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An Insight into the Legal Framework Shaping Consumer Rights in India's Right to Repair (RtR) Debate

Dr.Pallavi Devi * & Dr. Jayanta Krishna Sarmah **

Abstract

This paper examines the Right to Repair in the context of a rapidly evolving industrial structure where corporate monopolies increasingly prioritize profit over consumer welfare. Original Equipment Manufacturers (OEMs), leveraging intellectual property laws, restrict access to essential repair tools, manuals, and software, limiting independent repair markets and consumer choice. These legal and technical restrictions not only infringe on consumer autonomy but also contribute to planned obsolescence, an economically profitable but environmentally damaging strategy. Products are designed to fail or become obsolete prematurely, reinforcing a culture of disposable consumerism and adding significantly to global electronic waste. The rationale of this paper lies in the urgent need to address these overlapping concerns, legal, ethical, and environmental through a critical and comparative lens. The Right to Repair is explored not merely as a technical or market issue but as a matter of justice, sustainability, and democratic access to technology. The paper argues for repair-friendly legal frameworks that empower consumers, support local repair economies, and reduce e-waste. In conclusion, it advocates for a more humane, inclusive approach to technology and commerce, one that embeds sustainability and consumer rights at its core.

Key words: *Original Equipment Manufacturers (OEM); Consumer Rights, Independent Repair Shops, Third Party, Repair Restrictions; Consumer Autonomy; E-Waste.*

1. INTRODUCTION

Automotive pioneer Henry Ford in his autobiography,[1] aid of his automobiles, arguably the best single example of durable consumer goods, that "we want individuals who buy one of our products never to have to buy another," and it was important that "you can take a 10-year-old car, and with parts that are available today, make it into a car of today with very little expense."[2] This aspect suggests that the parts must be interchangeable. For Ford, reparability was a crucial element of product design.

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1 Henry Ford, My Life and Work (Kessinger 2008).

2 Daniel A Hanley, Claire Kelloway and Sandeep Vaheesan, 'Fixing America: Breaking Manufacturers'AftermarketMonopolyandRestoringConsumers'RighttoRepair'(*OpenMarket*, 13 April 2020) <https://www.openmarketsinstitute.org/publications/fixing-america-breaking-manufacturers-aftermarket-monopoly-restoring-consumers-right-repair#:~:text=Open%20Markets%20Institute%20released%2C%20%E2%80%9CFixing,manufacturers%20to%20purposefully%20adopt%20exclusionary> accessed on 16 March 2024

In the past, Americans were used to fixing items instead of constantly replacing them. For instance, refrigerators were commonly repaired and handed down from one owner to the next.[3] This mindset was particularly important during the Great Depression, as it not only met practical needs but also encouraged individuals to cultivate self-reliance through maintenance and repair.

Even in the early days of personal computing, there was a strong focus on repairability. Steve Jobs set a standard with the Apple II, the first widely successful personal computer, by designing a user-friendly manual. Competitors were prompted to improve their own manuals to match Apple' s detail and elegance.[4] Jobs aimed to empower consumers with knowledge about the accessible parts and expansion slots of the Apple II, ensuring the computer's longevity by facilitating repair and upgrades.

2. THE PROBLEM

A. Cornering Repair Markets Is A Lucrative Business

The U.S. market for auto collision repair alone was valued at $33 billion in 2018. Americans spent $39 billion repairing heavy machinery such as tractors and bulldozers, and $22 billion repairing cell phones, computers, and electronics, according to estimates from IBIS World.[5] Repair and aftermarket sales are a fundamental part of manufacturers' revenue streams, accounting for 10% to 40% of revenue for industrial companies.[6]

3 Helen Peavi*tt, Refrigerator: The Story of Cool in the Kit*chen (Reaktion Books 2017).

4 Robert X Cringely, 'Accidental Empires: How the Boys of Silicon Valley Make Their Millions' [1996] Battle Foreign Competition, and Still Can't Get a Date 2nd edition, New York: Harper Business; Michael Moritz The Little Kingdom : The Private Story of Apple Computer (William Morrow & Co. 1984).

5 'IBISWorld Industry Report Machinery Maintenance & Heavy Equipment Repair Services in The US 2019 | PDF' <https://www.scribd.com/document/474501586/IBISWorld-Industry-Report-Machinery-Maintenance-Heavy-Equipment-Repair-Services-in-the-US-2019> accessed 16 March 2024; Hanley, Kelloway and Vaheesan (n 2).

6 David Simchi-Le*vi, Operations Rules: Delivering Customer Value through Flexible Operat*ions (MIT Press 2010).management gurus have urged businesses to adopt such strategies as just-in-time, lean manufacturing, offshoring, and frequent deliveries to retail outlets. But today, these much-touted strategies may be risky. Global financial turmoil, rising labor costs in developing countries, and huge volatility in the price of oil and other commodities can disrupt a company's entire supply chain and threaten its ability to compete. In Operations Rules, David Simchi-Levi identifies the crucial element in a company's success: the link between the value it provides its customers and its operations strategies. And he offers a set of scientifically and empirically based rules that management can follow to achieve a quantum leap in operations performance.Flexibility, says Simchi-Levi, is the single most important capability that allows firms to innovate in their operations and supply chain strategies. A small investment in flexibility can achieve almost all the benefits of full flexibility. And successful companies do not all pursue the same strategies. Amazon and Wal-Mart, for example, are direct competitors but each focuses on a different market channel and provides a unique

B. Limits Consumers' Autonomy

Repair restrictions restrict consumers' ability to freely repair and modify their purchased goods, which hampers their autonomy and inhibits exploration and innovation. This not only limits self-service options but also challenges the traditional notion of ownership. When consumers are unable to repair or modify their products, it undermines their sense of ownership over what they've bought.[7]

To quote Aaron Perzanowski,[8]

> *"Companies around the world have deployed an arsenal of tools, including intellectual property law, hardware design, software restrictions, pricing strategies, and marketing messages: to prevent consumers from fixing the things they own. While this strategy has enriched companies almost beyond measure, it has taken billions of dollars out of the pockets of consumers and imposed massive environmental costs on the planet."*

C. E-Waste

The decision to replace rather than repair has far-reaching environmental consequences.[9] In 2018 alone, 1.5 billion mobile phones were manufactured world-wide, contributing to more than 50 million metric tons of electronic e-waste produced that year. Electronics currently account for 70 percent of the toxic waste in US landfills, a figure that continues to rise.[10] The electronic waste includes lithium, mercury, and lead chemicals that endanger

customer value proposition—Amazon, large selection and reliable fulfillment; Wal-Mart, low prices—that directly aligns with its operations strategy. Simchi-Levi's rules—regarding such issues as channels, price, product characteristics, value-added service, procurement strategy, and information technolog—-transform operations and supply chain management from an undertaking based on gut feeling and anecdotes to a science.","ISBN":"978-0-262-28902-3","language":"en","note":"Google-Books-ID: MwAdalF_UaUC","number-of-pages":"253","publisher":"MIT Press","source":"Google Books","title":"Operations Rules: Delivering Customer Value through Flexible Operations","title-short":"Operations Rules","author":[{"family":"Simchi-Levi","given":"David"}],"issued":{"date-parts":[["2010",9,24]]}}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

7 Daniel A Hanley, Claire Kelloway and Sandeep Vaheesan, 'Fixing America: Breaking Manufacturers' Aftermarket Monopoly and Restoring Consumers' Right to Repair'.

8 Aaron Perzanows*ki, The Right to Repair: Reclaiming the Things We* Own (Cambridge University Press 2022).

9 Sean O'Neill, 'European Union Puts Teeth in Right to Repair' (2021) 7 Engineering 1197.

10 Kristen Grant and others, 'Health Consequences of Exposure to E-Waste: A Systematic Review' (2013) 1 The Lancet Global Health e350.collectively known as e-waste, is increasing. We aimed to summarise the evidence for the association between such exposures and adverse health outcomes.\nMethods\nWe systematically searched five electronic databases (PubMed, Embase, Web of Science, PsycNET, and CINAHL

our water supplies and threaten human health. These chemicals released to the land are highly toxic. E-waste encompasses a broad range of discarded goods, spanning televisions, computers, batteries and lightbulbs. According to the World Health Organisation, exposure to the toxic chemicals and substances in e-waste can cause irreversible damage such as low birth weight, thyroid issues and neurological damage.[11] Extracting and refining raw materials produces too much pollution. Those environmental harms are a classic example of what economists call negative externalities: costs that the parties to a transaction don't have to take into account. Instead, the consequences are passed on to our neighbours and future generations who will have to deal with the fall out.

D. Wealth Holding Minorities

They have exclusive title to lands, resources, buildings, machinery, equipment and technologies and control access to credits. Letting the market decide is a euphemism for letting capitalists decide.[12] This is what Aaron Perzanowski said, the capitalist market is the problem, not the solution. It is a malevolent Capitalist Market with its belief in private ownership and the maximization of profits. The competitive drive to maximise profits pushes capitalist enterprises to expand production while cutting employment and wages, compelling workers to produce and consume more just to maintain existing employment and living standards. Capitalist entitlement denies most people a vote in economic decisions. Consumer goods are manufactured by capitalist industries. Billions are spent to encourage conspicuous consumption. Obsolescence is deliberately designed into products.[13] And therefore, it is important to understand the opaque and complex legal landscape that surrounds the right to repair and shows readers how to fight back.

3. PLANNED OBSOLESCENCE IS A GOOD BUSINESS

Ford's notion of durable products was not exactly a paragon of economic rationality.[14] With respect to encouraging new purchases by making repair parts for old models unavailable, Ford admitted that, "We have been told that this is good business, that it is clever business."[15] Commencing in the 1920s, Ford's Company organized dealers and repair shops into a network and provided repair parts only to certified shops and, in an

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11 WHO,'Making a difference : Indicators to improve children's environmental health.' <https://www.who.int/publications/i/item/9241590599> accessed on 16 March 2024.

12 Engler Allan, Economic Democracy : The Working Class Alternative to Capitalism (Aakar 2011).

13 Ibid 40.

14 Masayuki Hatta, The Right to Repair, the Right to Tinker, and the Right to Innovate (2020) Volume 19 Issue 4 Annals of Business Administrative Science <https://www.jstage.jst.go.jp/article/abas/19/4/19_0200604a/_article> accessed on 16 March 2024

15 Henry (n 1) 62.

attempt to evade competition on repair prices with independent outlets, made repairs impossible without using special tools supplied only to certified shops.[16]

At General Motors, led by Alfred Sloan, annual model changes were designed deliberately to create psychological obsolescence to stimulate replacement purchases by the consumers. In addition to Sloan's psychological obsolescence, other product development strategies designed to encourage replacement include functional obsolescence or adding new features to make the consumers feel that the previous models are old-fashioned and material obsolescence or intentionally shortening the product life.[17] Durable consumer goods such as cars and refrigerators, which had been assumed to have long lives, found widespread popularity during the 1960s; then, in the 1970s, economics and management science came up with an aggressive approach to intentionally reduce durability by making repairs more difficult.[18]

In concrete terms, material obsolescence functions in the following manner:

1 Making items difficult to repair (by raising the cost of repair, requiring special tools, etc.)

2. Failing to provide information (for instance, manuals are not provided)

3. Systematic obsolescence (making parts among models incompatible or making it impossible to fix newer models with parts from the older models)

4. Numbering (frequently changing the model numbers to make it psychologically less attractive to use old models)

5. Legal approaches (prohibiting access and modification to the internal structure of products by means of copyrights and patents)

Material obsolescence employs these kinds of approaches as a marketing technique for encouraging the consumer to replace an old model with a new one.[19] Some also believe that as an industrial policy, planned obsolescence is a requisite for technological progress, as encouraging rapid innovation through early obsolescence is better for the society than having products that last too long and hold back innovation.[20] Planned obsolescence, which encompasses material obsolescence, had a particularly large impact on the American IT industry of the 1980s and 1990s; the reason was the notion that in addition to the physical hardware, which is durable in nature, to recover investments in software, which in principle

16 Stephen L McIntyre, 'The Failure of Fordism: Reform of the Automobile Repair Industry, 1913-1940' (2000) 41 Technology and Culture 269.

17 Hatta(n 14).

18 Hanley, Kelloway and Vaheesan (n 7).

19 ibid.

20 Arthur Fishman, Neil Gandal and Oz Shy, 'Planned Obsolescence as an Engine of Technological Progress' (1993) 41 The Journal of Industrial Economics 361.

does not deteriorate, assertions of legal rights and planned obsolescence is indispensable. The 1980' s also saw the beginning of a pro-patent and pro-copyright wave as an industrial policy in the U.S., which was being battered by the technological competition with Japan, reinforcing the idea of protecting technology by legal means. It was a distinguishing characteristic of this era that the American justice system limited the application of anti-monopoly statutes, such as not deeming technology consortia to be cartels.[21]

4. THE LANGUAGE OF ECONOMICS IN THE CAPITALIST MARKETS

The Economics as it is applied today is that it deals with only that part of the human system that is traded and marketed. Even within the field of the production of goods and services, it only covers those productive activities within the cash economy. Many activities which could be considered productive employment are ignored simply because they are not paid for or traded.[22] The capitalist system seems to have lost perspective of the whole and is quite satisfied with bits and pieces. In view of this, the Right to Repair Movement serves as a guiding light, steering us to understand self-sufficiency and sustainability in the world of technology, which could also bring solutions to the problem of unemployment.

5. THE SUPPORTERS OF THE RIGHT TO REPAIR MOVEMENT

In the words of one individual at a public hearing on this issue: " It is my own damn car, I paid for it, I should be able to repair it or have the person of my choice do it for me." To address this frustration and combat the hostage taking of consumer product markets, a social movement demanding a "right to repair" has sprung up and has gained steam in the last five years.[23] The movement has several branches, with one branch focused on pushing a " right to repair" or "fair repair " through an amending the Digital Millennium Copyright Act (DMCA), which has provided yet another major legal ground for manufacturers to block repairs. The primary justifications for legislation offered by the movement include environmental concerns, consumer autonomy and competition. Supporters of the right to repair movement continue working to pass laws that would require manufacturers to make diagnostic tools, repair manuals and replacement parts available to the general public.[24]

This emergence of the Right to Repair (RtR) Movement didn't simply happen overnight but rather evolved as a response to an escalating frustration with what can be termed as

21 David V Gibson, 'R&D Collaboration on Trial : The Microelectronics and Computer Technology Corporation' (No Title) <https://cir.nii.ac.jp/crid/1130282268978672896> accessed 16 March 2024.

22 Allan (n 12).

23 Perzanowski (n 8).

24 'What Does a Right to Repair Tell Us about Our Relationship with Technology? - Kayleen Manwaring, Matthew Kearnes, Bronwen Morgan, Paul Munro, Roberta Pala, Shanil Samarakoon, 2022' <https://journals.sagepub.com/doi/abs/10.1177/1037969X221108557> accessed 16 March 2024.

the "disposable tech era." There was a time when fixing a malfunctioning appliance was a common skill, much like changing a light-bulb or tuning a radio. There was a time when "Do it Yourself " (DIY) spirit thrived, and the satisfaction of breathing new life into our cherished gadgets was akin to the feeling of mastering a complex puzzle. However, as technology advanced, the simplicity of DIY repairs began to fade because there are repair restrictions everywhere. Beyond restricting access to parts, companies block repair in all kinds in other sneaky ways. Sometimes they glue in batteries with industrial strength adhesives. Sometimes they use proprietary screw heads. Sometimes they use software to pair parts to your device's serial number or motherboard, either throwing up errors for replacement parts or blocking new parts entirely.[25]

6. THE POSTCOLONIAL POLITICS OF REPAIR

For a long time, laws around intellectual property (IP) have treated access to knowledge and technology as something users could have only under special exceptions like *fair use* or *fair dealing*. These were not seen as rights, but as narrow permissions granted within a system designed to protect the interests of creators or companies. However, in the last 25 years, there has been a major shift in thinking. Scholars like Sean Flynn[26] and Amy Kapczynski[27] have helped develop the idea of user rights, a way of understanding that people should have more active, legal rights to use, share, and repair the things they own, especially in the digital and technological world.

This new idea of user rights is very important to the Right to Repair movement. In India, the ability to repair a device, be it a phone, a tractor, or a sewing machine, is often limited by company controls, software locks, and lack of access to parts or manuals. People are forced to replace rather than repair. But this harms both the environment and the freedom of users. The movement argues that people should not just be passive consumers, they should have the right to open, fix, and improve the things they use.

In India too, informal repair shops and local fixers have long played this role. These are not just side businesses; they are part of a larger culture of technological creativity. People build, modify, and repair things in ways that challenge the idea that only companies can control technology.

So, the Right to Repair is not just about fixing gadgets. It's about recognizing everyday practices of repair as valuable, and ensuring that laws support the right of people to use

25 'Fixing the World, One Gizmo at a Time. | iFixit News*' (iF*ixit) <https://www.ifixit.com/> accessed 16 March 2024.

26 Mitchell, N. J. (2011). Amy Kapczynski and Gaëlle Krikorian: Access to Knowledge in the Age of Intellectual Property: Zone Books, Brooklyn, New York 2010, 664 pp, $24.95, Softcover, ISBN 978-1-890951-96-2.

27 Kapczynski, A. (2019). The law of informational capitalism. *Yale LJ*, *129*, 1460.

technology on their own terms. It's also about seeing how repair is connected to bigger ideas of justice, autonomy, and postcolonial identity.

7. THE RESISTANCE FROM THE MARKET

Manufacturers are taking advantage of product complexity to prevent or hinder the progress of the "Do it Yourself" (DIY) and independent repair shops from making repairs in a variety of different ways. Many manufacturers:

a) maintain an ' authorised network of repair shops', which consumers are required to use for repairs during the product's warranty period.[28]

b) Warranty cards of several products mention that getting them repaired from an outfit not recognised by the makers would lead to customers losing their warranty benefit**.** Joining the network is typically difficult and expensive.[29] While this practice in itself may be viewed as based on a legitimate concern for quality control, it becomes more troubling when manufacturers couple it with obscure repair information and refusal to supply replacement parts in the open market.[30]

c) Some manufacturers utilise their control over the repair market for their products. For example, certain manufacturers place microscopic trademarks on repair parts that are not seen (nor are they intended to be seen) by consumers in order to control their importation for repair purposes.[31] While this may be technically legal, such use of a trademark to surpass repairs exceeds the traditionally accepted purpose for trademarks, which is to promote competition and assist consumers in identifying the source of goods.[32]

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28 'Apple Authorized Service Provider Program - Official Apple Support' <https://support.apple.com/en-lamr/aasp-program> accessed 16 March 2024.

29 'Do You Know Anything About Apple's "Authorized Service Provider" Program?' <https://www.vice.com/en/article/ypkqxw/do-you-know-anything-about-apples-authorized-service-provider-program> accessed 16 March 2024.

30 'A "Right to Repair" Movement Tools *Up' The Econo*mist <https://www.economist.com/business/2017/09/30/a-right-to-repair-movement-tools-up?utm_medium=cpc.adword.pd&utm_source=google&utm_campaign=a.io_apac_generic&utm_content=conversion.non-brand.anonymous.apac_in_en_generic_prosp_non-brand_google_subs_pmax_other_na_na&gad_source=1&gclid=Cj0KCQiArrCvBhCNARIsAOkAGcXExvM9nOfry1sQAWyggh BblVuZ0MUn6trhA-8GGuOhb_gM50dIVUsaAliQEALw_wcB&gclsrc=aw.ds> accessed 16 March 2024.

31 'Do You Know Anything About Apple's "Authorized Service Provider" Program?' (n 36).

32 Ibid; William M Landes and Richard A Posner, 'The Economics of Trademark Law' (1988) 78 The Trademark Reporter 267.

d) Furthermore, manufacturers have issued cease and desist letters or take down requests when consumers or independent vendors have attempted to spread the knowledge of repair by posting information online.[33]

e) Some manufacturers also sue replacement parts manufacturers for patent infringement[34] or utilise the services of the U.S. customs and Border protection to seize replacement parts at the border on the premise that the parts are counterfeit.[35]

8. THE RIGHT TO REPAIR LAW IN INDIA

The Government of India adopted the Lifestyle for the Environment (LiFE) initiative to promote sustainable production and consumption in November 2021. Following this, a committee was set up in July 2022 by the Department of Consumer Affairs to create a comprehensive policy around the right to repair (RtR). In December 2022, the Department of Consumer Affairs launched an RtR portal to provide information to consumers about their products and facilitate the ease of accessing product repairs by acting as a centralised repository of repair-related information.

The portal covers four sectors: farming equipment (such as tractor parts, harvesters water pump, motor), consumer electronics (such as mobile, tablets, wireless headphones, earbuds, laptops, universal charging ports/cables, batteries, servers, data storage, hardware and software printers) consumer durables (water purifiers, washing machines, refrigerators, televisions, integrated/universal remote, dishwashers, microwaves, air-conditioners, geysers, electric kettles, induction, cooktops, mixer grinders, electric chimneys), and automobile equipment (such as passenger vehicles, two-wheelers, electric vehicles, three wheelers cars).

The portal provides information such as customer care numbers, publicly available warranty and post-sales service information and service network details such as the location of service centres for the on boarded companies. The portal also provides a centralised consumer grievance redressal mechanism by listing contact details from the Ministry of Consumer Affairs to local district-level commissions for consumers to seek help at different levels of government.[36] It also provides helpful consumer information through blogs on consumer

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33 'When Tech Companies Won't Provide Service Manuals, This Guy Writes His Own - The Washington Post' <https://www.washingtonpost.com/news/the-switch/wp/2014/01/13/when-tech-companies-wont-provide-service-manuals-this-guy-writes-his-own/> accessed 16 March 2024.

34 "Intellectual Property Law and the Right to Repair" by Leah Chan Grinvald and Ofer Tur-Sinai' <https://ir.lawnet.fordham.edu/flr/vol88/iss1/3/> accessed 16 March 2024.

35 'Do You Know Anything About Apple's "Authorized Service Provider" Program?' (n 36).

36 Ministry of Consumer Affairs, Food & Public Distribution, Government of India 'Right to Repair Portal India' (*Life Style for Environment*)< 'Right To Repair: India's Step In The Right Direction' (*Forbes India*) <https://www.forbesindia.com/article/iim-bangalore/right-to-

awareness. The portal's goal is to function as a one-stop shop for customers seeking repair by acting as a single source of useful information.[37]

Moreover, the "Atmanirbhar Bharat Abhiyaan" or the "Self-reliant India campaign" launched on 12 May 2020, also raised a clarion call to make the country and its citizens independent and self-reliant in all senses, particularly the Economy, Infrastructure, System, Vibrant Demography and Demand.[38]

9. THE REFURBISHED MARKET DEMAND IS ON RISE

Alakesh Phukan, who runs Assam Digital Info Solution Service (ADI) in Guwahati, Assam, brings to the front Kautilya's skepticism[39] towards traders' honesty still holds truth today. He with fear, pointed out the same thing: major companies like Apple, Sony, HP, Dell, HCL, BoAt, Oppo, Acer, Toshiba, Gigabyte, Asus, Vivo, etc., are reluctant to share repair information, manuals, and diagnostic tools with consumers and third-party repairs. He asked not to write that big companies have the power to impose potentially business destroying costs and penalties on the repair shop for things such as copyright and patent violations. Their product designs often lack repair-friendliness, establishing a monopoly for manufacturers. These companies typically maintain exclusive control over spare parts and repair processes, limiting customers' ability to self-repair or seek assistance from third-party repair services.[40] Continuing the conversation with him about the right to repair, he highlighted how original equipment manufacturers (OEMs) often advocate for restricting repairs to authorised service centres or dealers. He emphasised several key points:

a) In the event of a faulty motherboard in a laptop, companies typically opt to replace the entire motherboard rather than repairing it. However, third-party repair services may also choose to replace components like the keyboard, battery, and hard disk if they are damaged, but they more often than not aim to repair the motherboard instead of replacing it. He emphasised that with the right expertise and tools, many components within the motherboard can be repaired, ensuring its longevity for years to come.

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repair-indias-step-in-the-right-direction/89135/1> accessed 16 March 2024.> accessed on 16 March 2024

37 'Right To Repair: India's Step In The Right Direction' *(Forbes I*ndia) <https://www.forbesindia.com/article/iim-bangalore/right-to-repair-indias-step-in-the-right-direction/89135/1> accessed 16 March 2024.

38 'MyGov.in | MyGov: A Platform for Citizen Engagement towards Good Governance in India' *(MyGo*v.in) <https://www.mygov.in> accessed 16 March 2024.

39 'ARTHASHASTR*A' (Penguin Random House I*ndia) <https://www.penguin.co.in/book/arthashastra-2/> accessed 16 March 2024.

40 Interview with Alakesh Phukan, Founder of ADI,Guwahati (Guwahati, Assam, 24 January 2024)

b) Similarly, when it comes to issues with the power switch, repair service providers often attempt to fix the problem, while companies tend to opt for replacing the entire panel. He made a comparison to the automobile industry, where specific defects are repaired. The entire vehicle is never replaced. If that is the case why not any other electronic items?

c) The success of platforms like cashify.in in the refurbished market for laptops and electronic devices highlights the advantages of repair for consumers. This trend also demonstrates that properly repaired equipment can have a prolonged lifespan, offering further value to users.

India is experiencing a remarkable surge in the refurbished market, with expectations of doubling growth by 2025.[41] Tech-enabled products are particularly driving this trend, with an unprecedented demand for reconditioned items reaching an all-time high. The shift to a work-from-home culture during the global pandemic is seen as a major factor influencing this trend. While refurbished products are actively sold worldwide, the highest proportion of refurb buyers fall within Great Britain (GB) and America, with around four in ten purchasing repurposed electronics closely followed by Canada.[42] India is also significantly considering purchasing refurbished products.[43]

A study conducted by research firm RedSeer on May 5, 2022, revealed that Tata Consultancy Services Ltd, a prominent IT services company, acquired 100,000 used laptops annually from organised reverse commerce companies. RedSeer forecasts that the refurbished electronics market in India could reach a gross value of $11 billion by March 2026, showing a significant increase from around $5 billion in March 2021.[44]

The surge in refurbished product sales has attracted the attention of major e-commerce players. As the market expands, businesses are becoming increasingly structured, which was largely unorganised and fragmented which created a trust and convenience issue for

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41 Shouvik Das, 'Refurbished Devices in Demand as Prices Ris*e'(*mint, 6 May 2022) <https://www.livemint.com/technology/refurbished-devices-in-demand-as-prices-rise-11651858931343.html> accessed 16 March 2024.

42 '2023 Tech Consumer Trends' <https://business.yougov.com/sectors/technology/consumer-technology-whitepaper-2023> accessed 16 March 2024.

43 ibid.

44 www.ETBrandEquity.com, 'India's Used Smartphone Market to Reach $10 Bn by 2026: Report - ET BrandEquit*y' (ETBrandEquity*.com) <https://brandequity.economictimes.indiatimes.com/news/research/indias-used-smartphone-market-to-reach-10-bn-by-2026-report/91348819> accessed 16 March 2024."plainCitation":"www.ETBrandEquity.com, 'India's Used Smartphone Market to Reach $10 Bn by 2026: Report - ET BrandEquity' (ETBrandEquity.com

end consumers.[45] Amazon has been transacting refurbished products on Amazon Renewed market since 2017, while Flipkart took a step further by acquiring Yaantra, a marketplace for refurbished electronics. By acquiring Amazon Renewed and Yaantra, they are bolstering their expertise in the refurbishment sector, a crucial component for advancing India's digital economy. This strategic move not only strengthens their position in the market but also allows them to build a robust service ecosystem to facilitate their growth endeavours.

The demand of Cashify, another online platform for selling and buying refurbished electronic devices, took a leap during the pandemic. In Cashify, smartphones still dominate, making up 92% of Cashify's market, with laptops at 5-6%, and accessories at 2%. The Redseer report also underscores the dominance of smartphones, comprising 90% of the sector. This growth is fueled by two main factors: the rising prices of new smart phones and the higher profit margins for retailers. The refurbished market demand has been on rise since then.[46]

10. CONSUMER RIGHTS AND REVAMPING THE REPAIR ECONOMY FOR LOCAL RESILIENCE

By blocking and eliminating access to critical parts and tools, manufacturers hoard valuable market opportunities for repair. Entrepreneurs cannot start parts and service shops nor fairly compete in the repair business.[47] Nikon showed us what to expect from a world without a legally secured Right to Repair: They limited repair to their authorized shops, shut down those shops, and now only offer repair in two facilities. Repairs there are slow and expensive: but the only choice. Other manufacturers will keep copying this strategy.[48] Apple, imposes several conditions that prevent independent shops from competing fairly against Apple-authorized technicians.[49] In 2017, Apple acknowledged a controversial situation dubbed " Batterygate," where they admitted to intentionally reducing the performance of older iPhone models like the iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and/or iPhone SE that ran iOS 10.2.1 or later, and/or an iPhone 7 or iPhone 7 Plus that

45 'Flipkart Acquires Electronics Recommerce Company Yaantra - BusinessToday' <https://www.businesstoday.in/latest/corporate/story/flipkart-acquires-electronics-recommerce-company-yaantra-319005-2022-01-13> accessed 17 March 2024.

46 'India E-Tailing Update 2023' <https://redseer.com/newsletters/india-e-tailing-update-2023/> accessed 16 March 2024.

47 'US Smartphone Owners Break 5,761 Screens a Year, Report Says | Miami Herald' <https://www.miamiherald.com/news/nation-world/national/article222040170.html> accessed 16 March 2024.

48 'Nikon Is Killing Its Authorized Repair Program | iFixit News' <https://www.ifixit.com/News/34241/nikon-is-killing-its-authorized-repair-program> accessed 16 March 2024.

49 Maddie Stone, 'Apple's Independent Repair Program Is Invasive to Shops and Their Customers, Contract Shows' (Vice, 6 February 2020) <https://www.vice.com/en/article/qjdjnv/apples-independent-repair-program-is-invasive-to-shops-and-their-customers-contract-shows> accessed 16 March 2024.

ran iOS 11.2 or later, before December 21, 2017. The users complained that after installing software updates, their devices experienced deliberate slowdown.[50] Apple in 2020 agreed to pay up to $500 million to settle a class-action lawsuit in the US that accused the iPhone maker of "secretly throttling" some iPhone models.[51] Independent repair shops offer repairs for consumer products at significantly lower prices, often 30% to 50% cheaper, and complete the repairs more rapidly. But stringent authorization requirements not only restrict consumer access to repair choices but also place a squeeze on independent repair shops, hindering their ability to compete fairly in aftermarket services.

11. ENABLING COMPETITION IN THE MARKET:

IP law aims to incentivize innovation by providing inventors with exclusive rights to their inventions. Allowing unrestricted repair of patented products could potentially undermine this incentive by reducing the potential market for new products, as consumers might opt for repairs instead of purchasing new items. In the case of copyrighted works, DRM technologies are often employed to control access to and use of digital content. Repair legislation may conflict with DRM protections, as it could involve circumventing these protections to repair or modify the content, which may violate copyright laws. Companies also argue that allowing third-party repairs could compromise the quality and safety of their products. They may claim that only authorized repair technicians have the necessary expertise and access to genuine parts to ensure proper repairs, thus arguing against repair legislation. Many companies derive significant revenue from selling replacement parts and servicing their products. Allowing third-party repairs might cut into these revenue streams, which companies may argue would negatively impact their ability to recoup research and development costs and invest in future innovation.

A. The Patent Act

Under § 271 of the Patent Act, "whoever without authority makes, uses, offers to sell, or sells any patented invention, during the term of the patent therefore, infringes the patent."[52] Repairing a patented product entails a use of the invention and, therefore, counts as patent infringement unless otherwise permitted.[53]

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50 'Apple Will Finally Pay for Throttling iPhones With "Batterygate" Settlement | WIRED' <https://www.wired.com/story/apple-batterygate-settlement-payments-finally-coming/> accessed 16 March 2024.

51 'Apple: Apple Starts Paying iPhone Users as Part of $500 Million "Batterygate" Settlement - The Economic Times' <https://economictimes.indiatimes.com/tech/technology/apple-starts-paying-iphone-users-as-part-of-500-million-batterygate-settlement/articleshow/106608334.cms?from=mdr> accessed 16 March 2024.

52 '35 U.S. Code § 271 - Infringement of Patent*' (LII / Legal Information Insti*tute) <https://www.law.cornell.edu/uscode/text/35/271> accessed 16 March 2024.

53 This is true with respect to both a utility patent and a designed patent

Fortunately, patent law recognizes a right to repair to a considerable extent.[54] Under the doctrine of patent exhaustion, an authorized sale of a patented item exhausts the patentee's rights with respect to that item and leaves the purchaser and subsequent owners free to use or resell it without fear of an infringement lawsuit.[55] As part of the "use" of the product, its owner can repair it, if necessary. Yet, courts have drawn a distinction between repair and reconstruction. While repair is permissible, the reconstruction of a patented product amounts to the making of a new article and thus constitutes patent infringement.[56] Courts have struggled in drawing the line between repair and reconstruction.[57]

But what if the patent owner prohibits independent repairs as part of the sale or license agreement with the consumer? The Samsung Galaxy smart phone's terms and conditions contain an example of a contract provision that could be construed as prohibiting repairs: "[a]ny changes or modifications to your mobile device not expressly approved by Samsung could void your warranty for this equipment and void your authority to operate this equipment."[58] Similarly, farm equipment sold by John Deere is accompanied by a license agreement that prevents consumers from accessing the software embedded in the equipment and prohibits any repairs other than those made by an authorized repair provider.[59] For many years, the Federal Circuit treated exhaustion as a default rule that may

54 Roger D Blair and Thomas F Cotter, 'An Economic Analysis of Seller and User Liability in Intellectual Property Law' (5 January 1999) <https://papers.ssrn.com/abstract=146235> accessed 16 March 2024. (noting that U.S. patent law is "inconsistent with the practice in some other countries, which exempts from liability the private, non-commercial use of patented inventions").

55 'Impression Prods., Inc. v. Lexmark Int'l, Inc., 137 S. Ct. 1523 | Casetext Search + Citator' <https://casetext.com/case/impression-prods-inc-v-lexmark-intl-inc-2> accessed 16 March 2024.

56 'Aro Mfg. Co., Inc. v. Convertible Top Co., 365 U.S. 336 (1961*)' (Justia* Law) <https://supreme.justia.com/cases/federal/us/365/336/> accessed 16 March 2024.

57 'Mallinckrodt, Inc. v. Medipart, Inc., 976 F.2d 700,709' <https://casetext.com/case/mallinckrodt-inc-v-medipart-inc> accessed 16 March 2024. ("Although the rule is straightforward its implementation is less so, for it is not always clear where the boundary lies: how much 'repair' is fair before the device is deemed reconstructed."); Mark D Janis, 'A Tale of the Apocryphal Axe: Repair, Reconstruction, and the Implied License in Intellectual Property Law' 58. ("The repair-reconstruction dichotomy has baffled and annoyed courts for decades, often driving courts to employ 'loose language.'"). ("The repair-reconstruction dichotomy has baffled and annoyed courts for decades, often driving courts to employ 'loose language.'").

58 'Phone-HSGuid*e' (Samsung Electronics Ame*rica) <https://www.samsung.com/us/Legal/Phone-HSGuide/> accessed 16 March 2024.

59 Bloomberg (n 33).along with the constraints they are insisting on to protect the functionality, safety, and emissions compliance of their vehicles.","container-title":"Forbes","language":"en","note":"section: Tech","title":"John Deere's Digital Transformation Runs Afoul Of Right-To-Repair Movement","URL":"https://www.forbes.com/sites/

be contracted around, which enabled patent owners to enforce post-sale restrictions through patent infringement lawsuits.[60] However, the Supreme Court held in its recent landmark decision *Impression Products, Inc. v. Lexmark International, Inc*.[61] that an authorized sale of a patented item exhausts all patent rights with respect to that item, regardless of any restrictions on use that the patentee purports to impose.[62] In other words, violations of such restrictions no longer have remedies in patent law.[63] Nevertheless, the Court in Impression Products did not rule out the possibility that the patent owner could enforce post-sale restrictions (including non-repair clauses) under contract law in state court.[64] An action for a breach of contract is surely not as effective or as rewarding as a patent infringement lawsuit.[65] Still, the possibility of being sued may deter consumers and repair businesses from exercising their right to repair. Thus, it is important to find ways to decrease this concern.[66]

B. THE COPY RIGHT ACT

Copyright law already recognizes, to a limited extent, the notion of a right to repair at this core layer. Section 117(c) of the Copyright Act provides an exemption to owners or lessees of computers that allows them to make copies of software in order to maintain or repair the machine without infringing upon the copyright of the software.[67] Unfortunately, though,

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jasonbloomberg/2017/04/30/john-deeres-digital-transformation-runs-afoul-of-right-to-repair-movement/","author":[{"family":"Bloomberg","given":"Jason"}],"accessed":{"date-parts":[["2024",3,16]]}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

60 'Mallinckrodt, Inc. v. Medipart, Inc., 976 F.2d 700 (n 64). ("Use in violation of a valid restriction may be remedied under the patent law, provided that no other law prevents enforcement of the patent.").

61 'Impression Prods., Inc. v. Lexmark Int'l, Inc., 137 S. Ct. 1523 (n 62).

62 ibid.

63 Amelia Smith Rinehart, 'Contracting Patents: A Modern Patent Exhaustion Doctrine' (11 September 2009) <https://papers.ssrn.com/abstract=1472239> accessed 17 March 2024. (noting that the "enforcement of . . . resale or use restrictions would create an obstacle to the free use and alienability of personal property").

64 'Impression Prods., Inc. v. Lexmark Int'l, Inc., 137 S. Ct. 1335 (n 62).

65 Robert P Merges, 'The End of Friction? Property Rights and Contract in the "Newtonian" World of on-Line Commerce' (1997) 12 Berkeley Technology Law Journal 115. ("Parties must be in privity with each other for a contract to be formed."). In addition, the remedies for a breach of contract are generally not as broad as the remedies for patent infringement.

66 "Intellectual Property Law and the Right to Repair" by Leah Chan Grinvald and Ofer Tur-Sinai' (n 41).

67 '17 U.S. Code § 117 - Limitations on Exclusive Rights: Computer Program*s' (LII / Legal Information Insti*tute) <https://www.law.cornell.edu/uscode/text/17/117> accessed 17 March 2024. (noting that "section 117 functions as one of the chief mechanisms through which the

there is another layer in the Copyright Act that is incompatible with a right to repair. Section 1201 of the DMCA prevents anyone from disabling a technological protection measure that a copyright owner has placed on a work in order to protect its copyrighted software (a "digital lock").[68] In practice, almost any type of consumer technological product includes software, which in turn, likely includes such a digital lock.[69] Consumers cannot disable the digital lock without being liable under § 1201, even if the purpose for such hack was to diagnose, maintain, or repair the product. If the disabling is done wilfully and for commercial gain, the circumventer may be criminally liable.[70]

C. THE TRADEMARK LAW

Like their overuse of patent law, manufacturers have also overused trademark law to protect replacement parts, which can have similarly stifling effects on competition for such parts or for repair services. This occurs where manufacturers obtain trademarks on parts themselves, such as grilles on the front of vehicles.[71] Another use of trademark law to stifle competition in the repair market is the practice of claiming that refurbished replacement parts are counterfeits when they are actually authentic parts.[72]

12. Sustainable Development Practices In The Constitution Of India & The Circular Economy

Article 48-A of the Constitution mandates that the state shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. Article 51-A of the Constitution enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wild-life and to have compassion for living creatures. These two articles are not only fundamental in the governance of the country but also it shall be the duty of the state to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including

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public interest in software programs is balanced against the copyright holders' property rights in such programs").

68 '17 U.S. Code § 1201 - Circumvention of Copyright Protection System*s' (LII / Legal Information Insti*tute) <https://www.law.cornell.edu/uscode/text/17/1201> accessed 16 March 2024.

69 (describing the digital lock no newer Keurig coffee machines)

70 '17 U.S. Code § 1204 - Criminal Offenses and Penalti*es' (LII / Legal Information Insti*tute) <https://www.law.cornell.edu/uscode/text/17/1204> accessed 16 March 2024.

71 'Apple Sued an Independent iPhone Repair Shop Owner and Lost' <https://www.vice.com/en/article/a3yadk/apple-sued-an-independent-iphone-repair-shop-owner-and-lost> accessed 16 March 2024.

72 'Do You Know Anything About Apple's "Authorized Service Provider" Program?' (n 36).

Articles 14, 19 and 21 and also the various laws enacted by Parliament and the State Legislatures.[73]

India has also been actively working towards environmental sustainability through various initiatives and measures.[74] The Swachh Bharat Abhiyan (Clean India Mission) focuses on solid waste management, cleanliness, and sanitation. The Jal Shakti Abhiyan focuses on water conservation, rainwater harvesting, and groundwater recharge. The government has also launched the Namami Gange program to rejuvenate and clean the Ganga River. The government has launched initiatives like Paramparagat Krishi Vikas Yojana (PKVY) to promote organic farming, soil health management, and agroecology practices. It is here, the Right to Repair Law aims to promote sustainable practices by encouraging mindful and deliberate utilisation, instead of mindless and destructive consumption thereby polluting the soil. Reducing, reusing, and recycling electronics have the ability to create a circular economy,[75] which also aligns with our cultural and lifestyle values. It's designed to safeguard the environment by preserving resources extracted from the earth and minimising e-waste.[76] The COP27 meet also brought to fore the circular economy's relevance in mitigating carbon emissions for India by ensuring responsible consumption and sustainable resource management.

13. CONCLUSION

When manufacturers restrict access to spare parts, tools, and repair information, they create monopolistic ecosystems that disproportionately affect small repair businesses and limit consumer choice. The use of software locks and digital barriers to block repairs is often justified in the name of cybersecurity, yet experts widely agree that enabling repair does not inherently compromise data protection. Rather, such restrictions serve to consolidate corporate control over the after-sales market. The Right to Repair does not violate intellectual property rights repair manuals and diagnostic tools are not copyrightable in most jurisdictions and are integral to user autonomy.

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73 Brundtland Commission Report, para 82 (Traditional forms of national sovereignty raise particular problems in managing the 'global commons' and their shared ecosystems - the oceans, outer space, and Antarctica. Some progress has been made in all three areas; much remains to be done).

74 'Sustainable Development Goals (SDGs) and Environmental Sustainability' <https://www.drishtiias.com/blog/sustainable-development-goals-sdgs-and-environmental-sustainability> accessed 17 March 2024.

75 It includes 6 R's - Reduce, Reuse, Recycle, Refurbishment, Recover, and Repairing of materials.

76 Electronic waste (e-waste) is electrical and electronic equipment, whole or in parts, discarded as waste.

To counter these barriers, public awareness campaigns are essential to inform consumers about their rights and the economic, environmental, and social benefits of repair. Industry-wide standards for interchangeable parts and repair-friendly design can significantly reduce waste and extend product life cycles. Government support in the form of training programs, funding for innovation in repair technologies, and incentives for independent repair enterprises can build a robust repair ecosystem.

Crucially, technology transfer must be treated as a cornerstone of this movement. Facilitating the responsible sharing of repair-related technologies and know-how from global manufacturers to local repairers will not only decentralize control but also stimulate grassroots innovation. Equitable technology transfer backed by clear policy frameworks can help India localize repair capabilities, bridge digital divides, and empower users with the knowledge to fix and adapt technologies to their needs.

Taken together, these reforms can boost employment, promote circular economy practices, and ensure that technological progress serves the broader goals of sustainability, inclusivity, and consumer empowerment, not just corporate profit.

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Need to Bleed, Hygiene or Leave

Dr. Richa Saxena*

Abstract

Menstruation is a natural phenomenon of life of women and all others who mensurates (transgenders, intersex and non-binary people). It certainly affects their work life too. There is two-fold effect of menstruation on the work life. First, it causes physical discomforts and secondly poor facilities of WASH (Water, Sanitation and Hygiene) at the work and public places makes it unbearable. Discomforts of menstruation is difficult and unavoidable but can be managed if it is not a medical situation which needs treatment. At work and public places, poor WASH facilities make menstruation terrible. Various other issues related to menstruation creates trouble for menstruating women and for all others who menstruates such as social stigmas, unawareness, poverty, non-accessibility of menstrual products, security of women, etc. Menstruation is in news in India either due to movie Padman (2018), or some advertisements of sanitary napkin companies to break the taboos relating to menstruation (#whispers break the silence) (2018), or Government initiatives for menstrual health and hygiene of women and girls (2012). In current scenario, health and hygiene debate of menstruation extends to the demand of 'menstrual leave' or 'period leave'. Menstrual leave is known as 'paid leave off' from work in menstruation. In this reference this paper is planned with following objectives.

Objectives of the Research

1. *Critically examine the need of menstrual leave in India.*
2. *To investigate effect of menstrual leave on women's work and opportunity of employment for women.*
3. *To examine women's perception on menstrual leave.*

Research Questions

1. *What are the needs of menstruating women and all others who menstruates?*
2. *Does menstrual leave is guarantee of good menstrual health and overall well-being of women and others?*
3. *Does good menstrual hygiene management and liberal work culture will help to menstruating women and others at work?*

Limitation of the Study

This study does not include other menstruating people (transgenders, intersex and non-binary people in empirical survey. Though the scope of study would include all those who menstruates.

Keywords: Menstruation, Periods, Women, Work, Workplaces, Leave,

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1. Introduction

Menstruation is a natural and essential phenomenon responsible for human birth. It is a complex biological process of women's body. It defines as 'a part of women's cycle when the lining of the uterus (endometrium) is shed'[1]. In medical terminology it is called as 'menstruation while common understanding it is known as 'Periods'. Every woman has periods for the age from 12 to 50 years. It means on an average a women menstruate for forty years in her life time. Every day more than 2 million people menstruate all over the world.[2] It includes women, adolescents' girls and people who menstruate (generally called *menstruators*)[3]. There are two apparent problems related to menstruation all over the world. First is 'Period Poverty' and second is 'Period Management at Workplace'. Period Poverty is termed as non-access to water, sanitation and hygiene and non-affordability to menstrual products anywhere and everywhere. [4] It is global health issue. Women and girls have to miss school; work and they also suffer to poor health. To manage menstruation effectively, WASH (water, sanitation and hygiene), menstrual materials and conducive environment,[5] are three basic necessities. Women from developing countries are severely affected by period poverty due to their social and economic status as well as poor economic resources provided by the State[6]. Even those women who can afford menstrual products are also suffering poor management of their period due to non-conducive environment of work places. Period poverty and period management both are budgetary and policy issues. Former can be managed by free availability of menstrual products or affordable menstrual products, by ensuring safe and clean sanitation facilities in the schools and workplaces and also by making awareness against social stigma about menstrual process.[7] To manage periods at work places for working women and other *'menstruators.'* there is proposal for menstrual or period leave. Menstrual leave/period leave is already provided in

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1 https://www.stanfordchildrens.org/en/topic/default?id=menstrual-cycle-an-overview-85-P00553, (last visited on April 10, 2025)

2 https://www.unwomen.org/en/news-stories/explainer/2024/05/period-poverty-costs-too-much-take-action-to-end-visited (last visited on April 10, 2025)

3 Babbar, Karan et al., "Inclusion means everyone: standing up for transgender and non-binary individuals who menstruate worldwide" The Lancet Regional Health - Southeast Asia, Volume 13, 100177

4 https://www.unwomen.org/en/news-stories/explainer/2024/05/period-poverty-why-millions-of-girls-and-women-cannot-afford-their-periods, (last visited on April, 10 2025)

5 https://www.worldbank.org/en/topic/water/brief/menstrual-health-and-hygiene(last visited on April,10 2025)

6 Menstrual Hygiene Day, 'Putting an end to Period Poverty', available at https://news.un.org/en/story/2023/05/1137067, (last visited on November 16, 2024)

7 https://asiapacific.unwomen.org/en/stories/explainer/2024/05/period-poverty-costs-too-much-take-action-to-end-it, (last visited on August 12, 2024)

some of Asian Countries, like Russia (1880-1927, cancelled in 1927)[8], Japan, since 1947[9], Indonesia in 1951[10], South Korea in 1953[11], Taiwan in 2002[12] and China 2006[13]. Last year in 2023, Spain became first European Country to provide three days' period leave which may extend to five days.[14] As far as India is concerned, in the year 2017, a bill for three days menstrual leave policy was withdrawn in the Parliament[15]. In USA and UK, there is no government policy to provide menstrual leave. It is up to employer to provide such leave to their employees[16]. Menstrual Leave has been recently in debate when some of the International Companies like ZOMATO in India and VAT in Australia has announced menstrual leave to their employees[17]. Some other institutions and organization have already announced their period leave policy.[18] Few months before, Indian Supreme Court has asked to the Government to propose menstrual leave policy for women in India.[19] The menstrual leave policy seems and suggests as a positive solution to the sufferings of working women and other '*menstruators'.* at workplaces.

