles 15 and 21 of the Constitution, in conjunction with Sections 3 and 4 of the TP Act and Section 28, 29 and 33 of the AD Act. Herein, it is also important to note that in the case of a transgender person who is a person with a disability, this system betrays, without any doubt, Section 3 of the Rights of Persons with Disabilities (RPWD) Act, which also prohibits discrimination and directs the state to take steps to ensure they can enjoy their rights equally with others.[37]

### 6.3 Data Harms and Exclusion from Digital Welfare Systems

Inaccuracies in FRT could also disproportionately affect transgender person in accessing essential services under welfare scheme,[38] especially if these are linked to

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31 *Justice K.S. Puttaswamy (Retd.) v. UOI* (2019) 1 SCC 1.

32 Bert-Jaap Koops et. al., "A typology of privacy" 38(2) *UPJIL*483 (2016).

33 *Supra* note 8, ss. 4 and 5.

34 *Id.*, s. 7.

35 The Information Technology (IT) Act, 2000, Act No. 21, Acts of Parliament, 2000 (India), Chapter II and Chapter III.

36 The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, Rules 3, 4, 5 and 7.

37 The Rights of Persons with Disabilities (RPWD) (Act49 of 2016).

38 *Supra* note 6, s.8.

digital ID systems, and that is where the outsourcing of such technologies to third parties, particularly private companies, must be borne in mind. For example, mismatches between facial data and gender markers in Aadhaar or voter ID's – having the effect of denying subsidies, healthcare, or voting rights – cannot be construed as a reasonable or justifiable outcome on any ground. Sadly, Section 5 of the AD Act talks about special measures for the issuance of Aadhaar numbers to certain categories of persons; alas, that said category does not explicitly include transgender persons within it and silently sidelines them into those who do not have any permanent dwelling house and such other categories of individuals; it is to be noted here that the word "and" has been used instead of "or." To put it succinctly, this can create a *'digital/cyber marginalization'* where algorithmic errors will compound existing socio-economic exclusion, wreaking the most egregious harm on marginalized communities; yet it does not fall within the ambit of accountability, for the doctrine of desuetude – having guided outdated frameworks – cannot be atrophied into complacency while rights are put at risk.[39] Above all, such systems must yield true benefits that subserve the purpose of justice, rather than perpetuating exclusion from our society. Otherwise, the constitutional promise of dignity, held to be an inviolable guarantee, is subordinated to mighty technological arbitrariness. In present context, it would be more apt to refer to observation of the Apex Court in case of *Minerva Mills*, wherein it was observed:[40]

> *"The dynamic principle of egalitarianism fertilises the concept of social and economic justice; it is one of its essential elements and there can be no real social and economic justice where there is a breach of the egalitarian principle…"*
>
> (emphasis supplied)

Therefore, the current framework fails to address data harms, leaving gaps in accountability for harms caused by automated decision-making process, which, in turn, vitiate the principle of egalitarianism.

### 6.4 Lack of Legal Safeguards against Algorithmic Discrimination

The absence of mandatory audits for bias in FRT datasets – once it is noticed that such datasets could be trained on historical data reflecting past discriminatory practices, that is to say, a form of algorithmic discrimination based on agents as has been discussed in subsequent line, – coupled with non-transparent procurement practices by law enforcement, enables systemic discrimination at bureaucratic and judicial level.[41] It has to be noted that such discrimination has been held to manifest in two primary forms: *firstly,* algorithmic discrimination based on agents, where

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[39] *Supra* note10, s. 23.

[40] *Supra* note16.

[41] Xukang Wang, "Algorithmic discrimination: examining its types and regulatory measures with emphasis on US legal practices"7 *FRONT ARTIF. INTELL*1320277 (2024).

biased data entrenches societal prejudices, which may show the cyclical nature of inequality; and *secondly,* discrimination based on feature selection, where flawed attribute prioritization by designers is often reduced to technical neutrality, thereby to play truant with societal hierarchies.[42] Nevertheless, another insidious type involves proxy variables or masked attributes – a practice that must be deemed to indicate algorithmic "redlining" while appearing neutral, so as to obviate accountability. The context, therefore, is so obvious: transgender individuals, vulnerable in public spaces, face compounded harms as these systems, a major area of debates, are deployed without any kind of sufficient safeguards. To widen the vent, while *NALSA Case* and *Puttaswamy Case* establish broad protections in various forms, precedent by precedent, they also impliedly added note of caution in it. It was observed:[43]

> *"Nor can judges foresee every challenge and contingency which may arise in the future. This is particularly of relevance in an age where technology reshapes our fundamental understanding of information, knowledge and human relationships that was unknown even in the recent past. Hence as Judges interpreting the Constitution today, the Court must leave open the path for succeeding generations to meet the challenges to privacy that may be unknown today."*
>
> (emphasis supplied)

However, the courts will have to take note of this operation and interpret these precedents accordingly so that transgender persons may be able to realise the positive obligations on the State to mitigate technological harms, ensuring marginalized communities capture rights on their own terms – they would, on their own, assert these rights free from cruel State interference, save for certain reasonable exceptions. In addition, it would be idle to expect marginalized groups to posit trust in systems that to be noted that have acquired structural biases, as per several studies. Furthermore, transgender persons will face procedural hurdles in contesting FRT errors because grievance mechanisms under the current evolving frameworks are ill-equipped to address algorithmic harms, missing on their texture a coherent liability model to hold systems accountable. So, the judiciary, in this context, has to take note of their role to widen the vent for justice, lest equality becomes a relic.

## 7. Conclusion and Recommendations:

The paper has discussed legal aspects of FRT and its implications on transgender persons after unpacking its operational mechanisms alongside presenting the comprehensive legal landscape from which major legal implications are discussed and attracted our attention from available literature. These are: algorithm bias and misgendering, data harms and exclusion from digital welfare schemes, inadequate remedies against misuse of data, lack of safeguards against algorithm discrimination,

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[42] *Ibid.*

[43] *Supra* note 31.

and surveillance. Through a symphony of cross-sector collaboration, innovators and advocates must harmoniously refine racial detection algorithms in FRT's, and for that following recommendations be considered to ensure that they not only mirror societal diversity but also champion fairness with every pixel analysed.

**7.1 Adoption of Human Rights Impact Assessment:** Since the application of FRT involves intricate processes as well as several stakeholders, before making its application widespread the adverse impact of the same must be assessed on human rights.[44]As part of its efforts to promote inclusivity at workplace, the Zero Draft of the National Action Plan on Business and Human Rights in 2018 must be implemented for all stakeholders who are involved in this process.[45]

**7.2 Community-Driven Algorithmic Training and Participatory Bais Audits:** Establishing partnerships with transgender-led organizations to collaboratively develop facial recognition datasets should be encouraged.[46] Also, training AI models using a wide array of transgender faces, encompassing non-binary, gender-fluid, and post-transition individuals, is very crucial to actively overcome inherent binary gender assumptions within these systems.

**7.3 Creating and Adopting the EARN (Equity, Accuracy, Respect of rights, and Narratives) framework for ethical FRT:** To ethically guide facial recognition technology, the EARN framework, which calls for Equity & Inclusivity through diverse data and bias mitigation, as well as Accuracy & Reliability via differential metrics and transparent limitations, must be adopted at the national, state, and zonal levels.

**7.4 Revising the existing legal framework to ensure epistemic justice in digital age:** As it currently stands, the legal framework must be urgently reassessed through the lived experiences of transgender persons. In cases where enacting an entirely new framework proves not feasible, amendments should dismantle archaic barriers that have fuelled epistemic injustice, which has denied marginalized voices the right to shape societal knowledge in a just way.

**7.5 *Self-Affirmed Identity Recognition:*** To empower individuals in how they are recognized, we should establish a system where users can input their self-identified gender, preferred pronouns, and desired appearance, such as features

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[44] Alessandro Mantelero, "AI and Big Data: A blueprint for a human right, social and ethical impact assessment" 34(4) *Computer Law& Security Review* 754-772 (2018).

[45] Shehnaz Ahmed, "Zero Draft of the National Action Plan for Implementation of the UN Guiding Principles on Business and Human Rights" *VIDHI CENTRE FOR LEGAL POLICY*, May 11, 2025.

[46] Tan Hey& Byung-Won Min, "A Research on the Application of Face Recognition Algorithm Based on Convolutional Model and Transformer Model in Community Monitoring System" 9(5) *JITC* 61-72 (2023).

reflecting a transition. The AI would then prioritize this self-provided information when identifying them, effectively adapting its understanding based on own definition users.

**7.6 Trans-led oversight body:** For the responsible implementation of FRT in public areas, the States can also establish Transgender Equity Review Boards (TERB). These independent bodies, comprising a majority of transgender members alongside other members belonging to art or science fields, should be tasked with auditing system deployments. Additionally, it is recommended that fines resulting from algorithmic bias be channelled into Compensation Funds and these funds, in turn, could then be utilised to provide financial support for technology projects led by transgender persons.

While the recommendations which have been highlighted here aim to alleviate some existing tensions and address notable omissions, it is important to acknowledge that certain fundamental and philosophical questions will likely continue to fuel debates as our technological landscape evolves at rapid pace.

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# Women's Property Rights Under Personal Laws vis-à-vis Uniform Civil Code: An Overview

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## Abstract

Women's property rights form a crucial component of gender justice and substantive equality, directly influencing women's social status, economic independence, and access to justice. In India, property rights of women are largely governed by diverse personal laws Hindu, Muslim, Christian, Parsi and customary laws which often result in differential treatment based on religion, gender, and marital status. While certain statutory reforms, such as amendments to Hindu succession laws, have strengthened women's inheritance rights, significant disparities and patriarchal limitations persist across personal law regimes. The proposed Uniform Civil Code (UCC), envisaged under Article 44 of the Constitution of India, aims to provide a common framework governing civil matters, including property and inheritance, irrespective of religious affiliation. This research seeks to critically examine women's property rights under existing personal laws and evaluate the potential role of a Uniform Civil Code in ensuring equality, non-discrimination, and constitutional morality. Through doctrinal and comparative analysis, the study explores whether the UCC can harmonize personal laws with constitutional mandates of equality and gender justice, while addressing concerns related to cultural diversity and religious freedom. The research aims to contribute to the ongoing legal and policy discourse on women's rights, secularism, and legal reform in India.

**Keywords:** *Women's property rights, personal laws, Uniform Civil Code, succession, inheritance, gender justice*

## 1. Introduction

"Woman is the builder and moulder of nation's destiny...

Though delicate and soft as a life she has a heart, for stronger and bolder than of man...

She is the supreme inspiration for man's onward march...

She is, no doubt, her commanding personality, nevertheless is grimly solemn"

-Rabindranath Tagore

According to Rabindranath Tagore, women possess remarkable strength, despite societal constraints imposed on them by men. Women embody a unique blend of

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softness, gentleness, and courage, yet they face hindrances in their societal growth. They serve as an extraordinary source of inspiration for the entire human society. The advancement of society cannot be achieved without the empowerment of women. Unfortunately, our society tends to allocate less power and opportunities to women compared to men[1].

Lord Denning has observed[2]:

"A woman has the same intensity of feeling and clarity of thought as a male. She accomplishes useful work in her field, just as man does in his. She has the same right to her independence as a man to fully develop her personality. While his work is more essential in the community, her work is more vital in the family. Neither of them can function without the other. Neither is higher than the other or lower than the other. They are on the same level."

It is imperative that women are granted equal status in society, just as men are. If men are given opportunities to prove themselves, women should be afforded the same chance. Therefore, it is crucial to ensure that women receive equal rights and opportunities on par with men. The right to equality and dignity of person enshrined in the Preamble of the Constitution, Fundamental Rights, and Directive Principles, which are a trinity intended to eliminate discrimination or disability based solely on social status or gender, removed the pre-existing impediments that stood in the way. Personal laws that assign women a lower status are inherently contradictory to the concept of equality. They are derived from religious sources rather than the constitutional framework. However, it is crucial that any legislation resulting from these personal laws aligns with the principles of the Constitution. If such laws infringe upon basic rights, they can be deemed null and invalid under Article 13 of the Constitution. Then for the first time the Honourable Supreme Court in *Sarla Mudgal and Others* v. *Union of India*[3] talk about the Uniform Civil Code. The Honourable Supreme Court held that there is necessity to implement UCC to prevent the discrimination of women under different personal laws. The judgement is notable for emphasising the difficulties that arise from the simultaneous existence of various personal laws and the necessity for a comprehensive legal framework.

## 2. Meaning and Definition of Property

Property is a broader concept. Initially it was included only physical thing but now it also includes intangible things such as source of the income. These rights cover the absolute power to dispose of property within the limit put up by the law. In general, property is a thing which is upheld by person or persons and owner can exercise full

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1 Susmita Bhagat, "Unfolding of a New Women-Bimala in Tagore's "Home and the World"" 3(4) *Indian Journal of Social Science and Literature (IJSSL)* 2024, *available at* https://papers.ssrn.com/sol3/papers.cfmabstract_id=4868972.

2 Lord Denning, *The Due Process of Law* (Oxford University Press, 2005).

3 AIR 1995 SC 1531.

rights over it. Life of human being cannot complete without the property. The foundation of the property is the ownership[4].

According to Oxford dictionary, "property is a thing or things belonging to someone; it also includes the right to possession, use or disposal of something and ownership."

The expression "property" means, in the Black's dictionary: "That which is peculiar or proper to any person; that which belongs exclusively to one. In the strict legal sense, an aggregate of rights which are guaranteed and protected by the government[5].

## 3. Women Property Rights in Different Personal Laws and Legislations

The Indian Constitution indeed serves as the supreme code of conduct governing the country and enshrines important principles such as justice, liberty, equality, and fraternity. All laws, rules, regulations, bylaws, notifications, and orders must conform to the provisions of the Constitution. To fulfil this objective, Part III and Part IV of the Constitution contain various important provisions. The Constitution recognizes the need to protect women's property rights and contains provisions aimed at addressing this concern. The adequacy of these provisions can be examined within the constitutional framework[6].Different personal laws were enacted and amended from time to time and continue to thrive in this country to regulate the personal lives of the people in accordance with their faith. The applicability of personal laws in a country like India depends solely on religion. Hindus, Muslims, Christians & Parsis are governed by their own personal laws such as Hindu Law, Muslim Law, Christian Law, and Parsi Law respectively. From the religious point of view, the Personal Law is defined as "Body of law which apply to a person or to a matter solely on the ground of his belonging to or its being associated with a particular religion".

### 3.1Constitutional Provisions

In India and world half of the population consists with women. As compare to men she possesses very nominal and limited property. Women have been always treated unequal and that inequality always in silence. Article 14, 15, 21 and 44 of Indian Constitution consist with provision relating to prohibition of discrimination on the ground of sex.

**Article14, Article 15, Article19, Article 21, Article 44**

**Article 14 s**tated that, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". It deals with two important principles, "equality before law" and "equal protection of laws". This both

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4 Definition of property, *available at* :https://en.oxforddictionaries.com (last visited on May 15, 2025).

5 Black's Law Dictionary 5th Edition , 1979.

6 C. A. MacKinnon, "Sex equality under the Constitution of India: Problems, prospects, and Personal laws'' 4(2) I. CON 183- 202 (2006), *available at:*https://watermark.silverchair. com/mol001.pdf.

principles recognized the idea of equal status and equal justice. The Indian Constitution deals with provision equally applicable to men and women. "Equality" is the word which denotes passion and power. In *Indra Sawhney* v. *Union of India*[7], it was held that the right to equality is also recognised as one of the basic features of the Constitution and grants equal treatment to persons who are equally situated.

**Article 15(1)**[8] forbidden "discrimination on the ground of religion, race, caste, sex, place of birth or any one of them". Article 15 (1) is stated about the prohibition on basis of gender. But, Articles 15(3) and 15(4) are exceptions to the same which provide that state can enact special laws for women, children, and social and educationally backward class. There are certain fundamental rights which are specifically protect the rights of women. The Indian Constitution guaranteed right to property as a fundamental right in Part III. In *Govt of AP.* v. *P.B Vijayakumar*[9] the Court held that Article 15(3) was broad enough to cover any special provision for women including reservation in jobs. Women who are historically weaker section of our society for whose upliftment Article 15(3) is made, which should be given wide interpretation.

**Under article 19 (1) (f)**[10] **and 31-** under Article 19 (1) (f), it states that every person shall have right to acquire, hold and dispose of property, and Article 31 provided that no person shall be deprived of his property rights and shall be respected by the law. It was repealed after the 44th Amendment Act, 1978, by inserting article 300A which states that, "no person shall be deprived of his property save by authority of law". After this amendment, the right to property no longer remained a fundamental right; it became a legal and constitutional right.

**Article 21**[11] **Protection of Life and Personal Liberty:** It is read as, "No person shall be deprived of his life or personal liberty except according to procedure established by law".

**Article 44**[12] of the constitution stated that "The state shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India". In our Constitution, "Uniform Civil Code" is enumerated under Article 44. It deals with all aspects of personal laws. The Article 44 is intended that, by the majority of legislature attempt will be made to uniform the personal laws of all religions. But it is more than 70 years; Uniform Civil Code is still not implemented.

In *Sarla Mudgal* v. *Union of India*[13], The Court stated in that case as, "Since Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the course of

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7 (2000) 1 SCC 168, AIR 2000SC498.
8 The Constitution of India, art. 15(1).
9 (1995) 4SCC 520.
10 The Constitution of India, art. 19(1).
11 The Constitution of India, art, 21.
12 The Constitution of India, art. 44.
13 AIR 1995 SC 1531.

the national unity and integration, some other communities would not, though the Constitution enjoys the establishment of a common civil code for the whole of India.