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8 Ilic, M., "Soviet women workers and menstruation: Research notes on labour protection in the 1920s and 1930s" Europe-Asia Studies, 46(8), 1409 (1994)

9 Nakayama, I., "Periodic struggles: Menstruation leave in modern Japan", Ph.D. Thesis (Cambridge: Harvard University (2007)

10 Labor Act No.13 2003, http://www.niew.gov.my/niew/en/download/doc_download/324-labour-act, (last visited on April 14, 2025

11 Min-ho, J., Bo-eun, K., & Eun-ji, B., "Menstrual leave– An entitlement man reject" The Korea Times (2012, October 30, 2012

12 Chang, C., Chen, F.-L., Chang, C.-H., & Hsu, C.-H., "A preliminary study on menstrual health and menstrual leave in the workplace in Taiwan", Taiwan Gong Gong Wei Sheng Za Zhi, 30(5), 436(2011)

13 Chen, X., "Paid menstrual leave provokes controversy in China", available at http://www.china.org.cn/china/2016-02/16/content_37800348 (last visited on April, 12 2025)

14 Camillie Bello and Laura Lluch, "Painful periods? Spain just passed Europe's first paid 'menstrual leave' law" https://www.euronews.com/next/2023/02/16/spain-set-to-become-the-first-european-country-to-introduce-a-3-day-menstrual-leave-for-wo (last visited on November 18, 2024)

15 Masih, Niha, "Need time off work from period pain? These Countries offers 'menstrual leave" Washington Post, February 17, 2023

16 Hilary H. Prince, 'Periodic Leave: An Analysis Menstrual Leave as a legal workplace benefit' Oklahoma Law Review Vol 74: 187 (2022) at 195

17 Ibid.

18 Bihar Government (1992), Kerala Government (2023), Delhi Government (2021), Panjab University, NLIU, Bhopal, Cochin University and Guhati University and some Pvt Companies like, Zomato, Swiggy, Culture Machine, Metzger etc. are providing such policies.

19 K. Murli Kumar, "SC asks Centre to frame model policy on menstrual leave for women", *The Hindu*, July 8 2024

Though, a different aspect of menstrual leave policy is highlighted by Rachel and Jessica (2020). It is stated that *"the oppressive beliefs about and attitudes towards a menstruation that permeate, hetero-patriarchal culture can extend beyond menstruators' psychological health; they may negatively affect their overall wellbeing including their personal and professional achievements and success, physical health and right to feel empowered and experience equality".* [20] For India, Belliaapa (2018) stated that *'Menstrual leave policy are though well-intentional could have negative consequences for gender equity and need to be deployed with caution'.*[21] Therefore it is possible that such policy may have some detrimental effects too. In such circumstances to examine women's perception on menstrual leave/period leave policy, author has attempted to address in this paper with a view to analyze the impact of menstrual leave policy on working women in India.

2. Menstrual Health Care

Menstruation is one of the essential physical processes on which the birth of a human being is dependent. The Menstrual Health Alliance in 2018, provides that *"every woman and girl is enabled to manage her menstruation hygienically, with confidence, with dignity and without stigma so that they are empowered to fully and equally participate in society and live a healthy and productive life"*[22] WHO in 2022 had included menstrual health in the Human Rights Council Agenda and proposed to take it as health issue rather than hygiene issue. It is a health issue which requires to be addressed in the perspective of life, including all three physical, psychological and social dimensions. Further, it also mentioned that menstrual health means and includes 'access to information and education' about menstrual health, availability of WASH and menstrual products, facilities of disposal of used products, guarantee of menstrual care, and right to live, study and work in conducive environment related to menstruation and opportunities to participate in work and social life equally. It also provided that such policies must be included in the work plans and budget[23]. It is *'complete physical, mental, and social well-being and not merely the absence of disease*

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20 Levitt RB, Barnack- Tavlaris JL., "Addressing Menstruation in the Workplace: The Menstrual Leave Debate" 2020 Jul 25. In: Bobel C, Winkler IT, Fahs B, et al., editors. The Palgrave Handbook of Critical Menstruation Studies [Internet]. Singapore: Palgrave Macmillan; 2020. Chapter 43. Available from: https://www.ncbi.nlm.nih.gov/books/NBK565643/ doi: 10.1007/978-981-15-0614-7_43, (last visited on August 12, 2024)

21 Jyothsna Latha Belliapaa, "Opportunity to address inclusivity in Indian Organizations", The Indian Journal of Industrial Relations, vol. 53, No. 4 April 604-617(2018) at 604

22 UN, Dept of Economic and Social Affairs, Sustainable Development, "*Pushing Menstrual health on the 2030 Agenda*" (wed 11 July 2018- wed 3 Feb 2021).

23 https://www.who.int/news/item/22-06-2022-who-statement-on-menstrual-health-and-rights,(last visited on August 14, 2024)

or infirmity, in relation to the menstrual cycle'.[24] It deals with complete well-being of women, girls and all other *menstruators.* Such complete well-being can be ensured by accessibility of information about menstrual cycle, self-care and hygiene management, availability of WASH and menstrual products with privacy at private and public places to ensure comfort for menstruating women and others who are menstruating and affordability to the menstrual materials. Yusuf Kabir (2016) mentions five 'A's to be components of Menstrual Hygiene Management, i. e. Awareness, Aspiration, Affordability, Availability and Access.[25] Since 2014, 28th May has been celebrated as Menstrual Hygiene Day.[26] The celebration is dedicated to 'break the taboos and raising the awareness'[27] towards the issues related to menstrual hygiene.

Pitching Menstrual Health care as a Human Right and Public Health issue instead women or reproductive health issue respectively, signifies it includes broader perspective of human health.

When it is said that menstrual health care is a human right issue rather than a women issue, it is public health issue rather than a reproductive health issue, it signifies that it is broader perspective of human life. It includes right to life, and right to live with dignity, right to privacy and right to good health. It also includes right to education and right to work, right to enjoy life without discrimination. All these and others' rights of equality, equity and empowerment are ensured in the principle of menstrual health care. WHO and UNICEF Joint Committee provides the principle of Menstrual Health Management (MHM) as follows;

"Women and adolescent girls are using a clean menstrual management material to absorb or collect menstrual blood, that can be changed in the privacy, as often as necessary for the duration of a menstrual period, using soap and water for washing the body as required and having access to safe and convenient facilities to dispose of used menstrual management materials. They understand the basic facts linked to the menstrual cycle and how to manage it with dignity and without discomfort or fear".[28]

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24 Hennegan J, Winkler IT, Bobel C, Keiser D, Hampton J, Larsson G, Chandra-Mouli V, Plemons M, Mahon T. "Menstrual health: a definition for policy, practice, and research". Sex Reprod. Health Matters. Dec; 29(1) (2021)

25 Yusuf Kabir, Rajeshwari Chandrashekhar and Bharathy Tahiliani, "A reason to smile: the five ways approach to promote menstrual hygiene management in adolescent girls", Waterlines, vol. 35, Issue 3, 324-333(2016)

26 Pratima Uniyal, "Menstrual Hygiene Day 2023: Date, history, significance, theme, tips for menstrual hygiene" Hindustan Times, May 28, 2023

27 RELX, SDG Resource Centre, 'Menstrual Hygiene Day', available at https://sdgresources.relx.com/events/menstrual-hygiene-day-2025, (last visited on August 14 2024)

28 UNICEF, *"Guidelines of menstrual health and Hygiene"*, March, 2019, Programme Division, New York, available at https://www.unicef.org/media/91341/file/UNICEF-Guidance-menstrual-health-hygiene-2019.pdf(last visited on August 14, 2024)

Government of India is also working in the area of *Menstrual Hygiene Management (MHM)* as priority basis under the 'Swachh Bharat Mission' (SBM).[29] In 2011, Ministry of Health and Family Welfare implements launches Menstrual Hygiene Schemes for promotion of awareness of the adolescents' girls about menstrual hygiene and safe use and disposal of sanitary pad through *ASHA workers*, *Anganwadi workers* under the *'Rastriya Kishore Swasthya Karyakram'*[30]. Some other programmes, like, '*Beti Bachao and Beti Padhao'*[31] or *'Mission Shakti*'[32], has worked for menstrual Hygiene. A central Government initiative named *'Pradhan Mantri Janausadhi Kendras'* provided, Oxo-biodegradable sanitary napkins, SUVIDHA, at the price of one rupee.[33]

Women, Work and Menstruation

It is necessary to invest in women to accelerate economic progress of the State. UN suggests 'when more women work economies grow'.[34] Presently, statistics shows that women are 47.7% of the global workforce[35] and 32.8% women are in workforce in India (2021-22).[36] Menstruation is experienced in working age and its impact on the work participation directly depends upon the MHM at work places. Unfortunately, such a large population is still struggling for period management at work places. Indira Nooyi, CEO of PepsiCo, once

29 United Nations, '*Progress Report for Breaking the Silence – Menstrual Hygiene Management (MHM) in India'* Centre for Community Health Research,(8 May 2021), available at https://sdgs.un.org/partnership-progress/breaking-silence-menstrual-hygiene-management-mhm-india-wed-05082024-2232(last visited on August 14, 2024)

30 Ministry of Health and Family Welfare, 'National Health Policy, Menstrual Hygiene Schemes', available at https://nhm.gov.in/index1.php?lang=1&level=3&sublinkid=1021&lid=391, visited on 18/5/2025

31 Ministry of Women and Child Development 'Beti Bachao Beti Padhao' has undertaken cohesive convergent efforts for protection and empowerment of the girl child', Posted On: 07 FEB 2025 4:01PM by PIB Delhi, available at https://pib.gov.in/PressReleasePage.aspx?PRID=2100642, visited on 18/5/2025

32 https://missionshakti.wcd.gov.in/about, visited on 18/5/2023

33 Ministry of Chemicals and Fertilizers, 'Sanitary Napkins available for Rs. 1 per pad at Pradhan Mantri Bhartiya Janaushadhi Kendras', Jan 17 2020, New Delhi, available at https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1945842, posted on 4/8/2023, (last visited on August 28, 2024)

34 UN Women, *'Facts and figures: Economic empowerment'* available at https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures, (last visited on August 20, 2024)

35 Team Stage, 'Women in workforces statistics: Senior Roles, Maternity Leaves, Pay Gaps in 2024' available at https://teamstage.io/women-in-the-workforce-statistics/#:~:text=The%20female%20labor%20force%20participation,%25%20in%201990%20to%2074.7%25. (last visited on August 20, 2024)

36 Yogima Seth Sharma, 'India looks to match world average for share of women in workforce', *The Economic Times,* July 2, 2024

said that *"Gender doesn't necessarily deter us from setting professional goals. But periods sometimes do"* [37] In the words of Marcy (2022) '*around the globe employers have denied menstrual accommodations and violated workers dignity and privacy'*.[38]Adequate MHM is taken for grated in developed countries and it is a serious problem in the developing countries too[39]. Herrmann and Rockoff (2013), mentioned that menstrual problems are reasons for the health issues absence of women at work[40]. In UK about '85% of women and others who menstruate have experienced stress and anxiety when managing their period at work'.[41] Either they are working in formal sector or informal sector, in developing countries MHM at work places is disaster. Privacy, sanitation facilities (WASH), rest rooms all are not priorities of the employers.[42] In such circumstances *"some menstruators will leave the workforce, be forced to forgo certain opportunities, or experience poor attendance, decreased productivity, exacerbated medical conditions, or other negative consequences"*.[43] World Bank (2022) on menstrual health and hygiene mentioned that school dropout girls have limited opportunities of employment and due to lack of poor sanitation facilities at workplaces and menstruating women have to absent from work during menstruation. It causes denial of wages for them and they are also tagged as unreliable workers. This affects their opportunity of employment[44].

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37 Vyajanti Iyenger, 'Should your workplace care about your period', https://menstrupedia.com/blog/workplace-care-about-you-period/?srsltid=AfmBOorF4aS9y9LydidK63V6gBCaa3RHrT4-7EbqrLhlg40qz2hkPMrw, (last visited on November 11, 2024).

38 Marcy L. Karin, 'Addressing period at work', Harvard Law and Policy Review vol. 16, 451-518(2022) at 451

39 Astrid Kreni and Holger Strulik, 'The impact of menstruation hygiene management on work absenteeism of women in Burkina Faso ', Economic and Human Biology, Volume 43, (2021) 101067.

40 Mariesa A. Herrmann and Jonah E. Rockoff, 'Do Menstrual Problems explain gender gaps in absenteeism and earrings?' Labour Economics, 2013 vol.24, issue C, 12-22.(2013).

41 Periods at work: Conversations in the workplace that need to happen May 22, 2023, available at https://www.wateraid.org/uk/media/managing-periods-in-the-workplace-poll#:~:text=However%2C%20a%20new%20WaterAid%20survey,managing%20their%20periods%20at%20work. (last visited on 11 November 2025)

42 Sommer et al., 'Managing menstruation in the workplace: an overlooked issue in low- and middle-income countries' 'International Journal for Equity in Health (2016) 15:86

43 Mary L. Karin, 'Addressing periods at work' Harvard Policy and Law Review vol 16,451-518(2022) at 462.

44 World Bank, 'Menstrual Health and Hygiene', May 12, 2022, available at https://www.worldbank.org/en/topic/water/brief/menstrual-health-and-hygiene (last visited on 11 November 2024)

It is truly marked by Karin (2022) that "*Workplaces are not universally designed to support monaural needs."*[45] A recent research (2024) at Heriot-Watt University in Edinburgh reveals that *'woman, trans and non-binary people managing their periods at work are still being stigmatized, silenced and ignored'*.[46] Rahmi Rai mentioned that *'around 80% of menstruating women experiencing menstrual pain or other symptoms which affect their productivity at work place'.*[47]The pain during menstruation is difficult to bear at work and it directly affects performance, productivity and attendance of the menstruates.[48] In India, there is growing awareness on the use of water and sanitation, still there is lack of MHM in both formal and informal sectors[49].

In contrast to these circumstances, a universal truth that every person who menstruate has a right to dignified menstruation at work.[50] It can be accessed when both needs of menstruation and conducive environment at work will be provided by the employers. It includes menstrual accommodations, such as washrooms, restrooms, equipped with WASH facilities, access of menstrual products, access to paid time away and also non-discriminatory and friendly environment at work. Employers have to develop period policies for providing such facilities to the women and others who menstruate. One of such policy is Menstrual Leave/Period Leave Policy.

Menstrual Leave / Period Leave Policy

Time off from work for those who are menstruating and in pain is known as menstrual leave/period leave. In India, Bihar was the first State, to provide two days' menstrual

45 Marcy L. Karin, 'Addressing period at work', Harvard Law and Policy Review vol. 16, 451-518 (2022) at 452

46 Heriot Watt University, Periods are still seen as a problem in workplaces, Heriot- watt researches find, June 12, 2024, available at https://www.hw.ac.uk/news/2024/periods-are-still-seen-as-a-problem-in-workplaces-heriot-watt-researchers-find (last visited on August 21 2024)

47 Rashmi Rai, 'How does women's menstrual health affects productivity? Care Health Insurance, March 7, 2024. available at https://www.careinsurance.com/blog/health-insurance-articles/managing-menstrual-health-at-workplace, (last visited on August 21, 2024)

48 Schoep ME, et al. 'Productivity loss due to menstruation related symptoms: a nationwide cross-sectional survey among 32 748 women' BMJ Open 2019;9: e026186. doi:10.1136/bmjopen-2018-026186

49 Barkha Mathur, 'Lack of Menstrual Hygiene at work drives income loss, absenteeism', Business Standards, May 28 2023. available at https://www.business-standard.com/india-news/lack-of-menstrual-hygiene-at-work-drives-income-loss-absenteeism-123052800782_1.html, (Last visited on August 21, 2024)

50 Marcy L. Karin, 'The Right to Dignified Menstruation at Work?' American Bar Association, October 31, 2023,available at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/labor-and-employment-rights/right-to-dignified-menstruation-at-work/, (last visited on August 21, 2024)

leave to women employees up to the age of forty-five every month since 1992.[51] In 2017 Menstrual Benefit Bill 2017, was presented by the private member (Niong Ring) in the Lok Sabha proposing four days' menstrual leave for women working in the establishment established by appropriate Government.[52] In 2018, Dr Shashi Tharoor has presented Women's Sexual Reproductive and Menstrual Right Bill 2018. None of these bills were passed by the Parliament. In 2022, again The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill 2022 was presented in Lok Sabha. Under this bill three days menstrual leave for the working women and female students were proposed. In 2023, Supreme Court has disposed the PIL, Shailendra Mani Tripathi v. Union of India [53] filed for providing period leave under Maternity Benefit Act 1961. It was suggested by the apex Court that such representation has to be given to Ministry of Women and Child Development. The apex Court expressly mentioned that mandatory menstrual leave will lead women from "being shunned from the workforce". The Apex Court held it as Government policy issue and directed the Government to make policy related to menstrual leave.[54] In December 2023, Union Minister of Women and Child Development, Smriti Irani while answering to question in Lok Sabha, said "menstruation cycle is not a handicap, it's a natural part of women's life journey…We should not propose issues where women are denied equal opportunities just because somebody who does not menstruate has a particular viewpoint towards menstruation,"[55] She also responded that there is "no proposal under consideration by the Government to make provisions mandatory paid menstrual leave in all work places".

Recently, July 2024, Kerala Government announced to give period leave to all female students in the Universities of Kerala.[56] State of Orissa also announced one day period

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51 https://www.bbc.com/hindi/india-54276909, last visited on 5/11/2024. See *Vitt Vibhag* letter no. 3/F-2-01/92/1917 dated 4/4/1992.

52 Parliament of India, Lok Sabha, Digital Library, "Introduction of the Menstruation Benefit Bill 2017" available at https://eparlib.nic.in/handle/123456789/1465061 (last visited on November 11, 2024

53 WP (C) No. 172 of 2023, order dated Feb 21, 2023 (SC)

54 K. Murli Kumar, 'SC asks center to frame model policy on menstrual leave for women' *The Hindu*, July 8, 2024

55 Smriti Irani opposes menstruation leave policy, says it's 'not a handicap' December 14, 2023 *Business Standard*, available at https://www.business-standard.com/india-news/smriti-irani-opposes-menstruation-leave-policy-says-it-s-not-a-handicap-123121400389_1.html (last visited on 8/11/2024)

56 Legalise three-day paid menstrual: Kerala MP Hibi Eden, Feb 3, 2023, available at https://www.thehindu.com/news/national/legalise-three-day-paid-menstrual-leave-kerala-mp-hibi-eden/article66467052.ece, (last visited on November 5, 2024)

leave for women workers.[57] Karnataka Government is also making their mind to provide six days' paid period leave yearly.[58] In the meantime various higher education institutions, and private organizations have decided to provide paid menstrual leave , such as Panjab University[59], NLIU Bhopal[60], Cochin University[61] and Guwahati University[62] MNLU, Aurangabad[63] and Private Companies like, Zomato[64], Swiggy[65], Culture Machine[66], Byju's[67] etc.

Though a debate is on the policy of menstrual leave. One view is that such leave would be great contribution to women reproductive health and other is it would be barrier to women's opportunity of work. Even Supreme Court opined that it may prove to be 'counterproductive and detrimental' to their opportunity to get work. Menstruation is

57 Period Leave: Odisha announces one-day menstrual leave policy for women workers', August 15 2024, *Business Today*, available at https://www.businesstoday.in/india/story/period-leaves-odisha-announces-one-day-menstrual-leave-policy-for-women-workers-441653-2024-08-15 (last visited on August 15, 2024)

58 Karnataka considers six days a year paid period leaves plan for public and private employes' September 21, 2024, *Economic Times*, available at https://m.economictimes.com/jobs/hr-policies-trends/karnataka-considers-six-days-a-year-paid-period-leave-plan-for-public-and-private-employees/articleshow/113545000.cms, (last visited on November 5, 2024).

59 Ranbeer Singh, 'Panjab University VC Okays Menstrual leave for students' *The Hindustan Times,* April 11, 2024

60 Ramendra Singh, 'NLIU rolls out menstrual leave policy for students', *The Times of India*, February 26,2024

61 Shibimol KG, 'In a First female students at this Kerala University can avail menstrual leave', *India Today,* Jan 14, 2023

62 Notification no. 72, dated November 9, 2024, available at https://gauhati.ac.in/media/notification/1699591110.pdf (last visited on April 12, 2025)

63 MNLU-A menstrual leave Policy, available at https://backend.mnlua.ac.in/sites/default/files/2024-06/MNLU-A%20Menstrual%20Leave%20Policy.pdf (last visited on April 12, 2025)

64 Zomato introduces period leave for employees, ETHR World, August 10, 2020. 25https://hr.economictimes.indiatimes.com/news/workplace-4-0/diversity-and-inclusion/zomato-introduces-period-leave-for-employees/77454321

65 Swiggy offers no-questions asked, two-day monthly paid period leave to female delivery partners, October 21, 202, available at https://www.businesstoday.in/latest/corporate/story/swiggy-offers-no-questions-asked-two-day-monthly-paid-period-leave-to-female-delivery-partners-309979-2021-10-21 (last visited on April 12, 2025

66 Tess Sohngen, 'Indian Company Culture Machine is offering paid menstrual leave' Global Citizen, July 17, 2017, available at https://www.globalcitizen.org/en/content/india-company-offers-paid-menstruation-leave/ (last visited on April 12, 2025)

67 Biju's introduce period leave for staff and trainees, *The New Indian Express*, Nov 17, 2021, available at https://www.newindianexpress.com/business/2021/Nov/16/byjus-introduces-period-leaves-for-staff-trainees--2384402.html (last visited on April 12, 2025)

natural and regular process. It has to be managed well anywhere and everywhere at home or at work place. Mandatory menstrual leave is not solution to the menstrual problems, neither it is guarantee of menstrual health care.

Effect of Period Leave Policy

A safe and healthy working environment is fundamental principle to the right to work. Right to work and good conditions are fundamental right of a woman under Article 21 of the Constitution of India.[68] Good working conditions includes Menstrual Hygiene Management at work places. In present scenario paid period leave policy is also in demand. Proponents of the period leave policy favors that it would be good for the overall wellbeing of women health and contribute towards the production and performance of the women workforce. But since it's demand, period leave is a controversial issue. It's not only employers who think it as unnecessary expenses but even women employees were in favor of better working conditions rather than menstrual leave[69]. Russia being first country to implement period leave has taken it back within five years because women workers found it discriminatory[70]. Some of the concerns related to menstrual leave are as follows;

Firstly, it directly relates to opportunity of employment of the women. The perception arises from the notion that due to regular absenteeism of women employees at work, employers may hesitate to hire them. Their absenteeism will drastically affect work and working hours. For example, if a menstrual women worked eight hours daily in a six days week. She would work forty-eight hours in a week, two forty hours in a month and two thousand eight hundred eighty hours in a year. With two days' compulsory leave every month there would be one hundred eighty-eight hours in a year. Each employer has to compromise about two hundred hours of work every year for each menstruating woman and about up to twenty/twenty-five years (during her menstrual cycle). That would be huge criteria to opt only male instead female for employment. Similar statistics would apply to the other menstruators obviously.

Secondly, for ensuring gender equality period policy may create inequality between men and women and others *menstruators.* In general, except maternity and child care policies women employees worked on same terms and conditions with male in accordance to their age, ability, education, experience, quality and creativity. Such regular paid leave would tilt the work load towards the men. In such circumstances credibility of women as good,

68 Olga Tellis and Others v. Bombay Municipal Corporations and Others AIR 1986 SC 18

69 Sally King, 'Menstrual Leave: Good Intention, Poor Solution', in J. Hassard, L. D. Torres (eds.), Aligning Perspectives in Gender Mainstreaming, Aligning Perspectives on Health, Safety and Well-Being, (pp 151-176) Springer International Publisher (2021)

70 Ilic, M. 'Soviet women workers and menstruation: Research notes on labour protection in the 1920s and 1930s'. Europe-Asia Studies, 46(8), 1409–1415(1994)

hardworking, efficient and equal employee will be on stake. Some of the studies showed that menstrual leave is an extra leave to women and it is not just for men.[71]

Thirdly, gender biases regarding menstruation is the biggest hurdle. Merely being vocal about periods is not enough. There is deep-rooted socio-cultural stigma/taboo in every society related to periods. That may cause intentional discrimination or disturbance into the personal life of the women. Their personal health issues will become public and may be cause of different treatment of their male colleagues, subordinates or supervisors. It may be of abusing, teasing, harsh, hate or even heinous towards women.

Fourthly, a woman with heavy menstrual flow and pain is asking leave from work, to stay at home. It doesn't affect her menstrual discomfort neither the pain nor her health. But suitable menstrual management treatment and environment at workplaces would work for both her physical and economic status.

Fifthly, as Sally. K. (2021) mentions that population studies has not accurately interpreted menstrual experiences. These studies mostly based on memories of menstrual experience when it was in extreme and failed to differentiate between 'occurrence' and 'prevalence'. It is explained as that severe pain in menstruation is reported at some point of time in reproductive age (occurrence) while very few reported severe pains regularly during whole reproductive age 'prevalence'[72]. Similarly other severe issues of menstruation that need medication or treatment are rare (10% heavy blood flow[73] and 15% migraine etc.)[74]. Therefore, paid menstrual leave for all other 90% working women is not justified.

An Empirical Perspective on Women's Perception on Menstrual Leave

Menstrual leave would be beneficial for the menstrual health of the menstruating women and other *menstruators*. Globally, few countries have provided such leave and some of the private companies also adopted such policies of providing one day or two days' leave in accordance to their internal policies. Some countries are planning to include such leave in the policy but some has abruptly rejected. Researcher in this study has attempted to

71 Barnack-Tavlaris, J. L., Hansen, K., Levitt, R. B., & Reno, M. 'Taking leave to bleed: Perceptions and attitudes toward menstrual leave policy'. Health Care for Women International, 1–19 (2019) at pg. 10

72 Sally K. 'Menstrual Leave: Good Intention Poor Solution', Springer Nature Switzerland AG 2021 J. Hassard, L. D. Torres (eds.), Aligning Perspectives in Gender Mainstreaming, Aligning Perspectives on Health, Safety and Well-Being, https://doi.org/10.1007/978-3-030-53269-7_9

73 Scrambler, A., & Scrambler, G. (1985). Menstrual symptoms, attitudes and consulting behaviour. Social Science and Medicine, 20(10), 1065–1068.

74 Stovner, L. J., Hagen, K., Jensen, R., Katsarava, Z., Lipton, R., Scher, A., et al. (2007). The global burden of headache: A documentation of headache prevalence and disability worldwide. Cephalalgia, 27(3), 193–210.

know women's perception about menstrual leave. This is an online survey. A questionnaire of twenty 28 questions is used for the Data Collection. It is sent to the respondents via creating link through e-mails and WhatsApp's randomly. Ninety-six women responded in the study. Most of them are educated (Ph.D. to Graduate), and 77.1% are working and 20% are students. It shows that all these respondents are aware about the essentials of menstrual needs out of domestic spheres.

Sr. No.	Query	Response (Yes)	Response (No)
1.	Are You comfortable to talk about Periods?	100%	0
2.	Do you agree that Period Days are difficult for every woman?	81.3%	11.5%
3.	Do you consider Periods are illness?	12.5%	83.3%
4.	Does period affect women regular work always?	64.6%	29.2%
5.	Do you skip your routine work in periods?	56.3%	28.1%
6.	Do you go out in periods?	86.5%	7.5%
7.	Did you ever skip your school in Periods?	46.9%	41.7%
8.	Is menstrual hygiene essential for women health?	100%	0
9.	Is menstrual hygiene maintenance essential for gender equality?	87.5%	11.5%
10.	Is menstrual hygiene maintenance essential at work places?	97.5%	0
11.	Are work places well equipped for menstrual hygiene?	19.8%	72.9%
12	Are public places well equipped for menstrual hygiene?	8.3%	89.6%
13.	Do you think that there should be period leave for working women	78.1%	14.6%
14	Would it be normal for a woman to ask for period leave?	75%	11.5%
15	Would it be embarrassment for a woman to join after such leave?	10.4%	79.2%
16	Would period leave help to reduce menstrual shame/ stigma?	61.5%	22.9%
17.	Do you prefer to take such leave	75%	18.5%
18.	Would period leave increase gender equality at the workplace and beyond?	40.6%	33.1%
19.	Will such leave affect the woman opportunity of employment?	45.8%	41.8%
20.	Does period leave make women more expensive and less consistent and productive employee?	17.7%	70.8%
21.	Would period leave ensure good menstrual health care for women	78.1%	11.5%
22.	What you will prefer leave or hygiene?	22.9 (Leave)	72.9% (Hygiene)

3. Analysis of Responses

Following perceptions are drawn through above responses of the study.

1. Responses to question no. 2 and 3 approves that Period days are difficult but is not taken as illness and with proper care it can be managed well. 83.1 % respondents agreed that period days are difficult (question 2), while 83.3% respondents don't take period as illness (question no.3).

2. Responses to question no. 4 and 5 approves that Period affects their regular work always and they prefer to skip their routine works. 64.6% respondents agreed that periods affect regular work always and 56.3% said that routine work skipped in period days.

3. Responses to question no 6 and 7 approves that women go out in periods but due to poor menstrual management facilities most of the girls /women have to skip school and workplaces during period days. 88.5 % respondents said they go out in period days and 49.6% responds that they skipped school in period days.

4. Response to question no. 1 approves that social taboos related to periods are decreasing as women/girls are open to talk about periods. All the respondents, (100%) said that they are comfortable to talk about periods.

5. Responses to question no. 11 and 12 approves that Work Places and Public Places are not well equipped with menstrual hygiene. 79.2% respondents said that work places are not well equipped with menstrual hygiene and 89.6% respondents are agreed with poor menstrual hygiene at public places.

6. Responses to question no. 13, 14 and 15 approves that working women want period leave and it would be normal for them to ask for. 78.1% respondents said they want period leave. 75% said it would be normal for them to ask for period leave and 79.2% respond that there would be no embarrassment to join after such leave.

7. Responses to question no. 16 and 18 approves that period leave will reduce stigma and is good for menstrual health. 61.5% respondents agreed that period leave would help to reduce menstrual shame/stigma. 40.6% responds that period leave increase gender equality at the workplace.

8. Responses to question no. 17 and 21 approves that period leave is a positive initiative to ensure good menstrual health care and women would prefer to period leave. 75% respondents said to prefer period leave and 78.1% responds that period leave would ensure good menstrual health.

9. Responses to question no. 19 approves about the apprehensions that period leave will affect negatively on the employment opportunities of the women. Response to question 20 in contrast signifies that it does not denotes women workforce as less productive and more expensive worker. About half of the respondents i.e. 45.8% said that period leave affects the opportunity of employment of the women. 70.8%

responses denies that period leave would affect credibility of women workforce as good worker.

10. Response to question no. 18 approves that period leave would increase gender equality at the workplace and beyond. 40.6% respondents respond positively.

11. Response to question no. 22 approves that women prefer hygiene rather leave.72.9% respondents prefer hygiene rather than leave.

4. Measures for Addressing Periods at Work

It is obvious that better menstrual hygiene facilities at work places will definitely increase women work force. Wellbeing of women employees, their menstrual health and hygiene are fundamental requisites for their best contribution towards their work. Right to work must include right to safe and healthy working conditions[75]. To normalize menstruation at work places menstrual friendly environment is required. It is suggested that employers have to establish such facilities which lead menstruation normal at work place. For example, *"Management can do a number of things to help menstruating employees manage their pain, such as: provide trained health support staff on site, like a nurse; ensure that employees have access to painkillers and other pain relief options at work; dedicate a space within the workplace where menstruating employees can rest or seek pain management help; allow for washroom breaks when needed; and promote open communication around managing menstrual pain at work".* [76]

For creating such environment menstrual needs has to be identified. There are four basic needs of menstruation at work places, accommodations, menstrual products, flexible work culture and non-discriminatory environment.

1. Accommodation includes menstrual friendly bathrooms, restrooms where hygiene, safety, security and privacy have to be maintained.

2. Menstrual products include sanitary pads, tampons, water, soap, disposal products, pain relievers etc.

3. Flexible work culture includes, work schedule wise or shift wise, telework, work from home, half break etc.

4. Fair working hours is very much required. No extra work neither burdened labour will definitely lead normal working and normal menstruation.

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75 Article 42 of the Constitution provides 'just and humane condition of work' and Article 43 'conditions of work ensuring decent standard of life'.

76 Supporting Menstrual Health and Hygiene to improve Women and Girls' Well being, Endanger Health, May 26, 2023, available at https://www.engenderhealth.org/article/supporting-menstrual-health-and-hygiene-to-improve-women-and-girls-wellbeing (last visited on April 14, 2025)

5. Availability of medical facilities at work places for assistance for the employees who are menstruating.
6. Non-discriminatory environment means supportive and conducive environment for work should be created, where social biases such as shame, taunts, harassment etc must prohibited. There must be open environment to discuss the need and comfort related to menstruation.
7. Education and trained the supervisors and managers for develop support system for the employees who menstruates. Such MHM friendly environment will help distraction, discomfort and anxiety issues of the mensurates.
8. MHM friendly environment includes trust on menstruates and to listen their experiences because it may vary person to person and obviously requires different treatment and care.

5. Conclusion

It is expected that menstrual leave must ensure good menstrual health, gender equality and healthy working environment for women at workplaces. All these three components not at all satisfied by granting menstrual leave only. Good Menstrual health cannot be ensured only from providing leave from work. It includes hygiene management, care, rest, sensitivity and conducive environment at workplaces. Menstrual leave is not at all guarantee of good menstrual health. Gender equality cannot be ensured by taking women off from work or send them back to home. To ensure gender equality reducing stigma and taboo regarding female anatomy and physiology is necessary. Gender sensitive approach will help them to be comfortable everywhere either on workplace or public places. In fact, to ensure gender equality 'gender-based policies' should be avoided. Further, by ensuring menstrual hygiene and menstrual management schemes at work places, healthy working environment can be created. In such environment overall well-being of women including safety, security and health can be ensured. Such environment will help for good physical and emotional health, which is essential component of overall wellbeing of the women. In such circumstances, it would be possible to promote more and more women to work and contribute not only to their own social wellbeing but also able to contribute for the economic wellbeing of their family and of course for the country.

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Demystifying the Responsibility of Online Alternative Dispute Resolution Providers: An Analysis of the Framework in Europe & United Kingdom

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Abstract

Online Dispute Resolution employs electronic communications and information technology to resolve conflicts. Integrating the technology with the established ADR mechanisms, like negotiation, mediation, arbitration, or a combination of these methods, enables the disputants to reach resolutions. It encompasses a variety of processes benefiting from technological advancements, including artificial intelligence tools. The OADR ecosystem comprises the OADR providers, the online platforms, neutrals, the disputants, and other stakeholders. Integrating artificial intelligence tools with online dispute resolution mechanisms has raised an essential issue: determining the role and responsibility of OADR providers towards their users. In this paper, an endeavor has been made to address this concern by examining the existing regulatory framework in Europe and the United Kingdom. Based on this analysis, certain common principles that providers must consider to safeguard and strengthen the interests of OADR platform users have been outlined.

Keywords: OADR, OADR Providers, Artificial Intelligence, Users,Responsibility

1. INTRODUCTION

The concept of OADR has not been well defined; its ambit can be understood by amalgamating the concepts of alternative and online dispute resolution. An OADR system includes an online platform that, other than allowing the disputants to electronically file a dispute, enables them to determine their issues without needing physical presence during the proceedings. It plays a significant role as it increases the disputant's empowerment and access to redress in an evolving digital economy.

It endeavors to increase access to justice and ensure the effective and timely resolution of conflicts. It aims to support the parties in articulately employing ODR services and refining the continuous transfer of information and disputes. It forms part of a continuum of ways to address legal and justice conflicts. While resolving the disputes through OADR, the parties may adopt a collaborative approach, i.e., cooperation and mutual problem-solving, or an adversarial approach, i.e., each party seeks to win at the expense of the other. Regardless of the approach adopted, the parties retain control over the outcome and the process. They may also switch between such processes depending on the nature of the disputes.

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Alternative Dispute resolution denotes methods, namely arbitration, conciliation, mediation, court-annexed mediation, med-arb, and other hybrid forms that enable people to resolve their disputes without taking recourse to the traditional judicial system. The definitions of ODR vary according to sectors, jurisdictions, and the goals and purview of the drafters.[1] It is a method for determining disputes by way of electronic communication, and other ICT tools.[2]

As regards, the various types of processes covered, a comprehensive understanding of ODR includes all dispute resolution mechanisms, including negotiation, mediation, conciliation, arbitration, judicial proceedings, etc. A narrower approach to ODR links it only to the traditional ADR processes and does not cover court proceedings. However, over time, with the advancement of technology, especially after COVID-19, the scope of ODR has been enlarged.

Integration of AI & ODR

Now, it extends to the use of artificial intelligence in the resolution of disputes, automated decision-making, and its incorporation by the judiciary in regular judicial proceedings, etc. It can be understood as a subsection of ADR that employs technology-enabled communications in an online platform. It is characteristically understood to cover technology-supported processes where the disputants use digital communication and information tools to determine the issues. Increasingly, algorithms and artificial intelligence are also employed in ODR systems.[3]

AI for access to justice has been defined as a combination of scientifically established methods and techniques aimed to produce, either through machineries, or the cognitive abilities of human beings' decisions, and solve complex problems.[4]The system functions by observing the environment through the collection of the required data, and its interpretation, concluding available knowledge, and processing information obtained. Based on the data so collected and interpreted decisions are made concerning the required action to be taken to achieve the desired outcome.[5]

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1 Wing L, "Mapping the Parameters of Online Dispute Resolution" 9 International Journal on Online Dispute Resolution 3

2 UNCITRAL, "Technical Notes on Online Dispute Resolution" para. 24 (2017).

3 ASEAN Guidelines on Online Dispute Resolution (ODR) (ASEAN Secretariat 2022) <https://asean.org/wp-content/uploads/2022/04/ASEAN-ODR-Guidelines-FINAL.pdf>(Last visited on March 12th, 2025)

4 European Commission for the Efficiency of Justice, "CEPEJ Glossary" (CEPEJ 2020) <https://rm.coe.int/cepej-2019-5final-glossaire-en-version-10-decembre-as/1680993c4c> (Last dated accessed December 26, 2024.

5 European Commission for the Efficiency of Justice, "Guidelines on Online Alternative Dispute Resolution" (CEPEJ 2023)<https://rm.coe.int/cepej-2023-19final-en-guidelines-online-alternative-dispute-resolution/1680adce33>(Last visited onMarch 10, 2024).

In light of dispute resolution, the two kinds of AI are assistive technologies and automated technologies. The former supports, informs, or makes recommendations to the neutrals, and the latter partially or fully automates the tasks and in a few cases, evenreplaces neutrals, and might decide cases according to the nature of the technology used.

Assistive technologies are utilized to reduce the pendency of the cases, and other time-consuming administrative and procedural tasks like filling the matters and providing neutrals with informational resources that support informed, accurate, and efficient decision-making. They neither determine the outcomes of the cases nor alter them, but can help in conducting the predictive analysis of the already decided matters.[15]Whereas, automated technologies enable or conduct legal research, documentation and examination, case negotiation, settlement, decision, drafting, and in few cases decision-making. [6]

OADR providers

There is no universal definition of OADR. The UNCITRAL technical notes on ODR use the term ODR administrator and define it as an entity by which an ODR platform should be administered and coordinated.[7]The OADR providers generally establish three types of platforms for resolving disputes. The first category is developed specifically to provide ODR services. The second category is established by the e-commerce or other service companiesas part of their'one-stop' services to the customers. Thirdly, the platforms are governed by the arbitral institutions, courts, or governments that have set up their own ODR platforms to facilitate, either in whole or in part, arbitrations administered by them.[8]

2. Regulatory Framework in Europe

This part aims to discuss the role and responsibility of OADR providers in safeguarding the rights of users of OADR mechanisms, considering the regulatory framework in Europe.

European Convention on Human Rights, 1950

The rights for fair trial and effective remedy are envisaged in article six, and thirteen of the Convention for the Protection of Human Rights and Fundamental Freedoms. It grants every individual the right to a fair and public trial within a reasonable timeframe by an independent body and impartial authority established by law. [9]In cases where rights and freedoms are infringed upon, every individual shall have access to an effective remedy through a national authority.[10]

6 Ryan Abbott and Brinson S Elliott, 'How-AI-Rules-Will-Become-ADR-Rules' (*Orange County Bar Association*, April 2024) *available at*<www.ocbar.org/All-News/News-View/ArticleId/6617/April-2024-Cover-Story-How-AI-Rules-Will-Become-ADR-Rules> (last visited on March 8th,2025.)

7 UNCITRAL, "Technical Notes on Online Dispute Resolution" para. 27 (2017).

8 UNCITRAL, "iGLIP Report on ODR" 2 (New York, 24 June -12 July 2024).

9 European Convention on Human Rights, 1950art.6.

10 *Id.*art.13

The availability of individuals to engage in various OADR processes for resolving their disputes guarantees their entitlement to an effective remedy and a timely resolution of conflicts, and OADR providers are under an obligation to ensure that users' rights are protected and are informed about their rights of access to judicial proceedings.

"Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment, 2018"

It focuses on regulating the conduct of private and public participants responsible for designing and using artificial intelligence analysing in judicial decisions and the concerned data. It acknowledges the benefits of the use of AI tools in increasing the efficiency of judicial proceedings but mandates the responsible use of these tools. Further, it directs that due regard must be made to the fundamental rights of the individuals outlined in various European instruments and also to the fundamental principles stated in this charter. [11]

The providers, while developing the platforms and framing the procedures and standards for governing the OADR processes inclusive of artificial intelligence tools, should take due consideration of the following principles:[12]

'Principle of Respect for Fundamental Rights'

The design and implementation of the tools, including AI mechanisms, should align with fundamental rights.

'Principle of non-discrimination'

The providers should ensure no discrimination between individuals or groups while framing procedural rules, policies, and developing platforms.

'Principle of quality and security'

Providers must use certified sources for processing judicial decisions and data, and ensure the security of transactions.

'Principles of Transparency, impartiality, and fairness'

The methods used for processing the data must be transparent, impartial, and fair, and they must be subject to an external audit.

'Principle of 'under user control'

The users must be informed about the technicalities, procedures, alternatives, remedies, etc, and also should have control in making choices.

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11 European Commission for the Efficiency of Justice CEPEJ, "'European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment'" 5(2018)

12 European Commission for the Efficiency of Justice CEPEJ, "'European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment" 7 (2018).

"Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings"

In 2021, committee had adopted the rules on the operation of ODR processes in civil and administrative court proceedings.[13] The purpose was to establish a common framework to provide practical tools for assisting the member states in designing and implementing online dispute resolution mechanisms in the judicial proceedings in their respective jurisdictions

The principles outlined in the guidelines aim to foster trust and confidence in ODR, ensuring it does not impose significant obstacles to accessing justice. It further states that the procedural regulations that govern court proceedings generally shall also apply to cases that are being resolved through ODR unless the specific nature of the mechanism necessitates a different approach.[14]

These guidelines, while specifically designed for the courts, can also act as a source of direction for other OADR providers. For the protection of the interests of the users, the providers should, while utilizing the OADR mechanisms for dispensing justice, comply with the guidelines discussed below.

Fair Procedure

To secure access to justice for the users, the providers must develop the platforms to be user-friendly, cost-effective and with understandable rules. The users must be informed about how the platform operates, the process of filling out the required documents, monitoring the progress of their dispute and retrieving the decisions. The parties must also be informed about the usage of the AI mechanism and its implications.[15]

The providers should ensure that an independent and impartial adjudicative process is adopted for the resolution of the disputes between the parties. It will help in complying with one the most important principles of securing justice, i.e., the principle of equality of arms. [16]

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13 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 5,6 (2021)

14 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 7(2021).

15 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 7 para 1-6 (2021).

16 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 8 para 7-9 (2021).

The users should be permitted to present their evidence fairly, given an opportunity to contest the pieces of evidence produced by the other parties. The principles of legal certainty and the legitimate expectations of the parties should be respected by the providers. [17]

The providers should ensure the efficacy of the proceedings by allowing the parties to appear virtually. Also, they are required to make arrangements for dealing with technical difficulties that might arise in the course of proceedings. [18]

Transparency

The providers should formulate the design and operation of the OADR processes in an intelligible, transparent, clear, and unambiguous manner. Further, the parties should be conferred the right to request an oral hearing. [19] The parties must be informed about the procedural rules governing the dispute resolution processes. They must be duly notified about the potential conflicts, if any, the decisions, including the final decisions, notifications, etc. [20]

Issues related to ICT

The providers must maintain an appropriate level of cyber-security while dispensing justice through OADR mechanisms. They should provide safeguards for protecting the data of the parties, neutrals and other stakeholders. All the technical and organizational measures should be taken per the personal data rules.[21]

CEPEJ Guidelines on the Resolution of Online Alternative Dispute.

The European Commission for the Efficiency of Justice (hereinafter mentioned as CEPEJ) in 2023,adopted the guidelines to states with practical tools to assist them in operating online ADR in compliance with the principles outlined in other CEPEJ instruments.

17 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 8 para 10-12 (2021).

18 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 8 para 13-15 (2021).

19 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 9,10paras.21-23 (2021).

20 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 9,10 paras. 24-27(2021).

21 European Committee on Legal Co-Operation (CDCJ), "Guidelines of the Committee of Ministers of the Council of Europe on Online Dispute Resolution Mechanisms in Civil and Administrative Court Proceedings" 10 paras. 28-29 (2021).

These guidelines give a detailed account of the roles and responsibilities of the providers concerning the protection of the user's rights. These apply only to non-adjudicatory ADR processes like negotiation, mediation, and conciliation and do not apply to arbitration.

Use of Online ADR process should be 'Voluntary'

It has been emphasized that online ADR processes are advantageous for the parties as they provide them with an opportunity to resolve their disputes online and are comparatively less cumbersome. However, the parties should not be deprived of their right to have access to the traditional judicial system. The decision to use online ADR processes should be voluntary for the parties, consistent with existing laws. The right to access different adversarial proceedings and to an effective judicial remedy is fundamental, as safeguarded by Article 6 of the ECHR. and cannot be taken away by the online ADR mechanisms unless the law provides otherwise.[22]

The three main principles on which guidelines are based are as follows:

Availability

Online ADR providers should ensure that the platforms provide an easy, efficient, effective, and reliable means to resolve disputes. They are advised to comply with the minimum requirements for safeguarding access to justice and fairness while designing and using the online ADR processes determined by the member states.

The standards for the certification of the OADR providers should also be specified, and it shall also ensure its compliance. The standards might include factors like impartiality, independence, clarity in procedure, expertise in resolving disputes of a specific nature, etc. [23]

The procedure must be explained in easily understandable language, and the parties must be sufficiently informed about it. The parties involved should be informed about the role that the AI-based mechanism plays in the process, particularly regarding its involvement in resolving the case. This disclosure obligation follows the regulations, recommendations, ethical codes, and guidelines that set standards for the design, deployment, and use of artificial intelligence. Additionally, the costs associated with the processes must be disclosed in advance.[24]

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22 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 5 (2023)

23 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 9 (2023)

24 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 9(2023).

The providers should implement practical procedures that comply with the recent and updated standards of security, justice, and proficiency. The providers should ensure that they do not infringe the data protection rights, right to information, to access data, etc. The personal data of the parties and third parties should be safeguarded from the initial stages of the platform's development until the conclusion of the proceedings. [25]

The OADR processes must comply with the 'security by design' and 'security by default' principles. The providers must take technical and organizational measures to build resilience against cyber-attacks. The provider should have sufficient information about the technologies adopted in dispute resolution. It should identify the available technologies, assess the potential risks and benefits according to the nature of the disputes, and acquire the necessary skills for training the parties, neutrals, etc., about its use. The technology must be inclusive and cater to the needs of the disputants of the vulnerable groups. [26]

Accessibility

Digital accessibility is a crucial factor. The web page, mobile application platforms, and other technologies that connect the disputants with the dispute resolution mechanisms must be user-*friendly, understandable, and engaging*. The needs and preferences of the parties should be taken into account; for example, special provisions should be made for visually impaired parties, in cases where different languages are used, a provision should be made for translation of documents, etc. in their local/ regional languages. The technical design must adhere to internationally recognized accessibility standards. [27]

The providers should ensure the effective participation of the parties by providing them with continuous guidance about the steps required to be followed throughout the session. The continuous monitoring of the voice quality and image, restrictions on the dissemination of information during the online session by the parties or neutrals, etc., should be ensured by the service providers. There should be a provision for uploading and retrieving the necessary documents. By the parties depending on the nature of the disputes.[28]

Awareness

Informing the individuals and legal entities about the existence of online ADR processes. Conducting training workshops and other similar activities. Inculcating digital skills for the

25 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 10,11(2023).

26 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 12-14 (2023).

27 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 14,15 (2023).

28 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 15,16 (2023).

citizens and especially vulnerable groups like women, children, etc. The lawyers should also be trained in the skills of conducting online processes like video conferencing and audio conferencing. They should also be trained to secure the security concerns of their clients and themselves. The legal education curriculum should include the best practices to keep pace with technological advancements. [29]

"Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law,2024"

The convention aims to create a universally pertinent legal framework that establishes unified values and rules regulating the entire development of artificial intelligence systems. It seeks to preserve shared values and leverage the benefits of AI to promote these values while encouraging responsible innovation.[30]

Chapter three of the Convention outlines the general obligations that providers must adhere to.