*John Vallamattom* v. *Union of India*[14] The constitutionality of section 118 of the Indian Succession Act, 1925 was challenged on the ground of restriction put up on ability to will away land for charitable purpose. In this case, the Supreme Court of India held that Section 118 of the Indian Succession Act, 1925which imposed restrictions on Christians regarding their ability to bequeath property for religious or charitable purposes was unconstitutional and violated Article 14 (right to equality) of the Indian Constitution. Again, in that case court observed that there is need of UCC which help for national integration.

### 3.2 Hindu Law

Woman is always considered as an important part as man in the social economy and historical development of humanity. Women's lower status is reflected not just in their homes and communities, but also in their advantages and rights. The constitution of India provides provisions of equality of man and woman by fundamental rights and directive principles. The women are not allowed the right to inherit the immovable property as men, they have right to have movable property example ornaments, and clothing given to her on her marriage. Sometimes the personal laws or will allow them to inherit from father or mother but not from cognates[15].

#### 3.2.1 Women Property Rights under Customary Law

Customs is a significant legal source. In samritis, words like achara, sadachara, shishtachara, lok sangraha, and others are commonly employed to represent various aspects of tradition. In terms of acceptability, these local customs differ from area to region. In terms of women's rights, southern states have far more rights than the rest of India due to local norms. Both Yajnavalkya and Vijnaneshwara, who built their structures on women's right to property, are said to have come from the southern area. Even under smriti law, significant pro-women property inheritance norms persisted in the southern and largely Dravidian regions. The wide notion of stridhana in the Bombay and Madras schools is an example of these pro-women initiatives. There were also a number of additional local rites and practises that favoured women in the area that were less well-known. A custom of granting a portion of land for the daughter's personal expenses prevailed in the Maratha region of Bombay presidency, called as 'Bangdi Choli' (which literally means bangles and blouse). A woman was also entitled to one-third of the property if her husband remarried[16].

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[14] (2003) 6 SCC 611.

[15] Debarati Halder and K. Jaishankar, "Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India" 24(2) *Journal of Law & Religion*663-687 (2008).

[16] Dr. Paras Diwan, *Hindu Law* 1433 to 1438 (Orient Publishing Co., 2nd edn., 2005).

### 3.2.2 Women Property Right under Statutory Law

There are following laws which are made for the protection of women property rights

**The Hindu Wills Act, 1870-**It says that everyone has right to dispose of their property by will. This act came with the modifications in Indian Succession Act, 1925. This was the first Act which allowed Hindu to dispose of their property according to their will.

**The Married Women's Property Act of 1874-**This Act was important one which given wider concept of Stridhana. According to this Act, women can own her separate property which included:

a. Earnings and wages of married woman out of employment
b. Property in terms of money from her skill
c. All her earning and savings

This expansion idea of Stridhana enlarged the women rights to own and acquire property[17].

**The Hindu Law of Inheritance (Amendment) Act, 1929-** A son's daughter, a daughter's daughter, a sister, and a sister's son "shall, in that order, be entitled to rank in the line of succession next after the paternal grandfather and before the paternal uncle.

**The Hindu Women's Right to Property Act, 1937-** This Act was designed to change the Hindu norm of succession in order to provide women more powerful and crucial inheritance rights. After this Act, the widow of a deceased coparcener was permitted to acquire his interest in the Mitakshara undivided family. In all cases, widows have the right to demand partition. This is one of the most important legislations which given important and better property right to women[18].

**The Hindu Succession Act, 1956-** The Act of 1937's interpretation resulted in a slew of inconsistencies and ambiguities. As a revolutionary proposal to reform Hindu law, the Hindu Code Bill was proposed in the Central Indian Legislature. The Hindu Code Bill was subsequently divided into four pieces and published. The second component of the Hindu Code, which is no longer in effect intends to update and codify Hindu intestate succession laws, and this cause eventually leads to the passage of the Hindu Succession Act, 1956.As a result of the Act's present structure, the two separate systems of Hindu male property inheritance that existed under the Mitakshara and Dayabhaga Laws have been repealed, and an unified system based on the Mitakshara and Dayabhaga Laws has taken effect (Sec 8). After the Act takes effect, the recognised classes of heirs of bandhus, samanodaks, and sapindas vanish. The heirs are divided into following classes under the Act,

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[17] Thair Mahmood, *Principle of Hindu Law* 303 (Universal Law Publishing co.).
[18] Gupte's, II *Hindu Law* 1192 (Premier Publishing Co, 2nd edn., 2009).

a. Heirs in class I,
b. Heirs in class II,
c. Agnates, and
d. Cognates.

All property obtained by a female Hindu, regardless of how it was acquired, is now her absolute property, and she has entire discretion over how she deals with it or disposes of it. When the Act enters effect, whether before or after the commencement of the Act, the constraints on a female's authority evaporate. She no longer owns it as a limited owner, but as a full owner. (Sec 14)

### 3.2.3 Hindu Succession Act, 1956 with respect to 2005 Amendment

Before the amendment of 2005, the men are the only ones who are entitled to a part of the property. If any of the coparceners dies and leaves an inheritance, the surviving male coparceners receive their share. No woman has the same right as a man. With the establishment of section 6 prior to the 2005 modification, females began to acquire property rights as the heirs of their fathers, which was the first revolutionary shift in Hindu Law. After the amendment of 2005, Section 6 was completely rewritten, removing the discriminatory gender restrictions from the previous version. A daughter of a coparcener in a mixed Hindu household can now become a coparcener under a new rule. The following are the modifications brought about by these amendments:

a) Under section 6(1) of the 2005 amendment act, a coparcener's daughter has the same rights as his son by birth. They have the same rights to the coparcener property and are equally accountable for the coparcener property's responsibilities.

b) Section 6(2) the property which she gets with respect to the above provision she has right of dispose of the property by will or testamentary succession.

c) Under section 6(3) when a Hindu dies after the Hindu Succession Amendment Act of 2005, his or her interest is passed down through testamentary or intestate succession.

The amended Section 6 of the Hindu Succession Act has revolutionized property rights for Hindu women, granting them coparcenary status equal to sons and enabling them to fully participate in the ownership, management, and partition of joint family property. Judicial pronouncements have reinforced this legislative intent, striving to secure gender equality in inheritance under Mitaksharalaw. In *Danamma @ Suman Surpur* v. *Amar*[19] Supreme Court affirmed that the amendment confers full rights on daughter coparceners whether they were born before or after the 2005 amendment and they can seek partition in coparcenary property. The property share of a daughter

[19] AIR 2018 1SCC 168.

is equal to that of a son, even if the father died before the amendment, as long as the partition had not been completed before 2005.The landmark ruling of Supreme Court *Vineeta Sharma* v. *Rakesh Sharma*[20] clarified that a daughter's right as a coparcener is by birth and is not dependent on the father being alive when the 2005 amendment came into effect. The decision held that the amended Section 6 applies retrospectively for all living daughters as of 9 September 2005, regardless of whether they were born before or after that date, provided the property had not already been partitioned or legally disposed of[21].

**Section 14[22]:**

Property of a female Hindu to be her absolute property

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

**Explanation-** In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as Stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) Shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

In *Karan Pershad* v *Kunwar Rani*[23], The Supreme Court concluded that the widow's stake becomes "property" under s. 14(1), which became absolute on the entry into effect of the Hindu Succession Act, once the share of a female Hindu becomes ascertainable by severance of the joint family status on the initiation of a suit for partition. A widow is not required to establish a particular claim to a share of the property.

### 3.3 Muslim Law

According to the Muslim Personal Law (Shariat) Application Act of 1937, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula, and mubara'at,

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20 AIR (2020)10 S.C.R 135.

21 Manini Menon, "Court Clarifies Application of S.6 of Hindu Succession Act, 1956", *available at*https://www.scobserver.in/journal/court-clarifies-application-of-s-6-of-hindu-succession-act-1956/?

22 The Hindu Succession Act,1956, s. 14.

23 AIR (1970) 3 SCC 947.

maintenance, dower, guardianship, gifts, trusts, and trust properties, and wakaf are all covered under Muslim Personal Law. Muslim law makes no distinction between men's and women's rights. Nothing can prohibit both a girl and a male kid from being legal heirs of inheritable property when their ancestor dies. The quantum of a female heir's part, on the other hand, is usually half that of a male heir's portion. The reason for this is that under Muslim law, a female would get mehr and maintenance from her husband upon marriage, whereas males will inherit just their ancestor's property. Males are also responsible for the upkeep of their wives and children[24].

The Supreme court in *Sarla Mudgal* v. *Union of India*[25] and *Lily Thomas* v. *Union of India*[26]**,** has ruled that if a Hindu married man changes to Islam only for the purpose of marrying a second time, his conversion is null and unlawful and he would be prosecuted under Section 82 of the Bharatiya Nyaya Sanhita for bigamy. If a married man renounces his faith, his marriage terminates instantly under Muslim law; however, this is not the situation for Muslim women who convert; her marriage would not cease if she converted.

**Muslim Law of Inheritance under different categories:**

a. The Holy Quran.

b. The Sunna, or manner of life of the Prophet.

c. The Ijma – a decision reached by the community's learned men on what should be done in a certain situation.

d. The Qiya, which is an analogical derivation of what is good and just in accordance with God's precepts. Sharers and Residuaries are two categories of heirs recognised by Muslim law. Sharers are those who are entitled to a portion of the deceased's property, whereas residuary would take over the portion of the property that remains after the sharers have received theirs[27].

   There is a total of 12 Sharers, who are as follows:

   (1) Husband,

   (2) Wife,

   (3) Daughter,

   (4) Daughter of a son (or son's son, etc.),

   (5) Father,

   (6) Paternal Grandfather,

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[24] Munir's, *Principle of Mohammedan Law* 495 (Dwivedi and Co. 2008).
[25] AIR 1995 SC 1531.
[26] AIR 2000 SC 1650.
[27] Dr. Paras Diwan, *Muslim Law in Modern India* 212 (Allahabad Law Agency).

(7) Mother,

(8) Grandmother on the male line,

(9) Full sister

(10) Consanguine sister

(11) Uterine sister, and

(12) Uterine brother.

Depending on the circumstances, each sharer's share will change. For example, if the marriage has no lineal offspring, the woman receives ¼ of the share, and if they have, she receives one eighth. In the case of succession to the wife's inheritance, a husband receives a half portion if the pair has no lineal offspring, and a quarter share if the couple has lineal descendants. A single daughter gets half of the inheritance. When a deceased person has many daughters, all of them share two-thirds of the inheritance. If the dead left behind sons and daughters, the daughters cease to be sharers and instead become residuaries, with the remainder divided such that each son receives twice as much as each daughter[28]. The Muslim Personal Law (Shariat) Application Act, 1937 is used in non-testamentary succession[29]. On the other hand, if a person dies testate, that is, if he or she has made a will before death, the inheritance is controlled by the appropriate Muslim Shariat Law, which is different for Shias and Sunnis. The Muslims are governed by the Indian Succession Act, 1925 instances where the subject matter of property is an immovable property located in the states of West Bengal, Chennai, and Bombay.

### 3.4 Christian Law

Christianity is one of the large populations within India. They also based upon their religion, faith and belief. The all varieties of Christians reside in India included Roman Catholic, Syro Malabar, protestant, Marthoma Syrian, Presbyterian and so on. Accordingly, they reside permanently in India at various part, due to that their personal laws varied by their place of residence. Initially their inheritance laws were based upon customary practices and religious faith. However, it creates uncertainty in inheritance laws of Christian within India. The Church upholds the dignity of women and also given importance to motherhood. In modern era some efforts have been taken to maintain the original position of women in the church through the law[30].

#### 3.4.1 Legislations on Women's Property Rights under Christian Law

Initially there was a no proper law of succession for Christian in India. Therefore, they followed their custom and usages in inheritance matter. Thus, according to

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[28] Dr. Paras Diwan, *Muslim Law in Modern India* 212(Allahabad Law Agency).

[29] Munir's, *Principle of Mohammedan Law* 498(Dwivedi and Co. 2008).

[30] Jose Kalapur, "Women in Christianity, Changing Status: An Historical Overview" 21(4) *Women's Link* 29 (2015).

custom women was debar in succession and only men have property rights. Originally, women under the Christianity also deprived of property rights. According to Old Testament of the Holy Bible, son alone exercise the property rights and the women were entitled to only gift during their marriage. The law governing Christians in India was influenced by the colonial legacy from British imperialism. Christian's law of inheritance was governed by Indian Succession Act of 1865 with customary laws, in the matter of inheritance. Simultaneously, converted Christians followed their customs for inheritance. Indian Succession Act 1925 is a wider view on part of women's property rights, as it given equal rights for daughters and sons. Widows were also entitled to inherit one-third of her husband's property. But a major Christian population were followed their customary laws, accordingly, daughters were prohibited from inheriting property[31].

There were various inheritance rules in India for Christian, the "Indian Succession Act, 1925","Cochin Christian Succession Act 1921"and the "Travancore Christian Succession Act 1916". But the Act of Travancore and Cochin was removed and now Indian Succession Act 1925 will be applicable to them. Similarly, Christians in state of Goa and the Union Territories of Daman and Diu are followed by "Portuguese Civil Court 1867", and Pondicherry followed by "French Civil Court 1804". Thus, there is no any uniformity in our country regarding the Christian women property rights. However, the "Indian Succession Act of 1925" is now applicable largely and generally. Section 31 to 49 of the Indian Succession Act 1925 contains provision of Christian Intestate succession. Section 2(d) of the Indian Succession Act applicable to the Indian Christian and it means a native of India. In case of *Mary Roy* v. *State of Kerala*[32], the most important verdict was given in that case and uniformly Indian Succession Act 1925 applied to all over India. This landmark judgement struck down the Travancore Christian Succession Act of 1916 and extended the Indian Succession Act of 1925 to all Indian Christians, including those in Kerala. However, now a daughter from Travancore and Cochin can also inherit the property with their brother. This case also removed the uncertainty regarding Christian inheritance in India.

### 3.5 Parsi Law

**Parsi Chattels Real Act 1837** was passed by British Legislature in India to govern the property rights. Before this Act, Parsi was governed by English common law for property matters. According to this Act third part of property was given to widow and remaining was given to children and their heirs. However, this was the first legislation in India for the Parsi which legally recognized the women property rights[33].After that Parsi Intestate Succession Act, 1865 was passed. For the first time this new Act gave property rights to widow and the daughters of Parsi dying

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31 *Id* at 31.

32 AIR 1986 SCR(1).

33 The Indian Succession Act 1925, s. 48.

Intestate[34]. But, again this Act was not sufficient to solve problems relating to property distribution. In *Hirabai* v. *Mithibai*[35] it was held that when Parsi died by leaving with only widow and no lineal descendant, then widow will get the whole property. In *Shapoorji* v. *Rustamji*[36] issue was arisen that the English principle of freehold property in remainder applicable to Parsi or not.

No doubt legislations for Parsi women's property rights were passed but there were various issues arise in case of Parsi inheritance. As a result, Indian Succession Act, 1925 was drafted with certain modification and incorporated the Parsi Intestate Succession in Chapter III. After that in 1939 Indian Parsi Succession (Amendment) Act, 1939 was passed and introduced certain changes in favour of women property rights**.** According to it the son share was four, widow share was two and daughter share was one. This Act also brought the changes on part of the mother and father's right to property. According to it, father will entitle to half share of son and mother would get half share of the daughter[37]. Then in 1991, the Indian Succession (Amendment) Act 1991 was passed. This amendment was introduced in respect of distribution of property of Parsi intestate. Before this amendment daughter received half share of property and son received full share. Thus, it was discriminatory on part of the women and to remove this discrimination this amendment was introduced. However, by this amendment daughter as well as son would get the same share in the property from the male intestate and female intestate[38]. Thus, section 51 was amended and removes the inequality.

## 4. Uniform Civil Code: A Tool for Gender Justice

A Uniform Civil Code (UCC), ensuring uniform and equitable property rights for women irrespective of religion, is essential to uphold constitutional principles of equality, justice, and non-discrimination. However, in practice, personal laws governed by religion have often led to discriminatory practices against women, especially concerning property. Women's property rights in India are in violation of both international law and the Indian Constitution. In India, women's property rights vary depending on their faith. The Honourable Supreme Court in *Sarla Mudgal* v. *Union of India*[39] deliberated on the matter of bigamy and the act of adopting a different faith in order to enter into a second marriage. The court for the first time stressed upon the necessity of implementing a Uniform Civil Code in order to resolve discrepancies in personal laws. The court highlighted the importance of Article 44 of the Constitution of India, 1950 which said that State shall endeavour to secure UCC throughout the India. A Common Civil Code will help the cause of national

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34 S.S. Subraman, K Kannan & Paruck *The Indian Succession Act* 107 (LexisNexis Butterworth, 9th edn.).

35 AIR 1938 Bom 31.

36 5 Bom LR 252.

37 *Supra* note 34.

38 *Supra* note 34.

39 AIR 1995 SC 1531.

integration by removing disparate loyalties to laws which have conflicting ideologies. The issue was revisited in *Lily Thomas* v. *Union of India*[40] where the SC reaffirmed that a second marriage after conversion without dissolving the first marriage is void. The debate on Uniform Civil Code (UCC) continues to be a contentious issue in Indian politics and law.

*Ahmedabad Women Action Group* v. *Union of India*[41] The case underscored the role of the legislature in reforming personal laws to eliminate discrimination. The Court reaffirmed the principle of judicial restraint in matters of personal laws, emphasizing the role of the legislature in shaping and evolving these laws through a gradual and considered process. Although the Court did not delve into the merits of gender discrimination against Muslim women, it acknowledged the need for a UCC to address such issues effectively.