First is the *obligation to protect human rights.* Providers utilizing AI tools or systems in their dispute resolution platforms must strive to protect the human rights of the users according to the international and domestic legal regimes. [31]

Second is the *Obligation to maintain the integrity of democratic processes and the rule of law.* Providers should ensure that they do not use AI tools to weaken the integrity, independence, and effectiveness of democratic institutions. They must also respect the rule of law by giving individuals fair access and a chance to participate in the public debate. [32]

Chapter four of the Convention sets forth the general common principles to be adopted by the providers whenever they use artificial intelligence systems. These are as follows:

Human Dignity & Individual Autonomy- The providers must adopt measures to respect human dignity and the individual autonomy of the users. [33]Service providers should take due account of any specific needs and vulnerabilities regarding respect for the rights of persons with disabilities and children.[34]

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29 European Commission for the Efficiency of Justice (CEPEJ), "Guidelines on Online Alternative Dispute Resolution" 17,18 (2023).

30 'Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law,2024', *preamble,*para 9.

31 'Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law,2024'.art.4.

32 *Id,* art.5.

33 *Id*.art.7.

34 *Id.* 18

Transparency and oversight- Measures should be implemented to ensure adequate transparency and oversight requirements that are tailored to the specific types of disputes and associated risks.[35]

Accountability and responsibility - The providers must guarantee answerability and obligation for any negative effects on human rights, democracy, and the rule of law that result from the use of artificial intelligence tools.[36]

Equality and non-discrimination- When deploying AI tools, providers must respect users' right to equality and prohibit discrimination on any grounds unless it is provided for by domestic and international laws.[37]

Privacy and personal data protection- The privacy rights of individuals and their data must be protected, and providers must implement effective safeguards. This must be done per the applicable domestic and international obligations.[38]

Reliability - Providers should take measures to enhance the reliability of AI tools and build trust in their outcomes.[39]

Safe innovation- The creation of regulated environments for the development, experimentation, and testing of AI tools under the oversight of qualified authorities.[40]

3. Regulatory Framework in the United Kingdom

The UK has been at the forefront concerning the development of the AI regime, followed by Europe and the USA. In 2023, the Department of Science and Technology of the government of the United Kingdom introduced a policy paper entitled 'A Pro-Innovation Approach to AI Regulation. It sets forth the essential attributes of responsible AI design, development, and usage. The goal was to give regulators, corporations, and other stakeholders a road map for implementing the framework by offering recommendations on best practices for adhering to these principles. The white paper focuses on a principle-based approach. The regulators are obligated to implement the five standards which have been developed after considering different sectors.[41]OADR providers incorporating artificial intelligence tools in their platforms must take account of the values discussed below.

35 *Id.* art.8

36 *Id*.art.9

37 *Id.*art.10

38 *'*Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*,2024'.* art.11

39 *Id.*art.12

40 *Id.*art.13

41 Department of Science, Information and Technology, United Kingdom, "A Pro-Innovation Approach to AI Regulation" 23 (2023) *available* at A pro-innovation approach to AI regulation - GOV.UK (last visited on March,10th, 2025)

Safety, security, and robustness

The providers must ensure that the systems or platforms function in a robust, protected, and harmless manner. The risks should be regularly acknowledged, assessed, and managed by them. The systems must be technically secured and function reliably. The safety and security of the disputants and their data must be the core consideration for the providers. They should also remain vigilant about the possible security threats that could arise at any stage of the dispute resolution proceedings and must devise solutions.[42]

Appropriate transparency and explainability

The AI systems being used by the providers must be transparent and explainable. Transparency means they should be able to communicate the appropriate information about the working of the AI system to the users, neutrals, etc. The parties must be informed about the purpose of the use of specific AI tools in the process of the resolution and avoidance of their disputes. Explainability means the relevant parties get access and can interpret and understand the decision-making processes of the system.[43]

Fairness

It is a notion entrenched across various spheres of law and regulation. It includes within its ambit the concepts of equality and protection of human rights, protection of vulnerable classes, data protection rights, etc. Online dispute resolution systems incorporating AI tools must not infringe the individual or group rights or discriminate amongst the disputants. In cases where the providers use AI-automated decisions, they should be non-arbitrary and justifiable.[44]

Accountability and governance

The providers should lay down clear lines of accountability for their employees, neutrals, themselves, the disputants, and other stakeholders. They should place the functioning of the platforms incorporating AI tools under the oversight or governance of an expert. They shall take the necessary actions to reflect, integrate, and obey the principles. Also, present actions required for an effective implementation of the principles at all stages.

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42 Department of Science, Information and Technology, United Kingdom, "A Pro-Innovation Approach to AI Regulation" 25 (2023) *available* at A pro-innovation approach to AI regulation - GOV.UK (last visited on March 10th , 2025)

43 Department of Science, Information and Technology, United Kingdom, "A Pro-Innovation Approach to AI Regulation" 27 (2023) *available* at A pro-innovation approach to AI regulation - GOV.UK (last visited on March 10th, 2025)

44 Department of Science, Information and Technology, United Kingdom, "A Pro-Innovation Approach to AI Regulation" 27 (2023) *available* at A pro-innovation approach to AI regulation - GOV.UK (last visited on March 10th, 2025)

Providers must ensure compliance with regulations and best practices for the benefit of all parties and stakeholders involved. They should implement necessary measures to guarantee the effective functioning, research, design, development, training, operation, deployment, or other use of AI systems in dispute resolution. Regulatory guidance should outline the responsibilities for demonstrating proper accountability and governance, including maintaining documentation of important decisions made during the AI system's life cycle, conducting impact evaluations, and allowing audits when required.[45]

Contestability and redress

Wherever required, users, neutrals, third parties, and other actors must be able to challenge the result of AI-based tools that are harmful or create a substantial risk of harm to them. They will be expected to provide clarification to the existing mechanism for contestability and redressal. Such clarifications or directions must be made easily available and accessible to affected parties to enable them to contest harmful AI outcomes or decisions whenever needed.[46]

Obligations under the UK Data Protection Act, 2018

The identified or identifiable living individual[47]"to whom the personal data belongs" is called a 'data subject'. [48]The data subjects have the following rights, and the providers will be under obligation to secure these rights of the disputants or users.

Right to access

The data subject is entitled to obtain information from the controller as to whether the personal data concerning him is being processed, access to the data, and the information outlined in subsection 2 of section 45. [49] Such information must be provided in writing without undue delay and within one month or the period extended by the regulations.[50] However, this right is not absolute and is subject to restrictions on the grounds of protection of public security, national security, freedoms of others, etc. The data subject is further

45 Department of Science, Information, and Technology, United Kingdom, "A Pro-Innovation Approach to AI Regulation" 28(2023) *available* at A Pro-Innovation Approach to AI regulation - GOV.UK (last visited on March 10th, 2025)

46 *Id.*at page 29.

47 The Data Protection Act, 2018, s.3(3). 'Identifiable living individual' means a living individual who can be identified, directly or indirectly, in particular by reference to— (a)an identifier such as a name, an identification number, location data, or an online identifier, or (b)one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

48 The Data Protection Act, 2018, s.3(5).

49 *Id.* s.45.

50 The Data Protection Act, 2018, s.45(3), s.54.

entitled to the information about the rights that have been restricted, the reasons for such restrictions, and his rights to take remedial actions. [51]

Right to rectification or erasure, etc.

In cases where the data is inaccurate or incomplete, the data subject may apply to the controller on the request of the data subject to rectify the same. [52] Whenever the processing of data infringes the general principles discussed above or the controller has a legal obligation to erase the data, he shall erase the data without undue delay. It recognizes the data subject's right to get the data erased and the controller's duty to erase the same even if an application has not been filed. [53]

The right not to be subject to automated decision-making

All data subjects have the right to request an end to automated decision-making, including profiling, which could have legal consequences for them. However, data subjects may not exercise this right if they have explicitly consented to automated decision-making, if the state allows the controller to conduct these activities, or if automated decision-making is necessary to fulfil a contractual obligation between the data subject and the controller.[54]

4. Conclusion

The resolution of disputes through Online Alternative Dispute Resolution (OADR) mechanisms has become increasingly common, especially in the aftermath of COVID-19. The integration of technology with dispute resolution and avoidance methods is growing rapidly, as it facilitates effective resolution, prevention, and avoidance of conflicts. Therefore, it is essential to clearly define the roles and responsibilities of OADR providers. In this paper, an effort has been made to analyze the key elements that the providers should keep in mind while incorporating AI tools for safeguarding the rights of users, neutrals, and other stakeholders.

In this context, the previously mentioned frameworks of Europe and the United Kingdom have been noted. The analysis shows that the fundamental principles that providers must consider for protecting and strengthening the rights of platform users remain largely the same. However, the European regime is comparatively more comprehensive than the UK.

In this part, the commonality between the principles has been summarised. The providers are required to maintain due respect for the fundamental rights protected by their respective national laws and international instruments. They should ensure equality and indiscrimination in all aspects, for example, access, usage, awareness, etc. The interests

51 *Id,* s.45(4), (5).

52 *Id,*s.46.

53 *Id,*s.47.

54 *Id*, s.49.

of vulnerable groups like children, physically disabled people, senior citizens, visually impaired people, digitally illiterate people, etc. must also be taken care of by the providers. The procedural rules must be clear, understandable, and accessible to users. Their implementation should be conducted with transparency, fairness, and impartiality. Another significant aspect is ensuring 'voluntariness', i.e. the providers must ensure that the parties opt for the OADR processes as a matter of choice and not compulsion. They must be given complete freedom to take recourse to other available remedies. The providers' prime concern should be the safety and security of user data. Further, they also look after the efficiency, reliability and effectiveness of the working of the platforms being used by the providers for justice dispensation.

Ultimately, it is essential to highlight the pressing need to define the scope of ODR service providers, including their range and limitations, while establishing unified principles that must be adhered to by them, mandated by UNCITRAL or an equivalent organization.

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Test-Drive Accidents in India: Contemporary trends in the intersection of Contractual and Tortious Liability post *Vaibhav Jain* (2024)

Dr. Prem Chand*

Abstract

The law related to compensation to the victims of road accidents has been recast in the Vaibhav Jain v. Hindustan Motors Private Limited case, where, just before the test-drive accident, the manufacturer sold the car involved in the accident to the car dealer. And, the car dealer requested the manufacturer's driver to drive the vehicle, which led to the accident, and the person sitting with the driver died, which poses the question, who has the liability to compensate? Is it the manufacturer because the driver belongs to him or the dealer, as he temporarily possessed the car? In this regard, this judgement can be considered to be a landmark judgement with long-term ramifications because it directly affects various substantive and procedural issues of delivering justice, such as the cross-appeal procedures that directly deal with procedural justice, cross-liability and also the drafting of the dealership agreements. The central research question of this research paper is first to examine as to whether the dealer or the manufacturers liable for the compensation in such cases. Secondly, the extent of redefining the dealership agreements and the cross-liability doctrines, especially in test-drive-related accidents and the analysis of the procedural limits prescribed under the cross-appeal.

Keywords- Test Drive Accident, Tort Liability, Dealership Agreement, Manufacturer' Liability, Dealer's Liability, Hire and Purchase Agreement

1. Introduction

The law related to the claims in cases of death due to accidents is quite settled under the Motor Vehicles Act 1988 (MVA). The claim petitions in case of death compensation are filed under Section 166 of the MVA, 1988, before the Claims Tribunal (Tribunal). In case of a death, this claim application can be made by all or any of the legal representatives of the deceased. The tribunals constituted under the said Act are even empowered to award the compensation to the claimant without any formal application.[1] It is also to be understood that at the time of the filing of the claim under Section 166 of the MVA, 1988, there is also a need to prove negligence.[2] Generally, in claim petitions related to death, the Claim Tribunal is not expected to follow the hyper-technical approach but it should certainly be

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1 *Joshi Rajendrakumar Popatla*lv. *Thakore Ramanaji Hamirji*, 2020 ACJ 365 (Guj).A

2 See *ICICI Lombard General Insurance Company* v. *M.D. Devasia @ Jose*, ILR. (2019) 3 Ker. 539 (FB).

reasonable, fair and just in its conduct.[3] Most importantly, the standard of proof in claim cases before the Claims Tribunal is a preponderance of possibilities.[4] The proceedings before them is like a summary inquiry and in criminal cases, the rule is to prove beyond the shadow of doubt.[5] But, the law in regard to those cases is settled now, where the manufacturer has sold the vehicle to the car dealer as per the agreement and accordingly, had sent the car also to the dealer, again as per the agreement, clearly demarcating the rights and liabilities of both the dealer and the manufacturer, and, subsequently, if the accident occurred, during the test drive, the question which arises here, is who is now liable to pay the compensation tothe victim or the legal representatives of the victim. This grey area, though, is now settled by the court in *Vaibhav Jain's* case[6], where it was held that it is the manufacturer who would be liable to compensate the legal representatives of the deceased. This judgement has enormous ramifications in regard to both, (i) the liabilities arising out of the car dealership agreements and (ii) the issue of ownership of the vehicle in the case of test drive-related accidents, culminating in the death of the victim. There are various other 'tort-contract overlapping situations' also, which need to be addressed because this will lead to intersection of contractual obligations and tortious duties'and the conflict between each other in the light of *Vaibhav Jain's* case. For example, there can be a situation where the contractually permitted use of a car or other vehicle may result in tortious harm and where a manufacturer may under the contract, deliver a vehicle (car) into the custody of the dealer, yet would be liable for the tort, if its employee (driver) causes death during the test-drive. There can be an occasion when the dealer permits the test drives but, through a very informal and entirely verbal arrangement and in fact, mostly without executing an indemnity clause, which then makes the situation precarious for both the parties, in tort-based claims, despite having a clearly formulated contractual hierarchy. Similarly, there can be a situation like *Vaibhav Jain's* case,where the driver engaged by the manufacturer under the employment, for the delivery of the car, is informally deployed by the car dealer for the test drives (outside employment), thereby raising a pertinent question as to who will bear the burden of a tortious wrong, committed by the completely contractually unrelated person? The question would also be tricky in regard to the tortious liability, when a car dealer who is showcasing the cars, received from the manufacturer for the static display, later uses it for a test drive, in blatant violation of the contract, leading to death of some other person. Such type of situations are critical, especially in the automobile industry.

The present research paper,therefore, analyses, post *Vaibhav Jain v. Hindustan Motors Pvt. Ltd.* (2024), the emerging trends and the legal complexities revolving around the

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3 See *Shalla Bala Ghose* v. *Nital Chandra Saha*, 1999 ACJ 265.

4 See *Anshul Mandil*v. *Sushila Khli*, AIRONLINE (2019) MP 907.

5 See *Suman* v. *Somveer Singh*, (2016-4) Punj. LR 478 (P&H).

6 *Vaibhav Jain* v. *Hindustan Motors Private Limited*, (2024) INSC 652, para. 34 (Judgment delivered on Sept. 3, 2024).

said issue and examining the tortious and contractual obligations in cases related to the test-drive-related accidents in India. In the first part, the dealership agreement has been examined in the light of *Vaibhav Jain's* case, to understand how the liabilities are constructed in the agreement. The second part discusses the scope of the manufacturer's liability in the light of the vicarious liability principle. And, in the third part, the concept of ownership has been examined in detail, to understand, till what time the ownership of the manufacturer remains and what is the status of the dealer, after the sale of the vehicle stands completed. The discussion has also been made pertaining to the situation when the ownership is transferred to the customer. The status of 'Ownership' under the Hire-Purchase or the Leasing Agreement has been also examined and the status of the customer has been discussed while constructing the warranty and the limited liability clauses of the manufacturer. The fourth part analyses the doctrine of vicarious liability under tort law, particularly in the case of accidents occurring during test drives.The fifth part examines bigger jurisprudential questions, such as whether transferring tortious liability through the contract is possible.The procedural issues related to Order 41 Rule 33 of the Code of Civil Procedure 1908 (CPC) associated with avoiding the formal appeal process and the provision of cross-appeals and also the compensation in accidental cases borne out of a test drive,are discussed in the sixth part. The seventh part outlines how the dealership agreements after the *VaibhavJain's* Case outcome would be redrafted, particularly the liability clauses. Further, the eighth part discusses the future impact and the other effects of the *VaibhavJain's*judgment in the coming times. And, the ninth part in the end, concludes the research paper on the note that the impact of *Vaibhav Jain's* case, is larger than it seems and it would definitely affect the drafting of the contractual liabilities in the dealership agreements as the situation of the manufacturer becomes precarious.

1.1 Research Methodology

The qualitative doctrinal research methodology is adopted in this research paper based on legal analysis and interpretative reasoning, as detailed examination of various judicial decisions including, *Vaibhav Jain v. Hindustan Motors Pvt. Ltd.* (2024) has been done, which is also serving as the primary case study, for exploring the contemporary contours regarding the liabilities (both, contractual and tortious) in case of test-drive related accidents. For contextualising the legal obligations of both the manufacturers and the dealers, the interpretation of the relevant provisions of the Indian Contract Act, 1872, the Motor Vehicles Act, 1988, and the principles of tort law are undertaken. A comparative legal approach has been adopted to critically analyse the transnational jurisprudence from the developed countries such as United Kingdom (UK) and United States (US) so as to evaluate further how the test drive-related liabilities are treated in those jurisdictions. The methodological framework adopted here is normative and prescriptive, as the focus is primarily on the judicial trends and the doctrinal consistency. The normative recommendations are formed

at the end to suggest particular legal reforms in the legal policy and also in the workability of the contemporary contractual practices.

1.2 Key Findings

It is found that *Vaibhav Jain's* case (2024) has made a paradigm shift in delineating the liability in the test-drive-related accidents. The judgment has reinforced the tortious liability principle which is contingent on the (i) actual control and (ii) direction and not merely based on the contractual ownership. It has also been established that the dealership agreements do not automatically transfer the liabilities born out of test-driving related accidents, unless articulated clearly by the enforceable clauses, specifically concerning the (i) control (ii) possession and (iii) risk. The study also shows that the existing statutory frameworks comprising of the Consumer Protection Act and the Motor Vehicles Act are inadequate in addressing nuanced liabilities borne out of the employer-employee relationships. To summarise, *Vaibhav Jain's judgement* calls for (i) a more focused contractual drafting from the parties(ii) careful judicial note in identifying various types of non-delegable duties and (iii) a strong need for the legislative intervention so as to codify such types of risk apportionment which are born out of the test-drive related situations.

1.3 Limitations of the Research

The research here is primarily doctrinal and jurisprudential in nature. It is also analytically rigorous, but lacks the empirical data, both (i) on the frequency and (ii) nature, or pertaining to (iii) the industry practices, specifically related to the test-drive accidents across all the States and Union Territories of India. The present research paper is also constrained due to the non-availability of subsequent judicial pronouncements, interpretations or legislative responses, post *Vaibhav Jain's* case. The research paper has also not examined the criminal liabilities borne out of the test-drive-related accidents. The objectives of both the civil laws and the criminal laws are different. Lastly, the comparison element is restricted only to the selective references, and a very detailed and in-depth cross-jurisdictional analysis of the statutes has not been undertaken due to the limitations attached with the scope.

1.3.1 Test-Drive Related Accident Cases and Section 106 of the Bharatiya Nyaya Sanhita, 2023: Punishment for Causing Death by Negligence

The test-drive-related accident cases, which lead to death (caused by negligence)also triggered the punishments prescribed under the Bharatiya Nyaya Sanhita, 2023[7]. And, under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS),it is recognised as a cognizable offence, and the police has the authority to register an FIR and arrest the driver without a warrant. And, later, BNSS, 2023 also empowers the police to investigate the offence further[8]

7 See Section 106 of the BNS 2023 (section 304Aof the erstwhile Indian Penal Code 1860).

8 See Section 173 of the BNSS 2023.

and submit a detailed police report without delay before the Judicial Magistrate[9].The case registered under Section 106 of the BNS 2023 would be subject to the sessions trial.

1.3.2 Responsibilities arising from the Accident Cases which Lead to Death under the Motor Vehicles Act 1988

The Motor Vehicles Act 1988 prescribes in detail the responsibilities based on the 'no liability principle' in cases where death has occurred due to accidents.[10]And, it also provides for the right to claim compensation in such cases.[11]And such claims are adjudicated by the Motor Accidents Claims Tribunals,[12] based on the application[13] made before them, which finally culminates in the award[14].

1.4 Vaibhav Jain *v.* Hindustan Motors Private Limited[15] and Dealership Agreement

In *Vaibhav Jain's* case, the Appellant, Vaibhav Jain, was the proprietor of Vaibhav Motors, and the Respondent, Hindustan Motors Private Ltd., was the manufacturer of the vehicle. The dispute arose from the accident involving a car manufactured by Hindustan Motors. The car was sent under the dealership agreement from the manufacturer to the car dealer. On the Appellant's instructions, the car was then taken on a test drive by Mr Shubhashish Pal, Service Engineer and employee of the Respondent, Hindustan Motors. An accident took place during the test drive which resulted in the death of Pranay Kumar Goswami, the Territory Manager, who was also an employee of Hindustan Motors. After that, a claim petition was filed before the Tribunal for compensation by the heirs (legal representatives) of the deceased under Section 166 of the MVA, 1988, seeking compensation for his death due to the accident that happened during the test drive. The broader issues before the Court were, firstly, 'Ownership' of the vehicle belongs to whom at the time of the accident and secondly, it shall be whose 'Liability' to compensate the victim's family. Therefore, the Court firstly, had to ascertain the liability to pay compensation and analyse that whether the Appellant, the car dealer (Vaibhav Jain), could be held liable jointly and severally with the Respondent, Hindustan Motors (manufacturer), for the compensation towards the accident. Secondly, can it be said that the vehicle involved in the test-drive accident was actually in the possession of Vaibhav Motors (car dealer) for sale? Another query to be resolved was as to who is the owner of the car? And whether it can be construed that the ownership of the car stood transferred from Hindustan Motors to the car dealer during the

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9 Seesection 193 of the BNSS 2023.

10 See Section 140 of the MVA 1988.

11 See Section 141 of the MVA 1988.

12 See Section 165 of MVA 1988.

13 See Section 166 of MVA 1988.

14 See Section 168 of MVA 1988.

15 Supra Note No. 7.

test-drive accident. So, the dispute is primarily about the ownership of the car, particularly at the time of the accident. The Appellant argued that Hindustan Motors is still the car's owner and the car has not yet been sold to the dealer. Whereas, Hindustan Motors argued that the car had been delivered to the car dealer and that the dealer was the possessory owner at the time of the accident. And, when it comes to examining who had control and responsibility over the car at the time of the accident, it was argued by the Appellant that both, the driver and the deceased person, were Hindustan Motors's employees. It was also argued by the Appellant that the car was used for the purpose of test drive, directly under the control and supervision of the manufacturer, Hindustan Motors's employees. It is pertinent to note that both the Tribunal and the High Court discussed the dealer's liability and categorically held that both the car dealer and the manufacturer are jointly, as well as severally liable to pay the compensation to the legal representatives of the deceased. The Appellant, aggrieved by the decision, challenged the High Court order before the Supreme Court and argued that he should not be held liable to pay compensation because he is the car dealer only and the car was under the control of the manufacturer, Hindustan Motors at the time of accident during the test drive.

1.5 Liabilities under the Dealership Agreement

According to the terms of the Agreement between the car manufacturer and the car dealer, particularly regarding the liability aspect, the agreement was categorical and clear, mainly when it referred to the liability, especially at the time of the delivery being made at the dealer's point by the Manufacturer. As per Clause 3(b) of the Agreement, the moment the motor vehicles under the contract are 'despatched/ delivered' to the car dealer, the liability regarding defects of the company would be limited only to the 'Company's obligations' under the 'the warranty clause' only and thereafter, the Company would not be subject to any other liability and all the other liabilities, would be borne by the Dealer. The language of the clauses was clear once the car is sold and the manufacturer is going to dispatch the car from his side, his liability is limited only to the warranty clause. Similarly, Clause 4 of the Agreement further limited the liabilities of the manufacturer company only to the warranty clause, in case the vehicle is delivered to the dealer, and the company will not have any other liability. It is important to see that the clause further says that all the liabilities other than the one under warranty would be borne by the Dealer. When the language of the agreement is so clear, there is no scope left for ambiguity at all, and then it also means that there is a consensus amongst both the dealer and the manufacturer on their liabilities under the Agreement. This also means that after the accident, when the person who came along with the driver died, the dealer cannot be absolved of his liabilities under the agreement by giving any pretext. It is for this reason only that the legal representatives of the deceased also categorically claimed from the dealer due to the presence of the agreement. It is difficult to think of any other possibility of interpreting the liability clause.

2. Manufacturer's Liability and the Principle of Vicarious Liability

The application of vicarious liability indicates the liability of the dealer, even in a peculiar case like this, where during the test drive itself, the accident occurred, which led to the death of the person. Generally, it has been observed that car accidents do not create a complex legal tussle to the extent of identifying the ownership. Hence, there is no trouble in fixing the liabilities. However, crucial question such as how the vicarious liability principle applies to the parties who temporarily have possession but do not have control over the vehicle (car), particularly at the time of the accident, may also crop up. This is a unique situation because the legal control is yet with the manufacturer, as only the temporary number was allotted to the dealer. But, effectively, the moment the car is dispatched and later delivered, the contract is over as per the dealership agreement. Now the liabilities of the manufacturer should be limited only to the warranty clause. Therefore, when at the request of the dealer, the driver of the manufacturer goes for a test drive, he is actually under the constructive possession of the car dealer only and not the manufacturer, as the manufacturer never assigned any duty to the driver to provide test drive to the dealer and for any such voluntary act of the driver or the act done or committed under the instruction of the dealer, now put him under the control and supervision of the dealer only. Though he was on the duty of the manufacturer, temporarily, because he was there at the allotted place to deliver the car, he had the possession, but the moment the dealer asked him to go for the test drive, he effectively had taken the possession over the car. Therefore, the manufacturer's liability is now limited only to the warranty clause. And, any reading of the agreement other than this would widen the scope of the manufacturer's liabilities much beyond the agreed terms of the dealership agreement, which is also beyond the settled principles of contract.

3. Meaning of the term 'Ownership'

To clarify the application of the vicarious liability principle, let us first understand the meaning of the term 'ownership' in this case to understand who is construed as the car's owner. Generally, in a car dealership agreement with the manufacturer, the term 'ownership' refers directly to the 'legal responsibility' and 'legal rights' over the car. Whereas the car dealer, in most cases, has the physical possession of the car, the ownership is purely in the legal sense is with the manufacturer, especially when we talk for liability purposes and for which the car is not automatically transferred until the specific conditions are met. Therefore, in the case of the test drive, determining the ownership of the car ownership is vital, especially when the liability of the manufacturer or the dealer depends upon various factors, which are inclusive of both the contractual obligations, along with the registration details and also depend on other applicable laws and regulations, including the MVA 1988. Below, a few situations are discussed to understand how the concepts of 'ownership' and 'liability' are applicable to the manufacturer or the dealer in different circumstances.

3.1 The Ownership of the Manufacturer Until the Sale

To better understand the concept of 'ownership', let us presume that a car that is registered is lying with a person Z. The car is still registered in the name of the manufacturer only and it has not yet been sold to the dealer. Now the test drive is conducted by the employee of the dealer. In cases like this, the manufacturer generally has to be considered as the owner of the car, as the sale has not been completed yet and the registration is also in the name of the manufacturer only. In such cases, the manufacturer will remain the owner for all legal and practical purposes and all the liabilities would lie on the manufacturer unless the dealership agreement clearly specifies to the contrary and therefore, in case of death during the test drive, only the manufacturer can be held liable.

3.2 Dealer as Possessory Owner of the Car

Let us take another example where a car is temporarily registered in the dealer's name and is part of the dealer's inventory only, but it is yet to be sold to the customer. At this juncture, if during the test drive of the car, an accident occurs, then the dealer would be considered, at best, the possessory owner of the car, though not the final or actual owner, as the vehicle is still for sale only. In this situation, it is the car dealer only, who will be deemed as the owner of the car, in the context of the liability borne out of the test drive, especially in case of the accident, as it results from the actions of the representatives or the employees of the car dealer.

3.3 What will happen if Ownership is transferred to the Customer?

It is also necessary to consider the liability in case of transfer of ownership to the customer. Because when the customer generally buys the car, he usually sign all the necessary documents regarding the purchase of the car so that the sale is finalised. But, if the vehicle has yet not been delivered to the customer or also in those cases when the car sale has yet not been completed due to non-transfer of the car or also in those cases where the registration of the car is yet not formally done by transferring the title into the name of the customer, if at this juncture, an accident occurs just before the pre-delivery test drive, then the car dealer in such cases still holds the ownership over the car, until the formal transfer of the title is done. Therefore, in such cases, the car dealer will continue to be the owner of the car, as the legal ownership of the car is tied to the registration of the car and also to the delivery of the car only.

3.4 The Status of 'Ownership' Under the Hire-Purchase or the Leasing Agreement

It is necessary to understand the term 'ownership', especially as per the terms of the Hire and Purchase Agreements or leasing agreements as the situation in these cases is entirely different. For example, suppose a car is sold to the customer through the Hire and Purchase Agreement, and the buyer is ready to take possession of the vehicle (car). In that case, the legal ownership of the property still lies with the car financer only and the car will remain

in the custody of the financer until the loan amount is fully paid. And, effectively, it is the financer who owns the vehicle. And, now, if an accident takes place during the test drive of the car, then the ownership lies with the dealer or in the case of a financier, with the financer until the customer makes the final payment. Now, the question regarding the status of the car's ownership is that either the financier is the owner of the car or the dealer has the ownership over the car during the term of the hire-purchase agreement. Liability can be either shared or entirely borne by them depending on the specifics of the contract.

3.5 Constructing Manufacturer's Warranty and Limited Liability Clauses: Status of the Customer

Manufacturer's warranty has already been evolved in the past three to four decades to a great extent. It is ever-changing in the light of emerging technologies and improving, especially in relation to cars, like driverless cars. Therefore, the question of test drives would arise in that context. The liabilities born out of it need different considerations altogether. The construction of the manufacturer's warranty is generally borne out of the contractual obligations between the customer on the one hand and the car dealer on the other. It is due to the presence of these agreements between them that the manufacturer delivers the cars to a car dealer, under an agreement, which to a great extent limits the manufacturer's liabilities to the defects covered under the warranty clauses, but they generally do not refer to the accidents which occur or which can occur in future during the test drives. In cases where a representative of the dealer causes an accident during the test drive, then in such a scenario, because both (i) the ownership and (ii) the possession of the car are with the car dealer, we can safely say that it is the responsibility of the car dealer, as it is the car dealer, who is the owner for the purposes of liability and the manufacturer in such case, has to be absolved of any such liability and responsibilty for such incidents under the dealership agreement.

4. Tort and Vicarious Liability

Vicarious liability is a doctrine of strict liability, which earlier was subject to fault-based liability[16]. In history, the justification for making the master liable for the tort is that the acts of the servant were attributed to the owner.[17] This principle is necessary as it allows the employees to work for the employer, with a certainty of compensation to him or to his family members[18] in case of some mishap which might occur during the employment.[19]

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16 See Paula Giliker, *Vicarious Liability in Tort: A Comparative Perspective,* (Cambridge University Press, 1st ed, 2010) xli.

17 See *Jones*v.*Hart*, (1698) 91 Eng. Rep. 382.

18 See E. McKendrick, Vicarious Liability and Independent Contractors - A Re-examination, (1990) 53 *Mod. L. Rev.* 770.

19 R. Kidner, "Vicarious Liability: For Whom Should the "Employer" Be Liable?" 15 *Legal Stud.* 47 (1995).

The principle of *Respondeat Superior* is a Latin term applicable in those cases where the cause performed by inadvertently the person is done under the direction and control of the person superior to him and whose literal meaning is 'let the master pay'[20]. This term is a synonym for vicarious liability. Its most important feature is an incident of defined relationships between the master and the servant and where the master is liable, not for any breach caused by him which he owed towards the other, but because of his relationship with the tortfeasor servant. But, it is also necessary to know that vicarious liability is not an automatically applicable principle.[21] Here, as a matter of law, he is responsible for the tort committed by the servant as long as the act is committed during employment.[22] And, it is necessary to remember that since this doctrine of vicarious liability, came into the law books in and around 1700 AD, one can see its steady expansion in two principal directions: (i) the enlargement of the tort liabilities in certain specific categories of persons and (ii) defining various types of acts, for which the vicarious liability can be applicable or imposed, or can be extended.[23] The principle of vicarious liability is applicable in cases of death due to accidents, especially when the superior is responsible for the act of the person appointed by him, as in the cases of employer-employee relationships.[24] In cases where the accident has occurred during the test drives of the car, compensation in cases of death is subject to the principle of vicarious liability if the person who caused the accident has done so under the direction or supervision of the superior person over him under whose direction he was working. The problem of vicarious liability is more complex when the accident is caused by the employee who is in the employer-employee relationship, then, in such cases, vicarious liability of the superior arises, that is, the employer, who has to compensate the legal representatives of the victim. The Claimants (the legal representatives of the deceased), in accidental cases, do not generally accept the legal boundaries of liability, as is generally seen, instead, their search is for the 'deep pocket'[25], which often, therefore, creates expansionary pressure on the courts[26] to redefine the limits of vicarious liability every time. The principle of vicarious liability has been applied by the Courts also from

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20 Refer W. E. Scott, "The Theory of Risk Liability and Its Application to Vicarious Liability", 12 *Comp. & Int'l L.J. S. Afr.* 44, 44-64 (1979).

21 James Underwood, *Tort Law: Principles in Practice,* (3rd ed., ASPEN Opco LLC, 2022) 1110.

22 P. S. Atiyah, *Vicarious Liability in the Law of Torts*, 5 (Butterworths Oxford, London, 1st ed., 1967)

23 Peter Cane, *Atiyah's Accidents, Compensation and the Law,* (7th ed., Cambridge University Press, 2006) 229.

24 See Ernest J. Weinrib, *Tort Law: Cases and Materials*, 619 (Routledge, 5th ed., 2019). The author has referred to various cases referring to vicarious liability.

25 See Jonathan Morgan, *Great Debates in Tort Law,*55 (Hart Publications, 1st ed., 2022).

26 *London Drugs Ltd.* v. *Kuehne & Nagel Int'l Ltd.*, [1992] 3 SCR 299.

time to time, as in *Rajasthan State Road Transport Corporation* (RSRTC)case[27], where the vehicle was hired by the RSRTC and the services of the driver from its registered owner were also asked for. Later, the accident occurred and the issue was whether RSRTC would be liable for the liabilities caused by the accident because it was RSRTC that hired the services of the driver along with the vehicle. The Supreme Court categorically held that RSRTC was vicariously liable under the tort law, as it was constructively its driver, who had committed the tort, as the driver was directly under the control and command of the RSRTC, particularly at the time of the accident. This, in many ways, can be termed as a landmark case in regard to adjudicating the vicarious liabilities of the persons in case of accidents occurring under the employer-employee agreements. Even in *Mersey Docks* case,[28] court held that where the hire contract occurred between the harbour board and the diver along with the crane, for the stevedores' firm, and the contract stated that the driver would be termed as an employee of the firm only, whereas the board would continue to not only pay wages to the driver but also hold the right to fire him. And after that, due to the driver's negligence, damage occurred. The House of Lords held that the harbour board is vicariously liable for the driver's conduct. It is also necessary to know that there is no conclusive test to identify whether a person is an employee[29]. Privy Council in test drive related accident case held that where the owner (father) is sitting in the car and the son is driving the car and an accident has occurred, the son cannot be held liable, as the father would be considered as the owner.[30]

4.1 Vicarious Liability in Case of Accident during the Test-Drives

Generally, the legal concept of 'ownership', particularly in the cases related to the test drives, hinges on the fact that 'who' has the control, direction and command over the vehicle. It is observed that a dealer has physical possession of the vehicle (car). Yet, the ownership (formal transfer of the registration number in the name of another person was done by the manufacturer) and therefore the liability, generally remains with that person who is holding the registration of the car or the person who assumes its own responsibility towards the vehicle under the car dealership agreement. It is found that the Courts often overlook various aspects in these cases such as (i) the holistic nature of the dealership agreement (ii) the possession of the vehicle (car) and (ii) the registration status of the vehicle (car) to comprehensively determine, who is the owner of the vehicle (car) particularly for the liability purposes. The test-drive-related accidental cases test the boundaries of the principle of vicarious liability, as in the *Vaibhav Jain* case, where a car dealer (actually) temporarily possesses the vehicle (car) and he also comprehensively retains control over

27 *Rajasthan State Road Transport Corp.* v. *Kailash Nath Kothari*, (1997) 7 SCC 481).

28 *Mersey Docks & Harbour Bd.* v. *Coggins & Griffith (Liverpool) Ltd.*, [1947] A.C. 1.

29 See *Ontario Ltd.* v. *Sagaz Indus. Canada Inc.*, 2001 SCC 59.

30 *Samson* v. *Aitchison*, [1912] A.C. 844.

it, especially in reference to the other party, that is, the manufacturer. The car dealer was initially, held liable along with the manufacturer of the car, that is, Hindustan Motors, by the application of the principle of joint liability. However, later, the Supreme Court ruled that the car dealer, despite the fact was possessing the car, was not to be *stricto sensu* termed as the legal owner of the vehicle, particularly at the time of the test drive and later at the time of the accident, as because, the car was driven by the employee of the manufacturer only. In *M/s. Godavari Finance Company's* case,[31] though the financer's name was recorded in the registration book of the government as the owner of the vehicle, but actually the vehicle was under the control and possession of a third party, even at the time of the accident. The Court here in clear terms held that the financer would not be liable to pay the compensation, as the vehicle was under the control of the third party and not the financer. This case is important because it emphasises that the liability follows the control and possession and not merely by having the name in the registration book kept by the governmental departments. Similarly, in the *National Insurance Company Limited* case[32] also the registered owner of a vehicle was held liable, especially when the car was requisitioned by the State, especially for election duty. In another case[33], the dealer argued that the Appellant, Tata Motors, was vicariously responsible for the car (vehicle), particularly at the time of the accident. The Court here held that if the vehicle is sold to the dealer and the same is also delivered to him, then in such cases, the dealer has to assume both the ownership and the liability. The case is critical because here, the court believed that the ownership is supposed to be transferred only upon the sale and the delivery and it is not based on when the vehicle is used by the dealer or tested by him. After considering all these cases, the court in *the Vaibhav Jain* case relied heavily on RSRTC and held that it is Hindustan Motors which had the control and command over the vehicle through few of its employees.

5. Is the Transfer of Tortious Liability through Contract Possible?

The question that becomes important here and which has not been addressed by the court is whether can, by way of a contract, the tortious liability can be transferred from one party to another. In other words, is it possible to have such contractual terms while drafting the dealership agreements, which can legally absolve the manufacturer from the tortious liabilities and can tortious liabilities be placed entirely on the dealer? It is also necessary to examine the extent of the application of such clauses of the dealership agreements, which holds up under the statutory frameworks as is prescribed under the MVA, 1988.

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31 *M/S. Godavari Fin. Co.* v. *Degala Satyanarayanamma*, (2008) 5 SCC 107.

32 *National Insurance Co. Ltd* v. *Deepa Devi*, (2008) 1 SCC 414.

33 *Tata Motors Ltd.* v. *Antonio Paulo Vaz*, AIR 2021 SCC.

6. Avoiding Formal Appeal Process and the provision of Cross-appeals Under Order 41 Rule 33 of Civil Procedure Code 1908 (CPC) and Compensation in Test-drive related Accidental Cases

In *Vaibhav Jain's* case, the Court has also examined the applicability of the provisions of cross-appeal in detail as are provided under Order 41 Rule 33 of the CPC 1908 to ensure that they may not be misused by the parties, especially those, who are attempting to avoid the formal appeal processes as are prescribed under the CPC, 1908. There is a need to examine the scope of Order 41 Rule 33, CPC, 1908 to understand how the litigants are using the same, who had not filed the cross-objections. Essentially, Order 41 Rule 33 of the CPC 1908 allows the Court to have broad discretionary power to ensure that complete justice is done and also pass any decree or order that can be passed by the lower Court, despite the fact that a formal cross-appeal or objections is not filed by the Respondent as was done by Hindustan Motors in the present case. Under this Rule, the Courts are allowed to modify or even to the extent can reverse the decree in favour of the Respondent too, even if he failed to file the cross-appeal, till the time it serves the ends of justice.

6.1 Limitations of the Provisions of Cross-Appeal

The power given to the judge to use its discretion under Rule 33 of the CPC 1908 is not unlimited, as the Court is not allowed to use the power to the detriment of the party which has not appeared before the Court or has not filed an appeal. Similarly, those claims which have been waived by the parties or have been abandoned altogether, cannot be revived under this provision through the filing of the cross appeals. If the issues are not raised before the lower courts and are allowed to reach finality then the same cannot be permitted to be raised in the cross appeals. The provision is insulated from the stale claims, which were not raised in the past. In *Vaibhav Jain's* case, the Respondent, Hindustan Motors, had not filed any formal appeal against the award issued by the Tribunal, which held it to be liable for paying the compensation to the legal representatives of the victim and instead, an attempt was made under Order 41 Rule 33 of the CPC 1908 by using the provision for the cross-appeal, to challenge the liability imposed on it. The Supreme Court rejected this attempt by the Respondent because it had not appealed or filed the cross objections before the appropriate forums. It attempted at challenging the award when it had already attained finality. However, it is necessary to know that because the power of the court under Order 41 Rule 33 is discretionary in nature therefore, there cannot be a possibility of writing some rigid rule to use such power and in exceptional circumstances, the court can also pass decree or any order which ought to have been passed by the lower courts in favour of those parties who had actually not preferred any appeal at all.[34] This expanded the power of

34 *K. Muthuswami Gounder* v. *N. Palaniappa Gounder*, (1998) 7 SCC 327.

the court in appeal cases. In fact, the court in *Catholic Diocese of Gorakhpur*[35]case while invoking Order 41 Rule 33, referred to a Latin phrase being *fiat justitia ruatcaelum,* which means that "Let justice be done though the heavens fall", which also means that the belief is that the justice must be done regardless of the consequences. Therefore, the court further applied *ex debito justitiae*, which means rendering complete justice as per the requirement of justice, on a case to case basis.

7. Dealership Agreements and *Vaibhav Jain's* Case: Redrafting the Liability Clauses

In *Vaibhav Jain's* case, because the court had directly examined the contractual terms of the dealership agreement in detail to analyse the liabilities regarding test-drive-related accidents, it is therefore necessary to redraft those clauses now to clearly demarcate both the transfer of control as well as the liability between the manufacturers and dealers, to avoid the later disputes pertaining to claims born out of such situations. Because the future is of driverless cars, so there is a need to clearly write down the liability clauses of the parties, particularly in the case of test drives. Hence, it is necessary to re-examine the liability provisions of the dealership agreements, also both in light of the issues that arose in *Vaibhav Jain's* case and also keeping in mind the future of the vehicle, that is, driverless cars. Some specific drafting requirements need to be fulfilled regarding the dealership agreements so that liability clauses may not be left ambiguous, especially related to test-drive-related accidents.

7.1 Clear Clauses in 'Dealership Agreements' to Provide Clarity on 'Control' and 'Liability' in Case of Test Drives

There is a strong need to redraft the dealership agreements so that more 'explicit provisions' can be included while detailing the liabilities that arises out of test-drive-related accidents or even before the vehicle is sold. The manufacturer also has to be careful in including clear and explicit terms for the 'indemnity clause' so as to protect itself from the liabilities, born out of the situation when the vehicle is delivered to the dealers, as the Courts are likely to scrutinise that whether the control over the vehicles has actually been transferred or not.

7.2 Redrafting of the Clauses Related to Tortious Liability

Both the manufacturer and the dealers will now have to add very specific provisions covering tortious liabilities, particularly during test drives or any other type of demonstrations and also when the vehicle is sold but not delivered. It is necessary to appreciate that lack of specific, particular and unambiguous clauses leads to blurred lines of control and responsibility.

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35 *Catholic Diocese of Gorakhpur* v. *Bhola*, 2024 SCCOnLine All 5054 (decided Sept. 10, 2024).

7.3 Stricter Warranty Clauses

The clauses related to 'Warranty' and 'Risk Transfer' in the dealership agreement, now need careful drafting, in light of *Vaibhav Jain's* judgement, to avoid any ambiguous interpretations that can inadvertently transfer the liabilities pertaining to accidents, either to the dealer or the manufacturer.

8. Comparative Study of International Best Practices and the Legal Frameworks: United Kingdom (UK) and the United States (US)

8.1 United Kingdom (UK): Application of Common Law Principles

In UK, common law principles related to 'negligence and vicarious liability' are applicable under the tort law. The Highway Code (THC)[36] and the Road Traffic Act (RTA) 1988[37], alongside the Consumer Protection laws,holistically govern (i) the driving conduct (ii) insurance[38]and (iii) the allocation of liability[39] in UK. The drivers in UK are directly held liable for causing death of a person even during the test drives unless it is proved that they acted upon the directionsor were working either for (i) the dealer or (ii) the manufacturer. Although the facts in *Hawley's*[40] case were not similar to *Vaibhav Jain's* case, there are various similarities when it comes to the application of the law of vicarious liability. In *Hawley's* case, a nightclub named 'Luminar' had hired a security guard from one of the security services, namely, ASE Security Services. One fine day, one such doorman, namely, Mr. Warren, assaulted a patron (Mr. Hawley), causing him a grievous injury. Mr. Warren here had falsely represented himself as both (i) a registered and (ii) trained personnel. Later, the ASE security services had gone into the liquidation process and Luminar was then sued for as a "deemed employer" of Mr. Warren. The Court,based on'a detailed control' over the doorman, Mr. Warren, termed Luminar as a 'temporary deemed employer'. And, the Court, by citing *Mersey Docks*[41] and the *Viasystems*[42]case, further reasoned that the

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36 It provides general rules and techniques regarding driving on the highways.

37 See Section 1 of the RTA 1988, which describes that it is an offence to cause death of another person by recklessly driving a motor vehicle on road.

38 Section 157 (1) (b) (i) of the RTA 1988 says that a payment is to be made by an authorised insurer and the payment is to be made under the terms of an insurance policy issued as per the Section 145 of the RTA 1988 itself, and under Section 157 (1) (b) (ii) and (iii) of the RTA 1988, the payment is also be made by the owner of vehicle, or by the owner of vehicle who has deposited the amount withinRTA 1988 itself.

39 Section 157 of RTA 1988 governs the liability for payment towards hospital treatment in case of traffic casualties.

40 *Hawley v. Luminar Leisure Ltd.*, [2006] EWCA Civ 18.

41 *Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Limited,* [1947] AC 1.

42 *Viasystems (Tyneside) Limited v. Thermal Transfers (Northern) Limited*, [2005] EWCA Civ 1151.

vicarious liability is dependent 'upon the control over the particular act'and 'not over a mere contractual employment'.The Court rejected the dual vicarious liability principle here and held that 'Luminar' is solely vicariously responsible and absolved'ASE Security Services' of all the liabilities. The key principle here to understand is that the Employer's liability will be triggered only when it is clearly proved that there is a clear agency or control over the driver. In fact, to some extent, *Vaibhav Jain's* case is also in line with the UK jurisprudence related to vicarious liability, as it also highlights the control and agency as important and determinative factors, while establishing the tortious liabilities.

8.2. United States (US)

In US, the legal system is rooted in the 'state-specific tort law', which recognisesthe principle of vicarious liability. The Restatement (Second) of Torts § 390 clearly demarcates the liabilities about 'entrusting a vehicle to an unfit person', in which case, the liability belongs to the dealers, if they will allow a person without a valid license to test-drive a vehicle. In *Dobson's* case[43]the issue was, who would be termed as the owner of the vehicle, the 'Cruise America, Inc.', who was the actual owner of a rental vehicle or 'Hipold, a foreign lessee' for his negligent act under the doctrine of 'negligent entrustment'. The Court held that 'mere ownership' or 'the contractual link'will not suffice the law's requirement and 'effective control' or the 'foreseeability of harm' are to be proved necessarily.The Court therefore, in this case, was judicially reluctant to give expansive reading of the tort liability towards the entities, who are distanced from 'the direct operational fault', unless it is clearly established by way of evidence that 'the delegation of risk' or 'the negligent supervision' is present in the case. Similarly, in Garisson's[44] case, the Court held that the legal liability for motor vehicle accidents must be based on the clear evidence of (i) causation (ii) control and (iii) duty. In US, most of the dealership agreements are already subject to the commercial liability insurance policies, which particularly cover the 'test-drive accidents', with often the express terms that extend to the permissive users also (the potential buyers).*Vaibhav Jain*'s ruling also shows that the Indian Courts are applying the doctrine of 'negligent entrustment' and 'control-based liability' in many ways.

9. Impact and Effects of the Vaibhav Jain's Judgement

The effect of this judgement would be seen on a larger landscape. It will primarily affect the formation of the dealership agreement, which now has to be drafted keeping in mind the ownership and the liability in case of any accident during test drives, but there are various other impact points of this judgement as well.

9.1 Clarification on Ownership and Liability

43 *Stuart Dobson v. Richard Hilpold*, and Cruise America, Inc. Docket No. Civil Action 21-cv-00949-RBJ, (May 26, 2022, U.S. District Court, District of Colorado).

44 *Garrison v. Bickford,*377 S.W.3d 659, (2012, Supreme Court of Tennessee, U.S.).

In short, in such cases where an accident has occurred during test drives, the manufacturer or the dealer, whoever will be in control and ownership of the car, will compensate the legal representatives of the deceased. In other words, the dealers will not be held liable until it is proved that they had both ownership and possession of the car at the time of the accident.

9.2 Vicarious Liability

However, the Court reiterated that an employer can be held to be vicariously responsible for the actions of their employees if there is a direct link between the action performed by them and the duties assigned to them under the employment agreement. This ruling will undoubtedly affect more motor accident claims related to test drives or other related accidents in future.

9.3 Impact on Dealer-Manufacturer Relationships

The drafting of dealer-manufacture relationships will undergo an overhaul due to *Vaibhav Jain's* case, as it has direct ramifications on both of them. Who will be termed as the owner of the vehicle in case of test drive, now needs to be clarified in the dealership agreement itself. By, clear drafting, the problem can be resolved. The manufacturer can clearly put the term that during the test drives, the dealer will bear the liabilities and the dealer will be termed as the constructive owner for that time, even if the formal transfer of the vehicle registration has not taken place. The dealership agreements, therefore, need to be revised to clearly outline the responsibilities and liabilities, particularly after this case, where vehicles are involved in accidents before being sold.

9.4 Future Precedents

Vaibhav Jain's case will set a precedent for future cases related to compensation in test-drive-related accidental cases. In these cases, the dispute now revolves more around the ownership of the vehicles and also who had control over them. And, this can be done by broadly identifying the distinction between possessory ownership and actual control, which will now play a crucial role in determining liabilities.

10. Conclusion

As seen above, *Vaibhav Jain's* case will impact the legal system in many ways in the coming years. As in this case, the Supreme Court narrowly constructed the words of the dealership agreement. The principle of vicarious liability also needs to be relooked after this judgement, as it is contoured differently now. The law after this judgement stands as, if the car is delivered by the manufacturer, despite the presence of the dealership agreement between the car dealer and the manufacturer, clearly demarcating the list of rights, duties and the liabilities, and also demonstrating when the delivery can be construed as done, for fixing the rights and liabilities of each of the parties, yet, if the car from the manufacturer's

place reaches to the showroom of the car dealer, along with its driver, without formal transfer of the car registration into the name of the car dealer, the liabilities of the manufacturer is not over, and if the car dealer will ask (generally requests and many times directs) the same driver (driver of the manufacturer) to go for the test-drive, and if any mishappening would occur, then all the liabilities would belong to the manufacturer, as formally, the manufacturer is only liable, because principally the car's owner is manufacturer only, and therefore, in the light of the *Vaibhav Jain's* case, now the manufacturer have to strictly direct their drivers to not hear the instructions and directions of the car dealers (in any of the situations) especially, they should negate the requests of test-drives, due to the consequences it carries. Instead, the manufacturer also has to rephrase both, the contractual agreement with the drivers so that their liabilities and duties would also be fixed regarding the test drives (if they will do so without their permission) [45]and also the car dealership contract to specifically cover the rights and liabilities regarding the test-drives, as then it will be convenient to all, the manufacturer, the car dealer and any other third party, regarding fixing the liabilities in cases related to compensation to be paid in such accidental cases, where human life is lost.

In *Vaibhav Jain* case, the court absolved, the car dealer of all its liabilities, even though it is he who had directed the drivers of the manufacturer to go on test drives. The question which remains unanswered is that what if this accident occurred when the driver was of the car dealer. Can at that time also, the manufacturer would be held liable, as on principal grounds, the manufacturer is the owner of the vehicle, even at that stage? Can we construe the vicarious liabilities of only the manufacturer in such a situation as well? The result of the case has greatly jeopardised the manufacturer's position to a great extent and he is thronged with all the liabilities on the ground that the driver belonged to it at the time of the test drive. The court insisted upon the position that the right over the car is with the manufacturer, even though the car was under the control of the dealer at the time of the accident and this has put the manufacturer in a difficult situation, despite the fact that the requirement of accountability should be of the dealer, as it is he who requested the driver of the manufacturer, to take the car on the test drive.

The outcome of this case, which has made the situation of the manufacturer precarious, now will force the manufacturers of the car to redraft their car dealership agreements, so that they would be appropriately and clearly word regarding the liabilities both of the manufacturer and the dealer, and it should be made clear in the dealer agreements itself, that once the products (cars) are sold or reach to the showrooms of the dealers, in such situations, it is the dealer who exclusively is answerable and accountable for all practical purposes. This judgement has also examined the aspect of cross-appeals and under what

45 *Canadian Pacific Railway* v *Lockhart*, [1942] A.C. 591.

circumstances the cross-appeal shall lie. In this case, the liabilities being passed on to the manufacturer and the relief being granted to the dealer only indicate that a poorly worded dealership agreement can compromise the manufacturer's rights.

Vaibhav Jain's case is also significant because of its implications for both contract drafting and litigation strategies in the Indian context. The dealership agreements need an overhaul regarding the 'control' and 'liability' of the manufacturer and the dealer, especially during the test drives and also in cases of temporary possessions. This ruling is significant for the litigants as it underscores the importance of timely cross-objections and the limitations of relying on Order 41 Rule 33 of the Civil Procedure Code 1908 to overturn findings. This case has also cemented the traditional concept of vicarious liability[46] for the employers who are incontrol of the vehicles (in this case, the car)and the employees for shaping future casesinvolving car accidents and the liability for paying compensation.In fact, later in *Kartik Bachubhai Shah & Ors.*[47]case, the Gujarat High Court discussed the application of the Vaibhav Jain case and further elaborated the concept of vicarious liability by holding that the principle of contextual "ownership" has a persuasive value. However, when it comes to its application, it requires very strong factual proof pertaining to control and a mere suspicion or oral claims are insufficient. And, it further held that any deviation from Section 2 (30) of the MVA 1988 requiresthe establishment of a concrete evidence of (i) control (ii) possession, or (iii) the command. In fact, the Court emphasised the pressing need for more stronger legal norms so as to appropriately track the control chains of the vehicle, particularly, when there are informal transfers and exchanges. In *Mohd. Zakir*'s[48] case, theDelhi High Court applied *Vaibhav Jain's* case and reiterated that the meaning of the ownership under Section 2 (30) of the MVA 1988 comprises the actual control of the vehicle, particularly at the time of an accident, while determining the liability under the tort law.

11. Suggestions

Vaibhav Jain's case has cleared the air by holding that the 'liabilities in case of motor vehicle accidents, especially if a person dies, should rest with the party that exercises the (i) actual control and (ii) supervision over the vehicle, right at the time of the accident. While it looks doctrinally very sound, but, this case has also revealed systemic gaps in the India's legal framework pertaining to (i) liabilities arising out of the test-drive related accidents(ii) dealership governance and (iii) the manufacturer's accountability. To address these gaps, some of the legal and policy reforms are proposed below:

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46 Vicarious Liability at core can be termed as guilt by association with a tortfeasor.

47 *Kartik Bachubhai Shah & Ors. v. Ghanshyam Babubhai Patel &Anr.*, 2024:GUJHC:69589.

48 *Mohd. Zakir v. Sabuddin and Ors.*, 2024:DHC:7798.

10.1.1 Define 'Functional Ownership' and the 'control-based liability'

An explanatory clause, "any person, including (i) a manufacturer or (ii) a dealer, who has actual possession and (ii) who also exercises control over the vehicle, at the time of the accident" is proposed after the definition of the term 'owner', under Section 2 (30) of the MVA 1988.[49]This will align the 'legal ownership' with the 'practical liability' in cases where the vehicles are operated under 'test drives' or during 'demonstration situations.

10.1.2 Test Drive Liability Insurance

India is one of the biggest vehicle markets, so having a specific 'test-drive liability insurance' under the MVA, 1988 is better. Towards this objective, it is therefore proposed to insert in Chapter XI of the MVA 1988[50] the following provision: "every (i) manufacturer or (ii) dealer shall (a) obtain and (b) maintain a mandatory third-party liability insurance policy for all the vehicles which will be used for the purposes of (a) demonstration (b) test-drive or (c) transfer purposes,irrespective of the fact that registration is in the name of some other person." This will ensure that the compensation is available to anybody, irrespective of whether the 'internal control disputes' will align with the 'no-fault compensation' principles.

10.1.3. Regulation of Manufacturer-Dealer Agreements

As the present contracts are private in nature and therefore, may not necessarily carry the terms related to the liabilities, in case of test drive related accidents. Therefore, regulating such manufacturer-dealer agreements through the statutory guidelines can also resolve the issue related to the liabilities in case of test-drive-related accidents. It is therefore, proposed that the Ministry of Road Transport & Highways (MoRTH), should in consultation with various stakeholders should develop a Model Dealership Agreement, comprising of terms such as (i) prohibition regarding the use of the 'manufacturer-sent staff' by the vehicle dealers for their private purposes and (ii) clarity regarding the liability clauses, in cases involving test drive related accidents or also during the promotional or other delivery related use. This will develop uniformity, transparency, and accountability in the business environment, particularly in the automobile industry.

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49 'Owner' is narrowly defined in terms of vehicle registration. And, it completely fails to reflect the real-world scenarios related to the usage and control of the vehicles at the time of accidents, especially in cases related to a test drive.

50 Chapter XI of the MVA 1988 deals with the 'Insurance of Motor Vehicles against third parties'.

National Security, International Trade Law and International Humanitarian Law: Understanding the Confluence

Sakshi Kothari *

Abstract

This study explores the complex and evolving intersection of national security, international trade law, and international humanitarian law, emphasizing the economic dimension of global conflict and cooperation. It asserts that the conventional understanding of security, primarily military, must evolve to encompass economic and human security. In today's globalized era, economic self-interest of states, reflected through mechanisms like Foreign Direct Investment, drives both domestic stability and international cooperation. However, during times of conflict, economic sanctions, while intended as tools of policy enforcement, often disproportionately affect civilian populations, thereby raising serious human rights concerns.

The paper critically evaluates how trade-related policies and legal frameworks interact with international humanitarian law during armed conflicts, especially in relation to sanctions, resource allocation, and the role of businesses operating in conflict zones. It underscores the need for "smart sanctions" that minimize humanitarian fallout while achieving policy objectives. Through case examples and theoretical perspectives, the paper argues that legal regimes must evolve to accommodate non-traditional threats, emphasizing the role of law in fostering economic development, peace, and resilience.

A five-point policy framework is proposed to integrate legal safeguards, community engagement, and public-private partnerships for effective conflict-sensitive trade governance. The study concludes that the synergy between international trade law and international humanitarian law, if properly harnessed, can be a powerful tool for both economic reconstruction and sustainable peace.

Keywords: International Economic Security, Humanitarian Law and Trade, Smart Sanctions, Conflict-sensitive Business Practices, Peace through Trade

1. Introduction

A key aspect in the domain of international law is 'security'. The term 'security' has different connotations in different arenas. The plain dictionary meaning of 'security' states that it is a 'state of being free from danger or threat', however, when viewed in the present context of war and international trade would include a more holistic ideation, given the fact that it encompasses economic, political and individual security on both a macro and a micro level.

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According to Dumas[1], the term 'security' encompasses both 'national' as well as 'international' security. National security refers to the protection and safeguarding of the interests of the nation-state.

In particular, it refers to keeping nation-states and their individuals secure and ensuring that there is an overall advancement of the collective interests of the state as well as citizens of the state who essentially make up the fundamentals of the nation-state.

Under this context, national security includes a wide range of measures and contrivances such as intelligence gathering, military forces, economic policies, and diplomatic strategies. It also comprises domestic security measures such as border control, counterterrorism efforts, and cyber security. A key sub-aspect of national security is economic security, which is the focus of the current study.

Economic security refers to a secure state of economic affairs, both at the macro and the micro level. At the macro level, it refers to security of the balance of payments, foreign reserves, the gross national and domestic product of the nation and the overall economic stability of the nation. On the other hand, at the micro level, it includes individual economic security of the citizens of the nation-state. Delving into the ideation of individual economic security, it is established that self-interest forms the key, around which the entire discourse of individual economic security revolves around. Self-interest is particularly manifested when any action of an individual or state is motivated and rooted at self-interest.

Understanding the confluence of international trade law with the concept of 'economic security', it is to be understood that complete economic security can be achieved only when there is mutual free-trade coupled with a balanced relationship to further the ends of such manifested self-interest. [2]

It is quite a universal understanding that national security is linked to personal security and economic security when a nation-state not only protects its citizens but also secures its economic self-interest and relationships in the global economy along with equally prioritising the economic self-interest of its citizens.

A simple illustration of the above statement can be explained in the following manner-

Foreign Direct Investment (FDI) is attracted into a particular country only when the conditions to further such an investment are conducive as well as feasible. This FDI could be in the form of an opening of branches in the particular country.

Through this, there is a mass generation of employment to keep the business up and running, that essentially generates revenue for the host country through taxes and revenue

1 Dumas at 11

2 Id. At 54

through profits for the home state. Another important factor that is to be considered in the case here is the fact that the ease of doing business in such a nation, i.e., the host state must be top-notch.

A key component of ease of doing business to attract FDI is ensuring the legal compliance and dispute resolution mechanisms are well- established and not complex or sophisticated to navigate through them. This key component is extremely crucial; it becomes detrimental particularly when the initial attraction of the FDI is in question.

Foreign Direct Investment is manifested for a long period of time, more so, for decades and is essentially underpinned on the relationship that is to build between the home state sending such an investment and the host state attracting such an FDI.

FDI coupled with conducive conditions as stated above, would clearly establish a long-standing relationship with the nations. This furthers peace and international economic security between the nations and also national economic security.

Such a trade and investment relationship would also further the individual economic interest of the citizens by essentially generating greater employment and actively contributing towards increasing the 'PPP' or the purchasing power parity of the individual as well as the nation. Thus, in consolidation, all of this is ultimately rooted at economic self-interest only to act in confluence of all the aforementioned factors.

In light of this brief illustration and debating upon the relationships between national and international security, it becomes extremely crucial to consider the internal socio-economic and political factors and consequences of the policies, strategies, and tactics that are chosen in the quest for national security.

It is also important for states to be cognizant of the fact that establishing such trade and investment relationships could also prove to be counterproductive if under any given circumstances, they might remotely reduce personal security, be it in terms of economic factors or political factors.

There is undoubtedly an economic dimension to every policy or legal action that a state decides to take up for furthering the interests of its own security. It is particularly important in this economic dimension, which forms the key to all the policy decisions that are taken.

As Adam Smith, in his famous book, 'The Wealth of Nations' [3] puts it, there is particularly no action that does not have an economic underpinning or dimension to it. Every action of individuals, states in whatever arena will, without doubts have an economic dimension, without which the action or policy itself lacks any merit or standing.

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3 Smith, A. (1995) An inquiry into the nature and causes of the wealth of nations, London: Pickering

Thus, any policy furthered towards the betterment of international trade or promoted for the purpose of increasing any dimension of security should be carefully assessed in terms of all of the underlying dimensions of security.

International security is a term used to refer to the safety and protection of nation-states, their citizens, and international organizations from external threats. The international security environment is constantly changing, as countries and other actors need to balance their interests against the interests of other countries and groups. In the modern world, international security can be divided into traditional and non-traditional security.

Traditional security focuses on military and diplomatic efforts to protect a state from external aggression and protect its citizens from harm. Non-traditional security focuses on tackling global challenges such as climate change, pandemics, and economic inequality. It is, in this current study, that the predominant focus lies on non-traditional security of international law, particularly the examination of the confluence between the domain of non-traditional security and traditional security.

In today's globalised world, the international security environment is increasingly complex as well as sophisticated due to the rise of international terrorism, weapons of mass destruction, and cyber warfare. In response, states must develop comprehensive security strategies that encompass both traditional and non-traditional threats. These strategies should include preventive measures such as arms, control, diplomacy, and intelligence gathering, in addition to defensive measures like defensive alliances and military build-ups.

The challenges that plague international trade and international humanitarian law are pretty much fairly deep rooted in the economic self-interest of most nation-states.

International organizations such as the United Nations, NATO, and the European Union play a critical role in international security. These organizations help promote peace and stability and serve as a forum for diplomatic dialogue and conflict resolution. Finally, states must recognize the importance of human security. This encompasses economic, environmental, and social rights, as well as physical and psychological safety. Human security is essential for the stability of a state and the protection of its citizens.

In conclusion, international security is an ever-evolving challenge that requires a multifaceted approach. It is crucial that states work together to prevent conflict and promote global peace and stability. International Economic Security is a specific subset of the domain of international security that predominantly encompasses the idea of creating a secure and stable global economy and seeking to address issues such as global poverty, inflation, global recession and stagflation.

The core theme of this domain includes mechanisms to create a global economy that is resilient to economic shocks and various other challenges that the economy faces due to factors such as conflict, pandemics and other political shocks.

The two core themes of international trade law and international humanitarian law, i.e., individual economic security and international economic security are seen through the lens of conflict and how the very conflict between two nations affects their interplay.

National security and international security are two crucial aspects of security under international law. While the term 'security' itself have multiple and varied connotations in different domains of study, as clearly seen above, its confluence when studied under the arenas of international trade law and international humanitarian law, chiefly forms the crux [4].

National security concerns can create friction with international trade law and IHL principles. The case of US sanctions on Iran [5]exemplifies this. These sanctions aim to curb Iran's nuclear program and support for terrorism, but they also impede Iranian trade, impacting its economy and raising concerns about the legitimacy of such broad sanctions under international trade law. Balancing these objectives is complex. The US attempts to limit Iran's nuclear activities while acknowledging the economic consequences. A further challenge is the lack of a clear definition of "national security," which can be misused to justify trade restrictions. This is evident in how the US invokes national security exceptions in trade disputes.

Similarly, the trade in conflict minerals like tantalum and gold, mined in war zones and funding armed groups, highlights the clash between economic interests and humanitarian concerns. Regulations like the US Dodd-Frank Act[6] aim for transparency in sourcing these minerals, but ensuring responsible sourcing without disrupting legitimate trade remains a challenge. These cases demonstrate the complex interplay between national security, international trade, and humanitarian law. Striking a balance requires nuanced policies, robust due diligence, and international cooperation to achieve security goals without compromising ethical trade and human rights.

To	Person Person Person
Cc	Person
Bcc	Person

4 Dumas. At. 22

5 Geiß, Robin, and Nils Melzer (eds), The Oxford Handbook of the International Law of Global Security, Oxford Handbooks (2021; online edn, Oxford Academic), https://doi.org/10.1093/law/9780198827276.001.0001, accessed 15 May 2024.

6 2010

Subject	

2. UNDERSTANDING THE INTERPLAY BETWEEN INTERNATIONAL TRADE LAW AND INTERNATIONAL HUMANITARIAN LAW

The domain of international trade law is a specialized area of study under the umbrella of international law that seeks to govern trade and business activities between two or more nations. The core principles of international trade law are free trade without barriers and ensure that there is effective allocation of resources among countries, particularly when there are some countries that are at comparative advantage to each other in producing commodities.

International Trade law also comprises of building resilient mechanisms for withholding political and environmental shocks and formulating policies that promote economic growth and development among all nations[7].

One of the most important international organizations, the WTO is responsible for the regulation of international trade and for promoting free trade across boundaries.

The establishment of the World Trade Organization, successor to the General Agreement on Tariffs and Trade ensured that international trade is transformed to keep up with the dynamics of globalization. Currently, the World Trade Organization accounts for about 98 percent of world trade.

The discussion and the formal materialization of international trade law as a domain developed following the second world war as the priority of the international community at the time concerned mostly humanitarian atrocities and their prevention per se. Trade related laws and regulations started to develop only when economic development after the two world wars in the western world started to slowly pick up pace and international economic exchange across borders began to take place.

7 Isaac O. C. Igwe, WTO and the Dynamics of Free Trade: The Challenges of International Trade Law in a Divided Economic World, 5 Athens J.L. 165 (2019)

After the General Agreement on Tariffs and Trade (GATT), which later evolved into the World Trade Organisation (WTO), formal codification of international trade law became a reality. Apart from them, the European Union (EU), the North Atlantic Free Trade Agreement (NAFTA), and the United Nations Conference on Trade and Development (UNCTAD) have all contributed to the development of international trade law.

It is important to understand that it is a dynamic arena, gradually evolving and adapting to the varying economic and political circumstances across boundaries. Nevertheless, the core principles of international trade law are predominantly aimed at greater international cooperation and free trade without qualitative and quantitative barriers.

International Humanitarian Law (IHL) is the domain that deals with the set of rules that seeks to limit the implications and effects of armed conflict due to humanitarian reasons. In the international law domain, it is also known as the "law of war" or " law of armed conflict".

This specific domain of international law comprises treaties, customs (opinio juris) and the general principles of law within it. More particularly, Article 38 of the Statute of the International Court of Justice is of extreme relevance to the domain of IHL[8].

IHL, essentially regulates the conduct of parties during the times of war, which in legal terms is known as jus in bello. However, in particular reference to the current study, it becomes crucial to understand and analyze jus in bello of private actors during times of war.

There is substantial proliferation of literature in the domain of IHL but limited literature concerning the confluence of international trade law and IHL.

Nevertheless, the role of international trade law would step into the domain of IHL, particularly during times of conflict, when the regulation and the conduct of private entities involved in doing business would essentially impact human rights. Viewing this standpoint from another dimension, the role of private actors for the furtherance of peace is also significant for the purposes of the current study.

It is an established fact that the globalization of the world economy offers new arenas for enhancement of commerce and trade for business enterprises. While these can essentially generate growth, employment, and prosperity, they also give rise to risks. With the current world political scenario, businesses are forced to operate in conflict-hit zones, particularly when the impacts of such a conflict impacts business in more ways than one. It is extremely important to understand the role that international trade law plays as a domain

8 Business and International humanitarian law-CRC, https://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm (last visited Mar 10, 2023)

in its confluence with international humanitarian law per se. In the previous section, an attempt to define and perceive 'security' in terms of a holistic sense was made. The notion of 'security' is not limited to security from external forces or economic security of the individual and the nation alone. There is a need to look at it from a broader perspective owing to the fact that there is a significant manifestation of how very dynamic the whole notion of the same.

In this context, establishing and understanding the confluence of international trade law and international humanitarian law becomes crucial, to ensure that human rights, particularly with regards to the economic aspect, is respected and kept intact even during times of conflict. While, the answer to the question of whether any sort of interplay between international trade law and international humanitarian law, could possibly provide answers to the bigger implications and ramifications of war and armed conflict is something that has to be investigated through track-two diplomacy or diplomacy through non-state actors.

The interplay between international trade law and international humanitarian law has been growing in recent years, as they both aim to protect the interests of individuals and nations. One of the most striking similarities with respect to the domains of international trade and international humanitarian law is the fact that both these domains of law involve principles of private international law, particularly when it concerns the usage of private actors in coordination with the states. It is inevitable that 'security', both economic and national, is linked to humanitarian and trade law, which is also the concern of the state actors.

The confluence of these two domains is clearly a dichotomy between trade law versus human rights law and trade law for the furtherance of human rights law in the international domain per se. With regards to this, on one hand, the discussion forms a part of the general debate on the existence and the characteristics of the positive negative effects that trade liberalization principles pose for human rights law. On the other hand, the other dimension speaks about the possible extent to which courts could consider normative conflicts of international trade and international human rights. The case-oriented jurisprudence surrounding this is certainly lesser as there is an absence of both the lesser amount of existing relevant conflicts and the absence of an established legal basis to address and deal with these conflicts[9].

For the domain of trade, the integration of individual rights, also known as the human rights law into the domain of the existing international trade legal regime and rules would essentially bring about a direct enforcement of WTO agreements and treaties in the domestic courts. Such a thing would mean that there is a revolutionary overhaul from the

9 John Robst et al., Geographic Proximity, Trade, and International Conflict/Cooperation, 24 Conflict management and Peace Science 1-24 (2007)

current mechanism of the non-enforcement of the WTO laws, for having violated any of the fundamental principles on international humanitarian law.[10]

There is a generally accepted notion that trade rules are composed of an internationally, formally agreed framework of rules and regulations to govern the exchange of goods and services. This stipulates fairness and is predominantly aimed at putting aside the rules that essentially restrict or act as barriers to trade, internationally.

In a conventional setting, the typical case of a conflict between classical trade law rules and human rights is extremely limited and unable to be found. One of the major reasons for this is the fact that the scope of the two domains differs significantly in terms of the kind of rights that are essentially attributed within them.

While human rights predominantly deal with individual rights, not limited to that of economic security per se. On the other hand, international trade law covers the rights of two sovereign nations that are trading with one another and what are the mutual obligations that arise through the treaty or agreement for trade per se.

The scope and the coverage of the two domains are indeed fairly distinct. However, there are two points of intersection that form the particular basis and the crux of this entire chapter of this study. Firstly, the intersection occurs with respect to economic sanctions and the second with respect to the provision of humanitarian aid during times of conflict.

During times of conflict, nations fighting with one another tend to impose economic sanctions and trade embargoes that are often known for disrupting the general regime of human rights among the civilians who are part of the nations that are either imposing the sanctions or belong to the nation upon which the sanction has been imposed. Further, sanctions could also be imposed by the United Nations and a number of its organizations and the trend of the same has been increased after the end of the Cold War.

The fundamental principle governing the domain of international economic and trade law is based upon the treaties that advocate for the "reciprocal liberalization of market access and the protection of economic freedom and private property rights".[11]

It is important to note that while this is an important consideration for the discourse on international humanitarian law principles being violated, it also forms an adequate case for determining the manner of usage of the economic sanctions and the possible violations that they hold for human rights.

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10 Id

11 George A. Lopez & David Cortright, Financial Sanctions: The Key to a "Smart" Sanctions Strategy, 72 Die Friendens-Warte 327–336 (1997)

Economic sanctions are defined as "coercive foreign policy actions that intentionally suspend customary economic relations such as trade and/or financial exchanges in order to prompt the targeted state to change its policy or behaviour.[12]

From this definition of economic sanctions, it is fairly clear that a majority of economic sanctions concern and involve diplomats and the bureaucracy to a large extent. It is also clear from this definition that the idea of economic sanctions is aimed at attempting to change the policy and the behaviour of the states in conflict with one another. The main purpose of imposing economic sanctions is to modify the behaviour.[13]

While the definition implies that it is aimed at only those aspects that concern the diplomats and bureaucracy of the state, the immediate indirect effects are felt and pushed upon the civilians whose individual economic security through the series of the cascading effects of the very imposition of economic sanctions gets affected. Considering the same, the UN There is a general discourse surrounding the aspect and the conceptualization of "smart sanctions" in the domain of international law.

The ideation of smart sanctions is conceived of as direct political leaders, leaving the citizenry unaffected without compromising their basic human rights.[14]

With respect to the imposition of economic sanctions, they can be broadly classified into the following:

a. Trade a sanctions that restrict imports and exports to and from the target country

b. Financial sanctions addressing monetary issues.

c. Sanctions against the travel of certain individuals or groups and the sanctions against certain kinds of an air transport

d. Military sanctions

e. Diplomatic sanctions revoking the visas of certain diplomats and political leaders.

f. Cultural the sanctions banning athletes from international sports, competitions and artists from international events[15]

While these are various kinds of sanctions that could possibly be imposed by states upon other targeted states, for the purposes of the current study, it is merely limited to the first two types of sanctions mentioned above. Trade sanctions are these types of sanctions

12 Cortright, David Lopez (2019) Economic sanctions: Panacea or peacebuilding in a post-cold War World? S.l.: Routledge

13 Baek, Buhm Suk, "Economic Sanctions Against Human Rights Violations" (2008). Cornell Law School Inter-University Graduate Student Conference Papers. 11. https://scholarship.law.cornell.edu/lps_clacp/11

14 Lopez & Cortright at. 5

15 Id.

which essentially impose a barrier on the quantity of the goods and services (imports and exports) flowing or directed at the target country. [16]The Financial sanctions on the other hand, are those sanctions which are aimed at the target country for economic and financial motivations, aimed at addressing the monetary issues plaguing the times of conflict.[17]

It is clearly established that the definition of sanction is aimed at modifying behaviour of sovereign states, particularly during times of conflict and it is clear from the definition of economic sanctions that are aimed at bringing the economy of the target nation down. The sole purpose behind the economic sanctions is also to bring about disruptions in the status quo of the international economic order and how they could possibly bring about a cascading effect on the disruption to international trade, impacting neutral as well as belligerent nations across the world.

In multiple cases, the purpose of imposing any sanctions upon the target country is to further the cause of democracy, human rights and military abuse in certain countries ridden with active conflict. However, the negative externality created by a sanction can often be as harmful as war itself, with the sanctions causing more harm on the civilians than good, particularly from the economic standpoint.[18]

In the book, "The Peacekeeping Economy" by Lloyd J Dumas, it is argued that while economic, trade and financial sanctions are imposed for the purpose of cutting trade ties with the target nation, the implications of this are both long term as well as directed at causing a series of domino effects that impact the world economic order at large. [19]Further, Dumas argues that this long-term implication caused by the imposition of sanctions during times of war is akin to compromising the very core ideal of "individual economic security.'

From the discourse on international humanitarian law, it is clear that any compromise on the very core ideal of "individual economic security' is a de facto violation of human rights per se.

One of the most important aspects of human rights is 'security' and the notion of 'security' from the aforementioned chapter is clear that it is also comprises of individual security stemming from a multifaceted approach towards a decent standard of living and human rights. Additionally, economic sanctions are indirectly impacting individuals and economic security is certainly compromised when investments are curbed, when the civilians are deprived of a choice of goods and essential commodities which is clearly a violation of human rights.

16 Baek at. 68

17 Id. At. 56

18 Lopez & Cortright at 327

19 Dumas at 45

Reiterating Dumas, the fundamental principle of economic security is rooted in the fact that the ultimate benefit must pose to be a win-win situation among the citizens as well as the nation as well. While sanctions have become an established legal norm under the study of international law, their effects and implications on human rights can certainly be mitigated. The role of international trade law here is to make adequate and judicial use of technical legal expertise and craft 'smart sanctions.'

Smart sanctions, as previously stated are those sanctions which are predominantly aimed at giving primacy to human rights and its basic principles while they operate between nations and diplomats of a particular nation. An inevitable consequence of this is that the economic burden of the nation is forced and pushed upon the vulnerable sections who, do not have the means nor the infrastructure to pull themselves out of the mess that has been the indirect consequence of the imposition of the economic sanctions.

The Smart sanctions are in theory, a targeted imposition of restrictive measures against individuals, organizations and institutions that comply with the generally accepted legal principles of natural justice, the customary international law and the fundamental principles of international humanitarian law[20].In light of this, the question of whether sanctions can be made more humane, while still complying with their goals and accomplishments arises.

The potential success that multilateral "smart sanctions" hold could only be manifested through the seriousness with which the individual states are geared towards implementing the policy. In the regime of smart sanctions, it is important that the countries through government diplomats gain the support of the private sector in a concerted and coordinated effort of enhancement of technical legal capacity of nations per se. This is possible through the increasing of employment and engagement of local a civilian population by enhancing and providing opportunities

One of the most important requirements for the enhancement and realization of the potential of the sanctions is to ensure that there is an effective design in place. [21]For this effective design to materialize, the confluence between international trade law and international humanitarian law policy making comes into the picture. Legal expertise from both these domains must work and act together to design such policies that are not just seemingly smart, but are smart in practicality.

Lastly, in conclusion, the role that international trade law plays during times of conflict cannot be entirely blurred out, particularly when it comes to keeping the integrity and the fundamental principles of international humanitarian law intact.

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20 Smart Sanctions and due diligence requirements in practice-A bottomless Pit?, Deloitte Switzerland , https://www2.deloitte.com/ch/en/pages/tax/articles/smart-sanctions-and- due-diligence-requirements-in-practice-a-bottomless-pit.html (last visited Mar 9, 2023)

21 Lopez & Cortright at 333.

It is clear from literature used in the current study that it is time that the new economic world order must factor in the implications and the long- term consequences of war upon trade and include the civilians into the picture while formulating any of the trade policies or smart sanctions. This would not only curb the cascading effects of war caused on the economy, but would also create a substantial win-win situation that is ideal for all the stakeholders involved. This, undoubtedly, is possible only through garnering public-private partnerships and actively engaging technical legal expertise for the purpose of mitigating the effects of war on international trade.

3. REGULATING BUSINESS FOR PEACEKEEPING

It is quite strange from a doctrinal standpoint, because the direct applicability of human rights principles to business is significantly less obvious than the applicability of international humanitarian law.

Further, one of the most surprising idiosyncrasies of the very domain of international law is the fact that any two entities have obligations against each other but there is no formal enforcement mechanism for control of the same. [22]In this light, the illusion of regulation is far more dangerous to the international community than having no regulation at all.

In the arena of cross-boundary trade, the market forces alone are not sufficient to ensure that the substantive legal issues concerning international trade are adequately addressed. International Trade often finds itself in the cross-hairs of a conflict, mostly due to cultural differences and reallocation of resources due to the increase in globalization and an increasingly interconnected world.

As John Gerard Ruggie states, corporations are essentially 'participants' at the international level, with the capacity to bear some rights and duties under international law.[23]

Here, an important line of difference between 'ought' and 'is' in the area of international human rights has been drawn, particularly when there is scope that playing fast and loose at the same time in the domain of business and human rights could essentially dilute the value and the essence of the same.

With respect to the discourse on IHL and business rights, the proliferation of literature in this respect is essentially limited and also forms another reason why such limited attention is paid to the same. A substantive limited number of businesses do operate during times of conflict and the fact that most CSR activities of businesses essentially have no legal backing in the domain of the IHL compliance. Thus, the domain of IHL seeks to offer some

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22 Simon Chesterman, Lawyers, Guns, and Money: The Governance of Business Activities in Conflict Zones, 11 CHI. J. INT'l L. 321 (2011).

23 Ruggie, John Gerard. "Business and Human Rights: The Evolving International Agenda." The American Journal of International Law 101, no. 4 (2007): 819–40. http://www.jstor.org/stable/40006320.

limitations and some protections for businesses operating in conflict zones. The protection accorded to businesses occurs only when the security amounts to providing non-combatant status to businesses operating in conflict zones and the limitations include labour law and women rights related restrictions.

The problematic areas predominantly include ensuring the security of legitimate business activities in the conflict-hit zones. The legal liability imposed upon such legitimate businesses, particularly when they are associated with the government for the purposes of activities not directly involved in the war itself, becomes a grey area that requires substantial addressing of the same.

In order to understand this aspect further and be able to appreciate the legal underpinnings of the same better, it is important to briefly delve into the aspect of three main issues connected with the security of businesses in conflict hit zones. These three issues are-[24]

- Incoherence – Incoherence, with reference to IHL compliance by businesses in conflict zones is an issue that needs specific clarity on how the activities are to be conducted, particularly during times of conflict and when there is an already pre-existing partnership with the governments who are essentially at war. Clarity must also be sought with respect to the policy changes and implications with respect to the IHL and conduct of the business landscape.
- Arbitrariness – In order to address the issue of arbitrariness in the legal regime concerning the IHL and business domain, the key solution for this is rationality and ensuring a rational allocation of resources. Free trade may offer substantial wins for the short term but certainly is not the solution for ensuring that there is IHL compliance in conflict zones by businesses in the long run. In order to address this arbitrariness, it is important to reassess the role of international organisations such as the WTO in the reallocation of resources and mitigation of ill effects of the conflict.
- Normative overstretch – Normative overstretch refers to the excessive existence of certain norms, but with a lack of clear operability, particularly with regards to IHL compliance and conduct business. This issue can be resolved through modesty, in both, regulation as well as through markets.

It is unclear whether these genuinely constitute a conducive environment for conducting business in crisis zones

While normative overstretch in the markets, when viewed in isolation can be rectified through economic and fiscal market related measures, the normative overstretch in the law could only be addressed through bringing in legal mechanisms for the very regulation of such markets.

24 Chesterman at. 338

In consideration with the aspect of IHL compliance and conduct of business during times of conflict, two important questions arise with regards to the same - what is the motivation for businesses to operate in conflict zones and what is the role that they can play in fostering peace?

In order to address the first question here, it is important to note that the answer to this question lies in the fact that peace as a hyper goal for business, several overall goals appear to provide an incentive to enterprises by engaging in all sorts of trade at all times.[25]

This essentially means that the whole idea of a business operating in a conflict zone would mean limited revenues and limited space for operations, but it would mean an incentive for the advancement and development of the very conflict that hit the zone itself.

In his book, 'Development as Freedom', Amartya Sen writes [26]that the notion of development for businesses is not limited to profit and revenue growth alone but would also encompass trying to look for conducive environments and geography to keep the going concern of the business intact.

Thus, when business activities are allowed to be conducted in places of conflict, there is a substantial long-term incentive for the corporation to look and aim for potential expansion after the commencement of the peace-time economy in the country.

However, such an ideal situation would be possible only when the government of the country or international organizations create legal mechanisms that accord protection to corporations if in the case of any adverse event that may occur.

Answering the second question posed above, the answer lies in a five-point policy coupled with legal protection which has been briefly explained as below[27]

a. Promote economic development – The promotion of economic development forms the crux of the role of business in trying to bring about peace in the nation. This can be possible through advancement of CSR initiatives of the businesses in furthering humanitarian activities.

b. Promoting the rule of law and the principles of external valuation

c. Contribute in the community building through CSR and engaging the civilians in reaping the benefits of the community building

d. Track-two diplomacy – Track two diplomacy basically refers to a mode of Back-channel diplomacy is a non-governmental practice of informal and unofficial communications and activities between private persons. and non-state actors engage

25 Jennifer Oetzel, et. Al. , Business and Peace: Sketching the Terrain,89, Journal of Business Ethics, 357, 351-373 (2009)

26 Amartya Sen, Development as Freedom 126 (Oxford University Press) (1999)

27 Oetzel, et. Al at. 359

in nation building and actively engaging with the citizens towards community building.

e. Engage in conflict-sensitive practices and risk assessment analysis for finding out the prospects of conducting business in conflict hit zones. This particular risk assessment is essential for the purposes of weighing the pros and cons of conducting business in conflict zones.

It is important to note that while this five-point strategy is essential for the purposes of understanding the role that individual businesses and corporations can play in conflict zones, it is also equally important to not underestimate the role that international organizations such as the WTO must play in order to safeguard the best interests of the businesses as well as garner adequate support from individual corporations to relook into the prospects that they essentially hold in light of the prospects of doing business.

4. Conclusion & Suggestions

The conduct of trade between two belligerent nations certainly seems to be a highly utopian ideation, considering the aspect of trade and economic embargoes that are imposed during wartime, however the suggestion of continuing trade between two belligerent nations is not entirely far-fetched and cannot be fully ruled out.

As the analysis from the challenges to international trade law are indeed massive and have long-lasting impacts. One of the key factors to consider in this domain is post-war reconstruction of the economy of the belligerent nations per se. Another closely connected factor is the establishment of regional trade blocs predominantly established for the purpose of creating a conducive legal environment in order to attract more trade and substantive investments into nations and also being able to send investment and trade to the trade blocs.

The focus for the purposes of reconstruction of the economy must and should be inward and outward FDI and trade for the belligerent nations, particularly as seen in the case of Kosovo, especially the immediate post- war reconstruction of the economy in order to easily facilitate the inflow and outflow of trade and investments.

It is indeed an important consideration that the circumstances that prevail in Kosovo are unique to Kosovo itself, however, the key and general takeaways are something that could be applied to the global scenario, particularly liasioning with the inter and intra governmental organisations to create conducive legal environments for the attraction of FDI and easy facilitation of trade per se.

Further, the role of the WTO cannot be ignored and left in isolation in facilitating post-war reconstruction and mitigating the cascading effects to international trade law that wars and armed conflicts pose to the international economic system. While the literature in this regard may be substantially limited, there is reasonable practical experience from the

case studies to essentially suggest that there are substantial takeaways for applying it to individual scenarios.

In fact, the role of the WTO needs to be expanded in order to be more accommodative of the changing global scenario and adapt to these changes in a fastermanner. One of the immediate drawbacks while revisiting the role of the WTO is the absolute veto powers granted to certain developed nations who reap this power to their convenience, causing disadvantage to those nations who are still young members of the WTO or the UN organisations. This vulnerability and low leverage are often banked upon and causes distress to such countries still on the cusp of improving their economy per se.

More particularly, the westernization of the idea of 'veto' is also causing major shock waves, aggravating the circumstances and consequences of the implications of wars and armed conflicts on international trade law. The implications seemingly get exacerbated for the developing economies as they are not entirely independent in utilising resources to the fullest potential and nor are their balance of payments sufficient to sustain through the harsh effects of war and conflict.

Trade being hit would further push such economies deeper into debt and crisis, which would then manifest as creating different problems for countries to deal with, each of them being interconnected and having the potential to completely wreck the economy and legal systems of such an affected country.

Time and again, throughout this study, reference has been made to the suggestions made in the book by Lloyd J Dumas,87 to reconsider the way the world currently perceives international trade law and conducting trade during times of conflict and wars. In order to facilitate peace across the world, the key and primary focus of the same must be centred on law and economics theories that substantiate how trade leads to peace and how peace can be achieved through trade per se. The westernised notion and theories put forth have only added more misery to the already existing challenges in the domain. The only suggestion that Dumas makes in his book, is to 'think and act locally' focussing on establishing the local interests of nations in regional trade blocs. This collective representation of interests would then essentially hold better standing on the global platforms such as the WTO and the various other UN organisations.

In light of this, the following five-point strategy for formulating policies of international trade are suggested, in order to counter as well as largely mitigate the challenges to international trade law during times of war and conflict per se. The five major points recommended as a base for trade policies is explained below-

a. Promote economic development among the developing nations -Here, the promotion of economic development solely does not mean enhancing the individual

economic security of the nations. Economic Development here indicates a holistic understanding of syncing the individual economic security component to the collective international economic security component. This also means that economic development must not alone be restricted to improvement of investment and trade but also economic preparedness to be accommodative of exigencies.

Economic development among the developing nations could also be fostered by increasing regional trade cooperation and opting for preferential trade agreements on a local basis. Further, peace as a hyper goal in such situations must not be underestimated. It is one of the overarching aims closely linked to economic development and something that all businesses engaging in can strive for. Economic Development must also encompass this aspect, particularly when the role of businesses is not only limited to fostering economic development but also to ensure that there is peace in the process.

b. Promote the rule of law and the principles of external valuation – It Is imperative to note the fact that legal systems of a particular jurisdiction tend to be temporarily suspended during times of war and armed conflict between two nations, especially when the international community itself fails to recognise the very existence of the country itself. Considering this, there is a strong need to give international recognition, particularly when the war and armed conflict itself is substantially causing implications, which would not be fair for the other economies which are being affected per se. In such a circumstance, it is important to promote the rule of law and external valuation studied in consonance with each other.

Further, it is also important to note that there is substantial proliferation of resorting to the customary international principles such as pacta sunt servanda to be given primacy, which to a large extent could be responsible in mitigating the implications of war and armed conflict on the international economic system.

c. Contributing in community-building- Community building for the longest time has been one of the most tried and tested methods to encourage post-war economic recovery. This recommendation is solely limited to the aspect of post-war economic recovery. The role of businesses here cannot be side-lined. As they do not have much of an incentive to engage in peacebuilding, they are one of the most important agents that can contribute in bringing about positive peace through economic activity per se. Finally, community building can also be undertaken by those businesses who can incorporate these activities of post-war economic recovery as part of their CSR initiatives.

d. Track-two diplomacy- Track two diplomacy refers to the involvement of private individuals or non-state actors indulging in diplomacy. It is also known as back-channel diplomacy and is the practice of "non-governmental, informal and unofficial contacts and

activities between private citizens or groups of individuals, sometimes called 'non-state actors'".

However, Track two diplomacy does not take the place of track one diplomacy. Rather, it exists to aid official actors in managing and resolving problems by investigating potential solutions generated from public opinion, without the need for formal negotiation or bargaining for benefit. The efforts of these conflict resolution professionals, who mostly work through non-governmental organisations (NGOs) and universities, arose from diplomats and others realising that formal official government-to-government interactions were not always the most effective methods of securing international cooperation or resolving differences.

Track two diplomacy is informal, unstructured communication. Based on best case analysis, it is always open-minded, typically philanthropic, and strategically hopeful. Its core premise is that present or future conflict may be handled or mitigated by appealing to common human skills to react to good will and rationality. Track two diplomacy includes scientific and cultural interactions.

Track two diplomacy shall play an important role in ensuring that trade and investment during times of armed conflict and war are kept intact to a large extent since the governmental actors are more involved in catering to the needs of the war.

e. Engage in conflict- sensitive practices for the furtherance of trade-It is extremely crucial that the non-state or the non-governmental actors adopt conflict-sensitive practices such as risk-assessment to further the cause of the trade and investment and boost their capabilities in other jurisdictions where the conflict is not happening physically. It is indeed difficult to channel the skill and resources but certainly would bring about increased allocative efficiency to mitigate the implications as well as help in post-war reconstruction.

Thus, in conclusion, it can be said that this five-point policy recommendation is the need of the hour particularly with respect to post- war economic reconstruction and furthering the cause of international trade during times of armed conflict and wars.

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Institutionalization of Environmental Classism in India with reference to the Bhopal gas disaster

Dr. Saman Narayan Upadhyay*

Abstract

The Bhopal gas catastrophe has exposed the environmental classist approach of the Indian legislature and judiciary. The Indian legislature has practiced environmental classism since the establishment of the United States-based Union Carbide Corporation's (UCC) pesticide plant in the densely populated low-income locality of Bhopal city, which continued after the leakage of lethal Methyl Isocyanate gas on 2nd December 1984 at night. The Indian political lobby had helped UCC to operate its MIC gas-based pesticide plant by lifting all legal hurdles under the existing industrial and foreign exchange regulations. Exploring its parens patriae position under the newly enacted law, the Indian government has entered into a more lethal settlement of claims on behalf of the victims with UCC for US$ 470 million that completely exonerated UCC from all past, present and future claims, causes of action, and civil and criminal proceedings. The Supreme Court of India has also perpetuated environmental classism by approving terms of claim settlement between UOI and UCC in the midst of litigation without affording the opportunity of a hearing to the interested victims and their representatives. The institutional injustice from the institution of justice continued in the years coming ahead in the form of refusal to entertain pleas of victims to revise terms of settlement for an adequate amount of compensation and criminal proceedings against UCC for heinous corporate offences. The objective of this research paper is to examine the institutionalization of environmental classism in India through the legislature and judiciary with reference to the failure of environmental justice for the survivors of the Bhopal gas disaster. The research hypothesis of this paper is that government policies and judicial decisions have favored the industrial class and systemically left the survivors of Bhopal gas disaster not only inadequately compensated but also exposed to the brunt of industrial toxic and hazardous wastes in the sacrifice zone.

Keywords : Bhopal gas catastrophe; environmental classism; lethal terms of claim settlement; exoneration of UCC from corporate offences; environmental injustice from institution of justice.

1. Introduction

The environment and its components are considered a natural force by many philosophers, philanthropists, scholars and people. They do consider that the natural forces don't discriminate among the different populations on either ground, including race or class.[1] But

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1 Victoria Peña-Parr, "The complicated history of environmental racism" *UNM Newsroom* (The University of New Mexico, 4 August 2020), Accessed from <https://news.unm.edu/news/the-complicated-history-of-environmental-racism > [accessed on 9 April 2025]

it has been experienced that human has significantly influenced the environment, besides other things within his reach on the earth and in space. The Stockholm Declaration, 1972 has also recognized man as a creature and moulder of his environment.[2] Unfortunately, the human influence has led to environmental racism and environmental classism across the world by disproportionate exposure of toxic and hazardous industrial wastes to the vulnerable sections of society based on race and income group. The phrase "environmental classism" is synonymous with the phrase "environmental racism" with reference to the national policies for industrial operations that significantly discriminate among the people on the basis of their race, color, income, social status and political influence. The discriminatory national industrial policies are considerably tilting industrial benefits in favour of the race or high income class that shares socio-political dominance, while industrial burdens or industrial costs are disproportionately shifted onto the vulnerable race or low-income class of society that is socially-economically-politically marginalized. The systemic environmental discrimination against the marginalized race or low-income class through discriminatory national industrial policies eventually exposes them to the brunt of industrial pollution and environmental damages disproportionately. This systemic environmental discrimination is perpetuated in the government policies-rules-decisions, corporate policies-practices, and poor mechanisms for enforcement of environmental standards.

The plight of the Bhopal gas disaster has marked an environmental classism in India. There has been institutionalization of environmental classism against the survivors of the Bhopal gas disaster. The governmental regulatory frameworks for remediation of the survivors of Bhopal gas disaster have favored the mighty Union Carbide Corporation (UCC). The judiciary has turned down adequate claims of the victims manifesting monetary sympathy in favor of the plunderer UCC. After 40 years of the Bhopal gas disaster, the survivors are fighting for justice while the pesticide plant has re-operated its functions in the same 'sacrifice zone,' formally transferring ownership to the Dow Chemical Company in February 2001.