*Danial Latifi* v. *Union of India*[42] In this instance, the Supreme Court scrutinised the constitutional legitimacy of measures pertaining to maintenance under Muslim personal law. The judgement demonstrates a sophisticated comprehension of the rights of Muslim women and the necessity to harmonise personal rules with constitutional principles.

*Shayara Bano* v. *Union of India*[43] This significant ruling is a major achievement in the discussion on gender equality and the legality of immediate triple talaq. The Supreme Court, in a prevailing verdict, deemed the practice of quick triple talaq as unconstitutional; the court affirmed that personal laws cannot override constitutional rights.

The only state in India with a UCC kind code in the form of common family law is Goa. The Portuguese Civil Code of 1867, which is still in effect today, was first implemented in Goa in the 19th century and was not changed once the state was freed. For almost 500 years, a working model of Uniform Civil Code has existed in Goa. The government in India is also stressing and focusing on the goal of gender equality through UCC. The Uniform Civil Code Bill, 2019 was introduced in the Lok Sabha on 25 October, 2019. The final draft of the Uniform Civil Code was approved by the Uttarakhand Cabinet on 4 February, 2024. On 6 February, 2024, in the State Assembly Uttarakhand, Chief Minister Pushkar Singh Dhami presented The Uniform Civil Code of Uttarakhand, 2024. At present Uttarakhand become the first state to implement UCC and provide the equal property rights to women.

## 5. Conclusion

An analysis of existing personal laws demonstrates that while statutory amendments and judicial interventions have strengthened women's inheritance and property rights

[40] (2000) 6 SCC 224.
[41] AIR 1997SC 361.
[42] AIR 2001SC 395.
[43] (2017) 9 SCC 1113.

in certain communities, these advancements remain uneven across religious and customary frameworks. The different treatment of women under various personal laws continues to create inconsistencies that are difficult to reconcile with the constitutional guarantees of equality, non-discrimination, and dignity enshrined under Articles 14, 15, and 21 of the Constitution of India. Judicial pronouncements have played a significant role in interpreting personal laws through a constitutional lens, often prioritizing substantive equality over rigid adherence to traditional norms. Courts have consistently emphasized that personal laws are not immune from constitutional scrutiny, particularly where they infringe upon women's fundamental rights. These decisions indicate a discernible shift toward harmonizing personal law principles with constitutional morality rather than replacing them outright. The discourse surrounding the Uniform Civil Code, as reflected in constitutional debates, law commission reports, and judicial observations, highlights its relevance as a directive principle aimed at legal coherence and gender justice. However, the study demonstrates that the effectiveness of any uniform framework depends not merely on its uniformity, but on its capacity to incorporate principles of equality, fairness, and social realities. The available legal material suggests that reforming personal laws through incremental, rights-based approaches has yielded tangible outcomes, particularly where legislative intent and judicial reasoning converge.

Consequently, the issue of women's property rights in India cannot be viewed solely through the prism of uniformity versus plurality. The findings of this research underscore the need for continued constitutional engagement with personal laws, ensuring that women's proprietary entitlements are not contingent upon religious identity. A rights-oriented legal framework whether achieved through harmonized reforms or a uniform code must remain anchored in constitutional values, empirical legal developments, and lived realities of women. The study thus concludes that strengthening women's property rights requires sustained legal scrutiny, legislative clarity, and constitutional commitment rather than symbolic legal uniformity.

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# Navigating New Legal Frontiers in India's Online Gaming Boom: A Reform Agenda

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## Abstract

The phenomenon of gambling and betting, including their virtual and online presence and manifestations, has existed globally in one form or another since the beginning. Being practiced for so long, it involves a rich, complicated, and lengthy history, which is characterized by the cultural diversity of various regions in India. It is considered a source of amusement, entertainment, and a recreational and leisure activity, and with the advancement of society, it has also become a tool for earning money. Over the years, with the advancement in technology, the term 'gambling' has undergone drastic changes, introducing new dimensions to the already operating offline gambling industry. It has moved from traditional premise-based wagering activities to various online gaming platforms, and today, gambling is closely defined in terms of 'gaming'. Although there is a central legislation, named the Public Gambling Act, 1867, being a pre-Independence legislation, it mainly regulates offline public gambling practices. The law has become outdated in terms of the new online entrants to this industry in the guise of online gaming. The concept of online gaming is comparatively a new phenomenon, and the lack of proper regulations in this sphere leaves room for exploitation, unethical practices, and potential harm to individuals and society at large. It creates an environment where issues such as money laundering, addiction, and fraud can thrive without adequate oversight. This article intends to navigate the new frontiers emerging in India's online gaming industry, such as e-sports betting, crypto-currency, online real money gaming, and digital challenges associated with them.

**Keywords:** *Gambling Laws, Online Gaming, permissible online real money gaming, e-sports betting, crypto-currency, virtual reality casinos.*

## 1. Introduction

The online gaming and gambling sector has emerged as one of the fastest-growing industries today, having seen remarkable market growth and being poised with notable potential to reshape the global gaming landscape with its unprecedented growth and economic promise. The Indian gaming market was valued at USD 4.3 billion in 2024, and it is expected to reach a market size of USD 15.2 billion by 2033.[1] This data forecasts a compound annual growth rate (CAGR) of 15.2% from

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1 India Brand Equity Foundation, *Media and Entertainment Industry in India* (2024).

2025 to 2033.[2] The previous trajectory exhibited that the online gaming sector was at a CAGR of 28% from FY20 to FY23, having reached USD 2 billion (INR 16,428 crore) by FY23.[3] This surge in online gaming predicts that India is set on a path to becoming the largest gaming hub in the upcoming years, currently boasting the world's second-largest gaming population after China.[4] In 2023, India accounted for nearly 220 billion gamers, and this base is likely to reach around 338 million users in 2026.[5]

The attitude of the state and public towards gambling has varied across time and geography. It has been condemned, despised, and ridiculed on moral as well as religious grounds. With the evolution and rise in popularity of online gaming and sports betting, new trends, for instance, VR casinos, e-sports betting, loot boxes, and the use of crypto-currency for gambling, have emerged in the online gaming sector and entirely transformed the market. The 2023 EY- FICCI report projects that e-sports betting is expected to reach USD 1.2 billion in 2025, with in-app purchases increasingly growing every year.[6] But the lack of specific regulations for these novel trends and the fragmented current regulatory landscape highly hampers this growth potential. This rapidly growing industry faces significant regulatory challenges arising from overlapping jurisdiction between Parliament and State Assemblies. In recent years, tensions have also emerged between the state governments and the judiciary, particularly in the context of regulating online gaming. The existence of diverse and often inconsistent State legislations has resulted in frequent judicial scrutiny, with courts striking down certain State enactments on grounds of constitutional infirmity. Such regulatory uncertainty has contributed to legal ambiguity, thereby creating potential avenues for money laundering, illegal gaming markets, fraud, and other associated risks.

The legal grey zone acts as a stark warning for emerging trends. The PGA 1867, which is the central legislation for gambling in India, has become outdated and incapable of regulating the majority of gaming operations performed today in India. The new 2023 IT Rules introduced by the Government of India regulate online gaming to some extent, but they face several ambiguities. The rules are intended to regulate online gaming platforms in India and streamline the adjudication of the legal disputes that may arise. They give a glimpse of how the government intends to

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2 IMARC Group, "India Online Gambling Market: Size, Share & Report 2033" (2025) *available at:* https://www.imarcgroup.com (last visited on July 27, 2025).

3 EY-FICCI, "Windows of Opportunity: India's Online Gaming Landscape" (2023) *available at:* https://www.ey.com (last visited on July 27, 2025).

4 WinZO Games and IEIC, "India's Online Gaming Sector: Growth and Opportunities" (2025) *available at:* www.winzogames.com (last visited on July 27, 2025).

5 Dewangi Sharma, "Gaming Culture in India: A Rising Phenomenon", INV. INDIA (Dec. 8th, 2023) *available at:* https://www.investindia.gov.in/team-india-blogs/gaming-cultureindia-rising-phenomenon (last visited on July 27, 2025).

6 *Supra* note 3 at 37.

regulate online gaming in India.[7] While the rules prohibit online games involving wagering or betting, they do not conclusively define the distinction between "real money games" and permissible "games of skill", leaving scope for subjective interpretation by self-regulatory bodies and enforcement agencies. Also, while the Rules introduce self-regulatory bodies for verification of online games, the criteria for recognition, independence, and accountability of such bodies remain unclear, raising concerns regarding regulatory capture.[8] There are also no specific regulations for virtual reality casinos under the rules, exposing these platforms to potential fraud risks.[9] There is also a risk for E-sports betting being misclassified as gambling under the IT Rules. Crypto-currency gambling is regulated by strict anti-money laundering (AML) policies, leading to an increase in illegal markets.[10] Other factors, such as state-specific bans on online gaming and a 28% GST on all deposits, are driving these operators to offshore platforms, resulting in draining India's economy by USD 12 billion annually.[11] This raises several concerns, such as jurisdictional issues, data protection and privacy, illegal trade and black marketing, taxability of income from online gaming, and money laundering etc. The highly unregulated sport betting has also led to an increase in corruption in sports. The legal jurisdictions worldwide are yet to take a comprehensive note of and match the situation.

## 2. Conceptual Framework

In simple words, the term 'gambling' is defined as "playing a game in which one can win or lose money or property in a bet". It is *"the practice of risking money or other stakes in a game or bet"*.[12] Gambling can be attributed as a genus of which betting constitutes a species.[13] From the various definitions of gambling and betting, it becomes quite clear that there is a certain relationship between gambling, wagering, and betting. The terms are often used synonymously with each other. Gambling has the characteristics of a game that depends on contingent circumstances, particularly

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7 Alaukik Shrivastava and Kashish Siddiqui Khan, "Online Gaming Laws in India: An Analysis of the Legislative Intent Vis-À-Vis the Future Roadmap" 14(2) *UNLV Gaming Law Journa*l 161-177 (2024).

8 PRS Legislative Research, *Explainer: Regulation of Online Gaming under the IT Rules* (2023).

9 Swarndeep Singh and YPS Balhara, "Rules for Online Gaming Regulation in India: The Endgame or We Need to Level Up?" 46 *Indian Journal of Psychological Medicine* 589-592 (2024).

10 A Berry, *et. al*., "Online Gambling Through an Anti-Money Laundering Perspective: A Cross-Jurisdictional Analysis," in S. Singh, *et. al*. (eds.), *Online Gaming in India: Technology, Policy, and Challenges*, (Routledge, 2024).

11 *Supra* note 4.

12 Gambling: Definition and Meaning - Merriam-Webster, *available at:* https://www.merriam-webster.com/dictionary/gambling (last visited on July 27, 2025).

13 Inakshi Jha & Shantanu Dey, "Legalization of Gambling on Outcomes of Sporting Events - A Farcical Solution to an Uncontrollable Problem?" 3(2) *Nirma University Law Journal* 16 (2014).

the result of a sports event, giving it an element of uncertainty.[14] Generally, it is an act of betting or wagering money or any valuable substance on an event that may or may not happen. The money is kept at stake on a desired yet uncertain outcome.

Gambling and betting have been experienced for centuries; in sports, it is from decades, and in virtual and online modes, it is very recent. It is difficult to point out the exact time of its evolution, but references to its occurrence are seen in several ancient Indian texts and scriptures, such as the Ramayana, the Mahabharata, the Vedas, etc. For example, it is known that Yudhisthira, Pandu's eldest son, had an inclination for gambling. He ended up losing his kingdom, brother, and spouse in the "game of dice". The hymns in the Rig Veda and Atharva Veda also reflect the existence of gambling activities in ancient India.[15]

Gambling cannot be considered a single homogeneous activity, but it takes many forms. No widely accepted classification can encompass all forms of gambling and betting activities. Broadly, there are two types of gambling-

(i) **Physical Gambling:** It includes the running of the land-based gaming houses, casinos, betting parlours, etc. Any form of gambling activity taking place in offline mode is called physical gambling. For example, betting parlours to place bets on sporting events.

(ii) **Online Gambling-:** Gambling activities taking place through online platforms with the help of phone, internet, etc. There are several companies and internet service providers that allow accessibility to online gambling and gaming platforms through the internet, computers, and other electronic devices. Main forms of online gambling include online VR casinos, loot boxes, lotteries, gaming such as rummy and poker, fantasy sports, etc. There are platforms such as PokerBaazi and Dream11 that allow users to take real money with the potential to win or lose funds. It has resulted in generating USD 3.8 billion in revenue in FY 2023-24.[16] The legality of these different kinds of gambling activities mainly depends on whether it is a game of skill or chance.

## 3. Legal Landscape for Gaming and Gambling in India

Under the Constitution of India, 'Betting and gambling' is made a state subject under Entry 34, List II (state list) of the Seventh Schedule. It gives state legislatures the exclusive and complete power to make laws regulating betting and gambling. In addition, Entry 62 of the State List empowers the state legislature to levy taxes on

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[14] Law Commission of India, "Legal Framework: Gambling and Sports Betting including Cricket in India" 16-18 (2018), *available at* https://lawcommissionofindia.nic.in/report_twentyfirst/ (last visited July 27, 2025).

[15] Audrija Parasar, "Gambling and Betting in India"1(10) *International Journal of Research in Engineering, Science and Management* 133 (2018).

[16] Regulating India's Online Gaming**,** *available at*: https://www.drishtiias.com/daily-updates/daily-news-analysis/regulating-india-s-online-gaming (last visited on July 27, 2025).

betting and gambling in their respective states.[17]

The main legislation that regulates gambling in India is the Public Gambling Act, 1867. It is a central legislation enacted in an attempt to regulate and prohibit all forms of public gambling in India. This pre-Independence legislation continues to operate even after 156 years. The main purpose of the legislation is to suppress, prohibit, and penalize the acts of gambling and the running of the public gaming houses defined under Section 1 of the Act. It includes any establishment in which various instruments of gaming, such as cards and dice, are kept or even used to earn profit or gains in favour of the owner or occupant of such place.

The Act governs various aspects of physical gambling activities in India. It does not expressly define the term 'gambling' nor specify what gambling and betting activities fall under the purview of law for prohibition. It merely states that gambling does not include a game of skill. The Act has created a special distinction between games of mere skill and games of chance.[18] It prohibits all gambling activities considered as a game of chance. Games based entirely on skill are provided legal protection under the Act. However, this can be said only in terms of physical gambling. As the Act is quite old, and online gambling is comparatively new, it does not deal with online gambling or betting. Pursuant to the power under Entry 34, the states have enacted legislation to regulate online gambling.

### 3.1 Gambling and Gaming: Game of Skill V. Game of Chance

Wagering is a wide term that includes within its scope the various acts of gaming, gambling, and betting. The gaming industry consists of a wide classification involving both regularized and regularized gaming. Broadly, there are two types of gaming:

i. Game of skill
ii. Game of chance

Thus, 'skill' or 'chance' becomes the crucial factor to determine the legality and validity of gambling under the PGA, 1867. The primary criterion for assessing whether a game constitutes gambling or not is whether the predominant or significant factor involved is skill or chance.[19] If activity predominantly involves the element of skill, it is considered legitimate gaming and is excluded from the criminal prohibition of Section 12, PGA, 1867. It is also entitled to the shield and protection of law under clause (g) of Article 19(1) of the Constitution, protecting the platforms/ operators running gaming businesses. But, if a chance element is predominant, such activity is prohibited under the 1867 Act and also prohibited or allowed, subject to state gambling laws.

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[17] Vidushpat Singhania, "Sports Betting: Is it Really Illegal in India?" in Paul M. Anderson & Robert C. R.Siekmann (eds.)*Sports Betting: Law and Policy*443-452 (Springer, 2011).

[18] Public Gambling Act, 1867, (Act 3 of 1867), s. 1.

[19] *Supra* note 7 at 164.

There is no statutory definition of game of skill or chance, either under the 1867 Act or any state gambling legislation. However, there are many judicial precedents being set for their interpretation. The Indian judiciary has elaborated the concept of 'skill' and 'chance' in the landmark judgments such as the RMDC case, Satyanarayan case, Lakshmanan case, etc.

i. **Game of chance -** Generally, a game involving an element of luck or chance can be considered a game of chance. In other words, games of chance are characterized by outcomes that are primarily dictated by luck, rendering the results entirely unpredictable. In such games, an individual cannot exert any influence over the outcome through mental or physical abilities. Consequently, participants in games of chance experience victories or defeats solely based on fortune, with skill playing no part in the process. It is defined as "a game (such as a dice game) in which chance rather than skill determines the outcome."[20] Casinos, dice, and card games are games of chance.

ii. **Game of skill-** A skill-based game is defined as one where the outcome is primarily determined by the player's advanced knowledge, training, focus, experience, and dexterity.[21] In the Satyanarayan case, the Supreme Court of India elaborated on the term 'mere skill,' interpreting it to signify "a significant degree or predominance of skill".[22] In this case, the Supreme Court reaffirmed its reliance on the concept of a 'skill test' by determining that rummy is predominantly a game based on skill and not on chance. The Honorable Court noted that the game necessitates a significant level of skill, as players must memorize the cards that have been dealt and demonstrate considerable proficiency in managing their hands by arranging, rearranging, and eliminating cards. The term 'mere skill' is interpreted to imply the existence of skill to a substantial degree.[23] In the case of Varun Gumber v. Union Territory of Chandigarh, the High Court of Punjab and Haryana determined the legality of the popular game Dream11. It was held that Dream11 is a game of skill and not of chance.[24]

The distinction between skill and chance is also brought up in foreign decisions. For example, in a Canadian case.[25] The Court provided an interpretation of the relevant terms and clarified the difference between a game based on chance and a game based

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[20] "Game of chance." Merriam-Webster.com Dictionary, Merriam-Webster, *available at:* https://www.merriam-webster.com/dictionary/game%20of%20chance, (last visited on July 27, 2025).