The objective of this research paper is to examine the institutionalization of environmental classism in India through the legislature and judiciary with reference to the failure of environmental justice for the survivors of the Bhopal gas disaster. The research hypothesis of this paper is that government policies and judicial decisions have favored the industrial class and systemically left the survivors of the Bhopal gas disaster not only inadequately compensated but also exposed to the brunt of industrial toxic and hazardous wastes in the sacrifice zone. In this research paper, Section I is the introduction; Section II presents the rising voice for environmental racism in the USA and its transformation into environmental classism in India; Section III deals with the institutionalization of environmental classism in

2 The Stockholm Declaration, 1972, Preamble.

India through the legislature; Section IV deals with the institutionalization of environmental classism in India through the judiciary; and Section V is the conclusion and suggestions.

2. From environmental racism to environmental classism: from the USA to India

Racism and classism are products of the prevailing socio-economic-political landscapes in the nations across the world. Both, racism and classism make division among the people on the basis of their socio-economic-political prominence. The people belonging to dominating race or class are taking hold over the national resources, perpetuating their interest in the national industrial policy while the interest of the people belonging to vulnerable race or class is left unheard. Racism is predominantly practiced in the USA, while classism is practiced in countries like India due to the predominance of race and class in their national policies, respectively.

Dr. Benjamin F. Chavis, an African-American civil rights activist, coined the phrase "environmental racism" in 1982, garnering national attention against the national policy that designated rural Black community areas of North Carolina in the USA as toxic waste disposal sites that eventually contaminated their drinking water reservoirs due to leaching of toxic chemicals.[3] Dr. Benjamin had charged the Reagan administration of the USA in a press conference in 1987 with institutionalizing environmental racism by declaring 90% of African-American localities as toxic waste landfills across the United States.[4] Dr. Benjamin defined "environmental racism" as *"racial discrimination in the deliberated targeting of ethnic and minority communities for exposure to toxic and hazardous waste sites and facilities, coupled with the systematic exclusion of minorities in environmental policy making, enforcement, and remediation."*[5] Robert D. Bullard has rephrased and expanded the phrase "environmental racism," referring to it as a public policy, practice or directive for industrial operations that provides benefits to a selected section of the people (i.e., Whites) shifting industrial costs onto the disadvantageous individuals or communities based on race or color.[6]

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3 Maudlyne Ihejirika, "What is Environmental Racism" *NRDC* (24 March 2023), Accessed from <https://www.nrdc.org/stories/what-environmental-racism#:~:text=What%20exactly%20is%20environmental%20racism,%2C%20and%20low%2Dincome%20workers. > [Accessed on 9 April 2025]

4 "Ben Chavis Charges 'Environmental Racism,'" April 23, 1987; The Charlotte Post, Charlotte, NC," *UNC Libraries*, Accessed from < https://exhibits.lib.unc.edu/items/show/7443> [accessed on 10 April 2025]

5 "Dr. Benjamin Chavis," Commission for Environmental Cooperation, Montreal. Accessed from <https://www.cec.org/speaker/benjamin-chavis/> [accessed 10 April 2025]

6 Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality*, 3rd ed (Westview Press, Boulder, Colorado, USA, 2000). P. 98. ISBN: 978-0-8133-6792-7

In lieu of the race culture, there is a preponderance of the class culture in the Indian industrial regulatory frameworks that provides industrial benefits to the economically stronger class and shifts industrial costs in the form of environmental burdens on the economically vulnerable class. The incident of the Bhopal gas disaster, one of the hardest man-made industrial disasters in human-history,[7] is the result of class-based industrial policy in India. The Indian government had permitted the UCC to establish a Methyl isocyanate-based pesticide plant (MIC plant) in the densely populated locality of Bhopal city that was about two kilometers away from the railway station and very close to large natural lakes in order to facilitate the MIC plant with cost-effective transportation of its pesticide products and use plenty of water in the production of pesticides, respectively.[8] The government policy to establish the MIC plant had disproportionately exposed the people belonging to the low-income class of this locality to the industrial pollution. The environmental classism has appeared more strongly after the Bhopal gas disaster. The Madhya Pradesh government's Department of Gas Relief and Rehabilitation has described victims of the Bhopal gas disaster as the 'lower strata of society.'[9] This 'lower strata of the society' had suffered severe consequences of environmental classism. They lost their life and health; suffered from pulmonary toxicity, genotoxicity, reproductive toxicity, and cardiovascular and hematologic toxicity;[10] lost jobs; undergone economic crises; were forced into displacement;[11] and their locality has been left with wastes of the MIC plant that have contaminated the air and water of that locality.

3. Institutionalization of environmental classism in India through the legislature

While raising voice against the environmental racism in the United States, Dr. Benjamin may not have realized that within a couple of years India would also become one of the leading proponents of environmental racism, *inter alia,* environmental classism, in order to deny environmental justice to a lower-income class of its citizens comprising survivors of

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7 R. Srinivasa Murthy, "Bhopal Gas Leak Disaster," in J. M. Havenaar, J. G. Cwikel, *et al.* (eds.), *Toxic Turmoil,* p. 129 (Springer US, Boston, MA, 2002). DOI: 10.1007/978-1-4615-0623-2_7

8 Ibid. p. 130

9 "Bhopal Gas Tragedy Relief and Rehabilitation," Govt. of Madhya Pradesh, Accessed from <https://bgtrrdmp.mp.gov.in/Economic%20Rehabilitation.html> [accessed on 16 April 2025]

10 Daya R. Varma and Ian Guest, "The Bhopal accident and methyl isocyanate toxicity," 40 *Journal of Toxicology and Environmental Health* 513–29 (1993). Accessed from <http://dx.doi.org/10.1080/15287399309531816> [accessed on 16 April 2025]

11 Prabhat Kumar Mishra and Vineeta Singh, "The intersection of environmental governance and social justice in India: Some insights from the Bhopal gas tragedy," 49 *Shodh Prabha* 73–82 (2024). Accessed from <https://www.researchgate.net/publication/386090253> [accessed on 16 April 2025]

the Bhopal Gas Tragedy. The government of India and the government of Madhya Pradesh has followed the industrial policies to provide industrial benefits to the socio-economically and politically dominant class of the community and disproportionately shifted multi-faceted environmental burdens and industrial costs onto the socio-economically and politically weaker class of Bhopal city. Multi-faceted environmental burdens and industrial costs associated with the industrial activities have included disposal of industrial wastes in the targeted localities of the low-income class of Bhopal city; denial of adequate compensation to the victims of the Bhopal gas tragedy; non-consultation with the poor stakeholders in the formulation of terms to run the UCC industry; non-consultation with the survivors of the Bhopal gas tragedy in the claim settling; and least access of Bhopal gas disaster victims to free medico-legal aids. Indian political lobby and legislature has institutionalized environmental classism at both the stages, i.e., before the Bhopal gas catastrophe and after the Bhopal gas catastrophe. Before the Bhopal gas catastrophe, the political lobbying had helped the UCC to establish its plant in the Bhopal city by lifting all necessary precautionary statutory provisions to run an industry; and after the Bhopal gas catastrophe, they did all that were required to rescue the UCC from its civil and criminal obligations arose out of the catastrophe.

a. Before the Bhopal Gas Catastrophe

The Madhya Pradesh government had launched a series of incentives to attract industries in the state during the 1970s decade.[12] The US-based UCC had planned its industrial operations in India through its Indian subsidiary company named the Union Carbide India Limited (UCIL). The political lobbying helped the UCC to establish its pesticide plant in the densely populated locality of Bhopal city by overcoming the regulatory hurdles existed in the Foreign Exchange Regulation Act 1973 (FERA), the Industrial Development and Regulation Act 1951 (IDRA) and the Madhya Pradesh Development Plan for Bhopal (part of the Bhopal Town and Country Planning Act, 1973, i.e., BT&CPA). The political lobby helped the UCC to hold 60% of shares bypassing the limit of 40% permitted in the FERA to a foreign company in Indian companies; to do production of pesticides that was exclusively reserved for the small Indian industries in the IDRA; and to locate its hazardous industry in the densely populated area of Bhopal city violating the norms of the Bhopal Town and Country Planning Act.[13] Under pressure from the giant UCC, all industrial regulatory norms were lifted by the government, and the UCC was granted a license to run its chemical plant without complying with the Indian and international industrial safety

12 B. Bowonder, "An analysis of the Bhopal accident," 2 *Project Appraisal* 157–68 (1987). Accessed from <http://dx.doi.org/10.1080/02688867.1987.9726622> [accessed on 16 April 2025]

13 Amnesty International, "Bhopal: 40 Years of Injustice" (Amnesty International, 2024). Accessed from <https://www.amnesty.org/en/documents/asa20/7817/2024/en/> [accessed on 19 April 2025]

regulatory norms.[14] Moreover, the government had granted a 100-year lease to the Indian subsidiary company (UCIL) of the UCC[15] without assessing its long-lasting environmental impacts on the vulnerable lower-income class of that locality. The institutionalization of environmental classism through political lobbying, by lifting industrial regulatory hurdles, has begun since the inception of the UCC's MIC plant in Bhopal city.

b. After the Bhopal Gas Catastrophe

After the Bhopal gas disaster, the environmental classism through the political lobbying has perpetuated in the actions of the Indian legislative wings. After two months of the disaster, top officials of the UCC persuaded their proposal with officials of the Indian government to comprehensively settle claims of the victims of the disaster. Owing to the proposals of the UCC officials, the Indian Parliament has enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (BGLD Act, 1985), and the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 (BGLDRPC Scheme, 1985) to put an end to the issue in order to extend favor to the multinational corporation UCC. The BGLD Act, 1985 has conferred exclusive rights to the Central Government, as *parens patriae*,[16] to represent the claimants of the Bhopal gas tragedy and handle their claims in India and abroad.[17] Individual claims against the UCC were primarily not allowed in this Act; individual claimants were allowed to associate in the suit through the counsel at their expense only if the Central Government grants permission.[18] The central government has passed the BGLDRPC Scheme, 1985 exercising its powers conferred under the BGLD Act, 1985 to do registration and processing of claims for settlement with the UCC.[19] The BGLDRPC Scheme, 1985 has invited multiple claims from individual victims and their survivors[20] falling in various categories;[21] however, a claim of a person has been considered a single

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14 Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business*, First edition in paperback 24-28 (Routledge, London, 2014). ISBN: 978–0–203–12561–8

15 Themistocles D'Silva, *The Black Box of Bhopal: A Closer Look at the World's Deadliest Industrial Disaster* 183-187 (Trafford, Victoria, B.C, 2006). ISBN: 978-1-4120-8412-3

16 Bharat Desai, "The Bhopal gas leake disaster litigation: an overview," in S. K. Swan, J. J. G. Syatauw, *et al.* (eds.), *Asian Yearbook of International Law, Volume 3 (1993)* 163–79 (Brill | Nijhoff, Leiden Boston, 1995). ISBN: 978-90-04-40062-7

17 THE BHOPAL GAS LEAK DISASTER (PROCESSING OF CLAIMS) ACT, 1985, Act No. 21 of 1985, S. 3. Accessed from < https://www.indiacode.nic.in/bitstream/123456789/1855/1/A1985-21.pdf > [accessed on 11 April 2025]

18 Ibid. S. 4.

19 Ibid. S. 9.

20 THE BHOPAL GAS LEAK DISASTER (REGISTRATION AND PROCESSING OF CLAIMS) SCHEME, 1985, Paragraph No. 4(4). Accessed from <https://chemicals.gov.in/sites/default/files/notification/Bhopal_Gas_file2%5B1%5D.pdf > [accessed on 11 April 2025]

21 Ibid. Paragraph No. 5.

claim regardless of the number of categories of claims filed by him.[22] The BGLDRPC Scheme, 1985 has authorized the Deputy Commissioner to register the claims[23] and decide the quantum of compensation;[24] appeal against the order of the Deputy Commissioner has to be decided by the Additional Commissioner.[25] Being the executive wings of the state, the Deputy and Additional commissioner had not been fair to the victims; rather, they settled the claim on the terms of settlement proposal designed and proposed by the mighty UCC to the Central Government of India.

The Government of India has reached an out-of-court settlement for US$ 470 million with the UCC in 1989 against the initial claim made by the Indian government in Bhopal District Court in 1986.[26] This settlement had given peanuts as compensation to the victims, and most of the victims were left unregistered due to the irrational classification of claims under the BGLDRPC Scheme, 1985 that disallowed registration of injured children below 18 years and gas-burnt children and women for the claims. The intervener groups raised their voices against the intentional and systemic irrational categorization of claims and underestimation of the havoc of MIC gas suffered by the affected victims. They also raised their voices against the settlement of 1989 done between the government of India and the UCC on the ground that the settlement had been concluded on the basis of unscientific methodology to collect data of MIC-affected people.[27] Both the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985, have institutionalized the environmental classism favoring the mighty UCC and disfavoring the vulnerable class of citizens in the sacrifice zone of Bhopal city.

4. Institutionalization of environmental classism in India through the judiciary

The approach of the judiciaries of India and the United States has also not been to dispense environmental justice to the victims of the Bhopal gas disaster. The courts have also perpetuated environmental classism for one or other reasons. The courts had disappointed victims at both fronts of the justice: one is the criminal justice and the other is the compensatory justice.

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22 Ibid. Paragraph No. 4(4).

23 Ibid. Paragraph No. 3.

24 Ibid. Paragraph No. 11(3).

25 Ibid. Paragraph No. 11(5).

26 Amnesty International, "Bhopal: 40 Years of Injustice" (Amnesty International, 2024). P. 10. Accessed from <https://www.amnesty.org/en/documents/asa20/7817/2024/en/> [accessed on 19 April 2025]

27 Ibid. p. 60.

a. Criminal Justice for the MIC victims

The US courts had never initiated the criminal proceedings against the UCC and its owners. The Indian authorities had registered a criminal case of culpable homicide not amounting to murder against the UCC, UCIL, Warren Anderson and several other officials of the company within twenty-four hours of the incident. However, the criminal proceedings against the UCC and its owner Warren Anderson in Indian courts have never reached a conclusion due to the absconding of the accused Warren Anderson and the transfer of ownership of the plant to the Dow Chemical Company from the UCC. It is interesting to note here that Warren Anderson came to India on 7th December 1984, right after four days of the Bhopal gas tragedy. On the same day, he was house arrested, with eight others, and released by the Bhopal police on a personal bond of Rs. 25,000 with the condition to appear before the courts in India whenever he is called for. But he never returned to India to face a criminal trial, even after being declared a fugitive by the Bhopal District Court.[28] The UCC and its owners have managed to escape from the criminal proceedings and criminal liabilities for culpable homicide not amounting to murder.

b. Compensatory Justice for gas victims

As regards to the compensatory liability of the UCC and its owner Warren Anderson, both the US and Indian courts have favored the mighty UCC either by dismissing claims of the victims or holding the minimum amount of compensation adequate and sufficient that was proposed by the UCC and its owner Warren Anderson.

i. In the US

Several US-based social activists had followed the Bhopal gas disaster, and they helped to file class actions on behalf of victims in several Federal District Courts of the United States for compensatory justice. The first class action was filed on 7th December 1984 on behalf of the thousands of the victims in the Federal District Court of West Virginia,[29] following the filing of another 144 class actions in many Federal Courts in the US. In this way, nearly 2 lakh Indian plaintiffs had approached the US Courts. But, before the victims could have received some compensatory remedy from the US courts, the Indian government

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28 Dan Kurzman, *A Killing Wind: Inside Union Carbide and the Bhopal Catastrophe* 122 (McGraw-Hill 1987). ISBN: 978-0-07-035687-0. Today, Headlines, "Bhopal Gas Tragedy: How Warren Anderson Got Away from Our Grasp," *India Today*, 1 November 2014 Accessed from <https://www.indiatoday.in/india/north/story/bhopal-gas-tragedy-warren-anderson-union-carbide-dow-chemicals-rajiv-gandhi-congress-arjun-singh-225398-2014-11-01 > [accessed on 21 April 2025]

29 Dawani v. Union Carbide, No. 84-2479, (S.D. W.Va. Dec. 7, 1984). (cited by Charles Thelen Plambeck, "The Razor's Edge: The Doctrine of Forum non Conveniens and the Union Carbide Methyl Isocyanate Gas Disaster at Bhopal, India," 10 *North Carolina Journal of International Law* 743–59 (1985).)

took over all the suits, declaring itself *parens patriae* of the Bhopal gas victims under the newly enacted Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. All the Indian civil suits were transferred to Justice F. Keenan of the U.S. District Court for the Southern District of New York, who had eventually dismissed all the suits on the grounds of *forum non conveniens* with the condition that first, the UCC shall submit itself to the jurisdiction of Indian courts without plea of limitations; second, the UCC shall comply with the final judgments rendered against it by the Indian courts comporting with minimal requirements of due process; and third, the UCC shall be subject to discovery of records under the US Federal Rules of Civil Procedure.[30] Against this verdict, an appeal was filed in the United States Court of Appeals Second Circuit that also denied remedy to the victims rather favored the UCC by holding the second condition unnecessary and modifying the third condition, giving the UCC right to apply for discovery of records in the custody of the Indian government and its officials.[31]

ii. In India

Followed by the failure of suits in the US Federal and Circuit Courts, the Union of India (UOI) turned to the Bhopal District Court, filing a claim of US$ 3.3 billion against the UCC on 5th September 1986 on several grounds that include negligence, absolute liability, dangerous activity, ultra-hazards and corporate liability. The Bhopal District Court had awarded interlocutory relief to the victims, ordering the UCC and UCIL to deposit a sum of Rs. 3500 million in the court.[32] The UCC had approached the Madhya Pradesh High Court in a civil revision petition against the order of the Bhopal District Court.[33] The High Court of Madhya Pradesh had reduced the amount of interim relief to Rs. 2500 million. Ultimately, both the parties reached the Supreme Court, aggrieved by the decisions of the Bhopal District Court and Madhya Pradesh High Court. In the course of hearing of the appeal, the Supreme Court had passed an order on 14th February 1989 for the final settlement of the claims for US$ 470 million on account of the compelling needs for the survival of a large number of victims.[34] In order to effectuate the settlement, the five-judge bench of the court headed by the then Chief Justice of India R.S. Pathak ordered that all the pending civil and criminal proceedings related to the Bhopal gas disaster shall be

30 In Re Union Carbide Corporation Gas Plant Disaster at Bhopal, India in December, 1984, 634 F. Supp. 842 (1986). Accessed from <https://law.justia.com/cases/federal/district-courts/FSupp/634/842/1885973/> [accessed on 21 April 2025]

31 In re Union Carbide Corporation Gas Plant Disaster at Bhopal, 809 F.2d 195, 55 USLW 2401, 89 A.L.R. Fed. 217, 17 Envtl. L. Rep. 20,580 (Decided Jan. 14, 1987)

32 Bharat Desai, "The Bhopal gas leake disaster litigation: an overview," in S. K. Swan, J. J. G. Syatauw, *et al.* (eds.), *Asian Yearbook of International Law, Volume 3 (1993)* 170 (Brill | Nijhoff, Leiden Boston, 1995).

33 Union Carbide Corporation v Union of India, AIR 1988 MP 206

34 Union Carbide Corporation v. Union of India, (1989) 2 SCC 540, AIR 1990 SC 273.

transferred to the Supreme Court and shall stand concluded in terms of the settlement, and other proceedings related to this tragedy shall stand quashed.[35] Pursuant to the order of the Supreme Court, both parties- the UCC and the UOI- had submitted a memorandum of settlement with the exonerating terms that this settlement shall terminate all past, present and future tortious claims; civil and criminal proceedings; and causes of action by all Indians and public-private enterprises in relation to all past, present and future deaths, injuries, health effects, compensation and damages including civil-criminal-contempt proceedings; and the accused shall be acquitted.[36] The terms of the memorandum of settlement were approved by the Supreme Court. Professor Upendra Baxi referred to these terms of settlement as "another calamitous event" and remarked that it is an instrument of injustice by the institution of justice that is more lethal than the escape of the MIC gas.[37]

The competence of the UOI to exclusively represent the victims under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, was challenged on the ground that the UOI had shares in the UCIL; *inter alia,* it was also an alleged joint tortfeasor. This fact had raised another issue of the legality of the quantum of compensation and concluding terms for disposal of all past-present-future claims-causes of action-civil and criminal proceedings under the settlement between the UOI and the UCC. The series of issues included non-negotiation with the victims and their legal representatives in the finalization of the alleged settlement. Ms. Indira Jaising had referred to the parliamentary notes and presented the scope of the alleged Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 conferring only *locus standi* to the UOI to represent poor victims in the US Courts to rescue them from the 'ambulance-chasers' but not excluding victims to seek justice independently.[38] Ms. Indira Jaising contended that sections 3 and 4 of the alleged Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 have displaced victims by the UOI declaring it as a 'surrogate' of the claimant victims. However, in Charan Lal Sahu the Supreme Court has enquired only into the issue of the constitutionality of the alleged Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and finally upheld it as constitutionally valid, holding the UOI *paren patriae* of its nationals.[39]

The order dated 15th February 1989 of the Supreme Court in the Union Carbide Corporation case[40] for the final settlement of the claims for US$ 470 million had been challenged in the

35 Ibid. P. 275

36 Ibid. P. 278

37 Bharat Desai, "The Bhopal gas leake disaster litigation: an overview," in S. K. Swan, J. J. G. Syatauw, *et al.* (eds.), *Asian Yearbook of International Law, Volume 3 (1993)* 174 (Brill | Nijhoff, Leiden Boston, 1995).

38 Charan Lal Sahu v Union of India, AIR 1990 SC 1480. P. 37.

39 Charan Lal Sahu v Union of India, AIR 1990 SC 1480

40 Union Carbide Corporation v. Union of India, (1989) 2 SCC 540, AIR 1990 SC 273.

Union Carbide Corporation v. Union of India[41] on the grounds that: (1) the Supreme Court had no jurisdiction to transfer and dispose the main suits and the criminal proceedings during the hearing of the interlocutory order passed by the Madhya Pradesh High Court; (2) the settlement order is void of Order XXIII Rule 38 of the Code of Civil Procedure, 1908 as the affected gas victims were neither informed nor heard; (3) the court had no power to quash the criminal proceedings for serious non-compoundable offences; and (4) the settlement order has put a complete embargo on the future civil and proceedings that is unlawful and opposed to public policy. But the court has turned down all the grounds raised by the claimant petitioners, holding that the court has jurisdiction to withdraw to itself original suits pending in the district courts and to quash criminal proceedings for non-compoundable offences also under Article 142(1) of the Indian Constitution;[42] the settlement order is not void due to non-complying with requirements of Order XXIII Rule 38 of the Code of Civil Procedure, 1908;[43] and terms of settlement putting an embargo on future civil or criminal proceedings don't amount to a conferment of criminal immunity; rather, its effect is mere consequential[44] and it is not against the public policy.[45]

An increasing number of the gas victims and their survivors in the year 2010 have led the UOI to file a curative petition in the Supreme Court demanding additional compensation of Rs. 78 billion from the UCC by amending, invalidating or renegotiating the settlement of 1989 to adequately compensate the victims.[46] Dismissing this curative petition on 14th March 2023, the Supreme Court has placed its reasons that the curative petition has been filed by the UOI without filing a review petition; the UOI has asked for the 'top-up' of compensation without any known legal principles; the UOI has not challenged the legal validity of the settlement of 1989; there should be an end to *lis*; the groups representing the victims have tried to ride piggyback on the curative petitions[47] and ride on the coattails of the Union;[48] and the settlement amount was in surplus of actual requirements.[49]

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41 AIR 1992 SC 248

42 Ibid. p. 372 B-C, F

43 Id. p. 372 E

44 Id. p. 372 G

45 Id. p. 373A

46 Union of India Union v. Carbide Corporation, Curative Petition (C) No. 345-347 of 2010, 2023 INSC 222; Amnesty International, "Bhopal: 40 Years of Injustice" (Amnesty International, 2024). P. 56. Accessed from <https://www.amnesty.org/en/documents/asa20/7817/2024/en/> [accessed on 19 April 2025]

47 Union of India Union v. Carbide Corporation, 2023 INSC 222, paragraph 14.

48 Ibid. paragraph 50

49 Id. paragraph 45

The awarded amount of compensation was just 15% of the initially claimed amount by the UOI that has become inadequate and arbitrary in the years to come with the five times increased number of survivors of the gas victims counted at 568293 in the year 2010 as compared to 102000 registered victims in the year 1989.[50] None of the survivors of the victims were made aware of the quantum of compensation and stipulations of the settlement awarded by the Supreme Court. The court granted pardon to the UCC for the corporate crime committed against the present and future generations of the victims. The court had opportunities to cure defects in the settlement of 1989, but the court had taken a very strange stand on all the occasions and appeared to favor the mighty UCC. The survivors of the Bhopal catastrophe bagged injustice, leading to environmental classism from the institutions of justice.

5. Conclusion and suggestions

Forty years ago, at midnight of 2nd December 1984, about 40 metric tons[51] of lethal Methyl isocyanate (MIC) gas had escaped from a pesticide plant owned by US-based Union Carbide Corporation (UCC), which killed approximately twenty-two thousand people, severely injured around five lakh people, and led to adverse intergenerational impacts on the reproductive health of the survivors of victims in the sacrifice zone of Bhopal city.[52]

The US government and Courts have shielded the UCC and its owners from civil and criminal liabilities. The approach of the Indian legislature and judiciary has also been in favour of the UCC instead of victims of the Bhopal gas disaster. The Indian legislature has made UCC-favored laws institutionalizing environmental classism against the survivors of victims under the influence of political lobby. The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985, are the best-known laws made by the Indian Parliament under the influence of political lobby to shield UCC from all liabilities. The memorandum for claim settlement of 1989 prepared and submitted to the Supreme Court of India on 15th February 1989 by the Indian government and UCC is another set of environmental classism perpetuated against the survivors of victims. This memorandum had stipulated terms of settlement that exonerated the UCC from all past, present and future claims, causes of action, and civil and criminal liabilities. Approving the memorandum of

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50 Amnesty International (ed.), *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* 49-50 (Amnesty International, London, 2014). ISBN: 978-0-86210-485-6

51 Daya R. Varma and Ian Guest, "The Bhopal accident and methyl isocyanate toxicity," 40 *Journal of Toxicology and Environmental Health* 513–29 (1993). DOI:10.1080/15287399309531816

52 "India: Environmental racism enabled forty years of injustice for survivors of Bhopal gas tragedy," Amnesty International, 1 December 2024. Accessed from <https://www.amnesty.org/en/latest/news/2024/12/india-environmental-racism-enabled-forty-years-of-injustice-for-survivors-of-bhopal-gas-tragedy/ > [accessed on 10 April 2025]

settlement sweeping all liabilities of the UCC, the Supreme Court has also perpetuated institutional environmental classism against the survivors of victims. The court didn't give the opportunity of a hearing to the survivors of victims to present their sufferings at the time of approving the claim settlement in 1989. The Supreme Court didn't heed the grass root difficulties of the sufferers caused by the MIC gas leak even on later occasions too; rather, it ensured the invincibility of the UCC. The effect of the court's decision to uphold the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, as constitutionally valid,[53] the denial of rights of victims to reach courts for future civil claims as well as criminal proceedings,[54] and the denial to revise the amount of settlement[55] have not only debarring the sufferers from reaching the court for judicial remedy, but also perpetuated institutional environmental classism against the low-income sufferers' class.

The hazardous wastes left out by the UCC and UCIL are still spreading in the surrounding soil and water of the sacrifice zone of Bhopal city. The environmental classism against the survivors of victims is a persisting challenge, and the question of criminal justice and adequate compensatory justice for the survivors of victims is still pending before the executive, legislative and judicial wings of the Indian government.

6. Suggestions

The Bhopal gas catastrophe has exposed the collective failure of government, judiciary and corporate entities to provide environmental justice to lower-income class people in India. It has also exposed the environmental classist mindset of the Indian government and judiciary against the lower-income class of the society that has been manifested under the influence of a strong multinational company. The effects of the catastrophe are still persisting. Having presented institutionalization of environmental classism against the survivors of victims through the legislature and judiciary, the following suggestions are being made to the Indian legislature and judiciary to dispense environmental justice to the survivors of victims of the Bhopal gas catastrophe:

i. The Indian Parliament should amend the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985, re-tabling at the floor of its Houses to

   a. nullify the decision of the Supreme Court in Union Carbide Corporation v. Union of India[56] to the extent of exonerating the UCC from all future claims, causes of action and civil-criminal proceedings;

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53 Charan Lal Sahu v. Union of India, AIR 1990 SC 1480.

54 Union Carbide Corporation v. Union of India, AIR 1992 SC 248

55 Union of India Union v. Carbide Corporation, 2023 INSC 222

56 (1989) 2 SCC 540, AIR 1990 SC 273

b. allow individual and class action against the UCC and its subsidiaries in the courts for adequate compensation;

c. re-examine and expand categories of the injuries for compensation and rehabilitation through a victim-centric registration procedure;

ii. Since the Indian government had a dual position in the Bhopal gas catastrophe: it was a petitioner within the scope of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and it was one the respondents being an administrative facilitator and shareholder in the pesticide plant owned by the UCC and its subsidiaries. Therefore, the government of India should adequately meet out the claims of the victims and their survivors to the extent of its holdings in the corporation;

iii. The judiciary should rethink and heed the intergenerational effects of the Bhopal gas catastrophe since there has been a voluminous increase in the number of the Bhopal gas victims. The judiciary should take *suo moto* cognizance of the present pathetic condition of the victims and direct the UCC, its successor Dow Chemical Company, and the UOI to meet the claims of the victims adequately; and

iv. Criminal proceedings against the UCC and its successor, the Dow Chemical Company, should be reopened for fixing their criminal liabilities and deterring future corporate offences in India.

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Governance and Policy Frameworks for A Sustainable Blue Economy with Special Reference to International Laws, Policies, and Cooperative Efforts for Marine Resource Management

Dr. Nayanjyoti Das *

Abstract

The Blue Economy aims to balance economic growth with marine conservation, requiring robust governance and policy frameworks for sustainable management. International laws such as the United Nations Convention on the Law of the Sea (UNCLOS), along with agreements like the Convention on Biological Diversity (CBD) and Sustainable Development Goal 14 (SDG 14), provide a foundation for regulating marine resources. Regional policies, including the European Union's Integrated Maritime Policy (IMP) and the African Union's 2050 AIMS, further enhance transnational governance. Key policy tools such as marine spatial planning (MSP) and ecosystem-based management (EBM) help balance conservation and economic interests. Financial mechanisms like blue bonds and sustainable fisheries certification programs support conservation-driven economic activities. Meanwhile, global cooperation through organizations like the International Maritime Organization (IMO) and initiatives such as the Global Ocean Alliance promotes collective action in addressing marine challenges.Despite these efforts, issues like jurisdictional conflicts, weak enforcement, economic disparities, and climate change continue to hinder effective governance. Enhancing international legal compliance, institutional capacity, and stakeholder engagement is crucial for overcoming these obstacles. This paper argues for an integrated, multi-stakeholder approach to governance, combining legal, policy, and cooperative efforts. Strengthening governance will not only protect marine ecosystems but also foster economic resilience and social well-being, ensuring that ocean resources are managed equitably for present and future generations.

Key Word: Blue Economy, Marine Governance, International Policy, Sustainability, Ocean Conservation.

1. Introduction

The sustainable Blue Economy embodies the careful and equitable use of oceanic resources to drive economic advancement, support livelihoods, and maintain the ecological integrity of marine environments. It emphasizes the integration of environmental stewardship with economic development by aligning key marine-based industriessuch as fisheries, maritime transport, coastal tourism, offshore energy, and marine biotechnologywith long-term sustainability objectives.[1] Given that oceans cover over 70 percent of the planet and are

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1 Paul Holthus, "Ocean Sustainability and Stakeholders: The Future of Oil and Gas Industry Operations in the Marine Environment" SPE Annual Technical Conference and Exhibition, 2008.

vital to the livelihoods of billions, particularly in coastal and island regions, the responsible management of marine resources is indispensable to both ecological resilience and human well-being.International governance of marine resources is grounded in key legal frameworks. The United Nations Convention on the Law of the Sea (UNCLOS) establishes the legal basis for maritime rights, responsibilities, and jurisdictional boundaries, while the Convention on Biological Diversity (CBD) underscores the need for the conservation and sustainable use of marine biodiversity. Global initiatives such as Sustainable Development Goal 14 (Life Below Water) and the United Nations Decade of Ocean Science for Sustainable Development (2021–2030) further articulate international commitments to marine sustainability and knowledge generation.[2]Despite these frameworks, significant governance challenges remain. These include the fragmentation of legal regimes, insufficient enforcement in areas beyond national jurisdiction, limited data availability, and geopolitical tensions over maritime claims. Regional cooperation mechanisms such as Regional Fisheries Management Organizations (RFMOs) and Large Marine Ecosystem (LME) programs have been established to address some of these issues through collaborative resource management. In addition, emerging approaches—including blue bonds, marine spatial planning, and community-driven conservation—are contributing to more adaptive and inclusive governance models.[3] Achieving a truly sustainable Blue Economy requires more than legal harmonization. It calls for global solidarity, fair access to marine resources, informed decision-making based on scientific evidence, and meaningful participation from local communities. Enhanced international cooperation, capacity-building, and innovative financing mechanisms are essential to ensuring that marine resources are managed in ways that are both economically beneficial and ecologically sound.[4]

2. Defining Blue Economy and It's Importance

The Blue Economy represents a holistic approach to the sustainable use of ocean resources, aiming to balance economic development, environmental protection, and social well-being. Unlike the green economy, which broadly addresses environmental sustainability across sectors, the Blue Economy specifically focuses on marine and coastal ecosystems.[5] It encompasses a wide range of ocean-based industries, including fisheries, aquaculture, maritime transport, tourism, offshore renewable energy, and marine biotechnology. What sets the Blue Economy apart is its emphasis on the "triple bottom line"ensuring

2 Jane Lubchenco et al., "Priorities for progress towards Sustainable Development Goal 14 'Life below water,'" 7 Nature Ecology & Evolution 1564 (2023).

3 Robin Kundis Craig and J. B. Ruhl, "Governing for Sustainable Coasts: Complexity, Climate Change, and Coastal Ecosystem Protection," 2 Sustainability 1361 (2010).

4 "IUCN_MPAsClimateChange.indd," 2016.

5 Andrés M. Cisneros-Montemayor, "A Blue Economy: equitable, sustainable, and viable development in the world's oceans" Elsevier eBooks 395 (Elsevier BV, 2019).

that economic growth does not come at the cost of environmental degradation or social exclusion. For many coastal and island nations, the ocean is a primary source of food, jobs, and cultural identity.[6] By promoting sustainable fishing practices, responsible tourism, and clean maritime transport, the Blue Economy offers a pathway to long-term prosperity. Moreover, it plays a crucial role in enhancing food security, generating employment, and supporting regional cooperation. As climate change and overexploitation threaten marine ecosystems, adopting Blue Economy principles becomes essential for preserving biodiversity, ensuring ecosystem resilience, and securing livelihoods. In this context, the Blue Economy is not just an economic model but a strategic imperative for sustainable development in ocean-dependent regions.[7]

3. Legal Foundation of Global Marine Governance:

The governance of the world's oceans is underpinned by a robust yet evolving legal framework, which seeks to balance the economic, environmental, and security interests of coastal and landlocked nations alike. This framework is rooted in a body of international legal instruments that establish guidelines for jurisdiction, access, conservation, and sustainable use of marine resources. As global attention increasingly turns to the Blue Economy, the role of these legal instruments becomes ever more critical in ensuring that marine development does not come at the expense of ecological sustainability and equity.[8]

3.1. United Nations Convention on the Law of the Sea (UNCLOS): The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982 and entering into force in 1994, is widely considered the cornerstone of international marine law. Often referred to as the "constitution of the oceans," UNCLOS provides a comprehensive legal framework governing all aspects of ocean space, including navigational rights, territorial waters, economic exploitation, and the conservation and protection of the marine environment.[9]One of the defining features of UNCLOS is its classification of maritime zones. These include **internal waters**, **territorial seas** (up to 12 nautical miles from the baseline), the **contiguous zone** (up to 24 nautical miles), the **Exclusive Economic Zone (EEZ)** (extending 200 nautical miles), and the **continental shelf**. Beyond these lies the **high seas**, which are considered international waters. The classification system delineates not only sovereignty but also regulatory authority, providing states with

6 Pawan G. Patil et al., Toward a Blue Economy World Bank, Washington, DC eBooks, 2016.

7 Raul Gouvea and Margarida Gutierrez, "The Sustainable Brazilian Blue Economy: A Blue Powershoring and Blue Watershoring Strategy," 14 Modern Economy 1892 (2023).

8 FAO, "In Brief to The State of World Fisheries and Aquaculture 2024. Blue Transformation in action," 2024.

9 Shijun Zhang et al., "International Legal Framework for Joint Governance of Oceans and Fisheries: Challenges and Prospects in Governing Large Marine Ecosystems (LMEs) under Sustainable Development Goal 14," 16 Sustainability 2566 (2024).

specific rights and responsibilities based on their geographic position.[10]Within their EEZs, coastal states have sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resources. However, these rights are not absolute. States are also obligated to protect the marine environment, conduct scientific research responsibly, and allow freedom of navigation and overflight for other states. Furthermore, UNCLOS addresses the conservation of migratory species, control over marine pollution, and the settlement of disputes through bodies such as the International Tribunal for the Law of the Sea (ITLOS).[11]Importantly, UNCLOS introduces the concept of the "common heritage of mankind" in relation to the deep seabed area beyond national jurisdiction (the Area), where mineral resources are regulated by the International Seabed Authority (ISA). This principle aims to ensure equitable sharing of benefits derived from the seabed, especially with developing countries.[12]

3.2. Convention on Biological Diversity (CBD): While UNCLOS provides the structural and jurisdictional framework for ocean governance, the **Convention on Biological Diversity (CBD)**, adopted in 1992 at the Earth Summit in Rio de Janeiro, complements it by focusing specifically on the conservation of biodiversityincluding marine and coastal ecosystems.[13]The CBD operates on three primary objectives: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the utilization of genetic resources. Although it does not exclusively address marine issues, the CBD has been instrumental in shaping global efforts to protect marine biodiversity.[14]The **Aichi Biodiversity Targets** (2011–2020), particularly Target 11, emphasized the need to conserve at least 10% of coastal and marine areas through effectively managed, ecologically representative protected areas. While global progress was made, the target fell short in implementation, prompting a more ambitious agenda under the **Post-2020 Global Biodiversity Framework**, adopted in 2022 in Kunming-Montreal. This new framework calls for the protection of **30% of the world's oceans and coastal areas by 2030** ("30x30" target), aiming to reverse biodiversity loss and enhance ecosystem resilience.[15]Through mechanisms like the **Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)**, the CBD provides a platform for sharing knowledge,

10 "United Nations convention on the law of the sea," 2004 Law of the sea bulletin 1 (2004).

11 Arif Ahmed, "International Law of the Sea: An Overlook and Case Study," 8 Beijing Law Review 21 (2017).

12 "United Nations Convention on the Law of the Sea (UNCLOS)," Routledge eBooks 113 (Informa, 2018).

13 "Marine and Coastal Biodiversity," 2024.

14 Alex Innes Thomson et al., "Charting a course for genetic diversity in the UN Decade of Ocean Science," 14 Evolutionary Applications 1497 (2021).

15 James Fitzsimons et al., "The 30 × 30 Protection Target: Attitudes of Residents from Seven Countries," 17 Sustainability 3444 (2025).

setting conservation priorities, and developing tools to assess and monitor biodiversity trends. Marine Protected Areas (MPAs), Ecosystem-Based Management (EBM), and the use of traditional knowledge are integral to the CBD's marine agenda.[16]

3.3. Other Key International Convention: The **International Maritime Organization (IMO)**, a specialized agency of the United Nations, plays a critical role in regulating shipping to ensure maritime safety and environmental protection. Several key conventions administered by the IMO contribute significantly to marine governance:

3.3.1. MARPOL (International Convention for the Prevention of Pollution from Ships): Adopted in 1973 and modified by the 1978 Protocol, MARPOL is the primary international treaty aimed at preventing marine pollution from ships, whether due to operational discharges or accidental spills. It includes six annexes covering oil, noxious liquid substances, harmful substances in packaged form, sewage, garbage, and air pollution from ships.[17]

3.3.2. SOLAS (International Convention for the Safety of Life at Sea): First adopted in 1914 following the Titanic disaster, SOLAS mandates safety standards in ship construction, equipment, and operation. Though primarily focused on safety, its provisions also indirectly influence environmental governance by minimizing accident-related pollution.[18]

3.3.3. Ballast Water Management Convention: This treaty, adopted in 2004, aims to prevent the spread of harmful aquatic organisms carried in ships' ballast water. It mandates the treatment of ballast water before discharge, thus safeguarding marine ecosystems from invasive species.[19]

3.3.4. FAO Code of Conduct for Responsible Fisheries: The **Food and Agriculture Organization (FAO)** developed the **Code of Conduct for Responsible Fisheries** in 1995 to provide a voluntary, non-binding framework guiding nations on responsible fishing practices. Although not a treaty, the Code is widely regarded as a global standard for sustainable fisheries management.[20]

The Code covers a broad range of issues, including fishing operations, aquaculture development, post-harvest practices, and trade. It encourages the conservation of fish

16 Corey J. Morris et al., "Monitoring data for a new large offshore marine protected area reveals infeasible management objectives," 6 Conservation Science and Practice (2024).

17 International Convention for the Prevention of Pollution from Ships (MARPOL 73/78," 2025.

18 Daniel Nicu Fraitag et al., "Prevention activities in ship loading and unloading operations," 354 MATEC Web of Conferences 3 (2022).

19 "Ballast Water Management Convention," 2004.

20 Luo Guoqiang and Zhixin Chi, "Conflicts and Challenges of Sustainable Fisheries Governance Cooperation under the Securitization of the Maritime Commons," 8 Fishes 1 (2022).

stocks, habitat protection, enforcement of fishing regulations, and the elimination of illegal, unreported, and unregulated (IUU) fishing.[21]

Through its guidelines, technical reports, and regional initiatives, the FAO supports member states in adopting sustainable fisheries policies, improving data collection, and strengthening institutional capacity. The Code also underscores the importance of participatory governance, encouraging the involvement of local fishing communities in resource management and decision-making.[22]

4. Global Policy Frameworks Supporting the Blue Economy

The development of a sustainable Blue Economy relies not only on legal frameworks but also on well-defined global policy instruments that shape how marine resources are managed, protected, and utilized. These policies provide the foundation for international collaboration, national action, and community-level initiatives. Among the most influential are the United Nations Sustainable Development Goals (SDGs), the Paris Agreement on climate change, and the UN Decade of Ocean Science for Sustainable Development. These frameworks help align global priorities and encourage the integration of environmental, social, and economic considerations in ocean governance.[23]

4.1. Sustainable Development Goal 14-Life Below Water : This position Adopted in 2015 as part of the 2030 Agenda for Sustainable Development, Sustainable Development Goal 14 (SDG 14) is dedicated to the protection and sustainable use of the oceans, seas, and marine resources. It recognizes the oceans' critical importance to life on Earth regulating the climate, feeding people, facilitating trade, and feeding local communities, especially in coastal areas.[24]

SDG 14 consists of ten interconnected targets, which focus on major marine issues. These encompass the reduction of marine pollution (Target 14.1), the management and protection of marine and coastal ecosystems (14.2), the reduction of the adverse effects of ocean acidification (14.3), and the regulation of overfishing (14.4). Further targets: support for

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21 Myron H. Nordquist, Satya N. Nandan and James Kraska, "Code of Conduct for Responsible Fisheries" Brill | Nijhoff eBooks 605 (Brill, 2012).

22 Loretta Malvarosa et al., "Data availability and participatory approach: the right mix for enhancing Mediterranean fisheries' sustainability," 10 Frontiers in Marine Science (2023).

23 Loretta Malvarosa et al., "Data availability and participatory approach: the right mix for enhancing Mediterranean fisheries' sustainability," 10 Frontiers in Marine Science (2023).

24 "Goal 14: Life Below Water," 2025. It comprises a set of ten targets addressing an array of issues, including marine pollution, ecosystem conservation, overfishing, ocean acidification, and marine technology transfer Walter Leal Filho et al., Life Below Water Encyclopedia of the UN sustainable development goals (Springer International Publishing, 2020).

small-scale fisheries sustainability, reduction of harmful fisheries subsidies and marine scientific research and international law enforcement.[25]

However, progress on SDG 14 has been mixed despite increasing international attention. While there has been a growth of Marine Protected Areas (MPAs), other targets (overfishing, pollution and subsidies in particular) have seen little progress. One third the world's fish stocks are still overfished, and plastic is still choking the oceans at a worrying pace. But SDG 14 managed to place the world ocean on the international map and incentivize countries to include marine sustainability policies in their national plans.

Moreover, SDG 14 acts as a guiding framework for donor priorities, research agendas, and cross-border cooperation. By linking marine sustainability to economic development and poverty reduction, it reinforces the Blue Economy as a core component of sustainable development.[26]

4.2. Paris Agreement and Its Ocean Linkages: The Paris Agreement, signed in 2015 under the United Nations Framework Convention on Climate Change (UNFCCC), though not specifically directed at oceans, has serious consequences for the health of the ocean and for the Blue Economy. They happen to be the planet's biggest carbon sink, soaking up more than 25 percent of carbon dioxide emissions and more than 90 percent of the excess heat produced by greenhouse gases. This important work, however, is not without costs, as it results in ocean acidification, increased sea-surface temperatures, and rising sea levels – factors that pose threats to marine biodiversity and to coastal communities.[27]

Ocean warming is killing coral reefs, emptying some fisheries and increasing the ferocity of hurricanes and cyclones. The acidification of the oceans, a result of higher carbon concentrations, damages shell-forming organisms like corals and mollusks, upending marine food chains. These changes have also implications for key sectors of the Blue Economy, such as fishing and tourism.[28]

Acknowledging these risks, the Paris Agreement invites parties to scale up adaptation efforts that address oceanic and coastal ecosystems. The incorporation of the "Ocean and Climate Dialogue" in the UNFCCC framework in recent years also testifies to increasing

25 "Department of economic and social affairs," Energy statistics pocketbook (United Nations, 2025).

26 Raul Gouvea and Margarida Gutierrez, "The Sustainable Brazilian Blue Economy: A Blue Powershoring and Blue Watershoring Strategy," 14 Modern Economy 1892 (2023).

27 Pierre Friedlingstein et al., "Global Carbon Budget 2022," 14 Earth system science data 4811 (2022).

28 Chahan M. Kropf et al., "Tropical cyclone risk for global ecosystems in a changing climate" Nature Climate Change (2025).

recognition of the ocean-climate nexus. A number of countries with a coastline and islands also have featured ocean-based climate responses in their NDCs.[29]

The Paris Agreement also catalyzes investment in climate-resilient infrastructure, coastal zone management and early warning systems all crucial to protecting ocean economies. Though still a climate-centric agreement, its effectiveness over the long term is directly connected to the health of the marine environment and the sustainability of ocean-based economies.[30]

4.3. UN Decade of Ocean Science for Sustainable Development (2021–2030): The UN Decade of Ocean Science for Sustainable Development, as proclaimed by the United Nations General Assembly in 2017 and coordinated by IOC-UNESCO, seeks to stimulate all sectors of society to coordinate and advance knowledge policy on ocean science and governance. Taking place from 2021-2030, the Decade is a challenge to ensure the ocean is better understood while it supports more effective decisions, protects people and enhances sharing of ocean information for innovation and the sustainable management of the ocean.[31]

The CENTRE addresses the fact that many maritime challenges such as pollution, overfishing, or habitat loss – are the result not just of governance gaps, but of a lack of scientific knowledge as well. The data we have about ocean temperatures, currents, biodiversity, and ecosystem health remains fragmented or stale in much of the world. The Decade is aiming to spark a "global ocean knowledge revolution" to make science a linchpin of ocean policy and economic development.[32]

Among the aims of the Decade are better mapping of the world's oceans, better forecasting of ocean conditions, a scaled-up monitoring of human impacts, and the creation of digital engines to help manage the ocean. It also highlights the need for technology transfer and capacity building, with a particular focus in the developing countries to bridge the scientific and technological divide.

Crucially, the Decade promotes cooperation among states and research institutions, the private sector and indigenous communities. Through inter-disciplinary research and co-

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29 Julien Rochette, "Integrating the ocean into the climate regime: Progress report and future prospects," 2024.

30 Karen N. Scott, "SDG 14: Conserve and Sustainably Use the Oceans, Seas and Marine Resources for Sustainable Development" Cambridge University Press eBooks 354 (Cambridge University Press, 2022).

31 Jen McRuer et al., "Ocean literacy research community: co-identifying gaps and priorities to advance the UN Ocean Decade," 11 Frontiers in Marine Science (2024).

32 Melita Mokos, Giulia Realdon and Ivana Zubak, "How to Increase Ocean Literacy for Future Ocean Sustainability? The Influence of Non-Formal Marine Science Education," 12 Sustainability 10647 (2020).

designed projects it encourages solutions that are scientifically robust as well as socially relevant and locally appropriate.[33]

The revolving theme is innovation. From space-based observation of the ocean to artificial intelligence in fisheries management, technologies that can help the sustainable use of sectors of the Blue Economy are given an extra push in the Decade. Marine spatial planning tools, for example, can be used to better balance conservation with commercial activities, while new aquaculture techniques can minimize environmental harm and increase productivity.[34]

The Decade, in addition, has the important role of advocacy to increase public awareness about the importance of the ocean for the health of the planet and human living. It works through an education campaign, citizen sciences and by mobilizing global events to make it the culture to care about the ocean even outside of the community of scientists and decision makers.[35]

International policy regimes like SDG 14, the Paris Agreement, and the United Nations Decade of Ocean Science provide a foundation for global actions to develop a sustainable Blue Economy. They each provide distinctive solutions setting clear targets, building climate resilience, advancing scientific understanding to influence how we value, use and manage marine resources. Success of these will be contingent on national follow-through and regional coordination, but they offer the strategic guidance required to link ocean industries to wider sustainability objectives. In the process, they herald the future of marine ecosystems and the people who rely on them.

5. Regional and Multilateral Cooperation Mechanisms:

International cooperation is of crucial importance when it comes to the health and productivity of the world's oceans. Many marine ecosystems and fish stocks are not confined to a single jurisdiction and thus unilateral management is not appropriate. Against this background, regional and multilateral cooperation arrangements have become indispensable instruments in the handling of collective marine resources as well as to the advancement of an ecosystem-based management, that is to bring solutions to problems of over-fishing, degradation of habitats and pollution. These include Regional Fisheries Management Organizations (RFMOs), Large Marine Ecosystem (LME) Programs, and Transboundary Marine Spatial Planning (MSP). They are complemented

33 "Ocean Decade," 2024. The UN Decade of Ocean Science could be vital in accelerating Blue Economy investments, while aligning all development to environmental protection.

34 Yann Emmanuel Miassi and Kossivi Fabrice Dossa, "Opportunities and risks of the blue economy for innovative companies in the sustainable aquaculture sector," 1 Journal of Marine Studies 1201 (2024).

35 Ibid

by inter-governmental organizations, the Indian Ocean Rim Association and the Caribbean Community, that promote cross-border cooperation and capacity building.[36]

5.1. Regional Fisheries Management Organizations (RFMOs) : RFMOs are intergovernmental organisations between countries that have a shared interest in harvesting fish from a specific place on the earth, including high seas and other marine areas that don't belong to any one country (the so called ABNJ). These organizations have an important role in conserving and managing fish stocks on the high seas, such as migratory and straddling stocks, such as tuna and swordfish. RFMOs set legally binding conservation and management measures, such as catch limits, seasons, gear restrictions, and monitoring.[37]Examples include the International Commission for the Conservation of Atlantic Tunas (ICCAT), Indian Ocean Tuna Commission (IOTC), and Northwest Atlantic Fisheries Organization (NAFO). It is these ecosystems' systems of collective stewardship, with a mandatory requirement to adhere to science-informed rules in managing stock to keep stock at levels that are biologically sustainable.[38]

RFMOs, however, also face difficulties including unequal implementation of their rules, political disputes among its member states, inadequate protection of non-target species and habitats. However, they are among the most highly institutionalized and formalized types of marine cooperation among regions, and are often used as venues of scientific research, capacity building and dispute resolution.[39]

5.2. Large Marine Ecosystem (LME) Programs : Large Marine Ecosystems LMEs are large areas of the ocean that are characterized by the ecological limits of the area and not by political boundaries. With an area of at least 200,000 square km, each LME has unique bathymetry, hydrography, productivity, and trophic regimes. At present, 66 LMEs have been recognized around the world and together they are responsible for an important fraction of both fishery production and biodiversity production in the world.[40]

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36 Shijun Zhang et al., "International Legal Framework for Joint Governance of Oceans and Fisheries: Challenges and Prospects in Governing Large Marine Ecosystems (LMEs) under Sustainable Development Goal 14," 16 Sustainability 2566 (2024).

37 "Regional fisheries management organisations (RFMOs)," 2024. (There are around 17 RFMOs of over 40 marine Regional Fisheries Bodies identified by the Food and Agriculture Organization of the United Nations)

38 Bradford E. Brown, "Large marine ecosystem fisheries management with particular reference to Latin America and the Caribbean Sea," 22 Environmental Development 111 (2017).

39 Luo Guoqiang and Zhixin Chi, "Conflicts and Challenges of Sustainable Fisheries Governance Cooperation under the Securitization of the Maritime Commons," 8 Fishes 1 (2022).

40 Kenneth Sherman and Alfred M. Duda, "Large Marine Ecosystems: An Emerging Paradigm for Fishery Sustainability," 24 Fisheries 15 (1999).

LME activities are intended to advance the principles of ecosystem-based management (EBM) through coordinated and collaborative mechanisms. These efforts are conducive by organizations such as the Global Environment Facility (GEF), the United Nations Environment Programme (UNEP), and the UNDP, and involve the collaboration of neighbouring countries to control pollution, preserve habitats and restore overfished stocks.[41]

For example, in the Bay of Bengal Large Marine Ecosystem (BOBLME) project eight countries are involved and they are working on depleted fish stocks, habitat destruction or pollution. The program has paved the way for greater coherence and cooperation in marine governance through regional reviews, building capacity, and the joint development of action plans.

One of the valuable features of LME projects is that it is a complex assembly of scientific research, policy making, and stakeholder involvement. They provide ideas for transboundary environmental assessments, the creation of Strategic Action Programmes (SAPs), and encourage joint monitoring and data-exchange mechanisms that are required for sustained ecological resilience.[42]

5.3. Transboundary Marine Spatial Planning (MSP): Marine Spatial Planning is the practice of allocating space in coastal and ocean waters for a range of activities such as fishing, shipping, and conservation while also promoting greater use of space for activities that are less destructive to marine life, such as energy development and tourism. MSP, especially for marine spaces that overlap with two or more states, requires transboundary arrangements to avoid fragmentation and produce maximum mutual benefits.[43]

Trans-boundary MSP is of particular relevance in maritime areas that are heavily utilised, for example the Baltic Sea, where several countries are involved in planning the utilisation of the overlapping sea area. The HELCOM-VASAB MSP Working Group is one such gathering convened at the coasts states level to coordinate plans, transfer lessons learned, and synchronize regulatory arenas.[44]

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41 C.N. Ukwe and Chidi A. Ibe, "A regional collaborative approach in transboundary pollution management in the guinea current region of western Africa," 53 Ocean & Coastal Management 493 (2010).

42 Derek Armitage et al., "Science–policy processes for transboundary water governance," 44 AMBIO 353 (2015).

43 Robert S. Pomeroy, Kimberly Baldwin and Patrick McConney, "Marine Spatial Planning in Asia and the Caribbean: Application and Implications for Fisheries and Marine Resource Management," 32 Desenvolvimento e Meio Ambiente (2014).

44 Michael Elliott, "Baltic Sea environment proceedings," 22 Marine Pollution Bulletin 367 (1991).

MSP has its strength in multi-sectoral and participatory approach, making government, industries, and local communities to be co-architect to the fate of marine space. It contributes to the objectives of the Blue Economy by promoting the complementarity of economic uses, while respecting the integrity of ecosystems.

Still, transboundary MSP does not come without its share of challenges. Coordination can be hindered due to differences in state capacity, legal frameworks, and the availability of data between neighbours. However, working models are being demonstrated and these successes do point towards the potential of MSP to support integrated marine management in a sustainable manner.[45]

5.4. Case Studies: Indian Ocean Rim Association and Caribbean Community:

5.4.1. Indian Ocean Rim Association (IORA): The IORA, which consists of 23 member states along the Indian Ocean, is a platform for regional cooperation on marine and maritime affairs. Its economic and strategic significance as an ocean has resulted in the Association advocating for Sustainable fisheries management; Conservation of marine biological diversity; and Blue economy initiatives Continuing the theme on the value of the Indian Ocean to humanity.[46]

IORA has a Working Group on the Blue Economy that enables member states to share knowledge, cooperate on research and discuss policy. IORA provides assistance on building technical capacity and regional action plans, bolstering equitable and sustainable blue economies and promoting compliance with international norms.[47]

Indeed, IORA encourages South-South collaboration, which empower developing nations in the region to share experiences and best practices. In this regard, it collaborates with external entities such as FAO and UNEP to strengthen technical and institutional potential.[48]

5.4.2. Caribbean Community (CARICOM): CARICOM has a critical role to play in fostering the governance of the sea in its island and coastal member states. Because the Caribbean relies so heavily on marine-based food, tourism, and livelihoods, the region has committed to advancing a Sustainable Ocean-Based Economy.[49]

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45 Nazmus Sakib, Elena Gissi and Hermanni Backer, "Addressing the pollution control potential of marine spatial planning for shipping activity," 132 Marine Policy 104648 (2021).

46 Moses Onyango Ogutu, "The Indian Ocean Rim Association: Lessons from this regional cooperation model," 28 South African Journal of International Affairs 71 (2021).

47 Sainandan S. Iyer, Ranadhir Mukhopadhyay and Sridhar D. Iyer, "The Sino-Indian Geopolitics and Maritime Security of the Indian Ocean Region," 45 Strategic Analysis 1 (2021).

48 Saman Kelegama, "Open Regionalism in the Indian Ocean: How relevant is the APEC model for IOR-ARC?," 5 Journal of the Asia Pacific Economy 255 (2000).

49 Philippe Ross and Marie E. DeLorenzo, "Sediment contamination problems in the Caribbean islands: Research and regulation," 16 Environmental Toxicology and Chemistry 52 (1997).

CARICOM has also enabled the adoption of common policies for integrated coastal zone management, for controlling marine pollution and disaster risk reduction. The Caribbean Regional Fisheries Mechanism (CRFM) is a case in point; it allows for organised cooperation in fisheries management plans, stock surveys, regional licensing systems and alignment of fisheries legislation.[50]

CARICOM also advances initiatives for ecosystem restoration, expansion of marine protected area (MPA) and climate adaptation in collaboration with international donors and organizations like the Organisation of Eastern Caribbean States (OECS). These interventions are essential in building the resistance to the impacts of sea level rise and devastating weather incursions for small island developing states (SIDS).[51]

Regional and multilateral cooperation fora are necessary for managing marine resources across political borders. Be it RFMOs governing migratory fish stocks, LME programs encouraging EBM-based cooperation, or transboundary MSP facilitating spatial use harmonization, these instruments represent tangible and scalable entry points for a sustainable Blue Economy. Lessons from the regional agencies, IORA and CARICOM highlight the influence of institutional collaboration, open questions about scientific data and the role of open governance. Given the increasing pressures the ocean is facing, the ocean cannot be protected for that future generation if this regional cooperation based on equity, science and mutual benefit is not maintained.

6. Challenges and Gaps in Marine Governance

While there is a growing international drive for sustainable ocean governance, the management of the marine sphere is characterised by a series of structural deficiencies and continuing problems. The oceans by definition are transboundary, nested and linked systems. Therefore, successful marine governance needs legal consistency, strong institutions, quality data, fair participation, and geopolitical certainty. But today's systems too frequently come up short, exposing large deficiencies that hinder the realization of a sustainable Blue Economy. The most critical issues are the fragmentation of regulations, the weakness of governance, the scarcity of scientific knowledge, disparities between countries, and political rivalries over maritime boundaries.[52] For example The **United Nations Convention on the Law of the Sea (UNCLOS)** (1982) is considered the "constitution for the oceans", but it leaves room for **sectoral treaties** and **regional arrangements** to

50 BisessarChakalall, Robin Mahon and Patrick McConney, "Current issues in fisheries governance in the Caribbean Community (CARICOM)," 22 Marine Policy 29 (1998).

51 Ibid

52 Yann Emmanuel Miassi and Kossivi Fabrice Dossa, "Opportunities and risks of the blue economy for innovative companies in the sustainable aquaculture sector," 1 Journal of Marine Studies 1201 (2024).

regulate specific activities (fisheries, shipping, seabed mining, marine biodiversity)[53], while the recently adopted Biodiversity Beyond National Jurisdiction (**BBNJ) Treaty** (2023) aims to protect marine biodiversity in areas beyond national jurisdiction but its **jurisdictional overlap** with existing instruments (like UNCLOS and regional fisheries management organizations RFMOs) risks **conflicts** in implementation. That's why there is an uncertainty about how the BBNJ provisions will **align or compete** with existing regulatory regimes.[54]This fragmentation causes significant harm to the development and sustainability of the Blue Economy such as Policy Incoherence and Legal Uncertainty, Weak Environmental Protection, Inequitable Access and Benefit Sharing, Inefficient Response to Emerging Threats i.e Deep-sea mining impacts, Ocean acidification, Climate induced migration or sea-level rise. Overally No single body has **authority** to manage cross-sector threats holistically.

Fragmentation of International Legal Frameworks: The fragmented character of international legal regimes one of the greatest problems in the governance of the sea. Although the UN Convention on the Law of the Sea (UNCLOS) provides a primary legal construct for maritime jurisdiction, it is further elaborated upon and, at times, "over coded" by various sectoral agreements and regional arrangements. Instruments such as the Convention on Biological Diversity (CBD), MARPOL, CITES and the numerous RFMOs tackle various aspects in isolation. The mosaic of treaties, protocols and conventions makes for a fragmented jurisdiction, uneven application and legal uncertainty.[55]For instance, the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ) is partially regulated under UNCLOS, but there is a draft new instrument being negotiated. Until coherent structures emerge, the legal status and operational practice of high seas biodiversity protection efforts is unclear. Such as**Part VII – High Seas** (Articles 86–120) discussed Grants freedoms of navigation, fishing, scientific research, etc., but lacks a **clear framework for conservation of biodiversity** but No binding mechanism for ecosystem-based management or marine protected areas (MPAs) beyond national jurisdiction (ABNJ). **Part XII – Protection and Preservation of the Marine Environment**: Article 192 explain the General duty to protect the marine environment and Article 194 explain the Requires states to prevent, reduce, and control pollution but

53 Dire Tladi, "The Common Heritage of Mankind and the Proposed Treaty on Biodiversity in Areas beyond National Jurisdiction: The Choice between Pragmatism and Sustainability," 25 Yearbook of International Environmental Law 113 (2014).

54 Jinpeng Wang and Yiwei Zhang, "The area-based management tools coordination between IMO and BBNJ agreement regimes and its implications on vessel pollution control," 11 Frontiers in Marine Science (2024).

55 Shijun Zhang et al., "International Legal Framework for Joint Governance of Oceans and Fisheries: Challenges and Prospects in Governing Large Marine Ecosystems (LMEs) under Sustainable Development Goal 14," 16 Sustainability 2566 (2024).

unfortunately these provisions weak enforcement provisions and limited integration with modern environmental norms.[56] The above provisions create gaps such as Marine Genetic Resources, Area-Based Management Tools (ABMTs) / MPAs, Environmental Impact Assessments (EIAs), **Capacity Building & Technology Transfer. These gap can tried to be solved through some suggestive measures i.e. 1.**Finalize BBNJ treaty with clear **access and benefit-sharing (ABS)** mechanisms inspired by Nagoya Protocol but adapted for ABNJ, **2.** Grant BBNJ COP the authority to designate legally binding **ecological zones**, in cooperation with RFMOs and IMO, **3.** Adoption of globally agreed **minimum EIA thresholds**, with mandatory public disclosure and review mechanisms, **4.** Develop a **global ocean coordination mechanism** (e.g., under UN-Oceans or BBNJ secretariat) for cross-sector coherence, **5.** Establish mandatory funding schemes in BBNJ for **capacity building, tech transfer, and scientific cooperation**.Just as there is no single regime for fisheries, pollution or marine genetic resources that is always harmonious, there is also a resulting bias, or distortion, in the allocation of resources between use and conservation that can also result in inefficiencies and 'spillovers'.[57]**Weak Institutional Enforcement and Compliance Mechanisms:** Where laws do exist, they are inadequately enforced, and widespread non-compliance is still an issue. There are many international marine treaties but few have any meaningful enforcement mechanism or sanctions for non-compliance. In the areas outside national jurisdiction, it is frequently left without effective authority to implement the laws that prohibit illegal, unreported and unregulated (IUU) fishing, and as a result this is prevalent.[58]

Conservation measures can be adopted by regional bodies like RFMOs, but enforcement relies on the political will and the ability of individual member states. Inequalities in national capacity, together with lack of finance for surveillance and enforcement, also undermine regulatory reach. Flag-of-convenience activities, and lack of transparency for some fishing fleets make enforcement even more complex. Leaders among these are the lack of a centralised mode for enforcing accountability across governance regimes, which leaves a very significant part of the ocean, especially the more remote and less monitored regions, free from the rules.[59]

56 Moira L. McConnell and Edgar Gold, "The Modern Law of the Sea: Framework for the Protection and Preservation of the Marine Environment," 23 Case Western Reserve journal of international law 83 (1991).

57 Leo X.C. Dutra et al., "Key issues and drivers affecting coastal and marine resource decisions: Participatory management strategy evaluation to support adaptive management," 116 Ocean & Coastal Management 382 (2015).

58 Xidi Chen, Qi Xu and Lun Li, "Illegal, Unreported, and Unregulated Fishing Governance in Disputed Maritime Areas: Reflections on the International Legal Obligations of States," 8 Fishes 36 (2023).

59 Tony Long et al., "Approaches to combatting illegal, unreported and unregulated fishing," 1 Nature Food 389 (2020).

Overally improved coordination and cooperation among marine governance institutions could be developed via a globally central framework, such as the mandate of UN-Oceans being strengthened or the BBNJ treaty operationalized, to support harmonized enforcement and data sharing. Enhancing coordination between RFMOs, IMO, FAO and regional authorities with mechanisms for joined compliance and common surveillance technology used, will mitigate IUU fishing and enforcement deficiencies. Setting up regional enforcement centres, increasing the capacity of developing states and the linking of satellite vessel tracking systems will improve surveillance. Aligning sanctions, enhancing the transparency of fishing activities and incentivizing compliance through trade and market measures are equally important for a cohesive, efficient governance of the Blue Economy.[60]

Lack of Data, Monitoring, and Scientific Assessment: Effective marine governance relies on good science and strong monitoring. However, in many regions of the world, particularly those in developing and least developed states, there is a paucity of oceanographic data, biodiversity assessments, and long-term environmental monitoring. The absence of these data hampers evidence-based policy development and adaptive management planning.[61]

Scientific uncertainties also remain regarding the consequences of deep-sea mining, the long-term climate impact on marine species, and the cumulative anthropogenic pressures on ecosystems. In addition, insufficient funding for research and technology transfer leaves many countries depending on outdated or incomplete data for crucial decision-making.

Even when available, such data tend to be fragmented and non-standardised, making regional comparison and cooperation challenging. To fill this gap, three pressing actions are needed: the establishment of joined-up monitoring platforms, the promotion of data repositories with open access and a strong investment in marine science.[62]

Inequities Between Developed and Developing Nations: There's another major problem with marine governance: the entrenched disparity between nations and access to resources, technology, and forums for making decisions. Especially in the case of developed countries, institutional, technical, and financial resources are available to manage their marine sectors well, yet this does not benefit many developing countries either because they are

60 Tony Long et al., "Approaches to combatting illegal, unreported and unregulated fishing," 1 Nature Food 389 (2020).

61 Sarah Gignoux-Wolfsohn et al., "New framework reveals gaps in US ocean biodiversity protection," 7 One Earth 31 (2024).

62 Len McKenzie et al., "The global distribution of seagrass meadows," 15 Environmental Research Letters 74041 (2020).

unable to meet international obligations, due to lack of technical capacity, or because poor governance prevails in terms of sharing the benefits derived from marine resources.[63]

This discrepancy is reflected in access to marine genetic resources, deep-sea mining prospects and fisheries technology. In addition, international processes often fail to adequately account for traditional knowledge or livelihood priorities of the world's coastal communities, particularly in the Global South. This has led to a situation where the potential gains of ocean development could be unevenly distributed and the environmental costs disproportionately imposed on less wealthy nations.[64]

Political Tensions and Overlapping Maritime Claims: Unresolved maritime borders and competing territorial visions impede cooperative management more than anything else. In the South China Sea, East Mediterranean, and Arctic, geopolitical competition has sparked escalations, deadlocking negotiations and weakening international legal norms.[65]

These conflicts compromise the possibility of rational and joint conservation efforts, and are a source of instability in the region and in the economic hopes of the region. Political frictions frequently scuttle or push back international initiatives to create marine protected areas, regulate fisheries that cross national boundaries or combat illicit activities on the high seas.

In addition, the creation of EEZs and claims to the continental shelf, especially as permitted by UNCLOS, has resulted in greater competition for maritime space and resources. Without a diplomatic solution and recognition of reciprocal rights, ocean governance in contested areas will be ineffective and fragmented.[66]

7. Innovations and Best Practices in Marine Resource Management:

In recent years, sustainable management of the marine resources has gone a long way; there has been a blend of innovation for financial sustainability, conservation, technology, and the traditional knowledge systems as part of new perspectives. With increasing environmental pressures on ocean ecosystems, innovative tools and approaches become ever more crucial to promote a sustainable and blue economy. This section details four important approaches

63 David Gill et al., "Capacity shortfalls hinder the performance of marine protected areas globally," 543 Nature 665 (2017).

64 Ruby Grantham, Jacqueline Lau and Danika Kleiber, "Gleaning: beyond the subsistence narrative," 19 MAST. Maritime studies/Maritime studies 509 (2020).

65 Daojiong Zha and Lina Gong, "China and southeast Asia in the 2000s: Tension management in the maritime space," 23 The British Journal of Politics and International Relations 248 (2021).

66 Md. Monjur Hasan et al., "Protracted maritime boundary disputes and maritime laws," 2 Journal of International Maritime Safety Environmental Affairs and Shipping 89 (2019).

i.e. Blue Bonds and sustainable finance, Marine Protected Areas (MPAs), digital tools for monitoring, and community-based and indigenous marine governance.[67]

7.1. Blue Bonds and Sustainable Financing : Innovative financing tools, including blue bonds, are increasingly recognized as powerful ways to finance the sustainable use and management of the ocean. Blue bonds are bonds raised exclusively to finance marine conservation and sustainable development projects. They are similar in concept to green bonds, but they focus on efforts such as fisheries reform, coral reef restoration, sustainable aquaculture and pollution control.[68]

The first example is Republic of Seychelles blue bond in 2018 for the purpose of financing marine protected areas and sustainable fisheries management the first ever blue bond issuance in the market. The funds were then used for Marine Spatial Planning, surveillance and enforcement, and alternative livelihoods. This sort of instrument also has the potential to connect the world of finance to the health of the oceans, and to reward both responsible ecological management and economic growth.

Blue finance also includes other modalities such as impact investing, sustainability-linked loans, blended finance structures or leverage funds that pool public monies and private investments. These are important innovations in addressing the gap in funding for marine conservation, especially in the coasts and islands of developing countries.[69]

7.2. Marine Protected Areas (MPAs) : Marine Protected Areas remain a fundamental tool for the conservation of biodiversity and ecosystem management. MPAs are areas established as such for the management of human use with the purpose of conserving habitats, species and ecosystem processes. They come in a variety of forms from no-take reserves to multiple-use zones but are all designed to make marine ecosystems more robust.[70]

Over the past few decades, the coverage area of MPAs has expanded considerably at a global level, mainly owing to the international commitments around the objectives of the Aichi Biodiversity Targets and SDG 14. Governments and conservationists have also increasingly acknowledged that the measure can help restore fish stocks, protecting critical

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67 Andrés M. Cisneros-Montemayor, "A Blue Economy: equitable, sustainable, and viable development in the world's oceans" Elsevier eBooks 395 (Elsevier BV, 2019).

68 Antaya March, Pierre Failler and Michael Bennett, "Challenges when designing blue bond financing for Small Island Developing States," 80 ICES Journal of Marine Science 2244 (2023).

69 Pascal Nicolas et al., "Impact investment in marine conservation," 48 Ecosystem Services 101248 (2021).

70 Elizabeth Mcleod, "Marine Protected Areas: Static Boundaries in a Changing World" Elsevier eBooks 94 (Elsevier BV, 2013).

habitats such as coral reefs and mangroves, and allowing drivers of coastal life like eco-tourism or sustainable fisheries to thrive.

Efficient MPAs are made with science-based zoning, engagement with local communities, and enforcement. But their effectiveness more broadly is determined not simply by size and nomenclature but by good management and sustained funding. Incorporating MPAs into a wider context of seascape-level planning, such as marine spatial planning, can maximise their ecological benefits and management opportunities.[71]

7.3. Digital Tools and Technologies: Marine Protected Areas are a key tool of biodiversity conservation and ecosystem management. MPAs are areas where human activities are regulated or restricted to protect habitat, species and ecological processes. They take many shapes and forms strictly no-take reserves to multiple-use zones but all have been designed to bolster the resilience of marine ecosystems.

Internationally, MPAs have (39) grown rapidly in recent decades, driven largely by global commitments (e.g., Aichi Biodiversity Targets and Sustainable Development Goal 14). Governments and conservation groups have increasingly acknowledged their responsibility to restore fish stocks, protect critical habitats such as coral reefs and mangroves and provide sustainable livelihoods on the coast through eco-tourism and sustainable fisheries.

Effective MPAs include elements such as: science-based zonation, community participation and robust enforcement. But success depends not only on size and label but also on careful management and sustained financing. The inclusion of MPAs in more comprehensive seascape-level planning, such as marine spatial planning (MSP), increases their ecological effectiveness and potential governance.[72]

7.4. Community-Based and Indigenous Marine Governance: Indigenous Peoples and local communities have traditionally been stewards of marine ecosystems, and businesses will continue to be guided by traditional knowledge, cultural practices and well-established ecological connections. Community-based marine governance acknowledges and institutionalizes this approach, allowing local people to govern their coastal resources in ways that are ecologically sound and culturally rooted.[73]

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71 Patrick McConney and María Luz Martín Peña, "Capacity for (Co)Management of Marine Protected Areas in the Caribbean," 40 Coastal Management 268 (2012).

72 Patrick McConney and María Luz Martín Peña, "Capacity for (Co)Management of Marine Protected Areas in the Caribbean," 40 Coastal Management 268 (2012).

73 Meg Parsons, Lara Taylor and Roa Petra Crease, "Indigenous Environmental Justice within Marine Ecosystems: A Systematic Review of the Literature on Indigenous Peoples' Involvement in Marine Governance and Management" Sustainability 4217 (Multidisciplinary Digital Publishing Institute, 2021).

The experience of the Pacific Islands, parts of Southeast Asia, and areas within Africa is showing the way in which customary marine tenure and locally managed marine areas (LMMAs) have been effective in regulating fishing, preserving spawning regions, and increasing community resilience. Such models are frequently built around participatory decision-making, seasonal closures and co-management agreements informed by local priorities and knowledge.

Combining customary management with national and international frameworks would enable policymakers to achieve more inclusive, equitable, and sustainable marine resource management. Respecting community rights, providing technical support and ensuring genuine participation in marine planning are key to the long-term success of these approaches.[74]

A series of changes in how the oceans are governed from financial mechanisms such as blue bonds to digital innovations and community-led actions are shaping new models of interfacing with the oceans. These best practices not only support the conservation of marine ecosystems, but also drive inclusive economic development and social welfare. A mix of technological development, capital, awareness of local conditions, and robust government backing is needed if the Blue Economy is to be sustainable and fair.

8. Recommendation:

A series of pragmatic and forward-looking measures must be taken at the global, regional and national levels to achieve the vision of a Blue Economy that is truly sustainable. The recommendations below are intended to help close current governance holes and help ensure fair and science-based marine resource management.

8.1. First, there is an urgent need for greater international legal uniformity and coordinated implementation. While frameworks like UNCLOS, the CBD, and IMO conventions provide a foundational base, limited ratification, overlapping mandates, and fragmented enforcement undermine their effectiveness. Strengthening institutional coordination through mechanisms like the BBNJ treaty or an enhanced UN-Oceans platform can help harmonize legal obligations across environmental, fisheries, shipping, and trade regimes. This would ensure regulatory coherence, reduce contradictions, and improve compliance, particularly in transboundary and high seas areas. A more unified legal approach is essential for addressing IUU fishing, enhancing marine conservation, and enabling a sustainable and inclusive Blue Economy.

8.2. Second, we need to step up regional cooperation, especially in enforcement. There are stakeholders, such as RFMOs and regional seas not sufficiently resourced and

74 Marjo Vierros et al., "Considering Indigenous Peoples and local communities in governance of the global ocean commons," 119 Marine Policy 104039 (2020).

empowered to push for compliance, while they play a very important role in shared resource management. That's why it is so important that we bolster in-country capacity, strengthen data-sharing mechanisms and invest in collaborative monitoring efforts to ensure regional governance leads to action on the ground.

8.3. Third, investments in ocean science and technology are necessary for policy, monitoring of change and adaptive management. There remain significant data gaps in many developing countries, severely constraining their capacity to adequately manage marine resources. Marine research, ocean observatories and technological innovation should be given priority in international development cooperation.

8.4. Fourth, it is important to have a governance that is inclusive and not exclusive or participatory. Local communities, Indigenous peoples and civil society organisations need control of marine planning and decision-making. Their expertise, their experience and their cultural knowledge is critical to executing place-based solutions.

8.5. Finally, the design of innovative financing instruments—such as blue bonds and concessional funding—targeting small island and coastal developing states will help fill resource gaps and contribute to longer-term sustainability objectives.

In conclusion, a sustainable Blue Economy can be realised only through global links between legal, financial and knowledge tools. Ensuring the harmonization of international marine law, the reinforcement of regional enforcement and additional investment in ocean science and monitoring technologies are crucial. Also important is the encouragement of inclusivity in governance through a recognition of the role of local and indigenous communities. Finally, there will be a need to create innovative and accessible financial instruments that cater to the needs of developing coastal and island countries. These packages things are critical to ensuring we have healthy oceans where everyone has a fair share.

9. Conclusion

This research has revealed how international law, policy frameworks, and regional cooperation are all critical to the realisation of the sustainable Blue Economy. International governing frameworks like UNCLOS and the CBDB establish the framework for marine governance, while multilateral initiatives, SDG 14 and the UN Decade of Ocean Science highlight the importance of collective action.[75] Practical solutions such as blue bonds, Digital Tools for tracking fisheries management and community-driven management models are being adopted as promising ways to govern the sustainable use of the oceans more effectively and equitably. But obstacles loom despite these advances. Disjointed legal regimes, lack of enforcement on the high seas, and the imbalance in capacity between

75 Diana Mangalagiu et al., "Oceans and Coastal Policy" Cambridge University Press eBooks 348 (Cambridge University Press, 2019).

developed and developing states remain barriers to advancement.[76] The increasing threats posed by climate change, overfishing, and marine pollution only serve to underline the urgency of these reforms. Now more than ever, integrated and inclusive marine governance is a must. That calls for a more consistent interaction of legal instruments, regional works, scientific studies and sea facing communities empowerment.[77] Going forward, the international collaboration will need to shift from a reactive approach to one of expanding institutional capacity, technology transfer and sustainable finance specific to these vulnerable countries. Therein lies the only way for the Blue Economy to be fully realized, in service to both humanity and the planet.

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76 Shijun Zhang et al., "International Legal Framework for Joint Governance of Oceans and Fisheries: Challenges and Prospects in Governing Large Marine Ecosystems (LMEs) under Sustainable Development Goal 14," 16 Sustainability 2566 (2024).

77 Jessica A. Nilsson et al., "How to Sustain Fisheries: Expert Knowledge from 34 Nations," 11 Water 213 (2019).

Impact of Rubber Plantations on the State of Tripura: A Critical Socio-Economic Study on the Environment

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Abstract

The rapid expansion of rubber plantations in Tripura, India's second-largest rubber-producing state, has reshaped its socio-economic and environmental landscapes, triggering complex trade-offs between development and sustainability. This study critically examines the dual-edged impact of rubber monoculture on Tripura's indigenous communities, ecosystems, and economic frameworks. Customarily reliant on jhum (shifting cultivation) and rich biodiversity, Tripura underwent a dramatic bucolic shift post-1960s, driven by State incentives from the Rubber Board of India. While rubber cultivation has spurred rural employment, infrastructure development, and income growth—boosting farmer incomes by three hundred percent and employing over two hundred thousand people—it has also precipitated severe ecological degradation and socio-cultural disruptions. Using a mixed-methods approach, this paper synthesizes primary data from interviews with farmers and indigenous groups, secondary data from government reports, and spatial analysis of deforestation trends. Key findings reveal that 40% of Tripura's forest cover was lost between 1980–2020, primarily to rubber estates, endangering keystone species like the Hoolock gibbon and destabilizing watersheds. Indigenous communities, such as the Reang and Tripuri tribes, face displacement from ancestral lands, erosion of traditional livelihoods, and cultural disintegration, exacerbated by weak implementation of the Forest Rights Act (2006). Environmental costs include groundwater depletion (rubber trees consume twice the water of native flora) and chemical pollution from agrochemicals, contaminating soil and aquatic ecosystems. Case studies from Taidu (West Tripura) and Jampui Hills highlight contrasting narratives: while Taidu exemplifies economic success, Jampui underscores conflicts over land acquisition and loss of sacred groves. The study identifies policy gaps, including the absence of environmental impact assessments (EIAs) for new plantations and inadequate support for crop diversification. Recommendations emphasize agro forestry models integrating rubber with pepper or vanilla, stricter land-rights enforcement, and incentivizing sustainable alternatives like bamboo or turmeric.

This research underscores the paradox of rubber-driven growth—economic gains overshadowed by long-term ecological vulnerability and social inequity. It calls for a recalibration of development strategies to prioritize environmental resilience, indigenous agency, and diversified livelihoods, ensuring Tripura's transition from monoculture dependency to holistic sustainability.

Keywords: Rubber plantations, Socio-economic impact, Environmental degradation, Tripura, Deforestation, Indigenous communities, Sustainable agriculture, Land-use change.

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1. Introduction

Nestled in India's northeastern frontier, Tripura—a state endowed with rich biodiversity and indigenous cultural heritage—has undergone a dramatic agrarian transformation since the 1960s[1]. Historically sustained by *jhum* (shifting cultivation), a cyclical farming system rooted in ecological reciprocity, the state shifted to rubber monoculture under the Rubber Board of India's aggressive promotion[2]. This transition, framed as a pathway to modernization and poverty alleviation, has reconfigured Tripura's socio-economic and environmental landscapes, creating a paradox of growth and vulnerability.

By 2023, rubber plantations spanned over 100,000 hectares, contributing 9% of India's natural rubber output and 6% of Tripura's GDP[3]. While the sector employs 250,000 people and boosted incomes for smallholders, it has also displaced 30% of indigenous communities, degraded 40% of forest cover (1980–2020), and triggered water scarcity and soil depletion[4]. The Hoolock gibbon, a keystone species, now faces local extinction, and sacred groves central to tribal spirituality have been razed for plantations[5].

This paper critically examines the dualities of Tripura's rubber economy: prosperity for some versus ecological disintegration and cultural erasure for others. Through case studies of Taidu (a rubber-success narrative) and Jampui Hills (a site of resistance and alternatives), it interrogates policy failures, including weak implementation of the Forest Rights Act (2006) and corporate land grabs[6]. The study advocates for agroforestry, tribal sovereignty, and stringent environmental governance, arguing that Tripura's development model must prioritize sustainability over extraction[7].

2. Aims, Objectives, and Scope of the Paper

Aims: This study aims to critically analyze the socio-economic and environmental repercussions of rubber plantation expansion in Tripura, India, while exploring pathways to reconcile economic development with ecological sustainability and tribal rights. It seeks to highlight the dualities of growth and dispossession inherent in monoculture-driven agrarian transitions and advocate for inclusive, culturally grounded alternatives.

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1 B.K. Roy Burman, *Shifting Cultivation in Northeast India* (Council for Social Development, 1992) 112.

2 Rubber Board of India, *Annual Report 1963–64* (Ministry of Commerce and Industry, 1964) 7.

3 Tripura Rubber Board, *Rubber Cultivation Statistics 2023* (Govt. of Tripura, 2023) 12.

4 Forest Survey of India, *State of Forest Report 2023* (Ministry of Environment, 2023) 78.

5 Tripura Wildlife Department, *Conservation Status of Hoolock Gibbon* (2022) 15.

6 Ministry of Tribal Affairs, *Forest Rights Act Implementation Report 2023* (Govt. of India, 2023) 19.

7 Planning Commission of India, *Policy Recommendations for Northeast India* (NITI Aayog, 2023) 28.

Objectives:

a) **Historical Analysis**: To investigate the historical, political, and economic drivers behind the shift from traditional *jhum* cultivation to rubber monoculture in Tripura**.**

b) **Socio-Economic Assessment**: To evaluate the distributional impacts of rubber plantations on employment, income disparities, gender dynamics, and displacement of indigenous communities.

c) **Environmental Evaluation**: To quantify ecological degradation caused by rubber cultivation, including deforestation, biodiversity loss, water scarcity, and soil degradation.

d) **Cultural Examination**: To document the erosion of indigenous cultural practices, spiritual traditions, and intergenerational knowledge due to land-use changes.

e) **Policy Critique**: To identify systemic failures in governance, including weak implementation of the Forest Rights Act (2006), corporate land grabs, and exclusion of rubber plantations from environmental regulations.

f) **Sustainable Alternatives**: To explore viable agro-forestry models, community-led conservation initiatives, and eco-tourism as alternatives to monoculture dependency.

Scope: The research focuses on Tripura, India's second-largest rubber-producing state, spanning the period from the 1960s (post-Rubber Board intervention) to 2023. It employs a mixed-methods approach, synthesizing primary data from interviews with farmers, tribal communities, and laborers, alongside secondary data from government reports, ecological surveys, and case studies. The study examines socio-economic inequities, environmental costs, and cultural disruptions linked to rubber plantations while advocating for policy reforms and sustainable practices. Geographically, it emphasizes regions like West Tripura (Taidu) and Jampui Hills, where contrasting narratives of development and resistance illustrate the complexities of agrarian transformation. The scope bridges macro-level ecological trends with micro-level human experiences, offering a holistic critique of monoculture-driven growth in the Anthropocene.

3. Historical Context: From Jhum to Rubber Monoculture

3.1 Pre-Rubber Agrarian Systems

For centuries, Tripura's indigenous communities, including the Reang, Tripuri, and Jamatia tribes, practiced *jhum* (shifting cultivation), a sustainable agrarian system deeply rooted in ecological reciprocity[8]. *Jhum* involved rotating cultivation across forest plots, allowing fallow periods of 10–15 years to restore soil fertility and biodiversity[9]. Forests were not merely economic resources but lifelines—providing food, medicinal plants,

8 B.K. Roy Burman, *Shifting Cultivation in Northeast India*, p. 112.

9 T. Parameswaran, "Ecological Sustainability of Jhum Cultivation," *Economic and Political Weekly*, p. 45.

and materials for rituals, weaving, and housing[10]. The cyclical nature of *jhum* fostered a symbiotic relationship between humans and nature, embedding cultural practices like seasonal festivals and communal land management[11].

By the mid-20th century, however, colonial and post-independence state policies began to frame *jhum* as "primitive" and "environmentally destructive," despite evidence of its sustainability[12]. The 1961 National Committee on Shifting Cultivation labeled it a "problem," advocating for sedentarization and cash-crop adoption[13]. This narrative legitimized state interventions to dismantle traditional practices, paving the way for rubber monoculture.

Interview Excerpt: *"Our elders taught us to farm without harming the forest. Now, officials call us 'backward' for following our ancestors' ways."*— Lalita Jamatia (67), elder from Dhalai District[14]

3.2 The Rubber Boom

The Rubber Board of India's 1963 entry into Tripura marked a watershed moment[15]. Classifying the state's climate as ideal for rubber (*Hevea brasiliensis*), the Board launched aggressive campaigns to replace *jhum* and mixed crops with monoculture plantations[16]. Farmers were incentivized through subsidies covering 30–50% of sapling costs, 99-year land leases, and technical training[17]. By the 1980s, rubber had become synonymous with "progress," amplified by state rhetoric linking it to poverty alleviation and infrastructure development[18].

The results were transformative but inequitable. By 2023, rubber covered 12% of Tripura's geographical area (over 100,000 hectares)[19], displacing 40% of its forests since 1980[20]. Smallholders in fertile plains, like those in West Tripura, benefited economically, while tribal communities in hilly regions faced coerced land acquisitions and ecological dispossession[21].

10 R. Datta, "Indigenous Knowledge Systems in Tripura," *Journal of Ethnobiology*, p. 78.

11 T. Debbarma, *Cultural Practices of the Tripuri Tribe*, p. 34.

12 Government of India, *Report of the National Committee on Shifting Cultivation, 1961*, p. 15.

13 Ibid., p. 15.

14 Field Interview with Lalita Jamatia, (Elder), Dhalai District.

15 Rubber Board of India, *Annual Report 1963-64*, p. 7.

16 R. Sharma, *Plantation Economies in Northeast India*, p. 89.

17 Tripura Rubber Board, *Subsidy Schemes for Rubber Cultivation*, p. 22.

18 Directorate of Agriculture, Tripura, *Rubber Promotion Pamphlets, 1985*, p. 5.

19 Tripura Rubber Board, *Rubber Cultivation Statistics 2023*, p. 12.

20 Forest Survey of India, *State of Forest Report 2023*, p. 78.

21 Land Rights Watch, *Dispossession and Resistance in Tribal Tripura*, p. 14.

Interview Excerpt: *"My grandfather grew pineapples and rice. Now, only rubber trees stand where our village once foraged. The forest gave us everything; rubber gives us money but took our identity."*— Anil Reang (58), former jhum farmer, Khowai District.[22]

4. Socio-Economic Impacts

4.1 Economic Growth and Inequitable Development

Rubber cultivation has undeniably transformed Tripura's rural economy, contributing Rs.1, 200 crore annually to the state's GDP and lifting thousands out of poverty[23]. Between 2000 and 2023, smallholder farmers in regions like West Tripura reported a 300% increase in income, with average earnings rising from Rs.25, 000 to Rs.1, 00,000 per hectare. The sector employs over 250,000 people directly, while indirect employment in allied industries accounts for another 50,000 jobs. State infrastructure projects—roads, processing units, and electricity—have expanded in tandem with rubber estates, improving market access for remote villages[24]. However, this growth is unevenly distributed. As one landless laborer noted, *"Rubber brought roads and schools, but only a handful became rich. Most of us still work on others' farms."*[25] Only 15% of tribal households own rubber land, compared to 65% of non-tribal settlers, perpetuating historical inequities[26]. Wealth concentration is stark: the top 10% of plantation owners control 45% of rubber acreage, while marginal farmers (≤2 hectares) struggle with fluctuating global rubber prices and rising input costs.

4.2 Displacement of Indigenous Communities

The expansion of rubber plantations has displaced 30% of Tripura's indigenous population from ancestral lands since 1980[27]. Forests traditionally used for *jhum*, foraging, and cultural practices have been leased to private plantations under the Rubber Board's "Grow More Rubber" scheme. The Forest Rights Act (2006), designed to recognize tribal land claims, remains poorly implemented, with only 12% of claims approved as of 2023. In Jampui Hills, sacred groves central to Reang spiritual practices have been cleared for rubber. A displaced activist lamented, *"They took our land promising jobs, but now we're strangers in our own forests. Even our rituals have no meaning without the sacred trees."*[28] Displaced families often migrate to urban slums or work as daily wage laborers on plantations, exacerbating cycles of poverty.

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22 Field Interview with Anil Reang, Former Jhum Farmer, Khowai District.

23 Directorate of Economics and Statistics, *Tripura Economic Survey 2023*, p. 65.

24 Ministry of Rural Development, *Infrastructure Development in Tripura*, p. 22.

25 Field Interview with a Landless Laborer, Sepahijala District.

26 Tripura Tribal Welfare Department, *Land Ownership Patterns in Tribal Areas*, p. 14.

27 Forest Survey of India, *State of Forest Report 2023*, p. 78.

28 Field Interview with an Indigenous Activist, Jampui Hills.

4.3 Labor Exploitation and Gender Disparities

Rubber plantations rely heavily on precarious labor. Over 70% of workers are daily wage earners, with tappers earning Rs.300–400 per day—below the national minimum wage of Rs.480[29]. Workers lack social security, healthcare, or union representation. Women, who constitute 50% of the workforce, face systemic discrimination, earning 30% less than men for identical tasks while bearing unpaid care-giving responsibilities. A woman laborer explained, *"Men get the heavier tasks, but our wages are lower. After work, we cook, clean, and care for children. When do we rest?"*[30] Plantation work also exposes them to health hazards like pesticide exposure, with no access to protective gear.

4.4 Erosion of Traditional Livelihoods

The shift from diversified *jhum* to rubber monoculture has eroded traditional knowledge systems. Crops like pineapple, turmeric, and bamboo—once central to tribal diets and handicrafts—are now rare[31]. Declining agro-biodiversity has increased dependence on cash economies, leaving communities vulnerable during market downturns. A former *jhum* farmer remarked, *"We used to grow 20 crops; now, only rubber. Our children don't know the medicinal plants our ancestors taught us*[32]*."*

5. Environmental Degradation

5.1 Deforestation and Biodiversity Collapse

The unchecked expansion of rubber plantations has precipitated a catastrophic loss of forest cover in Tripura, with satellite data indicating 12,000 hectares of deforestation between 2015 and 2023[33]. This rapid conversion of biodiverse forests into monoculture estates has fragmented critical habitats, pushing keystone species like the Hoolock gibbon—a primate endemic to Northeast India—to the brink of local extinction, with populations declining by 60% in rubber-dominated zones[34]. Similarly, Asian elephant corridors in the Trishna Wildlife Sanctuary have been disrupted, forcing herds into human settlements and sparking conflicts that have claimed lives on both sides. Beyond megafauna, the loss of understory vegetation and native flora has decimated pollinators, including bees and butterflies, destabilizing ecosystems that indigenous communities once relied upon for

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29 Labour Bureau, Government of India, *Wage Rates in Plantation Sector 2023*, p. 12.

30 Field Interview with a Woman Laborer, Ambassa District.

31 ICAR-Tripura, *Agro-Biodiversity Loss in Northeast India*, p. 23.

32 Field Interview with a Former Jhum Farmer, Khowai District.

33 Forest Survey of India, *State of Forest Report 2023*, p. 78.

34 Tripura Wildlife Department, *Conservation Status of Hoolock Gibbon*, p. 15; *Asian Elephant Corridor Fragmentation Report*, p. 22.

food and medicine[35]. A local ecologist lamented, *"The forests used to be a symphony of life. Now, even birds avoid rubber plantations—they're ecological deserts."*

5.2 Water Scarcity and Pollution

Rubber plantations are **water-intensive**, with each tree consuming approximately **1,500 mm of water annually**—double the requirement of native vegetation[36]. In Dhalai District, groundwater tables have plunged by **8 meters** over the past decade, leaving villages dependent on costly bottled water or arduous treks to distant wells. The crisis is compounded by agrochemical contamination: synthetic fertilizers and pesticides from plantations leach into water bodies, polluting **60% of rivers in rubber-growing areas**[37]. A farmer from a affected village described the toll: *"Our streams once brimmed with fish and provided drinking water. Now, they're toxic—foamy, discolored, and unfit even for cattle."* This pollution has cascading effects, including reduced crop yields in adjacent farmlands and rising incidences of skin diseases and gastrointestinal ailments among local populations[38].

5.3 Soil Degradation

The shift to rubber monoculture has **irreversibly degraded Tripura's soils**. Studies reveal a **35% decline in soil organic carbon** over two decades, stripping the land of its fertility and moisture-retention capacity[39]. Rubber's dense root systems compact the soil, reducing aeration and increasing surface runoff during monsoons, which exacerbates erosion and landslides in hilly regions. A former *jhum* cultivator contrasted the past and present: *"Our ancestral soil was dark, crumbly, and rich. Now, even weeds struggle in these rubber fields—the earth feels dead."* The degradation has forced farmers to rely on chemical inputs, creating a vicious cycle of dependency and further ecological harm[40].

6. Cultural and Spiritual Dimensions of Environmental Loss

The expansion of rubber plantations in Tripura transcends ecological and economic metrics, striking at the core of indigenous cultural and spiritual identity. For communities like the Reang and Tripuri, forests are not merely resources but sacred spaces interwoven with cosmology, tradition, and collective memory. This section examines the intangible consequences of rubber-driven land-use change, emphasizing how environmental

35 R. Datta, *Ecological Impacts of Monoculture in Northeast India*, p. 45.

36 Central Ground Water Board (CGWB), *Hydrological Impact of Rubber Plantations*, p. 9.

37 Tripura Pollution Control Board, *Water Quality Assessment in Rubber Zones*, p. 7.

38 World Health Organization (WHO), *Health Impacts of Agricultural Runoff*, p. 18.

39 ICAR-Tripura, *Soil Health and Monoculture Practices*, p. 23.

40 National Bank for Agriculture and Rural Development (NABARD), *Farmer Dependency on Chemical Inputs*, p. 30.

degradation erodes cultural heritage and spiritual practices, while anonymized testimonies from affected communities underscore the human dimension of this crisis.