[21] *K R Lakshmanan v. State of Tamil Nadu*, (1996) 2 SCC 226.

[22] G. Sethi, *Sethi's Law Relating to Gambling, Betting, Lotteries and Clubs* 38-43 (Law Publishers (India) Pvt. Ltd., Allahabad, 2022).

[23] *State of Andhra Pradesh v. K. Satyanarayana & Ors.*, AIR 1968 SC 825.

[24] Su*pra* note 7 at 164.

[25] *Rex v. Fortier*, 13 Que K.B. 308.

on skill. The Court stated that this distinction is determined by the nature of the predominant element that ultimately affects the game's outcome.[26]

There is a difference between gaming and gambling. The differentiation between gaming and gambling is fundamentally connected to the notions of Skill and Chance. Not all forms of gaming are considered gambling. The latter encompasses the act of placing wagers or bets on events that may be revealed at a later time. Gambling is purely associated with chance. The three main elements in gambling are - Consideration, risk factor, and reward or prize. A certain amount of money or money's worth must be placed on stake while gambling. Risk factor is based on the principle of "more risk, more profit". Gambling is a game of probability. As the outcome of the event is completely unknown, there is a risk of loss of assets. After the consideration and risk is completed, the next stage is the prize. The prize is dependent on the risk/chance factor. If the gambler plays his cards well, there are chances of winning huge sums of money in a single round.[27] In the absence of these elements, it is conceivable that the activity in question does not constitute gambling. Conversely, if a skill component is introduced alongside the three aforementioned elements, the activity may fall under the category of gaming rather than gambling. It can safely be concluded that gaming is an activity that falls within the scope of 'Game of Skill,' whereas gambling is classified as a game of chance according to the Public Gambling Act.[28] Consequently, it is evident that engaging in games where chance has minimal or no influence and the results are determined exclusively by the player's skill, mindfulness, and intellect, is permissible, and provided there is no specific state law that renders such skill-based games illegal. Only the states of Sikkim and Goa allow gambling based on chance. But businesses can open such gaming houses only after obtaining proper licenses from the designated authority. The Goa, Daman, and Diu Public Gambling Act of 1976 legalized gambling in Goa. This legislation was later amended to allow for card rooms on offshore vessels and the installation of slot machines in all five-star rated hotels, contingent upon the approval and authorization from the State Government in exchange for periodic fees. Additionally, through the enactment of the Sikkim Regulation of Gambling (Amendment) 2005, the state of Sikkim has also legalized gambling. This amendment grants the State government the authority to designate specific areas where casinos may operate, subject to a fee.[29]

### 3.2 Legal Framework for Online Gambling in India

Over the years, the gambling and betting sector has transitioned to numerous online platforms. Nevertheless, the Public Gambling Act of 1867, along with most state-

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[26] *Supra* note 14 at 25.

[27] *Ibid*.

[28] Javvad Shaikh, "Gambling: Indian Perspective and the Intangible Loophole"15*Pen Acclaims* 5-7 (2021) *available at* https://penacclaims.com/ (last visited on July 27, 2025).

[29] *Ibid*.

specific gambling and gaming laws, was enacted before the advent of the Internet. These laws were created at a time when the notion of online/ virtual gaming was not recognized. Consequently, they primarily address physical gaming establishments and do not explicitly refer to games conducted in an online environment. In India, courts employ purposive construction to evaluate various online gaming activities against the stipulations of these existing laws. States have also taken different approaches in deciding the stance of existing laws against online operators. Therefore, the current regulation of online gambling in India is quite fragmented. To ascertain whether online gaming falls under the gambling prohibition, the same criteria of skill versus chance are utilized. Therefore, if an online game is predominantly skill-based, it is permitted; conversely, if it relies on chance, it is deemed unlawful. Regarding legislative initiatives, there are currently no specific Central Laws that regulate online gambling in India. Indirectly, it has been regulated by the Information Technology Act of 2000 and the Foreign Exchange Management Act of 1999.

Under the IT Act 2000, the Government of India retains control and power to take action against international websites that are considered inappropriate or illegal. This includes the ability to block access to such sites or to direct companies or ISPs to limit access to particular platforms.[30] This power has been demonstrated through various actions taken against certain online poker platforms that were found to be operating in violation of Indian laws. One of the key provisions relevant to online gambling is Section 67 of the Information Technology Act. This section outlines penalties for individuals who publish, transmit, or facilitate the dissemination of electronic content that is deemed to corrupt or deprave individuals who may encounter it. Given that gambling and sports betting are widely regarded as immoral activities in India and are classified as res extra commercium (outside the realm of commerce), these activities are illegal. As a result, any website that promotes gambling or related activities falls under the purview of Section 67, as it pertains to the distribution of corrupt or depraving content.

In addition, the Information Technology (Intermediary Guidelines) Rules, 2011, further bolster the regulatory framework concerning online gambling. These rules specifically mandate that intermediaries, including network and telecom operators, internet service providers, and search engines, must not disseminate or convey any material that directly or indirectly relates to or promotes gambling. This rule is crucial in ensuring that intermediaries take responsibility for the content they facilitate. Rule 3(4) imposes an obligation on intermediaries to act promptly in removing any content that promotes gambling. This provision is designed to ensure that illegal gambling content is swiftly addressed, thereby reinforcing the government's stance against online gambling and protecting the public from exposure to potentially harmful activities.

India also prohibits foreign direct investment in gambling and betting activities. The

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[30] *Supra* note 28 at 15.

Foreign Exchange Management Act of 2000 regulates the movement of funds from India to other nations as well as the entry of foreign investments. In particular, Rule 3 of the Schedule imposes limitations on remittances intended for the acquisition of banned publications, lottery tickets, etc, thereby banning any foreign currency transactions related to gambling. If a company's gaming activities are categorized as gambling, such activities would generally be deemed illegal in most states, contingent upon the existing legislative framework, thus disallowing foreign direct investment in such entities. Individuals are also prohibited from making payments on these platforms. Furthermore, opening an account in a foreign country jurisdiction where sports betting are permitted to participate in online gambling on these platforms would contravene Section 3 of The Foreign Exchange Management Regulations (Foreign Currency Amounts), 2000. This regulation stipulates that Indian residents must obtain explicit authorization from the Reserve Bank of India (RBI) to establish or retain such accounts.[31]

With the introduction of the new Bharatiya Nyaya Sanhita, 2023 (BNS), the concept of petty organised crime has been introduced.[32] Its definition is expanded to include unauthorised betting or gambling by a member of a group or gang, either by themselves or jointly with others, punishable with imprisonment for a term of one to seven years and a fine.[33]

### 3.3 State Regulations

As gambling is a state subject, several states have established their gaming regulations to oversee online gaming activities within their respective territories. States like Nagaland, Andhra Pradesh, Sikkim, Tamil Nadu, Chhattisgarh, and Telangana have extended their state enactments to online games. The states of Meghalaya, Nagaland, and Sikkim have established modern gaming regulations along with a licensing framework for online gaming activities. Skill-based online gaming is allowed in almost all states that regulate online gaming. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015 has expressly recognised and allowed virtual fantasy sports and virtual team selection games as games of skill. There are certain states that have attempted to prohibit online skill-based gaming when played for stakes. For instance, states of Telangana, Andhra Pradesh, Karnataka, and Tamil Nadu have amended their gaming laws imposing a blanket ban on all stake-based or real-money online games. This has been done to dilute or remove the express exemption provided by the judiciary in respect of skill-based games.[34] Tamil Nadu has constituted an Online Gaming Authority to

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[31] *Supra* note 13 at 51, 54-55.

[32] Bharatiya Nyaya Sanhita, 2023, (Act 45 of 2023), s. 112.

[33] Chambers and Partners, *Gaming Law 2024: Definitive Global Law Guides Offering Comparative Analysis from Top-Ranked Lawyers* (Harris Hagan, 2024).

[34] Aayush Kapoor and Harjas Singh, "Gambling Law Review: India" 8*The Gambling Law Reviews* 6-7 (2023).

regulate online gaming in the State. It has also attempted to introduce stringent rules, for instance, Aadhaar verification for users and operators, and game play blackouts from midnight to 5 AM.[35] Casino-based games such as roulette, casino brag, and blackjack are allowed in Goa, Daman and Diu, and Sikkim. These states prescribe a licence regime for land-based casinos.[36]

### 3.4 New Steps towards Regulating Online Gaming

Fantasy sports have been recognised as a game of skill by several High Court judgments. In December 2020, NITI Aayog released a working paper outlining draft guiding principles for the online fantasy gaming sector. It highlighted a significant rise in the number of users in the fantasy sports and online gaming industry in recent years. It expressed concern that, despite the nationwide operation of online fantasy sports platforms (OFSPs) through digital media, their regulation occurs under diverse state-specific frameworks, which may compromise the overall integrity of fantasy sports. The discussion paper proposed eight guiding principles intended for implementation and oversight by a recognized self-regulatory organization dedicated to the fantasy sports sector.[37] These principles state that online Fantasy Sports Platform (OFSP) operators must comply with the standards of Indian laws, promote and ensure skill-based contests, and protect minors from pay-to-play formats. Contests should reflect real-world sports, maintain fair rules, and provide grievance mechanisms. Gambling services and misleading advertisements are prohibited, with adherence to advertising standards. A self-regulatory organization should seek immunity from criminal prosecution for compliant operators.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, under the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, notified by the Ministry of Electronics and Information Technology (MeitY), is another milestone providing new rules on online gaming. The 2021 guidelines were not directly applicable to online gambling, but they provided a certain level of protection against misinformation on online platforms. These 2023 amendment rules intend to reshape the growth of India's online gaming industry by providing uniform pan-India guidelines for permissible online real money gaming (PORMG) applicable all across the country. It aims to establish a co-regulation between the Ministry of Electronics and Information Technology (MeitY) and self-regulatory bodies (SRB) to regulate online gaming in India. All matters related to online gaming come within the purview of MeitY, which shall act as the central authority governing online gaming. The amendment introduces fresh rules to regulate PORMG and also provides certain directives for online gaming

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35 *Supra* note 16.

36 *Supra* note 33.

37 NITI Aayog, "Guiding Principles for the Uniform National-level Regulation of Online Fantasy Sports Platforms in India", (December 2020), *available at:* https://niti.gov.in/sites/default/files/2020-12/FantasySports_DraftForComments.pdf, (last visited on July 27, 2025).

intermediaries. The purpose is to promote active participation of concerned stakeholders in regulating the industry and protect the citizens against illegal betting and wagering on the internet while simultaneously fostering and promoting innovation in the country's online gaming industry.[38] These rules mandate a complete prohibition of online games or platforms that involve wagering, including any form of advertising or presence,[39] to minimise the damages associated with online gaming, particularly financial losses, as well as psychological harm.[40] It safeguards the user's interests and monitors the Indian online gaming market.

A new taxing regime on online gaming is also brought into frame. The Finance Act, 2023, establishes a distinction between the taxation of online and offline gaming activities. It provides a tax to be imposed on income generated from playing online games. Section 115BBJ of the Income Tax Act, 1961, imposes a tax of 30% on net winnings earned by players from online games. Section 194BA imposes a withholding tax obligation on persons responsible for paying any income by way of winnings from any online game during a financial year at the rates in force.[41] A GST at a rate of 28% on the full value of the amount deposited with online gaming platforms is fixed for online games, casinos, and horse racing.[42]

The Promotion and Regulation of Online Gaming Bill, 2025, was passed by the Parliament dated 21st August 2025, with the intent to curb addiction, financial ruin, and social distress caused by predatory gaming platforms that thrive on misleading promises of quick wealth. But the Act also takes a balanced approach by recognising online gaming as a component of India's growing digital economy, opening the door for creativity and digital innovation. It recognises E-sports as a legitimate competitive sport in India and places an obligation on the Ministry of Youth Affairs to frame guidelines for e-sports tournaments. It further empowers the Central Government to recognise and register social games that are considered safe and age-appropriate, and provides for the establishment of a national-level regulatory authority to oversee compliance.[43]

However, a major limitation of the Act lies in its imposition of a blanket prohibition

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[38] R. Adhikari and S. Doshi,"MeitY Notifies Amendments to IT Rules 2021: Online Real Money Gaming Platforms Now Regulated by the Centre", *Mondaq* Apr. 18, 2023, a*vailable at* <https://www.mondaq.com/ india/gaming/1305570/meitynotifies-amendments-to-itrules-2021-online-real-moneygaming-platforms-now-regulated-by-the-centre> (last visited on July 27, 2025).

[39] Press Release: Press Information Bureau, *available at:* https://www.pib.gov.in/PressRelease Page.aspx?PRID=1914358 (last visited on July 26, 2025).

[40] *Supra* note 10.

[41] Finance Act, 2023 (Act 8 of 2023).

[42] Press Release: Press Information Bureau, *available at:* https://www.pib.gov.in/PressRelease Page.aspx?PRID=1945208 (last visited on July 27, 2025).

[43] Press Information Bureau, Government of India, *The Promotion and Regulation of Online Gaming Bill, 2025* (August 18, 2025).

on online money games, irrespective of whether such games are based on chance, skill, or a combination thereof. The Act also strictly prohibits the advertising and promotion of such games and bars banks and payment system providers from facilitating financial transactions linked to these platforms. While these measures aim to protect consumers, a complete ban may prove counter-productive in practice, as it risks driving online gaming activities into unregulated and illegal markets, thereby exacerbating concerns relating to black money, money laundering, and underground betting operations.

## 4. Emerging Legal Frontiers: New Trends and Challenges

India's most thriving online gaming and Gambling industry, being valued at USD 4.3 billion in 2024, is not free from challenges. The novel trends such as VR casinos, e-sports betting, loot boxes, virtual, and crypto-currency each present unique legal and regulatory challenges.[44] The absence of a cohesive regulatory framework exacerbates these challenges, leading to the driving of online gaming operations to illegal offshore platforms, costing USD 2.5 billion in tax revenue.[45] The various issues and challenges associated with gambling and online gaming are as follows: -

### i. Unregulated Sports Betting

The Sports Betting industry can be attributed to dominating the gaming landscape in India, particularly with respect to cricket. It has a market share of 57.41% generating USD 7 billion in wagers during IPL events.[46] As such, there are no laws that explicitly prohibit sports betting, and it is highly unregulated. Due to the unregulated nature of these activities, sports betting operate in an underground form. Further, the 2023 IT Rules do not properly address

e-sports betting. The availability of online platforms, 28% GST on deposits, and 30% tax on winnings provisions push these operations further underground, fuelling some major concerns, such as illegal trade and commerce, and corrupt practices such as spot-fixing and match-fixing being employed in sports. The absence of uniform laws hinders enforcement, necessitating a centralized regulatory approach akin to the UK's Gambling Act 2005.[47]

### ii. Increase in Crime, Illegal Trade, and Black Market

Gambling can be described as a 'connecting or linking crime' that associates the gambler with a range of other illicit activities. This connection often arises from the

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[44] *Supra* note 1.

[45] *Supra* note 3.

[46] Statista, *Online Gambling and Online Casinos Market Forecast: India* (2025), *available at*: www.statista.com (last visited on July 27, 2025).

[47] Makam Ganesh Kumar, "Regulatory Landscape of Online Gaming in India: Challenges and Prospects" *SSRN* (2023), *available at:* https://ssrn.com/abstract=4484558 (last visited on July 27, 2025).

gambler's attempts to recoup lost funds or their desire to 'invest' further money in gambling, driven by the expectation of higher returns. The gamblers often resort to illegal methods, which inevitably lead them to engage in other offenses such as chain snatching, looting, and theft.[48] The inevitability of gambling and sports betting suggests that a complete prohibition of these activities will not eliminate the associated issues. Furthermore, the absence of appropriate legislation has propelled these activities into the black market. A significant portion of sports betting, lotteries, and similar endeavours operate clandestinely, forming a black market valued in the millions. This situation adversely affects the nation's economy, as the government loses out on potential legitimate revenue. Additionally, profits from the illegal betting sector are often funnelled into illicit activities or transferred abroad. The lack of transparency in these transactions is exacerbated by the predominance of cash dealings, making it nearly impossible to trace the flow of money. This environment facilitates money laundering for these companies while simultaneously hindering governmental and investigative efforts to oversee such unlawful practices.

**iii. Use of Virtual Currency**

One of the primary issues associated with online gambling is the increasing accessibility and use of Virtual Currency like Bitcoin in online gambling. Virtual currency is characterized as a form of unregulated digital currency, created and managed by private developers, and influenced by market dynamics, which prevents it from serving as a replacement for conventional currencies due to various inherent challenges. Its decentralized nature complicates regulatory efforts, presenting significant obstacles for governmental authorities. The anonymity associated with virtual currency transactions heightens the risk of money laundering, as tracing the individuals involved can be exceedingly difficult.[49]

In July 2022, an Inter-Ministerial Committee established by the Ministry of Finance published a report outlining a proposed regulatory framework for distributed ledger technology and virtual currencies. The committee advocated for a total ban on transactions involving virtual currencies, accompanied by criminal penalties. The recommendation of the committee is under consideration by the government. The magnitude of the global market associated with Virtual Currency in Gambling is underscored by a recent incident involving the Hong Kong police, who apprehended individuals utilizing online platforms, including various instant messaging applications, to engage in gambling activities facilitated by Virtual Currencies such as Bitcoin. Similarly, the Philippine Gaming Regulator, PAGCOR, is confronting a comparable challenge, incurring annual losses amounting to millions due to illegal and unregulated gambling operations.[50]

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[48] *Supra* note 13 at 104-106.

[49] *Internet and Mobile Association of India v. Reserve Bank of India*, 2020 SCCOnline SC 275.

[50] *Supra* note 14 at 107-108.

### iv. Data Protection

The issue of data protection in online gambling is a growing concern due to the significant amount of sensitive personal and financial information involved. Stake-based gaming platforms handle sensitive financial data by requiring users to deposit funds or provide sensitive payment information such as bank account details, credit or debit card numbers, or digital payment methods like PayPal and electronic wallets. This renders online gaming platforms highly vulnerable to cyber attacks and data breaches. Hackers and cybercriminals frequently target such websites, leading to risks of identity theft, data breaches, and fraud, particularly in crypto transactions.[51] The lack of robust regulatory oversight under the Data Protection Act, 2023, further exacerbates these issues, as users may fall victim to unauthorized transactions or fraudulent platforms masquerading as legitimate gaming websites.[52]

To mitigate these risks, it is essential to enforce stringent data protection laws specifically tailored to the online gambling sector. Platforms should implement advanced cyber security measures, including multi-factor authentication, encryption protocols, and real-time monitoring systems. Regulatory frameworks must also mandate transparency from operators regarding their data collection, usage, and retention policies, ensuring that users are fully informed about how their sensitive information is handled.[53]

### v. Jurisdictional Issues

In the realm of online betting, the wagering process is conducted through platforms such as Betfair, 1XBet, and Bet365. These platforms are predominantly operated by entities located outside of India, or their servers are situated in foreign nations.[54] They provide individuals with the opportunity to engage in real-time betting on various sports events. Consequently, an individual residing in India may place an online wager via wire transfer on a website whose server is located in a foreign country and evade Indian jurisdiction. Since these websites fall outside the jurisdiction of Indian courts, the companies managing them often evade accountability.[55]

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[51] AA Panchal andV. Shah, "A Study on the Legal Challenges in Online Gamingwith Special Reference to Network, Accessibility, and Piracy" in Lovely Dasgupta and Shameek Sen (eds.), *Online Gaming in India: Technology, Policy, and Challenges*142-150(Routledge, 2024).

[52] Vidushpat Singhania,"Gambling Law Review: India" 7*The Law Reviews* 6-7 (2021).

[53] Privacy and Data Security in Online Casinos: Legal Guidelines and Best Practices *available at: https://legaldesire.com/privacy-and-data-security-in-online-casinos-legal-guidelines-and-best-practices/* (last visited on July 27, 2025).

[54] Indian States That Allow Casinos, *available at*: https://www.ritiriwaz.com/indian-states-that-allow casinos/ (last visited on July 27, 2025).

[55] Agniva Mandal, "Legalization of Betting in Sports in India" 5(3) *International Journal of Law Management & Humanities* 368 (2022).

### vi. Virtual reality casinos

Lastly, VR casinos, an emerging trend, lack specific regulations in India, increasing the risks of fraud and piracy in immersive platforms. The Netherlands' proactive VR guidelines under the Dutch Gaming Act 2021 emphasize real-time monitoring, a framework India must emulate to regulate this nascent market.[56]

## 5. Conclusion and Suggestions

The Central Government has made initial efforts to introduce a new and somewhat acceptable framework for regulating India's booming online gaming industry through the IT Rules, 2023, and the Promotion and Regulation of Online Gaming Bill, 2025. But the advancing technological developments and emerging trends in online gaming pose new, complex challenges. India's gaming sector is marked by an issue of both under- and over-regulation. It lacks central regulations for new frontiers, as the PGA, 1867 is outdated, and the 2025 Act has not been fully implemented. On the other hand, there is a challenge of excessive regulation in online gaming by the states, highlighting a deeply fragmented regulatory framework in India. Gambling and Betting being state subjects, states have their own legislation governing online gaming. Despite the accepted judicial notion of allowing skill-based gaming, states like Tamil Nadu and Karnataka are continuously placing unconstitutional blanket bans on all gaming operations. Lack of uniformity, legal uncertainties, strict AML policies, heavy taxation, and 28% GST are all driving gaming operators to move to offshore and underground platforms, leading to a USD 12 billion illegal black market and money laundering, hampering industry growth, innovation, and causing heavy financial losses to the country.

In the absence of a proper regulatory framework, the gaming industry has shifted towards self-regulation, overseen by bodies like the All India Gaming Federation (AIGF) and the proposed Self-Regulatory Bodies (SRBs) under MeitY. India's real money gaming industry has collectively signed a code of ethics to establish ethical and transparent business practices. But in reality, self-regulation lacks teeth due to non-coordination between AIGF and SRBs.[57] Instead, the following suggestions can be incorporated into India's online gaming regulatory regime:

i. An independent ombudsman (such as Belgium's Gaming Dispute Resolution body) should be constituted to oversee disputes and enforce a code of ethics. It shall ensure transparency and accountability.[58]

ii. Modelled on the UK's Gambling Commission, a centralised Indian Gaming Authority should be constituted to replace India's fragmented state regulation to unify regulation, improve coordination, and enforce mandatory compliance.

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[56] *Supra* note 51.

[57] *Supra* note 9.

[58] *Supra* note 47.

iii. A multi-tier taxation structure can also be adopted instead of a straight 28% GST. It will boost competitiveness and promote innovation.[59]

iv. States need to take a step back to allow the adoption of apan-India umbrella legislation for the entire online gaming segment.

v. Tailored laws are required to regulate new manifestations of online gaming such as VR casinos, e-sports betting, and loot boxes. For this, the Netherlands' Dutch Gaming Act 2021provides a fair model as it allows real-time monitoring for VR, thereby reducing the risk of piracy and fraud.[60]

vi. India's Digital Personal Data Protection Act, 2023, does not provide adequate protection for India's 591 million gamers. The EU's model of General Data Protection Regulation (GDPR) Standards should be adopted to protect users against potential cyber-attacks and safeguard financial data on gaming platforms.[61]

vii. To reduce the jurisdictional gaps in offshore gambling, India can draw inspiration from the UK's cross-border licensing with the EU and negotiate bilateral agreements with other gaming hubs to regulate foreign operators.

viii. Lastly, instead of using strict AML policies that drive gaming platforms offshore, India should introduce a mandatory licensing regime for operators to align with global practices. Crypto-currency payments could be permitted under this framework, leveraging block-chain technology to ensure transparent transaction tracking and curb money laundering. Mandating block-chain for KYC verification and payment monitoring would significantly reduce the illegal market, enhance regulatory compliance, and retain revenue domestically.

ix. India's path to becoming a global gaming hub hinges on these reforms. By harmonizing state and central policies, leveraging global best practices, and embracing technological innovation, the country can unlock its economic potential while ensuring a legal, transparent industry. The roadmap ahead demands bold legislative action and international collaboration to transform challenges into opportunities, positioning India as a leader in the digital gaming era by 2033.

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59 *Supra* note 10.

60 *Supra* note 51.

61 *Ibid.*

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# Human Rights Law in India: Constitutional Promise, Judicial Craft and Rights-Responsive Governance

***Akansha Singh****

## Abstract

The Indian human rights law can be viewed as a constitutional project, a complex of enforceable civil-political rights, a hermeneutical bridge between socio-economic rights and civil-political rights, and an institutional ecology which transforms the dignity into the lived reality. This article places the Indian human rights law in the context of its constitutional formulation and judicial development and how the modern-day governance has progressively viewed welfare administration as a means of rights- fulfilment. It claims that the rights jurisprudence in India, particularly in Articles14, 19 and 21 has turned the right to life into a broad guarantee which incorporates health, sanitation, privacy, non-discrimination and access to justice. It is on this background that the present policy direction of the Union Government is analyzed as a viable form of human rights practice: direct benefit transfers as a way of minimizing exclusion and leakage, massive sanitation and drinking-water programs as away of promoting dignity and the health of the population, and health insurance reforms as a way of achieving universal health coverage. Although issues of disproportionate execution, institutional capacity, and rights-sensitive balancing remain, the general trend is an indication of a form of governance that is increasingly viewing constitutional rights as not merely the judicially safeguarded boundaries of the State, but also as administratively provision of obligation to citizens.

**Keywords:** *Human Rights, Constitution of India, Article 21, Public Interest Litigation, NHRC, Socio-economic rights, Privacy, Welfare governance, Direct Benefit Transfer.*

## 1. Indian Human Rights Law: Sources and Philosophies

The Indian human rights law is constitutional, supported by judicial interpretation, and driven by a unique Indian combination of liberty and social justice[1]. The architecture of the Constitution denies a minimalist approach to rights as negative freedoms; in its place, it instantiates a moral economy of dignity in Fundamental Rights and Directive Principles, which forms the basis of a jurisprudence that acknowledges freedoms and capabilities. It is on the basis of this initial decision that Indian rights-talk is regularly shifting between court-centered enforcement and

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1 Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

policy-centered delivery-both as complementary components of human rights protection.

Practical rights philosophical so manifested in the Indian experience. Rights are not discussed merely as abstract moral demands; these are discussed as mechanism stored structural disadvantage-caste-based marginalization, gender inequality, poverty, and impediments to fundamental services.[2] In this frame, the human rights law is simultaneously a shield (against the arbitrary power of the State) and a ladder (to the resources and opportunities). The resulting right culture has progressively grown out of the classical civil liberties into contemporary rights of health, education, environment, informational autonomy and equal citizenship.[3]

This growth is not accidental or judge-based only. Constitutional design opened up a room where rights could be realized progressively; scholarship describes how the tension between the ability to govern and the need to transform society is internalized in the constitutional discourse of India. It is into this broad constitutional domain that modern- day popular policy, particularly massive welfare missions can be rightly evaluated as a kind of human rights enforcement, rather than as a development administration.

## 2. Constitutional Design and Elaboration of Rights by the Judiciary

The human rights paradigm of the Constitution is traditionally traced in Part III (Fundamental Rights), Part IV (Directive Principles) and the federal-democratic system that allocates the duties of rights-relevant services[4]. Articles14, 19 and 21 have been textually the foundation of rights adjudication. The Articles 14 and 21, which were interpreted by the Supreme Court as substantive equality and fair procedure, made it possible to have a deepening of rights over decades[5]. This juridical art provided the Indian human rights law with the most powerful doctrinal shift, the transformation of life and personal liberty into the guarantee of dignity with real-world content.

The jurisprudential change is most commonly perceived in the post-Emergency broadening of justifiability and remedial ingenuity by the Supreme Court, especially through Public Interest Litigation (PIL).[6] PIL transformed the standing rules into a gate way of poor and marginalized people, enabling the courts to deal with bonded labour, prison conditions, custodial violence, environmental harms, and food insecurity. According to scholars, PIL was not merely a procedural exception; it

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2 Upendra Baxi, *The Future of Human Rights* (Oxford University Press, 3rd edn., 2006).

3 Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019).

4 D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, 27th edn., 2024).

5 M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th edn., 2018).

6 S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

turned into a democratic technology of rights enforcement, which influenced the manner in which Indian human rights law interacts with governance failures[7].

There are two other developments that are significant to a modern Indian perspective. To begin with, equality jurisprudence is becoming more and more aware of structural and group-based harms, which coincides with the current discrimination theory. Second, the right to privacy which was established as a fundamental right has re-balanced the relationship between the individual and the digital State and data governance is a new battlefield of constitutional rights[8]. In this regard, the development of human rights law has expanded beyond the issues of restraint (what the State cannot do) to the issues of design (how the State should construct rights-respecting systems).

Notably, socio-economic rights in India are not just an aspiration. By making interpretive connections between Parts III and IV, the courts have subjected some welfare needs to enforceable aspects of dignity[9]. This is reflected in Indian scholarship as a step towards justiciable social citizenship, in which basic rights are open to judicial oversight, yet still reliant on strong executive power of scale and sustainability.[10]

## 3. PIL, Institutions, and Remedies Enforcement Architecture

The protection of human rights in India is based on a multi-institutional ecosystem, constitutional courts, statutory bodies, commissions, and legal aid structures. The courts are also central in the sense that they include authoritative interpretation and flexible remedies, the feature of Indian rights enforcement since the late twentieth century. However, the institutional narrative is not that of court-alone. The statutory institutions particularly the National Human Rights Commission (NHRC) was meant to entrench human rights control in administrative governance.

The scholarly reviews of the NHRC are subtle. The structural constraints which have been characterized as critical scholarship, include restricted enforceability, reliance on executive cooperation and the difficulty of managing complex security and policing issues. Meanwhile, institutional scholarship underlines the fact that the work of the NHRC is broader than the consideration of individual complaints: it assists in standardizing norms, recording violations, proposing systemic changes, and mainstreaming human rights education in institutions. More recent evaluations,

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[7] Anupama Chandra, "Courting the People: Public Interest Litigation in Post-Emergency India" 16(2) *International Journal of Constitutional Law* 710 (2018).

[8] Pratyay Panigrahi and Eishan Mehta, "The Impact of the Puttaswamy Judgment on Law Relating to Searches" 15 *NUJS Law Review* 1 (2022).

[9] Varun Gauri and Daniel M. Brinks, *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press 2008).

[10] A. Ranjan, "The Generation Theory of Human Rights and its Dichotomy: The Justiciability of Economic, Social and Cultural Rights with Special Reference to the Constitutional Guarantees in India" 61(2) *Journal of the Indian Law Institute* 242, (2019).

which are framed in terms of the Paris Principles, emphasize the need to maintain independence, resourcing and coordination with local human rights courts and mechanisms to increase effectiveness[11].

One of the unique strengths of the Indian enforcement architecture is its ability to improve the institutions in a cyclical manner. The modern governance is more and more based on the rights-by-design mechanisms, digitized service provision, grievance portals, transparency tool and direct transfers to beneficiaries. Although this is not an alternative to constitutional remedies, the mechanisms can lessen day-to-day denial so frights. Through exclusion, corruption and administrative friction. By doing so, the contemporary Indian model is slowly transforming ex post redress into ex ante system design of protecting rights- particularly in welfare delivery and digital governance[12].

This change does not diminish the role of courts and commissions. On the contrary, it makes them more important as a control mechanism that prevents the policy systems to be shifted towards constitutional dignity and equality. The modern moment thus demands a more holistic perspective of solutions: adjudication, regulatory control and scaled administrative design in cooperation as a compound human rights system.[13]

## 4. Rights-Responsive Governance: The Modern Policies as Human Rights Practice

The effort to transform rights promises into service delivery on a scale has been a hallmark of the new governance path in India. The normative meaning of the law of human rights is not only in the content of delivery, but also in the form of delivery, whether policies lessen exclusion, increase dignity, and make beneficiaries hold rights and not passive receivers.

### a. Openness and accessibility via direct transfers and access to finances

Direct Benefit Transfers (DBT) is a governance approach that is consistent with the human rights requirement of non-discriminatory and responsible welfare benefits distribution. The empirical evidence of high-quality links DBT-style reforms to the decrease in leakage and the increase in efficiency in the delivery of subsidies, which supports the idea of a rights-respecting welfare state that makes sure that the resources reach the target beneficiaries. In addition to this, financial inclusion programs and access to bank-accounts (including PMJDY-linked expansion) have

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[11] Ruchita Kaundal and Sanjeevi Shantha kumar, "Assessing the Effectiveness of the National Human Rights Commission, India, vis-à-vis the Paris Principles Relating to the Status of National Human Rights Institutions" 20 *The Age of Human Rights Journal* (2023).

[12] Prabhat Barnwal, "Curbing Leakage in Public Programs: Evidence from India's Direct Benefit Transfer Policy" 114(12) *American Economic Review* 3812 (2024).

[13] Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta, *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016).

been researched as drivers of further economic inclusion, which strengthens the socio-economic status needed to enjoy meaningful rights. Combined, these policy directions represent rights logic: less arbitrariness in welfare provision and increased institutional avenues by which citizens may demand entitlements.

### b. Dignity Assanitation Swachh Bharat and the Rights turning Public Health

The policy of sanitation is highly rights-relevant as it touches on health, safety and dignity. The academic literature examining the Swachh Bharat Mission draws attention to the peculiar position of the top-level political commitment, administrative leadership and behavioral change strategies in the acceleration of the sanitation results.[14] The significance of context, such as local uptake, the quality of infrastructure and community participation, are also prefigured by field research, but the programme-induced sanitation transitions can be considerable in specific contexts[15]. The main accomplishment, in human rights terms, is normative: the increased meaning of Article 21 is that sanitation should be viewed not as a charity product, but as a dignity-related civic duty.

### c. Health as a Fundamental Right: Ayushman Bharat and Universal Coverage

Health overlaps with the human rights law directly with the right to life and dignity. Ayushman Bharat-PM-JAY is analyzed academically as a significant policy tool on the way to universal health coverage, where the governance challenge is the issue of stewardship, regulation, and accountability at scale.[16] The systematic reviews of PM-JAY scholarship identify the accomplishments and gaps in implementation, indicating that the rights-promoting potential of the programme is most effective when it is supported by a strong institutional capacity, fair empanelment, and grievance redressing of the programme.[17]Normatively, PM JAY would mean a modern right through welfare model. The responsibility of the State is not just to make claims that are judicially enforceable, but to establish organized and funded access to necessary care.

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[14] Val Curtis, "Explaining the Outcomes of the "Clean India" Campaign: Institutional Behaviour and Sanitation Transformation in India" 4(5) *BMJ Global Health e001892* (2019).

[15] Josef Novotný, Radhika Borde, František Ficek and Anant Kumar, "The Process, Outcomes and Context of the Sanitation Change Induced by the Swachh Bharat Mission in Rural Jharkhand, India" 24(1) BMC Public Health 997 (2024).