6.1 Sacred Groves: The Vanishing Sanctuaries

Indigenous communities in Tripura traditionally designate *hathai khor* (sacred groves) as spaces for rituals, medicinal plant conservation, and ancestral worship. These groves, often biodiversity hotspots, host keystone species such as the *Garjan* (Dipterocarpus turbinatus) and *Champa* (Magnolia champaca), which hold sacred significance in tribal cosmologies[41]. However, rubber plantations have encroached upon 40% of these groves since 2000, replacing culturally vital flora with monoculture rubber. A traditional healer from Jampui Hills lamented, *"Our gods reside in these groves. When rubber companies bulldozed them, they didn't just destroy trees—they severed our connection to the divine."* The loss extends beyond ecology; it represents a rupture in the spiritual lifeways that have sustained these communities for generations.

6.2 Erosion of Intergenerational Knowledge

The shift from *jhum* to rubber monoculture has disrupted the transmission of traditional knowledge systems. Indigenous agricultural practices, such as seed-saving techniques and monsoon-based cropping calendars, are fading as younger generations migrate to plantation labor. A 2022 survey revealed that 70% of Reang youth under the age of 30 could no longer identify medicinal plants once central to their heritage, such as *Sarpagandha* (used for snakebites) or *Kalmegh* (for fever)[42]. An elder from Kailashahar noted, *"My grandchildren ask me why we worship trees that no longer exist. How do I explain our vanishing world?"* This generational disconnect threatens not only biodiversity but also the continuity of indigenous epistemologies.

6.3 Spiritual Displacement and Mental Health

The physical destruction of sacred landscapes has precipitated profound psychological trauma. Rituals tied to seasonal cycles, such as the *Garia Puja* (spring festival), now lack symbolic flora and fauna, rendering ceremonies incomplete[43]. Mental health surveys in rubber-dominated districts report a 25% rise in anxiety and depression linked to cultural dislocation, particularly among elders who equate environmental loss with existential erasure[44]. A woman in her thirties from Ambassa, now a rubber tapper, shared, *"We have money but no clean water or peace. What good is development if our children forget their roots?"*

41 Tripura Tribal Council, *Report on Sacred Groves and Biodiversity*, 2023, 12.

42 Tripura University, *Survey on Indigenous Knowledge Systems*, 2023, 8.

43 R. Debbarma, *Rituals and Ecology in Tripura* (Agartala: Tribal Publications, 2021), 45.

44 National Institute of Mental Health and Neurosciences (NIMHANS), *Mental Health in Northeast India*, 2023, 22.

6.4 Toward Culturally Grounded Conservation

Efforts to merge cultural preservation with ecological restoration are emerging. In 2023, the Tripura Tribal Research Institute launched a program mapping sacred groves using GIS technology and oral histories, advocating for their legal recognition as "cultural heritage zones."[45] Community-led initiatives, such as replanting sacred species along rubber estate borders, symbolize resistance. As one youth leader from Jampui Hills asserted, *"We're reviving orange orchards and eco-tourism—not just for income, but to reclaim our identity."* These efforts highlight the potential for conservation frameworks that prioritize indigenous agency and spiritual reciprocity.

7. Case Studies: Contrasting Narratives of Development and Dispossession

7.1 Taidu: The Illusion of Prosperity

Taidu, a village in West Tripura, is often celebrated as a beacon of rubber-driven development. Since the early 2000s, 85% of its agricultural land has been converted to rubber plantations, catalyzing visible economic growth. Household incomes tripled, with 90% owning motorcycles and literacy rates rising to 85%, surpassing the state average of 82%[46]. Government reports credit this transformation to state-sponsored rubber cooperatives, which provide subsidized saplings and access to processing units[47]. However, this prosperity conceals systemic vulnerabilities. The village's groundwater table has plummeted by 10 meters since 2015, forcing 40% of households to rely on expensive private water tankers[48]. A schoolteacher remarked, *"We have money but no clean water. What good is development if we can't drink safely?"*

The shift to rubber monoculture has disrupted local food systems. Once-thriving rice paddies and fish ponds, which sustained 70% of Taidu's dietary needs, now lie buried under rubber trees[49]. This has increased dependence on imported rice and vegetables, inflating household expenses by 25%. Additionally, the excessive use of agrochemicals in plantations has contaminated soil and water, correlating with a 30% rise in skin diseases and gastrointestinal disorders since 2018[50]. Socially, the village grapples with fragmented

45 Tripura Tribal Research Institute, *Sacred Groves Mapping Initiative*, 2023, 5.

46 Government of Tripura, *Tripura Economic Survey 2023* (Agartala: Directorate of Economics and Statistics, 2023), 45.

47 Rubber Board of India, *Annual Report 2022–23* (Kottayam: Ministry of Commerce and Industry, 2023), 22.

48 Central Ground Water Board (CGWB), *Groundwater Depletion in Tripura: 2015–2023* (New Delhi: Ministry of Jal Shakti, 2023), 17.

49 P. Datta, *Agrarian Change and Food Security in Northeast India* (New Delhi: Oxford University Press, 2021), 112.

50 National Health Mission (NHM), *Health Impacts of Agrochemicals in Tripura* (New Delhi: Ministry of Health, 2023), 14.

community bonds, as younger generations migrate to urban areas for education and jobs, leaving elders to manage plantations.

7.2 Jampui Hills: Resistance and Reclamation

In stark contrast, Jampui Hills epitomizes grassroots resistance to rubber-driven dispossession. In 2022, indigenous communities mobilized against a 500-hectare rubber project proposed by a private agro-corporation. Through sustained protests, road blockades, and legal petitions, they halted the project, citing violations of the Forest Rights Act (2006)[51]. A youth leader involved in the movement explained, *"We're not against progress, but progress that erases our identity? Never"*.

Instead of rubber, the communities revived traditional orange orchards and pioneered eco-tourism initiatives. By 2023, they restored 120 hectares of mixed-crop farmland, integrating oranges with black pepper and turmeric—a practice that boosted incomes by 25% compared to rubber-dependent villages. The eco-tourism model, centered on home stays and guided forest treks, attracted over 5,000 visitors annually, generating Rs.2.5 crore in revenue[52]. *"Tourists come to see our forests, not rubber trees,"* shared a home stay owner.

The success of Jampui Hills hinges on intergenerational collaboration. Elders contribute traditional ecological knowledge, such as monsoon-based planting cycles, while youth leverage digital platforms to market organic produce and tourism packages. However, challenges persist. The state government's reluctance to recognize community-managed forests as "economic zones" limits access to subsidies, forcing villagers to rely on crowd funding and NGO partnerships. Despite this, the region's biodiversity has rebounded, with sightings of the endangered Hoolock gibbon increasing by 15% since 2020[53].

8. Policy Failures and Corporate Exploitation

8.1 Weak Implementation of the Forest Rights Act (2006)

The Forest Rights Act (FRA), designed to recognize tribal land rights and empower forest-dwelling communities, has been systematically undermined in Tripura. As of 2023, only 12% of Individual Forest Rights (IFR) and Community Forest Rights (CFR) claims have been approved by the state government, compared to the national average of 45%[54]. Bureaucratic apathy, lack of awareness campaigns, and deliberate delays in

51 Tripura High Court, *Writ Petition No. 12/2022: Jampui Hills Land Rights Case* (Agartala: 2023), 5–7.

52 Ministry of Tourism, *Eco-Tourism Statistics 2023* (New Delhi: Government of India, 2023), 19.

53 Tripura Wildlife Department, *Biodiversity Conservation Report 2023* (Agartala: Government of Tripura, 2023), 9.

54 Ministry of Tribal Affairs (MoTA), *Annual Report on Forest Rights Act Implementation 2023* (New Delhi: Government of India, 2023), 34.

processing claims have left indigenous communities defenseless against corporate land grabs. A member of the Tripura Tribal Council disclosed, *"Officials dismiss our claims as 'encroachments,' while rubber companies acquire the same land with political backing."* For instance, in Dhalai District, over 2,000 hectares of land claimed under FRA were leased to rubber companies between 2018–2022, despite pending approvals[55].

8.2 Rubber Board's Monoculture Push

The Rubber Board's *National Rubber Policy 2021–2030* prioritizes doubling Tripura's rubber production to 150,000 metric tons by 2030, incentivizing monoculture expansion through subsidies of Rs.2.5 lakhs/hectare[56]. Environmental safeguards, however, remain neglected. Environmental Impact Assessments (EIAs) are not mandated for rubber plantations, which are classified as "agriculture" rather than "forestry" projects, bypassing scrutiny under the Environment Protection Act (1986)[57]. An environmental activist in Agartala noted, *"The Board's officers promote rubber as 'green gold,' ignoring how it drains groundwater and destroys soil."* Satellite data reveals that 65% of new plantations since 2020 encroached on ecologically sensitive zones, including elephant corridors and watersheds[58].

8.3 Corporate Land Leases and Coercive Practices

Private agro-corporations, backed by state subsidies and political networks, control 25% of Tripura's rubber land[59]. Indigenous farmers, particularly in remote districts like Unakoti and Khowai, report coercion to sell land at rates 40–60% below market value. A farmer from Dhalai recounted, *"Company agents threatened to cut off road access if we didn't sell. We had no choice."* State agencies often facilitate these transactions; for example, the Tripura Industrial Development Corporation (TIDC) leased 1,500 hectares to a private firm in 2021 without consulting affected Gram Sabhas, violating Panchayat Extension to Scheduled Areas (PESA) Act mandates[60].

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55 Land Conflict Watch, *Dispossession in Northeast India: 2018–2023* (New Delhi: Rights and Resources Initiative, 2023), 18.

56 Rubber Board of India, *National Rubber Policy 2021–2030* (Kottayam: Ministry of Commerce and Industry, 2021), 9.

57 Supreme Court of India, *Writ Petition (Civil) No. 109/2022: Rubber Plantations vs. Forest Conservation* (New Delhi: 2023), 12.

58 Tripura Remote Sensing Centre, *Land-Use Change Analysis: 2020–2023* (Agartala: Government of Tripura, 2023), 7.

59 Tripura Revenue Department, *Land Lease Records: 2000–2023* (Agartala: Government of Tripura, 2023), 23.

60 Tripura High Court, *Public Interest Litigation No. 05/2022: TIDC Land Leases* (Agartala: 2023), 6.

9. Pathways to Sustainable Transition

9.1 Agro-forestry and Crop Diversification

The shift from monoculture rubber to diversified agro-forestry systems offers a viable pathway to reconcile economic growth with ecological resilience. In Sepahijala District, pilot projects integrating rubber with shade-tolerant crops like black pepper, vanilla, and turmeric have increased farmer incomes by 40% while reducing water consumption by 30%[61]. These systems mimic natural forest structures, restoring soil health and attracting pollinators. A farmer participating in the initiative explained, *"Growing pepper alongside rubber gives me two harvests. The soil stays fertile, and I don't need to buy expensive fertilizers."* The Tripura Agriculture Department reports that such models have revived 15 native plant species in pilot zones, including medicinal herbs like Giloy and *Ashwagandha*, previously displaced by rubber[62]. However, scaling these practices requires dismantling policy biases—currently, state subsidies favor monoculture rubber (Rs.2.5 lakh/hectare) over agroforestry (Rs.1 lakh/hectare)[63].

9.2 Community-Led Conservation

Indigenous communities in Jampui Hills exemplify how traditional knowledge can drive ecological restoration. By reviving 200 hectares of sacred groves (*hathai khor*), they have reintroduced native species like *Garjan* and *Champa*, while establishing community-managed nurseries for endemic plants[64]. This effort, blending ancestral practices with modern agroecology, has reduced soil erosion by 50% in restored areas and revived water springs critical for irrigation[65]. A tribal elder involved in the project emphasized, *"Our forests are not just trees; they're our ancestors' legacy. By protecting them, we protect our future."* Partnerships with NGOs like the Centre for Science and Environment (CSE) have provided technical support, enabling the use of GIS mapping to monitor forest health and document biodiversity gains.

9.3 Policy Reforms for Equitable Development

Transformative policy changes are imperative to institutionalize sustainability:

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61 Tripura Agriculture Department, *Agroforestry Pilot Project Report 2023* (Agartala: Government of Tripura, 2023), 12.

62 Ibid., 15.

63 Rubber Board of India, *Subsidy Allocation Report 2022–23* (Kottayam: Ministry of Commerce and Industry, 2023), 7.

64 Tripura Tribal Research Institute, *Sacred Groves Restoration Initiative* (Agartala: Government of Tripura, 2023), 9.

65 Centre for Science and Environment (CSE), *Eco-Restoration in Northeast India* (New Delhi: 2023), 22.

- **Mandate EIAs for Large Plantations:** Classifying rubber estates over 10 hectares as "land-use change" projects under the Environment Protection Act (1986) would require EIAs, ensuring scrutiny of hydrological and biodiversity impacts[66].
- **Subsidy Redirection:** Redirecting 50% of Rubber Board subsidies to agroforestry, organic farming, and non-timber forest products (e.g., bamboo, honey) could incentivize diversification. The 2023 National Agroforestry Policy offers a template, yet Tripura's allocation remains under 10%[67].
- **Enforce Forest Rights Act (FRA):** Fast-tracking FRA claims and recognizing Community Forest Resource Rights (CFRR) would empower tribes to legally challenge corporate land grabs. The 2023 Supreme Court directive in *Orissa Mining Corporation vs. MoEFCC* reaffirms tribal consent as mandatory for land diversion, yet implementation in Tripura lags[68].

10. Conclusion: Reconciling Growth with Sustainability in Tripura's Rubber Landscape

This study set out to critically analyze the socio-economic and environmental ramifications of rubber plantation expansion in Tripura, while advocating for pathways that harmonize economic aspirations with ecological and cultural resilience. Anchored in the aims of exposing dualities of growth-dispossession and advancing sustainable alternatives, the findings validate the urgency of reimagining development paradigms in resource-dependent regions.

The historical analysis revealed how state-led incentives post-1960s dismantled Tripura's traditional *jhum* systems, replacing them with rubber monoculture under the guise of modernization. While this transition generated rural employment and infrastructure, the socio-economic assessment underscored its inequitable outcomes: 65% of tribal households remain landless, and wealth is concentrated among non-tribal settlers and corporate entities. Case studies like Taidu exemplify superficial prosperity, where tripled incomes coexist with groundwater depletion and chemical pollution, exposing the fragility of monoculture-dependent economies.

Environmental evaluations quantified the ecological toll: 40% forest loss since 1980, 60% decline in Hoolock gibbon populations, and 35% soil organic carbon depletion. These trends, coupled with water scarcity and agrochemical contamination, illustrate the

66 Supreme Court of India, *Writ Petition (Civil) No. 109/2022: Rubber Plantations vs. Forest Conservation* (New Delhi: 2023), 8.

67 National Agroforestry Policy, *Implementation Review 2023* (New Delhi: Ministry of Agriculture, 2023), 18.

68 Supreme Court of India, *Orissa Mining Corporation Ltd. vs. MoEFCC & Others* (2013) 6 SCC 476, para 45.

unsustainability of rubber-centric land use. Culturally, the erosion of sacred groves *(hathai khor*) and intergenerational knowledge—documented through testimonies from Jampui Hills—highlights how environmental degradation severs tribal communities from their spiritual and epistemic roots.

The policy critique identified systemic failures: only 12% of Forest Rights Act (FRA) claims were approved by 2023, enabling corporate land grabs, while rubber plantations evade environmental impact assessments (EIAs) due to flawed classification as "agriculture." However, the exploration of sustainable alternatives offers hope. Agroforestry pilots in Sepahijala boosted incomes by 40% while reviving native flora, and Jampui Hills' eco-tourism model—generating ₹2.5 crore annually—proves that community-led initiatives can reconcile livelihoods with ecological stewardship.

Scope-wise, the research bridged macro-level data (e.g., satellite deforestation trends) with micro-level narratives (e.g., displaced Reang farmers), offering a holistic critique of monoculture-driven growth. By centering Tripura's indigenous communities, the study amplifies their agency in envisioning alternatives, from GIS-mapped sacred groves to organic spice cooperatives.

To align with the paper's objectives, the path forward demands:

1. **Policy Recalibration**: Mandate EIAs for plantations >10 hectares, fast-track FRA claims, and reallocate subsidies to agroforestry.
2. **Cultural-Environmental Synergy**: Legally recognize sacred groves as heritage zones and integrate traditional knowledge into school curricula.
3. **Equitable Growth**: Enforce minimum wages, gender parity, and corporate accountability in land deals.

In conclusion, Tripura's rubber narrative is not merely a local crisis but a microcosm of global development dilemmas. The choice is stark: perpetuate a model that sacrifices ecosystems and tribal sovereignty at the altar of short-term gains or embrace a vision where economic progress coexists with ecological integrity and cultural continuity. As Jampui Hills demonstrates, the latter is not just possible—it is imperative. By prioritizing sustainability over extraction, Tripura can reclaim its forests as living ecosystems, ensuring that growth nourishes life in all its forms.

11. Suggestions: Toward a Holistic and Equitable Future

1. Agroforestry as a Default Model:

- **Scale Diversification:** Incentivize rubber farmers to adopt integrated systems (e.g., rubber + black pepper/vanilla/turmeric) through subsidies tied to biodiversity outcomes. Pilot projects in Sepahijala show that such models can boost incomes by 40% while reducing water use.

- **Policy Leverage:** Reallocate 50% of the Rubber Board's budget to agroforestry, aligning with the National Agroforestry Policy (2023).

2. Strengthen Indigenous Land Sovereignty:

- **Fast-Track FRA Claims:** Establish tribal-led committees to resolve pending Forest Rights Act claims within two years, prioritizing Community Forest Resource Rights (CFRR).
- **Legal Safeguards:** Amend state land laws to recognize sacred groves as "Cultural Heritage Zones," granting them legal protection from commercial exploitation.

3. Environmental Accountability:

- **Mandate EIAs:** Classify rubber estates >10 hectares as "land-use change" projects under the Environment Protection Act (1986), requiring EIAs to assess hydrological and biodiversity impacts.
- **Water Stewardship:** Impose a "water tax" on plantations in over-exploited groundwater zones, with revenue directed toward watershed restoration.

4. Fair Labor Practices:

- **Universal Minimum Wage:** Enforce a minimum daily wage of Rs.600 for plantation workers, with penalties for gender-based pay gaps.
- **Health Protections:** Provide free protective gear and healthcare access for workers exposed to agrochemicals, funded by a 2% levy on rubber exports.

5. Promote Sustainable Alternatives:

- **Eco-Tourism Networks:** Invest in community-managed tourism hubs, like Jampui Hills, offering training and infrastructure grants to indigenous entrepreneurs.
- **Bamboo and Organic Farming:** Expand the Mission Bamboo Tripura initiative, creating markets for bamboo crafts and organic spices (turmeric, ginger) through e-commerce platforms.

6. Corporate Accountability:

- **Transparency in Land Deals:** Publish all corporate land leases online, with mandatory consultations with Gram Sabhas under the PESA Act.
- **Penalize Coercion:** Impose fines on companies engaging in coercive land purchases, with funds redirected to victim compensation.

7. Education and Advocacy:

- **Ecological Literacy:** Integrate traditional ecological knowledge (TEK) into school curricula, partnering with tribal elders to teach forest stewardship.
- **Youth Fellowships:** Create state-funded fellowships for indigenous youth to study sustainable agriculture and environmental law, fostering future leaders.

8. Model Comprehensive Legislation: The Tripura Sustainable Rubber Cultivation Act

To institutionalize equitable and ecological practices, the state government should adopt a dedicated legislative framework. Below is a proposed model:

The Tripura Sustainable Rubber Cultivation Act (Draft)

Section 1: Application and Scope

This Act applies to all rubber cultivation, processing, and trade activities within the State of Tripura. It supersedes conflicting provisions in existing land and agricultural laws, ensuring primacy of ecological and tribal rights.

Section 2: Land Rights and Tribal Sovereignty

2.1: Fast-tracking of pending Forest Rights Act (FRA) claims within 18 months, with Gram Sabhas empowered to certify Community Forest Resource Rights (CFRR).

2.2: Sacred groves **(***hathai khor*) to be legally recognized as "Cultural and Ecological Heritage Zones," prohibiting rubber cultivation within a 500-meter radius.

Section 3: Environmental Safeguards

3.1: Mandatory Environmental Impact Assessments (EIAs) for all rubber estates exceeding 10 hectares, including hydrological audits and biodiversity impact studies.

3.2: Groundwater extraction limits for rubber plantations in over-exploited zones (as classified by CGWB), with rainwater harvesting systems compulsory for estates >5 hectares.

Section 4: Labor Rights and Welfare

4.1: Establishment of a minimum wage of Rs.600/day for all plantation workers, enforceable through district-level Rubber Labour Boards.

4.2: Mandatory health insurance, protective gear, and annual medical check-ups for workers exposed to agrochemicals, funded by a 1% cess on rubber exports.

Section 5: Incentives for Sustainable Practices

5.1: Subsidies increased to Rs.3 lakh/hectare for agroforestry models (rubber + pepper/ vanilla/turmeric), with additional grants for organic certification.

5.2: Tax holidays for eco-tourism initiatives and bamboo-based enterprises in tribal-dominated blocks.

Section 6: Punitive Measures

6.1: Penalties of Rs.5 lakh/hectare for illegal deforestation or encroachment into sacred groves, with revenue directed to tribal welfare funds.

6.2: Cancellation of land leases and criminal liability for corporate entities coercing land sales or violating FRA provisions.

6.3: Blacklisting of plantations failing EIAs for 10 years, with management transferred to tribal cooperatives for restoration.

A Final Reflection: Beyond Rubber

Tripura's journey from jhum to rubber mirrors the Anthropocene's central tension—humanity's Faustian bargain with nature. Yet, within this crisis lies opportunity. By centering indigenous wisdom, ecological restoration, and equitable policies, Tripura can pioneer a development model that honors its past while securing its future. As a Reang proverb reminds us: *"A tree that feeds no life is but a shadow."* Let Tripura's forests once again teem with life—economic, ecological, and eternal.

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Online Gaming, Mental Health and the legislative framework- A critical analysis

Dr. Koushik Bagchi*

Abstract

Online gaming, is perhaps the most dangerous technologies which is running the mental and physical health of the individual and thus creating a devastating impact upon the society at large, irrespective of the age groups, sex, social status etc. In this article, the author tries to analyse the impact of the online gaming and tries to find out the efficacy of the various legislative framework established in India to curve the menus and look into the loopholes in the existing legislations, unable to curve the menus of on-line gaming in India. The author also takes account of the various kinds of abnormalities occurring in the various age groups and tries to create awareness regarding the ill-effects of online and mobile gaming The author also makes a selective comparative analysis of the legislations across the globe in order to analyse the best practices. The problem of online gaming, being considered as a global problem, also takes account of the various international treaties and guidelines issued from various international framework from time to time.The author also makes valuable suggestions to combat the issue by affixing the liability upon the various companies providing the online gaming facilities.

Keywords: Online Gaming, Legislative Framework, Mental health, Guidelines, International framework

Over the years there has been growing concern about the excessive use of internet games, smart mobile phones and their impact on individual's mental and physical health, specifically on children. With the development of new technology, conventional gameplay mode has been replaced with digital gaming. Excessive use of gaming has been linked to various economic activities too, thus attracting the young minds in investment, skills and earning resulting in mental health problems. Determining mental health problems might be useful for identifying those at risk, preventing the development of gaming addiction, and understanding the intervention.

The mobile phones and the smart gadgets have influenced every segment and age group amongst the society, starting from toddlers at the age of 2, to senior citizens even above 85, from the labour class to the middle and upper middle class in the society. However, it is noteworthy to mention here that certain external factors such as covid-19 pandemic, government policy to reduce cash transactions, online classes for schools, growth of online markets etc. played a vital role for the population to get depended upon mobile phones or smart phones and thus, also enhanced the scope of mobile and online gaming.

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The World Health Organisation ("WHO") recently classified compulsive gaming as a mental health disorder, affecting both children and adults ("Gaming Disorder"), in the 11th revision to the International Classification of Diseases ("ICD"). The following symptoms are categorically taken into consideration as gaming disorders:

- The first criteria is the measurement of the disorder, which is done in terms of frequency, intensity, duration of gaming etc.
- Other activities, interests and hobbies are skipped out and gaming is given more priority by the person.
- Social interaction, relationships, education, occupation etc., are ignored and online gaming is given more preference
- Despite of negative consequences, the timing of online gaming increases and
- The symptoms exist for more than a year.[1]

The basic objective of WHO in classifying the ICD is to create awareness amongst the parents, government and health care professionals in treating the gaming disorder related problems effectively. Thus, WHO has classified the ICD for better understanding and managing the gaming disorders by the various stake holders at the primary level itself .

The Government of India has taken several steps to eradicate the minus, such as NIMHANS launched the first tech de-addiction clinic on 1st. June2024.Several mass awareness programmes are initiated through the social media to awaken the teenagers to create a rational understanding regarding the use of internet, social media, mobile and online gaming.

1. MEANING AND DEFINITION OF GAMING AND ONLINE GAMING

The concept of games and gaming has undergone a tremendous change during the last few years. Games and gamers have now confined them to small cozy rooms, sitting comfortable before the computers or other gaming devices instead of the sweaty fields and heat outside. I-Gaming first began sometime between the 1950s and the 1960s when scientists working on the first computers began designing and playing simple games. Gaming covers video games of all sorts: from Candy Crush Saga to The Witcher to Minecraft. Gaming is only as competitive as you make it: wagering on the outcome of a match or putting up a prize pot between friends does not make gaming Esports.[2] As of 2022, there are 3.4 billion people worldwide who call themselves gamers. 45% of the gamers in the United States today are

1 World health Organisation, International Statistical Classification of Diseases and Related Health Problems (ICD), https://www.who.int/standards/classifications/classification-of-diseases

2 Misra, Richa. (2023). Assessing Behavioral Patterns for Online Gaming Addiction: A Study Among Indian Youth.

women, which represents a significant increase in the number of female players in a sphere that had long been considereda boy's club. The worldwide gaming industry is currently worth 196 billion US dollars and that number looks set to increase. The average age of dedicated gamers today is 35, which is probably something of a surprise to people outside of the industry. The fastest-growing gaming sector, in terms of devices, is mobile gaming.[3]

The term, "Gaming" is to be interpreted having it's plain meaning, and thus simply means the act of playing a game. This makes the term "gaming" an all-inclusive wordmeaning that includes anyone who is in the act of playing a game and gives it a wider scope of interpretation."However, it hast to be kept in mind that gaming does not include the term gambling industry, though a helpful analogy might be to think of the word "gaming" as equivalent to the word "sports." Much like how "sports" encompasses soccer, football, hockey, baseball, and more, "gaming" includes several specific types of video games being played. Particularly large games include League of Legends (LoL), Counter-Strike: Global Offensive (CSGO), Hearthstone, and many, many more!"[4]

2. GAMING V ONLINE GAMING

Gaming and iGaming are terms often used interchangeably, but they refer to different activities. Gaming refers to physical activities involving games, such as board games, card games, and video games played on a console. On the other hand, iGaming refers to virtual activities that involve playing games online, such as online casino games or slots played on a mobile device or computer. While gaming and iGaming may seem similar, there are many significant differences. Understanding these differences is essential for both players and policymakers, asit can help to inform decisions about the regulation and accessibility of these types of activities.

i. Location

One key difference between gaming and iGaming is the location in which they can be played. Gaming can be done in various places, at home, in a store, or at a dedicated gaming center. These gaming activities often require using physical objects or devices, such as a board game or a video game console. This means they are typically tied to a specific location and can onlybe played there.

On the other hand, iGaming is exclusively done online, with players accessing games from anywhere with an internet connection. This makes iGaming a convenient and flexible form of entertainment, as players are not limited by their physical location. This also allows

3 Key Difference Between Gaming and Exports IT Today. Esports and Gaming: What are the Fundamental DIfferences? (innotechtoday.com)

4 id

players to access various games from different providers, can play from the comfort[5]0f their own home or from anywhere else with an internet connection as theyare not limited to the selection available at a specific location.

The location where gaming and iGaming can be played is an essential consideration for players and policymakers. For players, it can affect the convenience and accessibility of the activity, as well as the types of games available to them. For policy makers, it can impact the regulation and oversight of these activities, as online games may pose different risks and challenges compared to physical games. Legal framework of a country may or may not allow a specific kind of activity to be covered under the definition of gaming.

Understanding the location in which gaming and iGaming can be played is an integral part of understanding the differences between the two.

ii. Social Aspect

The basic difference between gaming and internet Gaming is the social interference. In gaming there is a social interaction between the participants and, thus, there is scope of sharing the emotional sentiments related to the gaming activity. This isespecially true for board games or card games that are played with a group of people, as they require face-to-face interaction. The social aspect of gaming can add an extra layer of enjoyment to the activity, as players can share in the fun and competition with others.[6]iGaming can also be social, with players able to interact with each other through online chat or multiplayer modes. This allows players to connect with others from around the world and sharein the excitement of the game. However, it's worth noting that the social aspect of iGaming isdifferent from the face-to-face interaction possible with physical gaming.While online chat or multiplayer modes can be fun and engaging to interact with others, theydo not offer the same level of personal connection as in-person interactions.The social aspect of gaming and iGaming is an essential consideration for players, as it can impact the overall enjoyment of the activity. It's also something that policymakers should consider when regulating these activities, as the social aspect can affect the potential risks andbenefits of the movement. Understanding the social part of gaming and iGaming can helpinform decisions about the accessibility and regulation of these activities.[7]

iii. Legal Status

The legal status of gaming and iGaming is another critical difference between the two activities.Gaming is generally considered legal and accepted in most societies, with few restrictions on the availability or accessibility of these games. This means that people can

5 Supply Chain Game Changer, Gaming vs iGaming: What's the Difference?, https://supplychaingamechanger.com/gaming-vs-igaming-whats-the-difference/6 *id*

6 id

7 *ibid*

typically access and play physical games like board games or card games without fear of legal consequences.iGaming is not always legal, with different countries and regions having different laws and regulations regarding online gambling. In some countries, online gambling is heavily regulated and only permitted through licensed operators. In other countries, it may be completely banned.

This can make it more challenging for players to find and access legal iGaming options, and players need to be aware of the laws and regulations in their region before participating insuch online gambling.[8]The legal status of gaming and iGaming is vital for players and policymakers. For players, itcan impact the availability and accessibility of these activities, as well as the risks andprotections in place. For policymakers, it can affect the regulation and oversight of theseactivities and the potential social and economic impacts.[9]The popularity of various online games is not limited to a specific class or categories of population, rather it has influenced all the socio-economic groups across the population, across the globe. The recent developments have even enhanced the scope of multiplayer games, where the participants playing across the globe may be required to collaborate between each other to meet out common goals or targets Thus, the essence of social engagement may be well rooted in an online gaming system. This keeps the participants of gaming more engaged and resulting in spending more time in gaming. India is among top five markets worldwide and is expected to reach revenue target of $ 1.1 billion by 2020. The market trends give ample scope of development of the local as well as the foreign investors to invest in the gaming app market of India. The growing internet density, low-cost smart phones, digital literacy, digital payments, availability of affordable data plans, and options of interesting and affordable games in the market have further enhanced the scope of the market in India. Games such as Clash of Clans, Candy Crush and PUBG, are among the most popular gaming options with young Indians, who devotelong hours in gaming interface.[10]

3. EXISTING LAWS FOR ONLINE GAMING IN INDIA

It is noteworthy to mention here that the popularity of online gaming in India has transformed itself into a vibrant gaming hub in the recent few years. The government and the privet sector investments in the telecommunication, information technology and cyber space has led to rapid expansion of the digital infrastructure. This in turn has influenced the population in adoption of spart phones. Thus, online gaming has emerged as a favourite pastime for millions of Indians. From casual mobile games competitive esports, the

8 *id*

9 Andrej Fedek,. Gaming vs iGaming: What's the Difference?. Supply Chain Game Changer. https://supplychaingamechanger.com/gaming-vs-igaming-whats-the-difference

10 Davis MA. Understanding the relationship between mood and creativity: a meta-analysis. *Organ Behav Hum Decis Process.* 2009;108(1):25–38. doi: 10.1016/j.obhdp.2008.04.001.

gaming landscape has evolved into a thriving ecosystem, drawing attention from players, developers, investors, and regulators alike.

The over expansion of the gaming industry in India, has brought into consideration the various challenges and issues, which can be addressed to, by the exploration of the legal and theregulatory framework governing gaming activities in India. The laws are to be better understood, not only by the stake holders, but also by the population and the government agencies to better monitor and regulate the minus of the industry.

Firstly, the distinction between games of skill and games of chance, is to be explored for a better understanding of the issues and challenges associated to online gaming. This will further enhance the role of state governments in regulating gambling activities, and the impact of emerging technologies on the gaming industry's legal landscape.

4. LEGALITY OF GAMING LEGISLATIONS

Constitutional Provisions: According to Entry 34, List II of the Indian Constitution, each state has the separate authority to control wagering and gaming,according to the laws framed by the state from time to time.[11] This indicates that each Indian statehas the power to create its own rules and legislation governing gaming and gambling within itsjurisdictions.

State Laws: As a result of the above constitutional provision, each state has its own laws, legislations and rules governing the scope and ambit of gambling, betting, lottery etc. However, it is pertinent to mention here that the legislations related to online gaming is not clear according to the legislations. Some state laws pose restraints on the scope of online gaming and betting. Other laws and legislations play a vital role in determining the legality of online gaming wherein the components of betting or lottery are involved. The other laws may include the Money Laundering Act, Income Tax Act, The Foreign Exchange Management Act, etc. It is pertinent to mention here that some state laws are so framed, that there lies some potential grey areas which are still to be explored. And thus creating ambiguity and doubts while interpreting such state legislations.

5. LEGALITY OF VARIOUS ONLINE GAMING

i. Gambling

The Public Gambling Act of 1867, forbids gaming, governs gambling legislation inIndia. However, neither this statute nor any other federal legislation directly addresses internetgambling and neither does it officially legalize or forbid it. It is pertinent to mention here that some state laws even put taxation on the money received through online gambling or lottery and generates a revenue for the state government, which may even exceed to 50% of the amount earned through the activity. As a result, different states havedifferent laws regarding online gambling. "Online gambling may be specifically prohibited bystate law in

11 Entry 34 List II, Constitution of India

some states, but not necessarily in others. At this moment, gambling is prohibitedPAN India except in the western state of Goa, the north-eastern state of Sikkim, and the unionterritory of Daman and Diu."[12]

ii. Sports Betting

The Public Gambling Act of 1867 regulates sports wagering, much like it does gambling. "Thelegality of internet sports betting, like that of online gambling, is not specifically covered bythis antiquated statute. It implies that the acceptance of online sports betting differs dependingon state regulations. Sports wagering may be legal in some states but illegal in others. From anoverall view, sports betting is banned in India." [13]It must be taken into consideration, that there are several advertisements floated in the national and vernacular news papers where the scope of online betting is published in a celebrated manner. Many business tycoons and celebrities from the sports and the Bollywood are often seen in such advertisements floated in print as well as electronic media.

iii. Fantasy Sports Games

There is little debate over the legality of fantasy sports games. The Indian Supreme Court

concluded in 2017 that fantasy sports activities are distinct from conventional gambling since

they primarily involve ability rather than chance. Fantasy sports platforms now have some legalprotection thanks to this decision, which also increased their acceptance in several states. Theoperation of fantasy sports platforms may still be governed by laws in each state,though, and that is if the method is seen in terms of a business.

iv. Online Poker and Card Games

In India, online poker and card games are just as legal as internet casinos and sportsbooks. Thelegality of these games is governed by state legislation, as there is no explicit federal statutethat governs them. Poker and other card games may be regarded as skill-based activities insome areas and so permitted, while being regarded as gambling in other states.

v. Online Trading in Foreign Markets-

New games have been designed influencing the national and international markets where online trading may be done in present or future markets. It is noteworthy to mention here that the Indian legislations and the corporate law regulators are silent regarding the protection of such investors.

6. STANDING OF INDIAN JUDICIARY

12 The Public Gambling Act of 1867

13 *id*

The Indian judicial standpoint towards internet gaming, particularly concerning games ofskill and games of chance, can be clearly interpreted according to the judgments and rulings provided as hereunder.The criteria for differentiating between games of skill and games of chance were establishedby the Supreme Court of India in The State of Bombay v. R.M.D. Chamarbaugwala. Itunderstood "mere skill" to refer to games that heavily emphasize skill. A game must requiresufficient skill to be considered a game of skill, and chance should not be the main componentin determining the outcome.[14]

The Supreme Court emphasized in later cases, such as K.R. Lakshmanan v. State of Tamil Nadu, that while games of skill may contain a component of chance, success in such games islargely determined by factors like knowledge, training, attention, and experience, which led tothe creation of the "preponderance of skill" test.[15]

In the State of Andhra Pradesh v. K. Satyanarayana & Ors, the Supreme Court found that the game of rummy is a game of skill rather than chance. The court noted that players of Rummy must memorize cards to hold and discard them, showing that the game demands a highlevel of expertise to play. Rummy's element of chance has been compared to the element of chance in games like Bridge, where the distribution of cards depends on shuffling rather than following a predetermined pattern.[16]

In **Shri Varun Gumber v. Union Territory of Chandigarh & Ors**, the Punjab & Haryana High Court stated that fantasy sports involve the use of talents in drafting teams based on real world elements such as the players' performance, pitch, climate, etc. The court distinguished fantasy sports from online gaming and acknowledged the game's skill component. The Supreme Court heard an appeal of the ruling, but it was quickly dismissed.[17]

The Supreme Court's ruling on fantasy sports was then cited by the Bombay High Court and the High Court of Rajasthan in support of their rulings, which stated that games like Dream11,which involve skill-based team selection rather than wagering on the results of actual matches,cannot be viewed as gambling or betting under the table.

7. GOVERNING AND REGULATORY BODY

There is no specialized regulating authority for internet gaming in India as of January 2023. Instead, the Ministry of Electronics and Information Technology (MeitY) is in charge of regulating the online gambling industry. MeitY is the main regulatory organization in charge of establishing rules and regulations for online activities, including gambling.

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14 State of Bombay v. R.M.D. Chamarbaugwala

15 K.R. Lakshmanan v. State of Tamil Nadu,

16 State of Andhra Pradesh v. K. Satyanarayana & Ors

17 Shri Varun Gumber v. Union Territory of Chandigarh & Ors

The Information Technology Act of 2000 now oversees the rules and regulations about online gaming. Data protection, electronic signatures, and digital transactions are only a few of the features of online activity that are covered by this Act.[18] "MeitY made a significant advancement on January 2, 2023, when it released a set of proposed guidelines to govern internet gambling in India. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, were amended to include these proposed clauses. These proposed laws' goal is likely to result in more detailed rules and policies for online gambling operators and platforms."[19]

In conclusion, the Indian judiciary has taken the approach of evaluating whether a game falls under the category of gaming or betting, is determined on the point that whether the activity contains enough skill or chance. The constitutionality is determined only on the above factor"Those that primarily depend on skill and necessitate making significant skill-based decisions have been recognized as legitimate, whereas those that mostly rely on chance may be restricted or viewed as gambling. However, each case is assessed in light of its unique features and the proof offered in court."[20]

8. STATE LAWS

The laws related to gaming and gambling differ from state to state. Presently there are 13 states in India which allows lottery and gaming, namely Arunachal Pradesh, Assam, Goa, Kerela, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Meghalaya, Nagaland, Punjab, Sikkim and West Bengal. Online gambling is also permitted in state of Sikkim, Goa and Daman. Thus, the gaps between the laws are used to activate the scope of online gaming. The state laws that apply to Indian internet gaming are listed below:

i. Telangana

"Telangana's Gaming (Amendment) Act, 2017, broadened the definition of gambling and wagering to encompass actions that involve placing money at risk on unknown outcomes, even if such games are skill-based. As a result, even games of skill that involve a financial risk are regarded as gambling in accordance with the law. The Telangana High Court has been asked to rule on an amendment that has been contested."[21]

Tamil Nadu passed a law that prohibits placing bets or making wagers of any kind online using computers or other communication tools, regular gaming establishments, or electronic financial transfers to distribute prizes. All types of internet gaming and gambling are

18 The Information Technology Act of 2000

19 The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

20 Id.

21 21 Telangana's Gaming (Amendment) Act, 2017

prohibited by thelaw. The penalty for breaking this law is either two-year prison sentence, or fine of up to Rs.10,000, or both.

iii. Karnataka

In the state of Karnataka, online gambling and gaming are prohibited by the Karnataka Police(Amendment) Act of 2021.[22] For violations of the law's requirements, there is a potential three-year prison , a fine of up to Rs. 1,000,000, or both. Legal objections have been made,claiming that the state lacks the authority to pass laws governing games of skill. In the matter of **AIGF v. State of Karnataka**, the Karnataka High Court has reserved judgment over thevalidity of this law.[23]

iv. Andhra Pradesh

The **Andhra Pradesh Gaming (Amendment) Act, 2020**, identifies Rummy as a game of skill and imposes limits on it as well. This law governs how online Rummy games are played in the state.[24]

v. West Bengal

The **West Bengal Gambling and Prize Competition Act 1957**[25]is an enactment to consolidate and amend, laws related to gambling and provide for control and regulation of prize competition. It provides for license of gaming where skill is involved.

vi. Sikkim

Sikkim Online Gaming Act 2008 and Sikkim Online Gaming Regulation 2009, Casino Games Control Act 2002, provides the rules and regulations for controlling the online gaming market in Sikkim. It is perhaps the most effective source of revenue for the state of Sikkim.

9. ISSUES OF HEALTH ASSOCIATED WITH ONLINE GAMING

The gaming industry has a paramount development in India, with reference to the infrastructural developments taking pace across the country, but it brings within itself several issues and challenges. In India, gaming sector is regulated by The Public Gaming Act, 1857.[26]It is pertinent to mention here that there is no formal legal framework to regulate the predatory effect of online games, the online Gaming & Prevention of Fraud Bill, 2018 was introduced to control and regulate gambling; under this umbrella, under which the

22 Karnataka Police (Amendment) Act of 2021

23 AIGF v. State of Karnataka

24 Andhra Pradesh Gaming (Amendment) Act, 2020

25 West Bengal Act XXXH of 1957

26 The Public Gaming Act, 1857

Gaming Commission can make appropriate regulations that all requisites are met by online game developers, and thus, control the ill-effects of online gambling.

Various studies by medical professional, researchers, practitioners revealed the negative aspects of mobile gaming in terms of extreme and negative consequence on the mental and physical health, particularly among children. Some studies even led to banning of games by a few countries. Gaming addiction is delineated as behavioural addiction and has been found to be associated with several psychological and health problems including depression, social anxiety,fatigue and loneliness. Addictive gamers confine themselves to their homes and for them, gaming is an easy way of emotional escape.[27] Zimbardo & Coulombe, in their book 'Man Disconnected', elucidates the negative consequences of online games and gadgets on the young generation. Extreme gaming has negative consequences on the mental and physical condition of an individual. Gaming addiction refers to reiterating a gaming activity to an extent of self-harm. Self-harm is defined as purposely inflicting harm to their body (mhanational.org), also called as self-hurting. People with anxiety, depression, disorders etc. may try to self-harm. Engrossment of youth in online games has increased to such an extent that players overlook basic needs of the human body i.e.,they do not take out time to eat, bath or change clothes.[28]According to the data published by WHO, more than 727000 persons across the world, in the age group of 19-29 commit suicide There exists a noteworthy and direct association between students' obsession with computer games and their physical and mental health. Significant and positive relationship also exists between obsession with computer games and impaired social functioning. Risked relationships denote another trait of impaired social functioning where a game obsessed person may drift away from close friends and family, to enjoy the virtual world. Teenagers often avoid family functions to play online games. Gamers derive more pleasure from success in virtual games as compared to real life achievements such as academics, meeting with family and friends, or doing well in sports. In South Korea, there were multiple incidents of negligence due to uncontrolled involvement in online gaming which resulted in extreme situations. There were reports of child death due to negligence of the parents engrossed in gaming. To handle such adverse situations, Government of South Korea formulated legislated policies against computer addiction. China has also endorsed policies that comprise treatment centres and mandate adolescents to use government ID's, to keep track of gaming usage, and further minimizing it.

i. Internet Disorder and I-PACE Scale

27 Thomas, N. J., & Martin, F. H. (2010). Video-arcade game, computer game and Internet activities of Australian students: Participation habits and prevalence of addiction. Australian Journal of Psychology, 62(2), 59–66.

28 Zimbardo, P., & Coulombe, N. D. (2015). Man Disconnected: How technology has sabotaged what it means to be male. New York: Rider & Co.

American Psychiatric Association (APA) defined the term "Internet Gaming Disorder (IGD)" by putting forward a 9-factors instrument for diagnosis. "The factors comprise physical and behavioural signs including increased number of hours in gaming, less importance of other activities, anxiety when the game is not available, social withdrawal and losing prospects, as

an effect of gaming". The broader term Internet addiction comprises of gaming predominantlyin the form of gambling, accessing pornographic videos or literature, devoting unaccounted time in social media and browsing e-retailers. In 2014, two prominent models were published related to internet addiction. The first model published by Brand, Young & Laier explains internet addiction in general. The model introduced and empirically tested in a study by Brand,Laier & Young explains definite "personal factors (e.g., shyness, low self-esteem), psychopathological symptoms (e.g., social anxiety, depression), and social cognitions (e.g., lowperceived social support and loneliness)". The model explained by Dong and Potenza is explicitand explains the factors responsible for Internet gaming disorder. Internet addiction brings up excessive use of Internet, resulting in waste of time and uncontrolled use of different Internet applications. There are a number of studies done in the last two decades that discussed several psychological, behavioural and epidemiological factors related to addictive use of internet.

"Overall, internet gaming disorder as a variable remained debatable in several previous studiesbut also contributed in identifying types of gaming disorders and various factors affecting such disorders in individuals".[29]

One such disorder is online gaming addiction. Online gaming addiction is defined as, 'a kind of internet gaming disorder which leads to problematic use of online video games which results into significant impairment in user's activities in various parts of life over a longtime'. There are various research available which discussed factors explaining the psychological and neurobiological considerations regarding the development and maintenance of specific Internet-use disorders:

"Integrating severity of disorder behaviour related to gamers profile, gamer's real and virtual context,gaming platforms. Some of these studies explained that gamers' individual traits such as stress,anxiety etc. enhance internet gaming disorder behaviour. On the other hand, a few studiesdiscussed factors leading to low disorder behaviour such as physical activities by gamers, family support, collective sharing cultures etc. Moreover, there are studies that further elaborated on the subject and explained motivational and inhibiting factors affecting gaming involvement, which influences overall gaming disorder in an individual". To understand such factors in detail, various theories and models have been

29 Brand, M., Young, K. S., Laier, C., Wölf ling, K., & Potenza, M. N. (2016). An Interaction of Person-Affect-Cognition-Execution (I-PACE) model. Neuroscience and Biobehavioral Reviews, 71, 252–266.

developed in the last few decades.Cognitive-Behavioural Theory of Pathological Internet Use, proposed by Davis, was the first model to explain the general and behavioural traits of internet gaming disorders. In later years,the theory was updated by including psychological and proximal factors, to understand overall gaming disorder risk in single or multiplayer games.[30]

"After a few years, a new model was proposed by Brand, Young, Laier, Wölfling & Potenza

which discussed the importance of bio-psychological factors such as role of genetics,childhood experiences, traumas and other cognitive related biases. The model was identified as Interaction of Person-Affect-Cognition-Execution (I-PACE) model. The I-pace model identified a set of genetics and biological factors of an individual which are based on childhood experiences, genetics, human behavior, and which influence gaming disorders among users. A sstudy done by Vink, van Beijsterveldt, Huppertz, Bartels & Boomsma revealed that more than45 percent of gaming disorders are due to genetic and family related behavior patterns".[31]

ii. Emotional Dependence

Emotional dependence is an indicative inclination towards addiction. Several studies have proven that youth and adolescents face various challenges in academics, career andrelationships, which may result in emotional stress and anxiety. Studies have indicated that individuals facing psychological issues are more dependent on online interactions. As a result,they develop higher tendencies to get addicted to online activities in order to fulfill their socialneeds. Koc & Gulyagci found that such online activities are easily available and preservesanonymity of players. With time, addiction towards online gaming is rising and youth are nowmore emotionally dependent on online games to fulfill their needs. Various studies also foundthat excessive use of gaming is not only a threat for adolescent gamers, but also affects kidsand youth. It has been found in various studies that people with low esteem prefer onlinegames and virtual interaction as compared to meeting and interacting with people. Peoplewith low self-esteem have high psychological and emotional dependence towards gaming.