[16] Blake J. Angell, Shankar Prinja, Anadi Gupta, Vivekanand Jha and Stephen Jan, "The Ayushman Bharat Pradhan Mantri Jan Arogya Yojana and the Path to Universal Health Coverage in India: Overcoming the Challenges of Stewardship and Governance" 16(3) *PLOS Medicine e1002759* (2019).

[17] Aashima and Rajesh Sharma, "A Systematic Review of the World's Largest Government-Sponsored Health Insurance Scheme for 500 Million Beneficiaries in India: Pradhan Mantri Jan Arogya Yojana" 22(1) *Applied Health Economics and Health Policy* 17 (2024).

### d. Water Security and Capability: Jal Jeevan Mission

Safe drinking water is a prerequisite to health, education, and gender equality and has obvious connections to dignity and bodily integrity. The policy in this are at hat is relevant to rights is best evaluated based on its ability to decrease the daily deprivation and inequitable burdens particularly on women and children. Jal Jeevan Mission Public health commentary on the Jal Jeevan Mission explicitly puts house hold tap-water access in the context of a transformative development intervention with strong welfare consequences[18]. In the human rights connotation, the mission is an administrative pledge to transform the basic needs into guaranteed social services- a strategy that is consistent with the social-justice orientation of the Constitution.

### e. Digital Rights and Privacy: Data Protection as a Contemporary Human Rights Law

The acknowledgment of privacy as a fundamental right in India has established the data governance as a focal point of the human rights law in India. The modern research highlights that data protection regimes should strike a balance between consent architecture and fairness limits, especially in situations where power imbalances or need- based services undermine meaningful choice[19]. Here, the Digital Personal Data Protection Act, 2023 has been examined as one of the important legislative steps towards institutionalizing privacy-conscious processing standards in the growing digital environment in India.[20] Although the issues of standards and enforcement will persist, as in all well-developed privacy regimes, the rights-based meaning is obvious, the legal system is beginning to treat informational autonomy as a constituent of dignity, rather than a consumer interest. Combined the efforts signify a significant change in the human rights practice in India: the role of the State is more and more articulated in terms of massive, rights-relevant public goods and inclusion provisions. This pattern of policy is favorable to a positive evaluation of the current government as a government that seeks to operationalize the constitutional human rights by way of governance design, administrative competence and welfare provision.

## 5. Conclusion: Gaining Ground, Strengthening Rights Culture

The law of human rights in India is no longer limited to the statements of the courtroom. It is a living constitutional practice, which is defined by transformative interpretation, institutional experimentation and a governance agenda that is more

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[18] Dheeraj Shah, "Jal Jeevan Mission: A Game Changer for India!" 67(4) *Indian Journal of Public Health* 507 (2023).

[19] Mark J. Taylor and Jeannie Marie Paterson, "Protecting Privacy in India: The Roles of Consent and Fairness in Data Protection" 16(1) *Indian Journal of Law and Technology* 77 (2020).

[20] Abhishek Singh and Anusha, "The Digital Personal Data Protection Act, 2023: An Ambitious Government Step Towards Ensuring Its Wide Reach" 70(3) *Indian Journal of Public Administration* 502 (2024).

and more treating welfare delivery as the practical expression of dignity. The Indian tale demonstrates the possibility of expanding the moral horizon of rights by courts, and mainstreaming these rights in the daily lives of citizens by policy systems.

The current stage of governance should be credited with its focus on rights-relevant scale, which includes the reduction of welfare exclusion by direct transfers, the promotion of dignity by sanitation and drinking-water missions, the reinforcement of access to healthcare by insurance and primary-care architecture and the establishment of a statutory framework of privacy in a digital society in Indian terms. They are not just administrative accomplishments, but they indicate a rights-conscious interpretation of the constitutional duties of the State to provide circumstances of equal citizenship.

The second step must further entrench this rights culture in three aspects:

i) make sure that discretion is minimized and remedies are strengthened throughout welfare systems.

ii) make institutional independence and capacity of human rights bodies more in line with global standards; and

iii) invest in rights-by-design solutions that preclude harms before they happen, particularly in policing, digital governance, and service delivery. The promise of the constitution of India is challenging and encouraging. The ongoing challenge is to transform that pledge into reliable, daily justice-through law, institutions and governance that makes human dignity the central point.

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# Striking an Equilibrium between Trademarks and the Cyber Space- Need of the Hour

***Aishwarya Jagga****

## Abstract

Trademarks are an intellectual property that hold a lot of importance eon the present day where e-commerce if flourishing at this pace. Protection of the brand in the present era of technology is rather difficult as internet knows no bounds and so the impact of it is also large scale. The infringement of trademark is not impactful only for the owner of the business who has put in labor to provide goods and services but rather also for the consumers who are utilising the goods and are the focal point of the market. The infringement that happens against the trademarks on the online platform are related to domain names majorly. Domain names are today seen as the trademark equivalent in the virtual world. The infrinement that happen against domain names can be cyber-squatting, typo- squatting, reverse domain name hijacking (R.D.N.H). However the infringement of trademarks can also happen beyond domain name such meta tags, hyperlinks and framing. These infringements need to dealt in novel ways as the major issue that crops up is the issue of jurisdiction especially in cross-border issues. The need off the hour is to balance the trademarks in the cyber space as Internet is growing with every passing moment and so are the infringements on it.

**Keywords-** *Trademark, Internet, Domain name , Jurisdiction, Tags.*

*"You should learn from your competitor, but never copy. Copy and you die."*

*– Jack Ma, executive chairman of Alibaba Group*[1]

## 1. Introduction

The present century has seen the growth of internet at a lightning speed. With every passing minute technology seems to touch every facet of human life. Consumers and businesses are no exception to the ever-growing impact of the internet. Businesses all over the globe have always been conscious of the goodwill that they have earned and a by-product of which is trademarks. Trademarks are those marks which essentially enable differentiation between the various goods available in the market, thereby making a name in the market that ensures the incidents of the product that the

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1 Nada Sobhi, 30+ E-commerce quotes to help you understand your customers better, *available at* https://blog.converted.in/en-us/blog/e-commerce-quotes-to-understand-your-customers-better (Last visited on August 12, 2025).

consumer intends to purchase corresponds to the needs of the consumer.

Trademarks for the businesses conventionally meant saving the brand name in the physical markets and ensuring the no counterfeit product or service is sold in the name of any company that has not produced it. But in the contemporary times along with the need to focus on the counterfeit products in the markets, the company owners have to see that no infringement of trademarks is done vis a vis the virtual markets. This implies that registration of the trademarks by the company is even more imperative as it was prior to the advent of internet. As per the Trade Marks Act of 1999 trademark is defined in Section 2 (zb) as *"a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours"*

Today consumerism has substantially shifted to online platforms where the consumers are ordering products and even service from their devices in contrast to actually venturing out in the physics markets. This acts as a catalyst as well as a catastrophe for the businesses. Every company today has made a mark in the cyberspace, and what traditionally was done by unique marks on the products in the physical world is today being fulfilled through "domain names". Domain names essentially mean the web address of the company which is a link between the consumer and the company in the digital environment. The need of the hour is to balance the growing proliferation of internet and the rights intellectual property rights of the businesses.

## 2. Trademarks in the Virtual Realm

Trademarks are intellectual property rights which are of utmost importance for businesses. Trademarks are simply those marks which are unique, help in identifying and also differentiating the product from others in the market, for instance the golden coloured "M" which is a trademark of the fast food chain Mc Donalds. Trademark has been defined by WIPO (World Intellectual Property Organisation) vide Article 15 as any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. In the judicial precedent of *Cadbury India Limited And Ors.* v. *Neeraj Food Products*[2]the Honourable Court emphasised on the importance of the trademark laws which protects the consumers as well as the traders from those who pick onto others trademark with the intention to gain profit or even to replicate a well known trademark.

In the virtual realm the trademarks tend to have seen the both good and the bad. While on one hand the companies have got much better exposure on the other hand the risk of counterfeiting is now beyond the local boundaries where the companies

[2] 142 (2007) DLT 724.

sell their goods and services. Domain names are like virtual addresses of the companies which is a striking feature of the paradigm shift of the consumerism as today all the companies have made a mark in the virtual space through this domain name only.

Trademarks are intangible assets of the company which are indicative of the goodwill of the company. The interconnectedness of the internet has undoubtedly enlarged the jurisdictions where the companies can function but with that the possibility of infringement is also there. Prior to the digitalisation the companies were only operating in a specific realm, which was physical in nature and could be monitored with much ease because of the designated periphery. With internet blurring all peripheries, the equilibrium of the trademarks vis a vis the cyberspace is shaken.

### 3. Infringement of Trademarks in the Virtual Realm

The use of internet has soared in the past decade resulting in an increase of infringements in the cyberspace. Traditionally the law pertaining to trademark was applied to protect those traders who had registered trademarks, by providing them an exclusive right to carry on trade under that mark and preventing any third parties from using the same.[3] Trademarks today, are also being infringed in the virtual realm and to control this infringement the present law seems to not be sufficient. Trademarks give the user of the trademarks an absolute right to use the trade mark which cannot be used by anyone else. The owner of a registered trade mark shall have the exclusive right to prevent all the third parties not having the owner's consent from using in the course of trade identical or similar signs for goods and services which are identical and similar to those in respect of which the trade mark is registered where such use would result in a likelihood of confusion.[4]

Trademark infringement in the virtual space implies that the trademarks of the companies vis a vis a good or service in violated online resulting in an offence which jeopardises the company's goodwill in the market. Trademarks can be infringed online in the following manners

- Auction sites which are online
- Sale of trade-marks as key-words especially in search engines.
- Trademarks that are being sold in the virtual world and
- Domain name infringement

With the growing proliferation of the internet in the businesses it has become seemingly important that the trademarks are protected. Registration will provide that

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[3] Sakshi Jain, *What can I do to protect my trademark in cyberspace : an overview, available at* https://blog.ipleaders.in/what-can-i-do-to-protect-my-trademark-in-cyberspace-an-overview/ (Last visited on August 12, 2025).

[4] Dr. S. R. Myeni, "Intellectual Property Rights Management", 160-161 (New Era Law Publication 1st edn, 2019).

protection to the user of the trademark which is imperative in the present technology driven world. However the traditional registration way will not suffice as the infringement online requires a much stronger process of protecting the trademarks virtually. The Supreme Court in *Satyam Infoway Ltd* v. *Siffynet Solutions Pvt. Limited*[5]differentiated between trademarks and domain name. Domain names and trademarks do not hold any separation for the owner but they vary in the manner they operate. Where trademarks work only in local law jurisdictions the domain names are accessible beyond the local markets. The Court also emphasised on the role that the international body WIPO play.

The trademark infringement in the cyberspace can be divided into domain name disputes and other issues which hamper the exclusive and monopoly right pertaining to usage of the trademark by owner. The infringement of the trademarks in cyber era is rather complex owing to the borderless character of the internet that results to violation in jurisdictions more than one leading to loss to the true owner of the business and risk of counterfeiting.

**4. Domain Name Disputes**

One of the most glaring infringements of the trademarks in the digital space is pertaining to the domain names. In the present era of internet technology domain names can be seen as similar to virtual trademarks that need to be protected like the traditional physical trademarks. Domain name is a mixture of words and figures that are unique and solely identifiable to a particular company in the digital environment. It is an alpha-numeric string granted by DN Registrar or any competent authority as an electronic address on the internet.[6] Domain name is in a way a virtual address akin to the address of an individual or that of an office the major difference only being that the address in the real world is subject to change with the change in the location of the individual or the institution in contrast to the domain name which is perpetual and can be accessed even if the tangible office of the person changes.

For example-

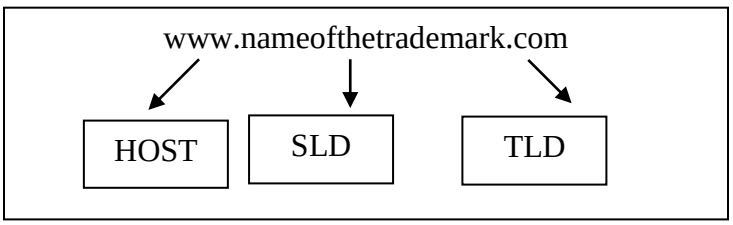


Figure 1 - PARTS OF DOMAIN NAME

5 AIR 2004 SC 3540.

6 Dr. Jyoti Rattan, "Cyber Laws and Information Technology", 589 (Bharat Law House Pvt Ltd. 9th edn, 2022)

Figure 1 depicts the various parts of a domain name. The above URL (Uniform Resource Locator) "www.nameofthetrademark.com" consists of 3 parts which are the TLD or the suffix (top level domain), SLD (second level domain) and the host or the prefix. A domain name has to always be read from right to left and it consists of the following parts -top level domain/first level domain (suffix), second level domain and host (prefix).

In *Rediff Communication Ltd*. v. *Cyberbooth and Anr.*[7] the Honorable law Court held that, the domain name are not simply an address but it also an important corporate asset. Any infringement with domain name is akin to the infringement of the rights of the company. In the present case the defendant was using the word "Radiff" in its domain name and was providing chatting services. The plaintiff was also offering chatting services to its users under the name "Rediff". The Court opined that RADIFF and REDIFF are similar and hence the defendant was wrong in using the word "Radiff" in its domain name.

Domain name disputes are those disputes that arise when the domain name of a particular brand is jeopardised. Domain name dispute are rather convoluted due to the novelty that the come with .Domain name dispute can be of the following types -

- Cybersquatting
- Typosquatting
- IDENTICAL SLD DOMAIN NAME REGISTERED IN DIFFERENT REGISTRIES IN DIFFERENT COUNTRIES.
- REVERSE DOMAIN NAME HIJACKING (R.D.N.H).

### 4.1 Cyber Squatting

Cyber-squatting is when someone else registers trademark to their name but they do not actually own the trade, only with the motive of selling to the actual trade holders at a much higher price. The issue with cyber - squatting is that consumer access those websites that have the same name but are under the ownership of an infringer. The main reason for cyber squatting is the gap between the registration of the trademarks own the physical world and the growing usage of internet in the present world.

In *Manish Vij and ors.* v. *Indra Chugh and others.*[8] , the Court defined the word cyber squatting as that action whereby one obtains registration which is fraudulent, intending to actually sell this domain name to the true owner at a much higher price.

In the case of *M/S.Kalyan Jewellers India Ltd* v. *Antony Adams*[9] the defendant was

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7 AIR (2000) Bombay 27.

8 AIR 2002 Delhi 243.

9 C.S. No.335 of 2020.

using the domain name “kalyanjewellers.com” that was identical to the trademarks of the plaintiff. The Madras High court while emphasising on the importance of registration of trademarks explained cyber squatting in the light of the World Intellectual Property Organisation (WIPO). The court stated that cyber squatters register domain names, even when they are not the true owner of the brand that they register only with the motive to earn monetary advantage by trading the domain name later to the true owners. In the instant case as well the court of law ordered the defendants to hand over the domain name to the plaintiff who were running their business under registered trademark namely Kalyan Jewellers.

### 4.2 Typo Squatting

Typo squatting is that infringement where the infringer registers an already existing registered trademark or domain name with a very slight difference, variation or even typographical permutations which are already existing. The variation can be on the account of mis-spellings or even phonetic similarities. For instance intentional mis-spelled words such as “faacebook.com" instead of “facebook.com" being used as domain so the traffic is diverted to the website of the typo squatter.

One of the cases of typo squatting came to light in the year 2006 where the known tech company “GOOGLE” was a victim to typo squatting when a website by the name “GOGGLE” which was a phishing site saw immense traffic only because of the typographical similarity.

In the judgment of *Electronics Boutique Holdings Corp.* v. *Zuccarini*[10] the Court of law agreed that the defendant Zuccarini acted with a *mala fide* intention whereby he knowingly traded the plaintiff’s reputation with intent to mislead the public.

### 4.3 Identical SLD Domain Name Registered In Different Registries in Different Countries

Sometimes an identical second-level domain (SLD) domain name is registered in the different registries in different countries, which implies that the same domain name are registered by different entities or individuals in separate country-specific domain name registry. This leads to conflicts and challenges for the trademark owners as it tends to cause confusion among the consumers and potential infringement on existing trademarks.

### 4.4 Reverse Domain Name Hijacking (R.D.N.H)

Reverse domain Name Hijacking is a domain name dispute where the trademark owner or the complainant is being threatened to not use the registered trademark mostly done by a powerful company. Reverse domain name hijacking is when someone contacts you claiming to be a trademark holder and demanding that you

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[10] 56 USPQ 2d (BNA) 1705 (ED Pa.2000).

give up your domain for free arguing you are infringing on their trademark.[11]

### 5. Other Issues

Infringement of trademarks in the digital era happens majorly against the domain names which can be seen as the trademarks in the cyber space. Infringement in the contemporary times is not only bound by the violation of the domain names but rather in other ways that hamper the goodwill of the business. Apart from the above stated issues which are pertaining to the domain name disputes there are other issues as well which infringe the trademark in the virtual world.

### 5.1 Meta Tagging

HTML (Hyper Text Markup Language) is that programming language of the web and meta tags are the snippets of HTML. The search engines use meta tags as assisting tools that are much like the subject index for a library's card catalogue system, enabling search engines to deliver a clear indication of the contents of the website.[12] Meta-tags are nothing but simply keywords which when the consumer puts in the search engine it shows the result according to the tags used by the website.

In the judgment of *Mattel, Inc. and Others v Jayant Agarwalla and Others*[13] the plaintiff was a leading manufacturer of the board game "SCRABBLE" and the defendant was using the word scrabble to define their product "SCRABULOUS" and not to divert the traffic from the website of the plaintiff. The Delhi High Court prevented defendants from the usage of the term "SCRABULOLUS" as it was similar and confusing to the term "Scrabble" which was the domain name being used by Mattel Company. The law Court also highlighted that unless proper restraints are not followed the defendant would continue to do acts that would infringe trademark online.

### 5.2 Hyperlinks

Hyperlink is generally used to go from one website location to another website location. Hyperlinks can be internal which are within the same website but there are certain links which are external and redirect the user to another website. Generally this linked new website has some association with the initially accessed website. Infringers however park their websites hyper-link on a well known website which directs the user to an external website due to the likeness of the domain name causing loss to the well known trade marks in the cyber world.

One of the initial cases that addressed the issue of hyperlinking was an American case

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[11] https://www.vondranlegal.com/reverse-domain-name-hijacking (Last visited on August 16, 2025).

[12] Dr. Farooq Ahmed, *Cyber Law in India*, 173 (New Era Law Publication 5th edn., Reprint 2021).

[13] 2008 (153) DLT 548.

*Ticketmaster Corporation v. Microsoft Corporation*[14] the plaintiff's website was providing services for the purchase of ticket for events and the defendant Microsoft added a hyperlink to its own website which directed the user to the plaintiff's website if a consumer wanted to purchase a ticket. Inspite the link ending up profitable to the plaintiff the plaintiff contended that the links results in the user bypassing the main website page which has been specially crafted for the consumer. The judges ordered in the favour of the plaintiff and thereby prevented Microsoft from using the hyper-link to Ticketmaster's website. The Court went a step further and opined that hyperlinks cannot be *prime facie* be segregated as good or bad rather the consequence of the link has to be seen.

### 5.3 Framing

Framing happens when one website links to another website within a window or a frame. In case of framing both the sites remain on the screen simultaneously the difference between the framing site and the framed site is in the source material that appears on the screen of the user.

It can thus be concluded that the trademarks in the virtual realm face the threat of infringement because the pace of growth of the internet is not at par with the growth of the legislation. The off-shoot of internet technology and electronic commerce has been invincible resulting in violations of trademarks of nature that the contemporary jurisprudence fails to blanket.

## 6. Jurisdictional Issues Vis a Vis Trademarks in the Virtual World

Jurisdiction simply means the power of a forum to try a particular matter of law. Whenever there is any infringement the GH aggrieved party approaches the court of law to get the justice. But owing to the nature of internet which is limitless and has no defined geographical borders, there can be universal access and infringement because of which it becomes a mammoth task to decide which court has jurisdiction and hence in dispensing justice.

In India the law pertaining to jurisdiction in civil matters is dealt with the Code of Civil Procedure, 1908. Section 20[15], CPC deal with the place of jurisdiction and where the parties can sue. The Trade Marks Act, 1990 vide Section 134[16] states that the suit shall be tried by District Court or superior Courts-

(i) For infringement of registered trademark, or

(ii) Pertaining to any right of a registered trade mark, or

(iii) For passing off

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14 Case no. 97-3055 DDP.

15 Other suits to be instituted where defendants reside or cause of action arises.

16 Section 134 - Suit for infringement, etc., to be instituted before District Court.

Section 20 of the Code of Civil Procedure, 1908 and Section 134 of the Trade Marks Act have to be construed harmoniously so that determination of the jurisdiction in cases pertaining to the infringement of trademark in the cyberspace can be done effectively. In the case of *HT Media Limited & Anr.* v. *Brainlink International, Inc.*[17] the petitioner who was a renowned agency of national news had found the defendant in New York using the petitioner's registered trademark by using their domain name. This was one of the cases where the court of law used the principle of extra-territorial jurisdiction. The Honourable High Court of Delhi opined

- The defendant's suit which was filed in New York is harassing as well as oppressive owing that he trademark in not registered in USA
- The defendant's act tends to legalise infringement of the trademark of the plaintiff. Plaintiff's trademark is registered in India but his goodwill is all across the world.
- On these grounds prime facie case was made and an anti suit injunction was hence given.

Time and again there is a need for the judicial courts to assume jurisdiction which is extra - territorial owing to the spike in the internet transactions. The need of the hour is universal co-operation between all the countries and stronger laws to protect trademark infringements.

## 7. Conclusion and Suggestions

The proliferation of internet has in a variety of ways revolutionised the consumer's relation with the businesses. Trademarks which were conventionally only constricted to geographically boundaries but now with the digital era the reach is much beyond the geographical areas. Another corollary of this is the anonymity which come with the use of internet. Trademark of a company is the intangible asset that is commercialised and is used for earning profit. Any infringement to trademarks is considered as a direct blow to the business, which is now happening even in the virtual world.

There is a dire need to strike an equilibrium between the use of trademarks and the application of internet technology which has been a catalyst but also a catastrophe for the business keeping in view the domain name infringements that happen. The latest threat to trademarks in the online platform is not limited to traditional infringement where the consumers get confused as to the authenticity of the brand but rather the concept of trademark dilution has started to creep in. Trademarks dilution can happen as blurring or tarnishment where the reputation of the brand is put at stake by the use of trademark for goods as well as services that are negative in nature which thereby reduces the value of the brand's good will.

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[17] CS(COMM) 119/2020 IAs 3767-3771/2020.

To strike an equilibrium between trademarks in the online world and ensure that the violation of trademarks does not happen following are a few suggestions.

- Registering of trademark is inevitable and the only way trademark holders can make sure that they are not subject to cybersquatting, typo squatting, meta tagging and many other offences.
- International cooperation is of importance considering the character of the internet which knows no bounds. Cross border disputes can only be solved if all the countries co-operate and co-ordinate with each other.
- Strengthening the information technology laws is the need of the hour as the law pertaining to the same has to keep pace with the growing internet technology. Any lapse in the speed of the two will end up in the cyber infringement of trademarks which will not even be punished
- The Intellectual Property laws have to be strengthened keeping in mind that the businesses today are not restricted to just one jurisdiction
- Education, awareness and sensitisation of the consumers, brand owners, police, lawyers as well as the judiciary is the need of the hour to ensure that the law and the infringement of trademarks can be reduced.
- Frequently monitoring of the websites by the true owner of the trademark is important so that the infringement can be detected at the earliest and the action against the infringers can be taken without any delay.
- Engaging legal experts is the most important step to ensure that the proper guidance can be given and no infringement goes unpunished because of lack of the knowledge of the law at the pretext of the Trademark owners.

It will only be possible if all the players of the markets, consumers and legislators come together to resolve the issues and strike an equilibrium between the trademark infringement and the growing usage of internet.

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# Teaching Language through Literature at the Middle School Level: A Comparative Analysis Between A Public and Private School

***Navnit Kaur Sodhi*[1]**

## Abstract

The study investigates the effectiveness of teaching language through literature as a better alternative to traditional language teaching process at class 8 level. The experiment included teaching language component i.e. tenses through stories. Students from two schools--city-based convent school and representative government model school were chosen as the medium of experiment. The process began with the pre-test followed by meaningful linguistic input in the classrooms and ended with the post-test. The scores of the post-test showed favourable results. The pedagogical methodology adopted in the classrooms produced favourable results which pointed towards the better linguistic proficiency, communicative skills, critical thinking, better comprehension and retention of language component by the students. The study emphasizes the capacity of literature as an educational instrument to enhance language acquisition in middle school environment. It also highlights the recommendations for wider usage of this pedagogical methodology.

**Keywords**—*language teaching, literature, middle school environment.*

## 1. Introduction

Language is humanity's most enduring invention which not only facilitates communication but also serves as a medium for the transmission of knowledge, shaping societies, preservation of culture and a channel for global collaboration. One of the channels of this kind of transferral occurs through the medium of literature. The interrelation between the two is evident.

Language and literature operate together: language shapes literature, while literature gives language new meanings. The use of language is refined through the study of literature, and the comprehension of literature is enriched by the study of language.

Consequently, planners and practitioners of ELT have a very onerous task at hand not only today but for last 200 years. Because ELT has emerged as a discipline, hence, multitude of methods and approaches of teaching language have unfolded with the changing times. In the context of Indian Education system, the educators have adopted these approaches and methods and transformed, according to the evolving era.

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## 2. Review of Related Literature

In our school education system, the separation of English language and literature has been a subject of debate in applied linguistics and pedagogy. In India, this bifurcation is particularly visible from the nursery to class 8 level, where curricula typically prescribe distinct sections for language skills (grammar, vocabulary, comprehension) and literary texts (poems, stories, plays). But according to Krashen's (1982) Input Hypothesis, language acquisition is most effective when learners are exposed to comprehensible input in meaningful contexts. However, when grammar and vocabulary are taught separately from literature or authentic usage, students struggle to transfer these skills into real communication. Nunan (1991) further emphasizes that communicative competence requires integration of linguistic, sociolinguistic, and discourse skills—something isolated teaching fails to nurture. Several studies have been conducted on integrating teaching of language and literature while teaching in the classroom but the systematic methodology and pedagogy to implement the same is unclear.

## 3. Statement of the Problem

Both public and private, teach grammar by making students memorize rules without any context, repetition of exercises and rote learning. This strategy can make students feel disconnected and demotivated, unable to comprehend the purpose of learning language. They feel incompetent to apply their grammar skills in real-life communication. Despite the possibility of teaching language through literature, there exists a gap between policy aspirations and classroom realities which creates an urgent need to examine how English is being taught, how teachers perceive integration, and what barriers prevent its effective implementation, the pedagogical methodology to be adopted for the same. It will also delve into the feasibility and effectiveness of the integration of the two with the degree of progress achieved in both the city-based convent school and representative government model school by integrating language and literature.

## 4. Objectives of the Study

1. To examine the current classroom practices in the teaching of English language and literature at the middle-school level in Indian middle-class schools.
2. To investigate the extent to which language skills (reading, writing, speaking, listening) are integrated with the teaching of literary texts.
3. To explore the perceptions and attitudes of English teachers toward integrating language and literature in their pedagogy.
4. To identify the challenges and constraints faced by teachers in implementing integrated teaching practices.
5. To suggest pedagogical strategies that can enhance the effective integration of language and literature in the middle-class school context.

## 5. Hypotheses

**H0 (Null Hypothesis):** There is no significant difference in the effectiveness of teaching grammar through literature between private and government school students at the Class 8 level.

**H1 (Alternative Hypothesis):** There is a significant difference in the effectiveness of teaching grammar through literature between private and government school students at the Class 8 level.

## 6. Methodology

The methodology adopted for conducting the experiment is as follows:

### 6.1 Research Design

The study follows a comparative quasi-experimental design with both quantitative and qualitative components.

### Sample

Two schools were selected:

- **School A:** A city-based convent school (English Medium)
- **School B:** A representative Government model school (English/Hindi medium) Each school had 50 students from Class 8 (total = 100 participants).

### 6.2 Instruments

**Pilot Study:** To assess the opinion of both teachers and learners regarding the possibility of integrating the teaching of language through literature in the classroom. The data clearly proved that the teachers as well as students teach and learn language respectively in isolation. Some teachers were even of the opinion that two can't be taught in an integrated way. This encouraged the teacher-researcher to go ahead with the experiment of teaching language through literature in an integrated way.

- **Pre-test and Post-test**: To assess language improvement in both the schools, the pre-test of 40 marks was taken up before the experiment. It was followed by teaching tenses through their literary text (stories), followed by post-test of 40 marks to assess their progress.

### 6.3 Procedure

Students were first administered a **pre-test** on tenses. Over four weeks, both groups were taught selected literary texts (stories) with an emphasis on language teaching through their prescribed textbooks. The students/learners were taught to change the tenses in an interesting way while simultaneously reading the chapter. After this input by the teacher-researcher, a post-test was conducted to check the level of improvement of the students/learners. The marks of the Pre-Test and Post-Test of both the schools are as follows. The table outlined below depicts the pre-test and post-test scores of city-based convent school.

**Table1Scoresofpre-testandpost-testofcity-basedconventschool**

| STUDENTS | TENSES (PRE-TEST) (40 MARKS) | TENSES (POST-TEST) (40 MARKS) |
|---|---|---|
| C1 | 28 | 32 |
| C2 | 36 | 36 |
| C3 | 31 | 35 |
| C4 | 36 | 40 |
| C5 | 28 | 33 |
| C6 | 20 | 30 |
| C7 | 32 | 36 |
| C8 | 32 | 36 |
| C9 | 36 | 40 |
| C10 | 36 | 38 |
| C11 | 36 | 38 |
| C12 | 36 | 38 |
| C13 | 36 | 40 |
| C14 | 36 | 38 |
| C15 | 32 | 40 |
| C16 | 33 | 38 |
| C17 | 36 | 40 |
| C18 | 32 | 38 |
| C19 | 12 | 20 |
| C20 | 16 | 22 |
| C21 | 36 | 40 |
| C22 | 12 | 18 |
| C23 | 36 | 40 |
| C24 | 36 | 40 |
| C25 | 32 | 37 |
| C26 | 36 | 40 |
| C27 | 36 | 36 |
| C28 | 36 | 38 |
| C29 | 12 | 32 |
| C30 | 36 | 38 |
| C31 | 26 | 36 |
| C32 | 32 | 40 |
| C33 | 36 | 40 |
| C34 | 20 | 26 |
| C35 | 36 | 40 |
| C36 | 32 | 35 |
| C37 | 26 | 30 |

| | | |
|---|---|---|
| C38 | 28 | 33 |
| C39 | 12 | 19 |
| C40 | 28 | 40 |
| C41 | 32 | 40 |
| C42 | 36 | 40 |
| C43 | 28 | 36 |
| C44 | 16 | 26 |
| C45 | 28 | 32 |
| C46 | 26 | 33 |
| C47 | 36 | 40 |
| C48 | 28 | 40 |
| C49 | 28 | 35 |
| C50 | 36 | 40 |

## 7. Data Analysis

The inferences which could be drawn by analysing the data are as follows:

### 7.1 City-Based Convent School

The following graphs represents the pre-test and the post-test scores, comparison of the pre- test and post-test scores and the average performance of the students of the city-based convent school.

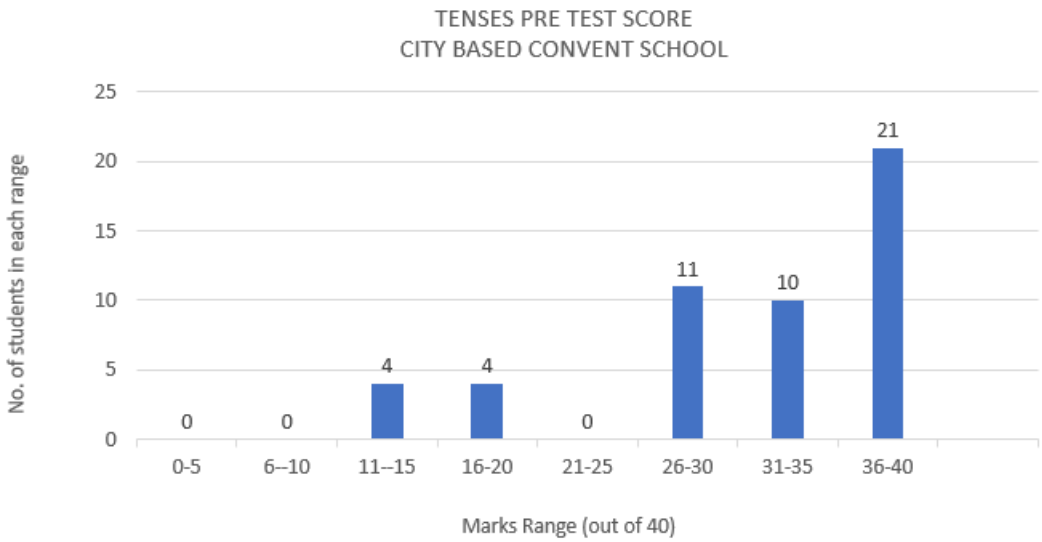


**Figure 1: Pre-test scores of city-based convent school**

Figure 1 describes the score of the pre-test of the city-based school, where y-axis represent the number of students in each range and x-axis represents the marks (out of 40) obtained by 50 students. For example, four students have obtained marks ranging from 11-15 out of 40.

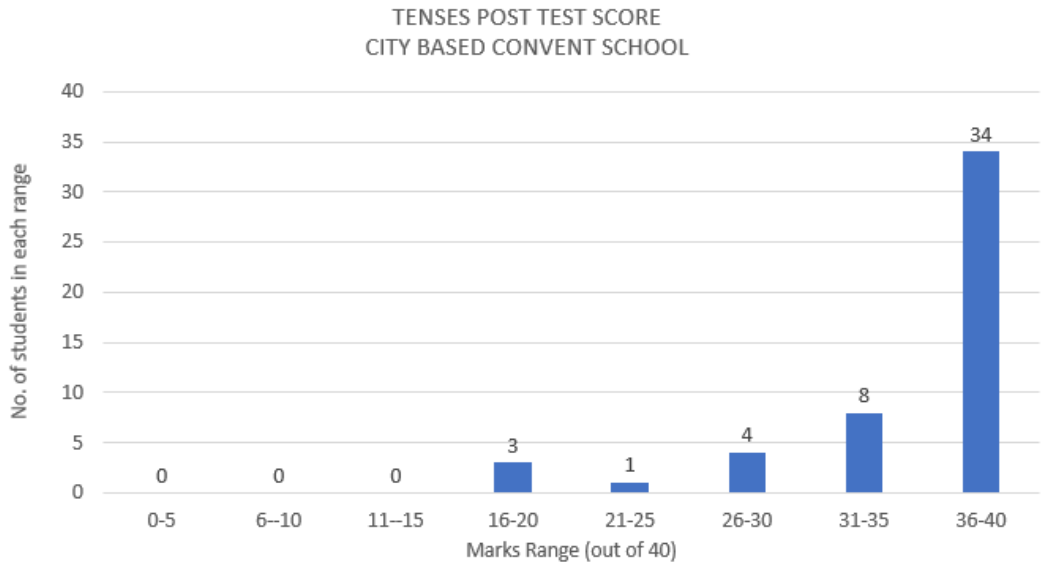


**Figure 2: Post-test scores of City-based convent school**

Similarly, Figure 2 represents the score of the post-test of the city-based school, where y-axis represent the number of students in each range and x-axis represents the marks (out of 40) obtained by 50 students. For example, eight students have obtained marks ranging from 31-35 out of 40. The graph also shows that no student scored below16 marks in their post-test.

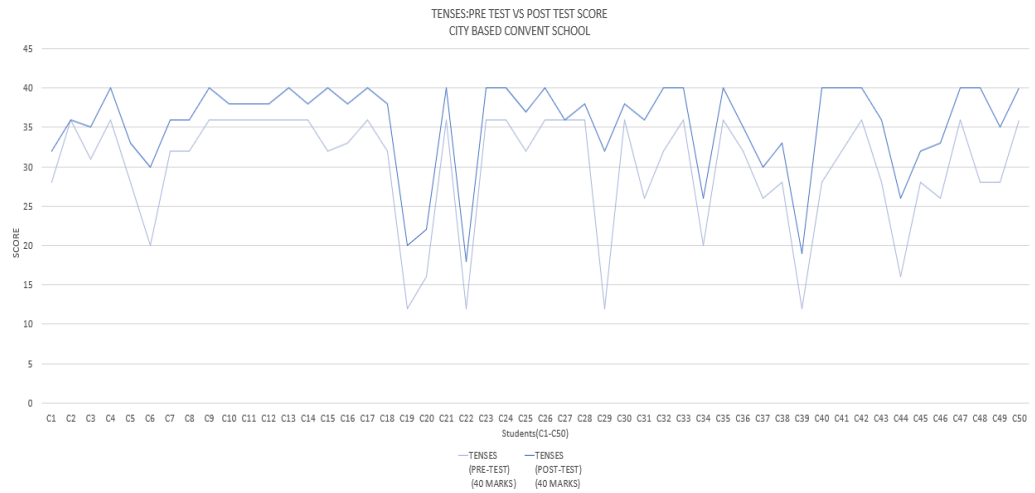


**Figure 3: Pre-test vs Post-test scores of city-based convent school**

The graph, Figure 3 depicts the individual scores of 50 students. The yellow line shows the pre-test marks (out of 40) and the blue line shows the post-test marks (out of 40) of all the students of the city-based convent school. The improvement in the scores is clearly visible. For example, the student no. 20 has scored 36 marks in the pre-test and 40 marks in post-test

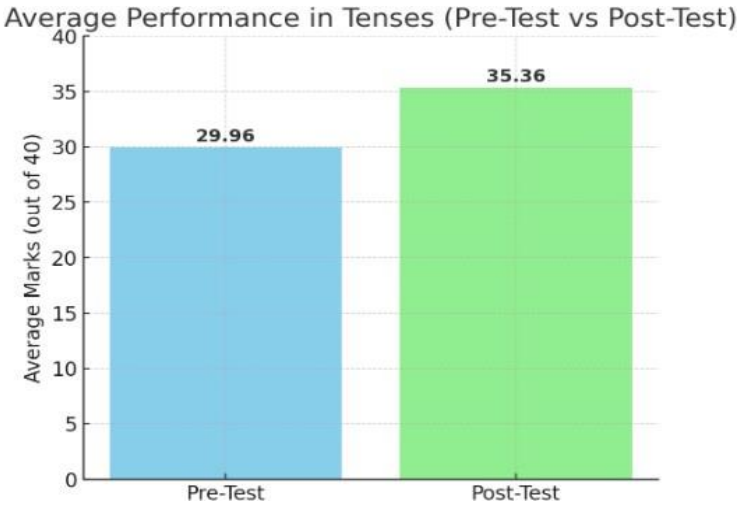


**Figure 4: Average performance of students in Tenses of city-based convent school**

The figure 4 shows the average marks of both pre-test and post-test conducted at the city- based convent school. The blue bar shows the average mark soft hearted-test. The average score is 29.96. Similarly, the green bar shows the average scores of the post-test of 50 students of the city-based school. The average score is 35.36. There is a visible increase in the scores before and after applying the language-literature integration methodology in the class.

Inferences drawn from the above graphs of the city-based convent school

1. The **blue line (Post-Test)** consistently lies above the **yellow line (Pre-Test)**, in Figure 3 indicates improvement for nearly every student.
2. Several students who scored very low (below 10) in the pre-test showed remarkable improvement after the experiment was conducted. (Figure 2).
3. The highest performers maintained their consistency, with some reaching full marks (40).
4. This upward trend demonstrates that **teaching tenses through literature** was effective in enhancing their understanding and application.
5. The average increase of the performance of the students is **5.4**.

### 7.2 Representative Government model school

The table outlined below depicts the pre-test and post-test scores of representative government model school.

**Table 2: Scores of pre-test and post-test of representative government model school**

| STUDENTS | TENSES (PRE-TEST) (40 MARKS) | TENSES (POST-TEST) (40 MARKS |
|---|---|---|
| G1 | 24 | 24 |
| G2 | 24 | 36 |
| G3 | 20 | 30 |
| G4 | 12 | 28 |
| G5 | 32 | 40 |
| G6 | 08 | 24 |
| G7 | 0 | 18 |
| G8 | 12 | 25 |
| G9 | 08 | 19 |
| G10 | 24 | 33 |
| G11 | 24 | 35 |
| G12 | 08 | 17 |
| G13 | 20 | 28 |
| G14 | 24 | 32 |
| G15 | 28 | 36 |
| G16 | 10 | 23 |
| G17 | 12 | 20 |
| G18 | 12 | 23 |
| G19 | 24 | 32 |
| G20 | 24 | 40 |
| G21 | 32 | 38 |
| G22 | 40 | 40 |
| G23 | 12 | 23 |
| G24 | 0 | 15 |
| G25 | 0 | 13 |
| G26 | 12 | 24 |
| G27 | 04 | 18 |
| G28 | 08 | 27 |
| G29 | 12 | 25 |
| G30 | 20 | 32 |
| G31 | 28 | 36 |
| G32 | 26 | 33 |

| | | |
|---|---|---|
| G33 | 24 | 29 |
| G34 | 32 | 36 |
| G35 | 23 | 30 |
| G36 | 33 | 38 |
| G37 | 16 | 26 |
| G38 | 32 | 36 |
| G39 | 29 | 35 |
| G40 | 30 | 35 |
| G41 | 33 | 33 |
| G42 | 35 | 36 |
| G43 | 33 | 34 |
| G44 | 31 | 35 |
| G45 | 18 | 29 |
| G46 | 17 | 25 |
| G47 | 34 | 37 |
| G48 | 31 | 35 |
| G49 | 30 | 34 |
| G50 | 35 | 37 |

The following graphs represents the pre-test and post-test scores, comparison of the pre-test and post-test scores and the average performance of the students of representative government model school

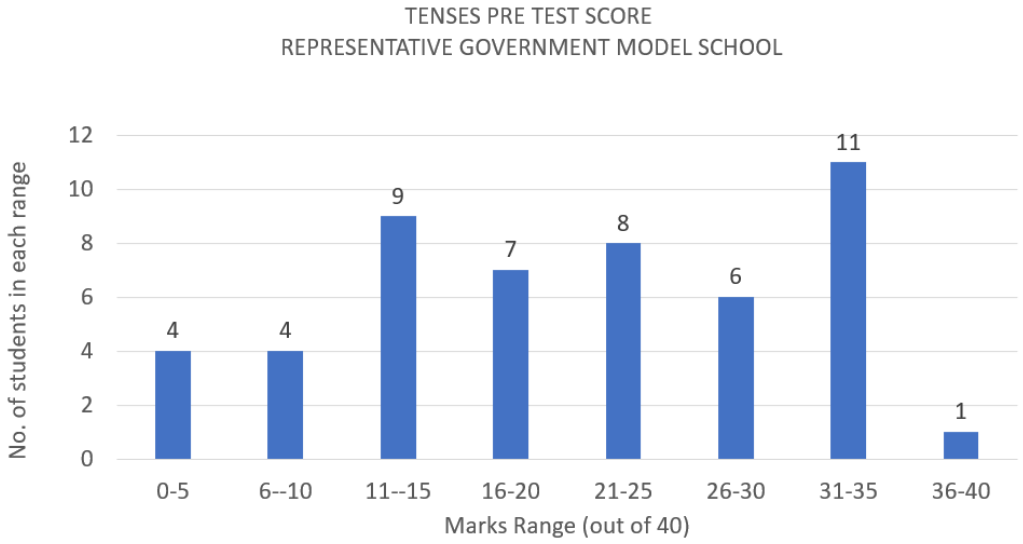


**Figure 5: Pre-test scores of Pre-test scores of representative government model school**

Figure 5 depicts the score of the pre-test of the representative government model school, where y-axis represent the number of students in each range and x-axis represents the marks (out of 40) obtained by 50 students. For example, nine students have obtained marks ranging from 11- 15 out of 40.

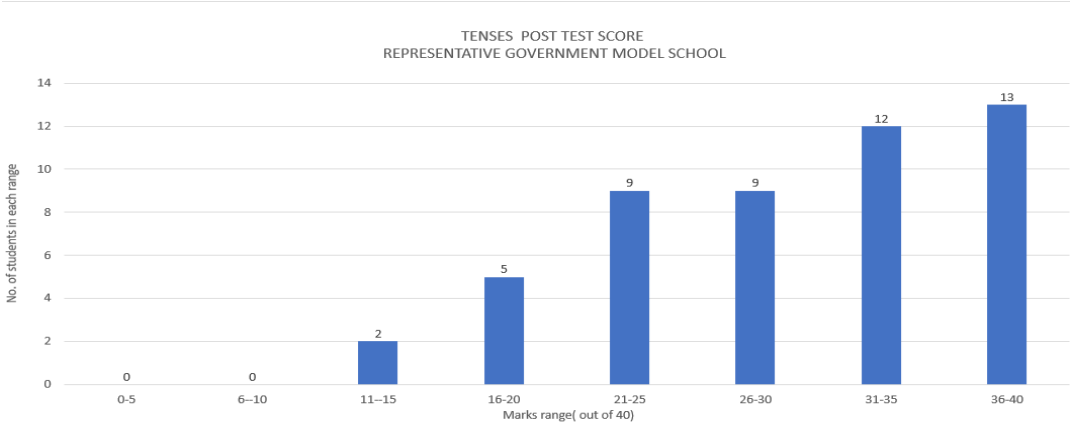


**Figure 6: Post-test scores of representative government model school**

Similarly, Figure 6 represents the score of the post-test of the representative government model school, where y-axis represent the number of students in each range and x-axis represents the marks (out of 40) obtained by50 students. For example, twelve students have obtained marks ranging from 31-35 out of 40. The graph also shows that no student scored below 11 out of 40 in their post-test.

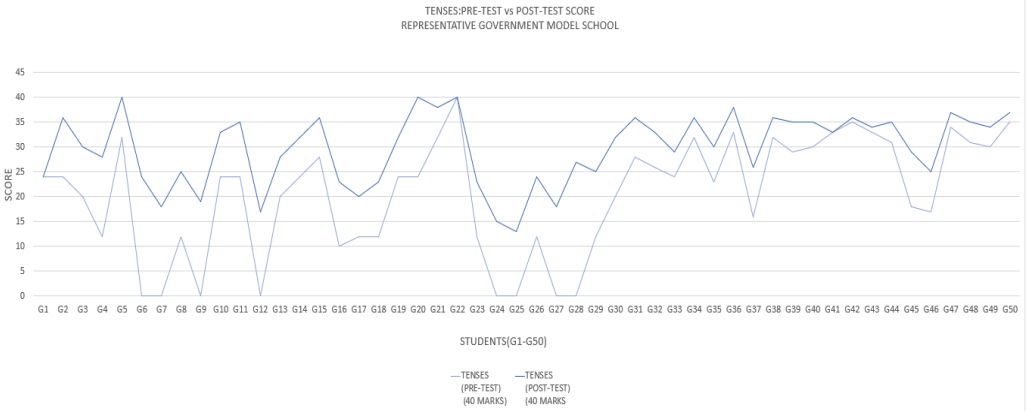


**Figure 7: Pre-test vs Post-test scores of representative government model school**

The graph,Figure7 depicts the individual scores of 50 students of representative government model school. The blue line shows the pre-test marks(out of 40) and the green line shows the post-test marks(outof40) of all the students. The improvement in the scores is clearly visible. For example, the student no.35 has scored 23marks in the pre-test and30 marks in post-test.

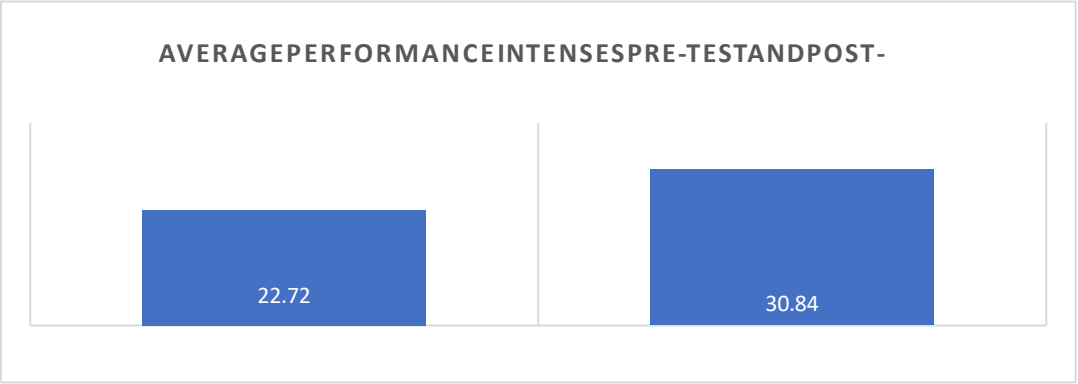


**Figure 8 Average performance of students in Tenses of representative government model school**

The figure 8 shows the average marks of both pre-test and post-test, conducted at the representative government model school. The first bar shows the average marks of the pre-test. The average score is 22.72. Similarly, the second bar shows the average scores of the post-test of 50 students. The average score is 30.84. There is a visible increase in the scores before and after applying the language-literature integration methodology in the class.

Inferences drawn from the graphs of representative government model school.

1. The **green line (Post-Test)** consistently lies above the **blue line (Pre-Test)**, indicating improvement for nearly every student. (Figure 7)
2. Several students who scored very low (below 10) in the pre-test showed remarkable improvement after the experiment was conducted. (Figure 6)
3. The highest performers maintained their consistency, with some reaching full marks (40).
4. This upward trend demonstrates that **teaching tenses through literature** was effective in enhancing their understanding and application.
5. The average increase of the performance of the students is **8.12.**

### 7.3 Outcome of data analysis

The graphical representations (bar graphs and line graphs) of pre-test and post-test, average performance of students of both the schools reveal visible improvement in the students' understanding of tenses. Both the schools benefitted, with **higher gains**

**in the representative government model school.** Hence, the experiment of teaching tenses through stories showed favourable results, accomplishing the aim of the teaching-learning process. Thus, indicating the success of the methodology of integrating both language and literature in the classroom.

## 8. Findings

1. Language teaching through their text books led to the better understanding of linguistic components.
2. Students exhibited greater involvement and zeal when tenses were taught through stories.
3. Representative government model school students showed slightly higher gains, as the methodology used helped the students understand tenses in a better and interesting way.
4. Both groups agreed that integrating literature made language learning more meaningful and enjoyable

## 9. Discussion

Scholars like Carter and Long (1991) assert that literature can be natural context for language learning. The experiment conducted to teach tenses through stories, affirm this claim. Instead of teaching the tenses rules in isolation, stories help the students/learners to associate with characters and events enabling to remember and recall the correct tense forms.

Stories are a beautiful play of emotions and imagination, making tenses learning less mechanical, engaging and more enjoyable. Stories are sequences of events of past, present and future. This enables students to comprehend how different tenses are used to show time and continuity, hence, enhancing students' creativity and critical thinking.

The experiment aimed at integrating both language and literature while teaching in the classroom. After adopting this methodology, the results are encouraging. Both the schools have benefitted by adopting this approach of teaching the linguistic component. Hence, fulfilling the aim of the teaching-learning process

## 10. Conclusion

The study indicates that teaching tenses through stories is an effective pedagogical approach. The methodology not only simplified the understanding of linguistic component but also enabled the students to a new concept of language-learning. It also resonates with the approach of teaching language through literature as is instructed by NEP 2020. The gap between the theoretical assumptions and the practical execution can only be bridged by adopting this methodology of integrating language with the literary text.

Findings indicate that both convent and government school students showed measurable improvement in their grasp of tenses. The positive outcomes affirm the value of integrating language components with contextualized, literature-based teaching. This new methodology of integration invited maximum participation of students and sense of satisfaction for the teachers. The favorable results indicate the need for wider implementation of story-based language teaching in classrooms. Future curriculum planners should prescribe and enforce this pedagogical innovation of teaching language component through literary text in an integrated way to strengthen language acquisition among school learners.

**11. Recommendations**

- To teach language through literature from the primary years of education.
- Train teachers in integrated pedagogical methods.
- To make teaching interesting, gripping and engaging for the students.

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