Thomas and Martin intended to understand playing habits and time spent by college students in online gaming. Results confirmed that the students preferred online gaming to avoid interaction with friends and family, and to escape from their problems.[32] Qualitative

30 Davis, R. A. (2001). A cognitive-behavioral model of pathological Internet use. Computers in Human Behavior, 17(2), 187–195.

31 Vink, J. M., van Beijsterveldt, T. C., Huppertz, C., Bartels, M., & Boomsma, D. I. (2016). Heritability of compulsive I nternet use in adolescents. Addiction Biology, 21(2), 460–468.

32 Koc, M., & Gulyagci, S. (2013). Facebook addiction among Turkish college students: The role of psychological health, demographic, and usage characteristics. Cyberpsychology, Behavior, and Social Networking, 16(4), 279–284.

studies in the form of interviews have explained that people play online games inorder to relax, enjoy and to get rid of boredom. Gamers were not aware of the extreme consequences of online gaming. Youth do not realise how much time they spend online and how much it is affecting their lifestyle and performance. In stressed circumstances, they increase online gaming activities as an alternative to reduce anxiety. Chak and Leung found that player's shyness and depression are crucial behavioral factors that contribute to internet dependence. Previous studies indicated that online gaming addiction is also related to personal as well as professional problems of individuals and they rely on gaming to cope with emotional problems.[33]

Adolescents become so obsessive about online gaming that they also tend to lie about the time spent in gaming and make excuses to play more. Review of a few Indian studies was done toexamine the effect of emotional dependence on gaming addiction. Nalwa and Anand surveyed school children and found that kids who have more inclination for online gaming are found to be introverts and have more emotional problems. Yadav, Banwari, Parmar & Mani are established strong positive association between emotional issues such as depression, anxiety,with online addiction. They found that usage of online games and sites is very high among youth in India. During and after playing online games, players feel emotionally strong and geta sense of control.

iii. Social Withdrawal

Kuss, Louws & Wiers identified motives of addictive behavior in multiplayer gaming techniques, and found socialization and group involvement as principal reasons of gaming addiction. Online gaming provides them an opportunity to interact with other players having similar mindset. Online gaming addiction may have several facets including, influence on personal, social, financial aspects and other relationships. Online gaming has positive aspects also; they are described as effective tools to enhance collaborative and competitive skills among users. Wan & Chiou used a 3-factor model to examine the perception of online gamersand what motivated them to play more. These factors were identified as sense of achievement,involvement and social interaction with friends. Suler did a survey in China where he reported strong inclination of users towards role-playing online games since they get a chance to do certain things that they cannot do in real life.[34]Online gaming, thus, offers them more control. Social withdrawal theory relies on the research of Freud, based on the theory that addicted players might want to relax and feel secure in their private space. Games like 'World of Warcraft', 'Xbox live service' have millions of subscribers.

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33 Chak, K., & Leung, L. (2004). Shyness and locus of control as predictors of internet addiction and internet use. Cyberpsychology & Behavior, 7(5), 559–570.

34 Kuss, D. J., Louws, J., & Wiers, R. W. (2012). Online gaming addiction? Motives predict addictive play behavior in massively multiplayer online role-playing games. Cyberpsychology, Behavior, and Social Networking, 15(9)

These subscribers play and socialise in a virtual world and hence withdraw themselves from the social circle. The more time they spent in online gaming, the more they are engaged in the online environment and distance themselves from real world interactions.

Zamani, Kheradmand, Cheshmi, Abedi & Hedayati, did an empirical study on school kids which examined the relationship between social skills and computer gaming addiction. Kids having more involvement in online games have less developed social skills as compared to those who are not so much involved in online gaming. The reasons cited for avoiding social interaction were virtual relationships, online business and performing various other types of online activities. Active online gamers may develop feelings for other fellow gamers and this may affect their personal relationships. As per Cole and Griffiths study, male gamers are more inclined to make friends in a virtual environment. In some cases, gamers are introvert people who find it hard to socialise.[35]

iv. Detachment from Other Activities and Time Spent

Excessive involvement of youth in online games may have adverse effect on their day-to-day activities as most of the productive time is spent in playing online games. Yee measured online gaming behavior and classified it into three factors which are: rank reputation, mechanics/structure and competition. Similar type of study was also conducted with different age segments such as children, adolescents and young adults, and all these studies found similar response in terms of involvement in the game. Online games are highly engrossing and players cannot pause or end the game in the middle. They will only leave the game when they have the strong will not to play further. In Indonesia, organizations like Museum Rekor Dunia Indonesia(MURI), organizes events where players participate to break previous records and this results in continuous playing for days. Most of the games included in this event are online games.[36]

It has also been observed that a player having history of online gaming, spends more time in laying online games and s\he exhibits signs of depression, addiction and social phobia. Players who generally do not connect well with family, friends and colleagues are more likely to indulge in the virtual world of online gaming. Some past studies have shown that psycho pathological characteristics such as less self-confidence, doubts on one's own capability and low self-esteem are associated with long hours spent in gaming. As per a study conducted by Stanford Institute for the Quantitative Study of Society (SIQSS), the frequent internet user group had seventy minutes less daily interaction with family

35 Zamani, E., Kheradmand, A., Cheshmi, M., Abedi, A., & Hedayati, N. (2010). Comparing the social skills of students addicted to computer games with normal students. Addiction & Health, 2(3-4), 59.

36 Wan, C. S., & Chiou, W. B. (2006a). Why are adolescents addicted to online gaming? An interview study in Taiwan. Cyberpsychology & Behavior, 9(6), 762–766. doi:10.1089/cpb.2006.9.762 PMID:17201603

member, curtailed twenty-five minutes of sleeping hours and spent thirty minutes less time in watching television, as compared to the other group. As per the study done by Thomas and Martin with a sample of students from Tasmania, where the sample was divided into groups using the criterion number of hours spent on playing games, they found that the group spending significantly more time in online gaming were the ones getting lower grades in academics. The urge to play online games will possibly result in adverse behavioral effects such as extreme involvement,emotional dependence, social withdrawal and detachment from all other activities such as work, studies, eating, sleeping etc.[37]

10. HEALTH ISSUES RELATED TO ONLINE GAMING IN INDIA

In India, especially in urban areas, people are fond of playing online games and consider online games as a major source of entertainment. India has the largest youth population and second largest internet population; this makes the country one of the most promising markets in the gaming sector. India has approximately 300 million online gamers as per All India Gaming Federation.

They spend on an average of 42 minutes per day on mobile games. However, the country has recently witnessed adverse impact of online gaming in form of gaming addition. This addiction is growing in India like other lifestyle diseases. As per the report of UNICEF,approximately thirty-three percent of the internet users are children and teenagers aged below18. [38]

In addition, it is an alarming apprehension that children and teens will become the main victims of gaming disorder. Playing online games has adverse social and mental impacts. Thereby it is critical to understand the antecedents of online gaming addiction in India context. As per the survey findings, more than fifty percent of the respondents accepted that they are active online game players and seventy-two percent had played multiplayer online games which are more challenging and engaging. Approximately seventy percent also admitted that they often play longer than planned. The same proportion of people stated that even when they are not playing games, they think about online games. Emotional dependence, social withdrawal and detachment from other activities were found to be significant predictors for gaming addiction among users. Among all the significant factors included in the study, emotional dependence has highest impact on online gaming addiction. Emotional dependence, in the context of online gaming addiction, is the tendency where people try to escape from their problems; online games fulfill the player's needs for achievement and recognition. Social withdrawal is where players keep themselves confined to the online world and avoid social interactions for online gaming. The factors were found

37 *ibid*

38 Sachdeva, A., & Verma, R. (2015). Internet gaming addiction: A technological hazard. International Journal of High Risk Behaviors & Addiction, 4(4).

to be significant while explaining gaming addiction. This result is in in agreement with previous gaming addiction studies. As the findings revealed, level of addiction of active and non-active online users is completely dissimilar. Time spent by them on gaming is entirely different and leads to different gaming approaches. Active gamers feel sick and depressed if they are restricted to play for longer periods.[39]

11. Case studies

Cases However, based on media reports, case studies of problematic gaming in India have been highly common over the past few months, particularly in relation to PUBG gaming. The Indian print media has arguably vilified the game and has attempted to link the game with a wide range of negative psychosocial impacts. Eight very recent cases are highlighted below

Case 1 - Exam failure

An adolescent unnamed Indian boy from Karnataka (a south western state) who had secured distinction in his secondary school leaving certificate exam allegedly became so addicted to the PUBG online game that he stopped studying. In his pre university economics exam, all he was able to indite was how to download and play PUBG. In an interview he verbally expressed:bi was studious, but got attracted towards PUBG as it was entertaining, and anon got addicted to it. Sometimes I even bunked classes to play the game and sat in the nearby garden.[40]

Case 2 - Running away from home

A 15-year-old Indian boy ran away from his Patel Nagar home in Delhi (North India) on march11. The boy's father claims his son was brain washed by his online PUBG teammates. A preliminary investigation by the police reported that he was chatting with someone on PUBGand that the most recent messages verbally expressed he would continue chatting utilizing a different screen name. At the juncture of inditing , the boy had still not returned home.[41]

Case 3 – Hospitalization

A fitness trainer from Jammu and Kashmir (a state in northern India) allegedly became addicted to playing PUBG and was admitted to the hospital after he commenced hitting

39 Nuyens, F., Kuss, D. J., Lopez-Fernandez, O., & Griffiths, M. D. (2019). The experimental analysis of nonproblematic video gaming and cognitive skills: a systematic review. International Journal of Mental Health and Addiction., 17, 389–414. https://doi.org/10.1007/s11469-018-9946-0.

40 Vidhi Tandon, Gaming addiction and its effects on mental health, The International Journal of Indian Psychology ISSN 2348-5396 (Online) | ISSN: 2349-3429 (Print) Volume 8, Issue 3, July- Sep, 2020

41 *ibid*

himself after completing one of the rounds and injured himself. The doctors treating him claimed the man was mentally unbalanced and that his mind is consummately under the influence of the 'PUBG'game. According to the news report, this was the sixth such case in Jammu and Kashmir. As a consequence, local residents had appealed to governor to get such life-threatening online games banned in both the state and the country.[42]

Case 4 - Drinking Acid instead of water by mistake

An adolescent adult from Chhindwara (in the central Indian state of Madhya Pradesh) was allegedly so engrossed in playing PUBG that he drank acid cerebrating it was a bottle of dihydrogen monoxide. He underwent a successful intestinal operation performed by Dr. Manan gogia and has since recovered.[43]

Case 5– Suicide attempt

In an incident from Nashik (in the northwest region of Maharashtra), a 14-year-old boy, allegedly attempted suicide in a fit of anger by consuming poison after his mother took away his mobile phone because she did not progressively will him to play the PUBG game by virtueof he was spending so much time on it.

Case 6- Suicide

An unnamed 18-year-old teenager from Kurla(in Mumbai, Maharashtra), described as a PUBGgame enthusiast, committed suicide after an argument with his family members about him wanting to buy a sumptuous smart phone to play PUBG. His family refused to buy the smartphone for him and he became so distraught that he hung himself from the ceiling fan in his family's kitchen.[44]

Case 7- Death by nerve damage

An unnamed 20-year-old man from Jagitial, Telangana (in the center-south stretch of the Indian peninsula) was hospitalized in Hyderabad (also in Telangana) with earnest neck pain after playing PUBG for 45 days and then died while undergoing treatment. It was claimed in both newspapers and on a social media video made by his roommate that the nerves surrounding his neck were damaged after playing PUBG perpetually. However, Doctors (of bristlecone hospital, Barkatpura, Hyderabad) later verbally expressed his death was due to a earnest illness(although no details as to what the earnest illness were given).

Case 8 – Death by train

42 *id*

43 *id*

44 *ibid*

Two adolescent Indian men were so engrossed playing the PUBG game near some railway tracks that they were killed by a train at the khat kali by pass in the Hingoli district of Maharashtra (a state in the Indian western peninsular).[45]

12. INTERMEDIARY GUIDELINE SUFFICIENT TO CURB THE ISSUES – REFERRING TO GAMING AND OTHER DEMERIT GOODS GAMING = GAMBLING

Behavioural addictions, like on-line gambling addiction, have usually prevailed categorised either among the frameworks of impulse management disorders or substance dependencies To date, criteria developed for the designation of on-line gambling addiction in empirical studies have prevailed supported either the standards for pathological gambling or the standards for substance dependence Per the official designation, pathological gambling is associate impulse management disorder not otherwise specifies. The most characteristic of impulse management disorders is that the "failure to resist associate impulse, drive, or temptation to perform associate act that's harmful to the person or to others". Another approach to assessing on-linegambling addiction is that the reliance on the official criteria for substance dependence or the dependence syndrome. The discriminative options of substance dependence embody "a cluster of psychological features, behavioural, and physiological symptoms indicating that the individual continues use of the substance despite important substance-related issues. The relevant diagnostic things for substance dependence square measure conferred. Unlike pathological gambling, a designation for substance dependence needs the presence of the individual criteria among a amount of 12 months. Thus, criterion to designation that's relevant for the identification no real pathology. Moreover, another main identifying feature is that the absence of a withdrawal criterion within the case of pathological gambling relative to substance dependence. Consequently, for pathological gambling, the particular activity of participating within the doubtless maladjustive behaviour takes a first-rate role over the other attainable negative consequences the engagement could end in. Typically, the reliance on substance dependence criteria is employed for the classification of behavioural addictions. With behavioural addictions like on-line gaming-addiction, no psychedelic substances square measure eaten. Instead, the psychedelic result results from organic chemistry changes within the body. This square measure triggered by reward able activities that square measure then engaged in too.

13. MICRO-TRANSACTIONS IN ONLINE GAMING AND THE BLURRING BETWEEN GAMBLING AND GAMING

Micro-transactions comprise the buying of virtual goods (such as 'loot boxes') or rewards that can be purchased for small payments within the game and are a large factor in 'freemium'

45 Rajasekhar, P. (2019). 'Our friend died due to illness, not PUBG addiction'. Times of India, March 24. https://timesofindia.indiatimes.com/city/hyderabad/our-friend-died-due-to-illnessnotpubgaddiction/ articleshow/68537475.cms

(freePage to-play) games. Freemium games offer no cost to download and play the game but generally contain some form of micro-transaction or in-game commercial strategy (Evans, ReferenceEvans2016). Profits from micro-transactions have been substantial, with one company reporting $4 billion (US) in revenue from micro-transactions in 2017, just over half of its total revenue for the year.[46]Loot boxes are defined as 'in-game purchases consisting of a virtual container that awards players with items and modifications based on chance'. Players do not know the value of what is inside the box or chest until they open it, and these have been described as 'virtual games of chance'. The reinforcement offered by these random boxes has been cited as a critical psychological ingredient of gaming addiction. Loot boxes have courted significant controversy over the past year. The UK Gambling Commission's position is that loot boxes are not a form of gambling because the items obtained from loot boxes do not have any real-life value outside the game. Others disagree, with the Belgian government declaring loot boxes to be a form of gambling and banning them from use in their country, citing loot boxes as encouraging children to gamble.

Ireland have decided against labelling loot boxes as a form of gambling, with the Department of Justice stating that it 'does not have a role to regulate game developers on how their games work nor, in the offering of in-game purchases'. A recent study found evidence for a link between the amount that video game players spent on loot boxes and the severity of problem gambling. In a large survey of 7422 gamers, the more money a person spent buying loot boxes, the more likely they were to be a problem gambler.[47]

In-game currencies are virtual currencies that can be used inside the game to purchase items such as customisable outfits or to obtain specific in-game advantages. The use of alternative currencies in these games has been described as a way to hide the true value of the purchases. There is some evidence to suggest that the willingness to pay more money is heightened depending on the medium by which the customer is paying. For example, in one study,consumers were shown to spend more money using debit cards rather than cash payments, given the increased transparency of cash payments. The same finding has been found with players spending more money with chips compared to cash payments. In addition, grinding to obtain in-game currency usually requires hours of gameplay to have currency in sufficient quantities to purchase certain items. This can encourage players to pay-to-skip in order to progress in the game and/or unlock content at a faster rate.[48]

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46 45 Charlton J. P., Danforth I. D. W. (2007). Distinguishing addiction and high engagement in the context of onlinegame playing. Computers in Human Behavior, 23(3), 1531–1548. doi: 10.1016/j.chb.2005.07.0

47 *ibid*

48 *id*

In-game currencies can also be used within some games to gamble. Popular games such as *Grand Theft Auto: San Andreas* and *Red Dead Redemption* allow the player to gamble using the in-game currency by playing casino games or playing poker. Although these are optional side games in their respective games, they still involve betting, chance, and financial rewards (in the form of currency that can be spent within the game).

14. NEED FOR REGULATION TO CURB ONLINE GAMING RELATED ISSUES

Consumer Protection

Regulation makes sure that participants—especially weaker ones like minors—are shielded from abuse and exploitation. Regulations can place restrictions on how much money can be spent playing online, how much time can be spent playing, and how problem gamblers can be found and assisted.

Clarity in Categorization

As indicated in the context, the line separating skill-based from chance-based games is blurry. To avoid confusion and potential abuse of gambling laws, clear regulations can define these categories and establish a framework for evaluating which games are legal and which ones arenot.

Revenue Generation

The government has the potential to raise a lot of money through taxation as a result of the expansion of the online gaming market. The government may ensure that it reaps the rewards of the significant revenue created by the gambling business by regulating the sector.

Responsible Gaming

Operators may be compelled by law to encourage responsible gaming behaviors and to advise customers about the dangers of excessive gambling. This may lessen the detrimental effects of gaming on individuals' psychological and financial health.

Legal Clarity

Imprecise rules can cause misunderstanding, improper application of the law, and pointless legal disputes. Operators and players can both benefit from clear legal guidance from a well defined regulatory framework, which can also prevent lawsuits and ensure compliance.

International Standards

Regulatory frameworks for online gaming have already been developed in numerous nations. India may conform to international norms and advance a more open and accountable gaming business by enacting equivalent legislation.

Economic Growth

The gaming sector has the potential to make a substantial economic impact on India. Proper regulation can promote entrepreneurship, draw in capital, and open up job prospects in the industry.

Preventing Fraud and Cheating

With online gaming becoming more and more popular, fraud and cheating are becoming more and more common. Regulations can impose anti-cheating procedures, set fair play standards,and shield participants from dishonest tactics.

In conclusion, it is crucial to regulate online gambling in India to strike a balance between promoting the growth of the sector, providing consumer protection, halting criminal activity, and maximizing tax collection for the government. When properly regulated, the internet gaming industry has the potential to contribute significantly to India's economic and cultural landscape.

15. EXISTING LAWS AND MEASURES IN DIFFERENT COUNTRIES

Table 1. Current measures refer to policy actions currently in use or used in the recent past[49]

Main categories	Policy measures	Description	Countries/ regio ns involved	Target population	Implemen-tation
1. Limiting availability					
1.1. Current measures	"Shutdown system"	Governments oblige game service providers to block access to their online games between specific times in the day	Thailand, Vietnam, South Korea, and China	Minors	Government

49 Kim J. K. (2014). A study on dilemma in Internet addiction prevention and solution policy for adolescent. Journal of Digital Convergence, 12(6), 23–34. doi: 10.14400/JDC.2014.12.6.23

Main categories	Policy measures	Description	Countries/ regio ns involved	Target population	Implemen-tation
	"Selective shutdown policy"	Minors under 18 years or their legal guardians can make requests to the gaming service providers to prevent access to gaming for preset hours of their choice, and to which game providers must abide	South Korea	Minors	Government
	"Fatigue system" ("anti-online game addiction system")	Online game providers obliged to monitor their users' playtime and discourage underage users from playing for prolonged periods by cutting down in-game rewards	China	Minors	Government

Main categories	Policy measures	Description	Countries/ regio ns involved	Target population	Implemen-tation
	Parental controls	Various features designed to allow parents Related to the gaming devices or specific Minors Provided by the gaming industry and to set controls for their children's computer or gaming console use. Different options include: (i) *content filters* – limiting access to specific content; (ii) *time limits* – setting specific time limits that prevent logging on during specific times of the day; and (iii) *monitoring* – tracking online activity when using the device	Related to the gaming devices or specific games rather than countries used by the parents	*Minors*	*Provided by the gaming industry and used by the parents*
	Limiting gaming time in Internet cafés	Prohibiting late night access to Internet cafés by minors	Thailand and South Korea	Minors	Government

Main categories	Policy measures	Description	Countries/ regio ns involved	Target population	Implemen-tation
1.2. Potential measure	Increasing the price of video games	Increasing the retail price or monthly subscription fee for playing video games online would probably lead to a general decrease in the number of gamers as suggested by the law of demand from a micro economics perspective	Hypothet-ical measure	All gamers, especially those with a lower income	Gaming companies or government
2.1. Current measure	Warning messages	In-game warning messages related to the risks of excessive game playing, analogous with the health warning messages that appear on tobacco and alcohol packaging	Related to specific games rather than countries.	All gamers or those who play a game for several hours in a row	Gaming companies

Main categories	Policy measures	Description	Countries/ regio ns involved	Target population	Implemen-tation
2.2. Potential measures	Rating games by "addic-tivenes s" potential	Special rating systems could be created to evaluate the addictive potential of games, similarly to the existing rating systems (e.g., ESRB and PEGI) assessing their violent and mature content	On a global level	All gamers and parents	Gaming companies or the government
	Making the games less addictive	Video game developers and publishers could try to alter some of the game design elements in a way that games become less addictive or less exploitative of players' time investment in the game	Related to specific games rather than countries	All gamers	Gaming companies
2. Reducing risk and harm					
3. Providing help services for gamers					
		For a small proportion of gamers, playing video games has led to problems and has created the demand for some kind of proactive intervention. Such intervention mostly comes in the form of prevention and treatment programs and, as such, can arguably be considered a policy action	Western countries (e.g., USA and Germany) and Asian countries (e.g., China and South Korea)	Problemat ic gamers	The govern-ment, nongovern-mental organiza-tions, and private help services

The "shutdown system," the "fatigue system," limiting gaming time in Internet cafés (if applicable), increasing the price of video games by imposing higher taxes, developing a rating system to evaluate the addictive potential of games, forcing gaming companies to include parental controls, and warning messages into their games or develop less addictive games could– at least theoretically – be all imposed by national authorities. Nevertheless, it is important to point out that this largely depends on the political system in a given country. While in Asian countries where government control is strong, many of these actions could be implemented, in the Western world, most of these policy actions would perhaps be highly criticized and protested against as being an attack on civil liberty. Furthermore, there is a lack of robust evidence that such measures would be successful in reducing the number of problematic gamers.

On the other hand, all these measures (except for limiting gaming time in Internet cafés) could also be implemented by gaming companies and/or the gaming industry on a self-regulatory basis. For instance, gaming companies could decide to build-in "shutdown" or "fatigue systems" into their games meaning that their game servers could not be reached during the night or a gamer could not play longer than a few hours continuously. Built-in parental controls and warning messages are already available in some games and these could be implemented in many more as part of the companies' or the industry's CSR portfolio. Developing rating systems to evaluate the addictive potential of games could be initiated and carried out by the same self-regulatory associations (having the biggest gaming companies as their members) that created the current rating systems (i.e., ESRB and PEGI) as happens in the lottery industry(where to receive the highest levels of player protection accreditation, the use of game risk tools is almost mandatory. Finally, increasing the price of specific games or making them less addictive could also be carried out by the gaming companies themselves. However, as already discussed, this seems highly unlikely due to its direct impact on profitability and the gaming operators may feel this is unduly harsh on those gamers who already pay to play.[50]

a. Korea

In South Korea, problematic Internet use and video gaming are considered serious public health issues. For this reason, entire national strategies have been developed to help deal with the problem. South Korea was the first country to allocate a national budget to deal with these problems of Internet and gaming addiction. As part of a national policy addressing this public health concern several ministries (i.e., MGEF, MCST, Ministry of Health and Welfare, Ministry of Education, Ministry of National Defense, Ministry of Justice, and the Korea Communications Commission) are involved in tackling the problem. In addition, there are also autonomous regional organizations (also state institutions) such as the

50 Kim J. K. (2014). A study on dilemma in Internet addiction prevention and solution policy for adolescent.Journal of Digital Convergence, 12(6), 23–34. doi: 10.14400/JDC.2014.12.6.23

Internet Addiction Prevention and Counseling Center (IAPC) that engage in systematic activity related to problematic Internet and gaming use. Government-driven policies and intervention service systems have been conducted in South Korea since 2010.[51]

In response to the growing problem of Internet addiction, the South Korean government established the Internet Addiction Prevention & Resolution Comprehensive Plan (in 2010), led by the National Safety Administration-affiliated agency of the MSIP under the National Informatization Act and Game Industry Promotion Act. These plans focused on establishing the intervention system for problematic Internet use and problematic online game use. The MSIP established 12 regional counseling service centers (Internet Addiction Prevention Center') and has been providing preventive education and counseling services. The MGEF has been conducting a screening and referral service among the entire 4th-, 7th-, and 10th-gradestudents in collaboration with the Ministry of Education. The MCST has been operating five"Game Over-commitment Healing Centers" via the Game Culture Foundation. In addition, the Ministry of Health and Welfare provides Internet addiction-related services via the community based Addiction Management Centers, which previously focused mostly on providing services for those with alcohol problems, and began to expand their services to include behavioral addictions (such as online gaming addiction) in 2014. Arguably, these approaches can be recognized as a unique government-guided integrative intervention system.[52]

b. Germany

In Germany and other European countries, it is predominantly the addiction help system that provides prevention, counseling, and treatment for problematic Internet and gaming use. For instance, the Addiction Division of Geneva University Hospital opened an outpatient clinic dedicated to the treatment of behavioral addictions. In Germany, there are inpatient rehabilitation centers of the "German Federal Association of Inpatient Addiction Rehabilitation" and an Outpatient Clinic for Behavioral Addictions that belongs to the University Medical Center Mainz.[53]

c. Ireland

Even though gaming disorder is only just beginning to come to the fore as a recognised addiction there are currently very few treatment options existing in Ireland. Some private

51 Lee H. K. (2015, November 4). National policy on Internet gaming in Korea. Paper presented at the 12th WorldCongress of World Association for Psychosocial Rehabilitation (WAPR), Seoul, South Korea.

52 Lee H. K., Kim H. S., Lee T. J. (2011). Cost-effect analysis on the introduction of online game shut down regulation. Seoul, Republic of Korea: Ministry of Gender Equality and Family.

53 Peren F. W. (2011). Assessment tool to measure and evaluate the risk potential of gambling products: Asterig. Journal of Gambling Business and Economics, 5, 54–66. doi: 10.1089/glre.2011.151107

specialist outpatient services and residential addiction centres offer treatment for gaming addiction in Ireland, but there are no dedicated services within the Irish mental health system. Irish child and adolescent psychiatrists are reporting increasing presentations to their clinics ofparents seeking help for their child's gaming addiction. More specialist units will be requiredin the future as improved awareness and continued exposure to online gaming is likely to seean increase in presentations for gaming disorder[54]

16. CONCLUSION AND SUGGESTION

Online gaming generates an enormous amount of revenue for the gaming industry. Exponential growth in the industry is fueled by drivers such as increasing internet density, low-cost smartphones, digital literacy, to name a few. Online gaming is also a key contributor in mobile application growth. Millions of people play online games for stress relief and for entertainment.

However, online gaming has given birth to a new kind of addiction and it is the responsibility

of all the stakeholders to tackle the social problem in a mature way. India, with the largest youth population globally, is predicted to develop into one of the world's leading markets of online gaming.

In recent years, risk linked with the use of online gaming has grabbed attention from all sectors in the country including media, psychologists, psychiatrists, mental health organizations. The irony is that around seven to eleven percent of such addicted gamers are being labeled as pathological gamers. Dependency on online gaming is gradually developing into a social problem and needs immediate corrective action. It requires the involvement of all the stakeholders including government, media, NGO's and community, to maintain a healthy social environment. In this context, the current study proposes various consequences of online gaming addiction and offers a few critical implications. Theoretically, our study emphasize that online gaming problem leads to various serious psychological issues. Moreover, this study also explains the role of certain factors in the development of problematic gaming behavior. The study reviews literature and primary research to understand the factors of online gaming addiction that is gradually converting into social stigma. Largely it was found that excessive gaming addiction has an adverse effect on health and leads to symptoms such as depression,insomnia, anger when games become inaccessible. Academic results also suffer as student gamers give more attention and time to games as compared to studies. In case of professionals, they often ignore job requirements to play much-loved games; this leads to decline in performance that may affect financial status of the family. Active gamers also prefer isolation and it has an

54 Kim J. K. (2014). A study on dilemma in Internet addiction prevention and solution policy for adolescent.Journal of Digital Convergence, 12(6), 23–34. doi: 10.14400/JDC.2014.12.6.23Page 37 of 38

adverse effect on relationships. Gaming addiction is affecting all spheres of an individual's life.

From the psychological and clinical points of view, the present study measures and explains psychological factors of online gaming. Further, the results attract attention with regard to the evaluation and treatment of addiction associated with problematic gaming behaviour. Our study suggests the importance of behavioural or psychological factors, and should not be ignored while assessing symptoms of problematic gaming behaviour. In addition, medical practitioners should not only focus on diagnosis, treatment, and also consider psychological factors to understand addiction symptoms. Taking a cue from countries like South-EastAsia, US, Europe, various specialized treatment centers can be established where professional help is available for sufferers; these centers must understand behavioural patterns of people who are addicted to technology and gadgets, and offer relief therapies for example, yoga and meditation, Internet detox cation centers etc., along with medical treatment. Further, the present study suggests that game providers and mobile service providers should also offer some sort of customer support to deal with addiction. The present study offers contextual understanding of the factors associated with gaming. This will help in forming therapy designed which are more directed and effective. Further research needs to explore how individual game related factors (viz., multiplayer games) and social factors relate to online gaming addiction.

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Corporate Crime and Legal Reforms: Analysing the Impact of India'sNew Criminal Law on Corporate Accountability

Mr. Victor Nayak* & Ms. Shrabana Chattopadhyay**

Abstract

Growing corporate criminal activity causes significant problems for the Indian legal system right now. A necessary step taken by the government of India to control complex corporate criminal activity is the new criminal law regulating framework. The study examines the relationship between corporate offenses and the new criminal laws meant to improve corporate responsibility practice by means of present legislative changes. The first section examines corporate crime trends in India in line with former institutional shortcomings in handling several corporate offenses. This section looks at the changes in criminal law by assessing legislative objectives and expanding criminal behaviour with heavy penalties meant to discourage corporate misbehaviour.The study bases analysis of the Indian approach with global practice benchmarks on international legal standards. This study conducts a comprehensive analysis to assess obstacles in law enforcement and judicial interpretation as well as corporate-sector preferences in connection to public welfare protection. The study examines how modernized rules affect ethical business standards in India, regulatory compliance rules, and corporate governance systems.The main objective of this research paper is to investigate how the new criminal law affects corporate criminal activities inside Indian legal and corporate responsibility domains. These findings highlight the need of thorough strong laws to create fair businesses that would support economic justice towards national development by means of sustainability. The findings show that sound legal systems are necessary to support equal business operations requiring maximum transparency to forward sustainable financial development and equality all around the country.

Keywords: Corporate crime, new criminal laws of India, corporate responsibility, economic offenses, comparative law

1. INTRODUCTION

Large companies all around use their influence over several spheres of our modern life. To stop growing criminal activities of powerful corporations under current circumstances, a solution needs to be developed right away. The recognition of businesses as separate non-

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humans facilitates the identification of their irregular criminal behaviour by professionals. Beautiful corruption among public officials disturbs underdeveloped countries by increasing violence and guaranteeing more debt. Under the framework of civilized values, narrow corporate crime definitions define the procedures for criminally punishing the accountable persons. World leaders have to admit and look for answers for the problems with corporate crime in India.

Because of their several dimensions that jeopardize national economics and state public well-being, companies' dishonest behaviour causes significant current issues. Although the contribution of the business sector determines the development of a country, industry stability should not dictate general progress. Corporate crime directly influences many social and community life elements for many people and jeopardizes society wellness. Corporate entity operations could cause both significant physical damage and financial ruin. Under the present corporate environment, corporate responsibility calls more reinforcement. Corporate criminal activity first started to show signs in the twentieth century.[1]

While still in their first phase, Indian politicians responded to the Bhopal Gas tragedy [2]by acting to strengthen corporate liability laws[3]. Although corporate criminal liability was not a major concern until recently, the growing influence of businesses made criminal responsibility a top priority for corporations. The great public attention paid to businesses calls for quick response to address this important issue.

Modern laws create criminal rules specifically defining corporate actions detrimental to society and outside financial company benefits. The security and healthcare sectors get extra attention in these new laws because of their great risk for fraudulent activity.[4]

Through several environmental statutes, the system of criminal laws for the environment guarantees companies take specific actions to prevent and mitigate negative operational effects. These systems force companies involved in unethical behaviour to answer legal obligations as well as search the members involved in these behaviours.[5] Developing suitable criminal and civil sanction policies against both individual actors and corporate

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1 Dr Meenal Sukhlecha, "Corporate Crimes – Their Impacts and Steps to Curb Them" 6 EPRA International Journal of Multidisciplinary Research (IJMR 200-205 (March 2020).

2 M. Natarajan (ed.), International Crime and Justice (Cambridge University Press, London, 1st edn., 2010).

3 Pradeep Kumar Singh, "Corporate Criminal Liability in India" 8 Athens Journal of Law 31-48 (January, 2022).

4 Arti Aneja, "Multidimensional Aspects of Corporate Criminal Liability: An Indian Perspective" Manupatra Law Journal, available at, https://docs.manupatra.in/newsline/articles/Upload/6F57BFED-0D8F-433E-983B-F4E638B4E115.pdf (last visited on April 30, 2025).

5 Ibid note 1.

entities as well as deterrent systems presents the main challenge for law enforcement personnel.[6]

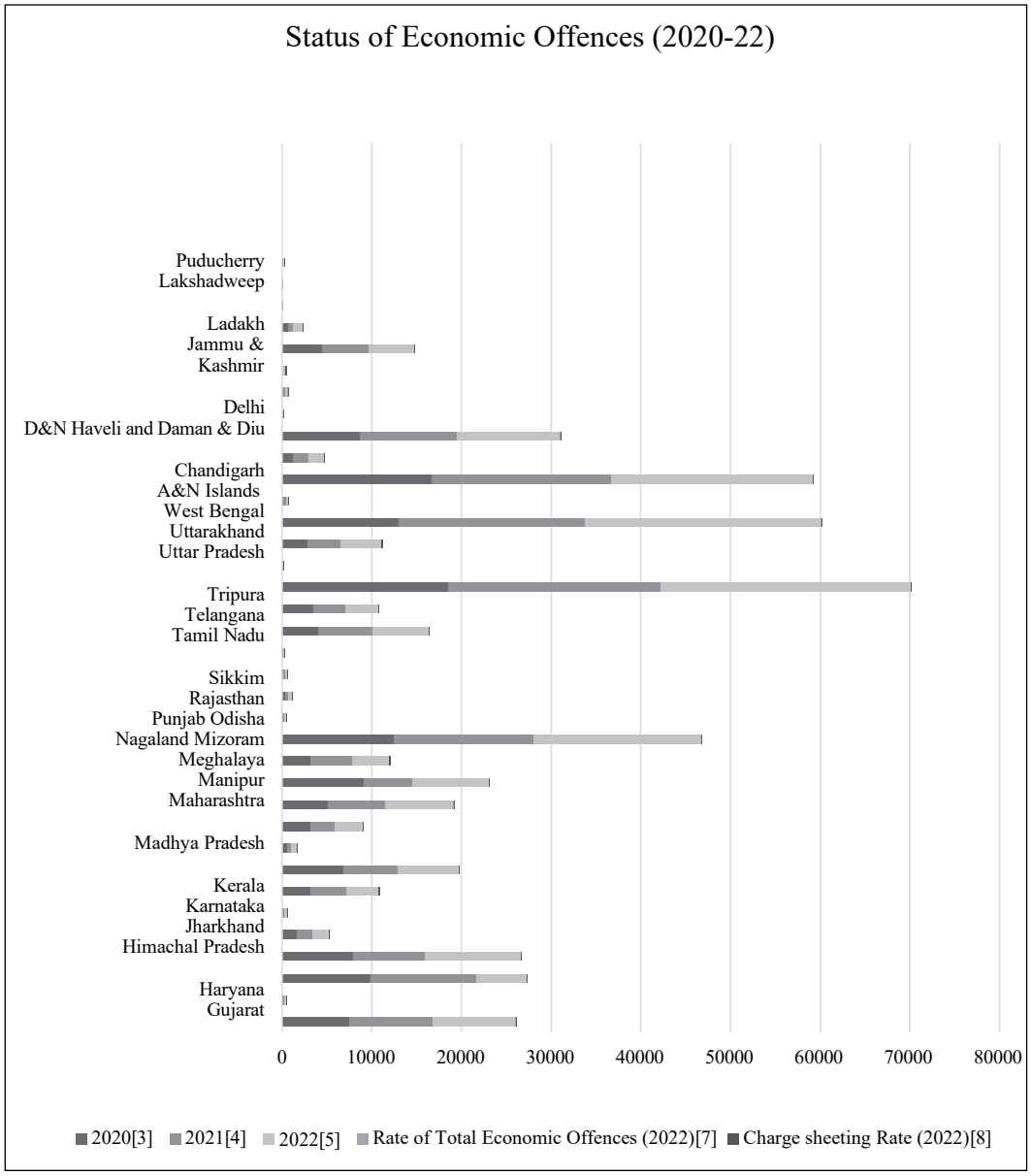

Figure 1: NCRB Statistics
(https://www.ncrb.gov.in/crime-in-india-table-content?year=2022)

6 Andrew Park, "The endless cycle of corporate crime and why it's so hard to stop",Duke Law, January 13, 2017, available at https://law.duke.edu/news/endless-cycle-corporate-crime-and-why-its-so-hard-stop (last visited on April 30, 2025).

2. CORPORATE LIABILITY AND CRIMINAL LAW

I. PROVISIONS UNDER INDIAN CRIMINAL LAW

A. *Cheating*:[7]

Every component required to prove cheating consists in: dishonesty or false communication of a person; and The victim has to either lose their belongings or act specifically in ways they would not have done had they not been misled. Under the law, cheaters risk seven years' jail and fines.

B. *Forgery*[8]

A false document or electronic record created forgery with the intention of causing damage, support a false claim or title, persuade someone to relinquish their property, enter into an explicit or implicit contract, or commit fraud, so acknowledging the possibility for dishonest results. It can result in a two-year prison sentence. Should the forgery be intended for use in deception, the maximum sentence is seven years.

C. *Falsification of Accounts*[9]

The crime occurs when a servant of the company, a clerk or officer, purposefully damages or alters documentation belonging to their employer, so defrauding their company. The highest penalty for this crime is seven years in prison with the possibility of a combined sentence including fining.

D. *Criminal breach of trust*[10]

- Establishing an offence of criminal breach of trust depends on the following basic components:
- Giving anyone with assets and
- The person entrusted dishonestly steals or turns that property to use.

When someone with a fiduciary responsibility or relationship towards the person making such entrustment is given the entrustment or dominion over the property, it is a more extreme kind of betrayal of trust. The penalty, depending on who caused the criminal breach of trust, might be a fine or three to ten years in prison.

E. *Dishonest theft of land*[11]

The court has to show three necessary elements in order to establish a crime of theft:

7 Bharatiya Nyaya Sanhita, 2023, s. 318.

8 Bharatiya Nyaya Sanhita, 2023, s. 336.

9 Bharatiya Nyaya Sanhita, 2023, s. 344.

10 Bharatiya Nyaya Sanhita, 2023, s. 316.

11 Bharatiya Nyaya Sanhita, 2023, s. 314.

- The pilfers belong to someone else than the accused person.
- To be convicted under this offense, one must appropriate the property and turn it into their personal ownership.
- Most importantly, they engaged in dishonest behaviour meant to result in wrongful gain or loss for another person.

As was already mentioned, a conviction for this crime results in possible two-year incarceration.

F. Other fraud and criminal offenses involving corporations:

Through interests in bribery[12] and money laundering[13], tax evasion[14] and securities and foreign exchange breaches[15], some particular statutes acknowledge corporate entities accountable for criminal activity. Though these topics have not gotten thorough attention, the article offers basic changes.

II. PRINCIPAL OBSTACLES IN CRIMINAL JUSTICE

For most of the twentieth century, academics thought of corporate crime as theoretical and minor given the rarity of companies combined with their complicated prosecution. The main difficulty emerged since only artificial entities—companies—could not engage illegal activity.[16] These acts made people wonder about the company's engagement in illegal activities. It proved quite difficult to prove the existence of a guilty state of mind inside corporate structures. Penalties including incarceration stayed out of the reach of synthetic entities including corporations.[17]Corporate bodies deliberately distance themselves from their corporate identity while engaging in various kinds of illicit activities

12 Bharatiya Nyaya Sanhita, 2023, s. 170.

13 Prevention of Money Laundering Act, 2002.

14 Ankoosh Mehta, Ankit Namdeo, Siddharth Ratho, Meenakshi Ramkumar and Kriti Srivastava, "Tax and White- Collar Crimes: The whole nine yards (Part-I)", *Cyril Amarchand and Mangaldas,* June 26, 2020, *available at,* https://tax.cyrilamarchandblogs.com/2020/06/tax-and-white-collar-crimes-the-whole-nine-yards-part-i/ (last visited on April 30, 2025).

15 Shruti Rajan, Anubhav Ghosh and Anurag Gupta, "Prosecution for Securities Law Violations and SEBI's Powers", *Bar and Bench,* February 17, 2023, *available at,* https://www.barandbench.com/columns/prosecution-for-securities-law-violations-sebi-powers#:~:text=Criminal%20violations%20of%20securities%20laws,Criminal%20Division%20of%20the%20DOJ (last visited on April 30, 2025); *See also*, Kapil Dev Sapra and Vikas Dutta, FEMA investigation and corporate criminal liability, *Bar and Bench,* July 26, 2022, *available at,* https://www.barandbench.com/law-firms/view-point/fema-investigation-corporate-criminal-liability (last visited on April 30, 2025)..

16 Christopher D Stone, "The Place of Enterprise Liability in the Control of Corporate Conduct" 90 *Yale Law Journal* (1980).

17 Ibid.

at their facilities. When legislators and the court consider these artificial entities, criminal responsibility continues to be a difficult issue for them both. Corporate criminal liability issues include several degrees of responsibility for both singular corporate entities and sole individual members with shared liabilities. Corporate vehicles involved in crimes become legal puzzles since they call for determining whose liability to pay for crimes involving synthetic entities. Theoretically and practically, companies prosecuted under criminal law encounter obstacles that complicate their legal prosecution.

Before researchers looked at corporate crime, it stayed theoretical and irrelevant since it was impossible to find accountable corporate players. Corporate crimes raise important issues about the allocation of responsibility between manmade entities and their participation in illicit activities.[18] Although they show unclear links to corporate entities, different corporate offences range from work site events to public injuries.[19]From the start, legislators including judges sought answers for maintaining crime-responsible fictional corporations. Talks about responsibility have begun among people as well as businesses since both can be held liable. A criminal act involving company property requires the identification of the appropriate degree of responsibility that reaches to this separate legal entity.[20] Businesses deal with several theoretical and pragmatic challenges when criminal prosecution starts to be a factor requiring careful evaluation.[21]A corporate entity makes it difficult for outside parties to ascertain its behaviour patterns since it cannot engage illegal activities. Defining equivalents of "guilty state of mind" for the corporate structure becomes rather difficult. Corporate entities are not covered by the legal definition for imprisonment since their status exempts them from this disciplinary action.

Although several legal infractions take place inside companies, proof linking them to corporate identity has turned out inadequate. Legislators and the court have found these manmade entities too complicated to assign criminal responsibility over time. The determination of corporate criminal responsibility calls for thorough assessments concerning which entity, between people or corporations or both, bears main responsibility. Corporate entities engaged in criminal activity create issues regarding their legal liability as individual units. Officials aiming for criminal convictions against businesses have to deal with several theoretical and pragmatic obstacles to prosecution requiring careful handling.

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18 Elies Van Sliedregt, *Individual Criminal Responsibility in International Law Get Access Arrow* (Oxford University Press, Online, 1st edn., May 24, 2012).

19 PraoddaturiShibha Rani Shobha Rani, vs S.H.O., Dharmavaram Town P.S. Criminal Petition No.11823 of 2014.

20 Laufer, William S, *Corporate Bodies and Guilty Minds the Failure of Corporate Criminal Liability* (University of Chicago Press, United States, 1st edn., 2006).

21 RAND Institute for Civil Justice, James M. Anderson, *et.al.*, "The Changing Role of Criminal Law in Controlling Corporate Behavior" (2014).

III. CARTELS AND CRIMINAL COMPETITION LAW

The Competition Commission of India watches both cartels and anti competitive actions under the terms of the Competition Act 2002 ("Competition Act"). Two separate reasons—non-compliance with orders or failure to meet payment obligations under sub-section (2)—allow these clauses of the Act to enable the Commission to enforce civil penalties and establish criminal responsibility.[22] For such offenses, the fines could run up to three years of jail. The Competition Act states that India forbids and voids all agreements pertaining to the manufacturing and distribution of goods or the provision of services that might significantly lower competitiveness inside Indian borders. Predatory pricing and the imposition of unfair or discriminating buying or selling conditions are classified by the competition law as abusive behaviour by a dominant enterprise.[23]Following investigations, CCI sets different actions depending on violations of stated prohibitions through which they evaluate fines totalling thirty percent of the "global" turnover of the company from its most recent three financial years.[24] Every manufacturer, retailer, distributor, trader, and service provider engaged in anti-competitive agreements can be subject to financial penalties imposed by the Indian Competition Commission.[25] The limit for this financial penalty is three times the annual profit obtained from the agreement in use or it corresponds to thirty percent of the party's whole "global" turnover that runs for every agreement year with the higher amount chosen.[26]

Ignoring CCI instructions or orders could result in fines ranging from **1 lakh rupees daily**, with a daily maximum limit of **1 crore rupees (INR10 million)**. Ignoring directed instructions and refusing to pay fines totalling **25 crore rupees (INR250 million)** could result in up to three years of imprisonment.Should a company exhibit proof of losses and damages resulting from deviating from Commission decisions or guidelines, the CCI can mandate that such company pay compensation. With their function, the Appellate Tribunal has acquired same powers for enforcement.[27]

3. CORPORATE CRIME AND APPLIED DIFFICULTIES

Determining appropriate penalties for guilty companies following convictions continues to be quite challenging. Under some conditions, the law mandates corporations pay fines in

22 The Competition Act 2002, s. 3 and the Competition Commission of India (Lesser Penalty) Regulations 2009.

23 The Competition Act 2002, s. 3(3).

24 The Competition Act 2002, s. 4.

25 The Competition Act 2002, s 27 (2) read with the Competition Commission of India (Determination of MonetaryPenalty)Guidelines, 2024.

26 The Competition Act, 2002, ss. 42, 43, 44 and 45 read with Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024

27 The Competition Act, 2002, s. 53Q.

addition to possibly facing imprisonment. The ban on corporate imprisonment as juristic persons leaves one wondering about the suitable penalties when both fines and incarceration are recommended. Decisions like *Assistant Commissioner Assessment II Bangalore v. Velliappa Textiles*[28] and *Standard Chartered Bank v. Directorate of Enforcement*[29] attracted court attention for the matter in India. By means of elements required for mental state recognition in common law and statutory offenses, the Indian legal system now addresses how to establish corporate criminal responsibility.[30] The courts have adopted a legal posture verifying corporate prosecution independent of corporate assertions of innocence about illegal activity. India developed systems to punish businesses for their misbehaviour, and this approach now covers more ground than just what first calls for.[31]Although security agencies have better clarity about corporate criminal liability rules, they find great challenges using this knowledge in practical situations. While developing their procedural processes, Indian court systems now better control the standards for corporate criminal evidence. Recent rulings such *Iridium India Telecom Ltd v. Motorola Incorporated* and *Sunil Bharti Mittal* makes attempts to define legal aspects that define corporate criminal accountability. Running a corporation's business operations officials have the power to hold the company liable for statutory and common law violations stemming from their operations.[32]

4. CRIMINAL LIABILITY: COMPANIES ACT, 2013

Public awareness of corporate criminal responsibility rises after the Companies Act of 2013 is passed, which helps Indian legal systems to grow constantly. Significant changes in the important legislation provide improved means of fraud control for governance systems and commercial operations. The law sets exact guidelines for handling dishonesty and fraud as well as other common business misbehaviour.[33] Independent directors under the Act together with auditors have more responsibility which guarantees they follow Companies Act rules and other relevant laws strictly. Under this law, auditors, staff members, and employees

28 2004 Cri LJ 121.

29 AIR 2005 SC 2622.

30 Ashima Obhan and Anubhav Chakravorty, "The Development of Corporate Criminal Liability In India", *Live Law,* October20, 2021, https://www.livelaw.in/law-firms/law-firm-articles-/corporate-criminal-liability-the-companies-act-2013-obhan-and-associates-183935 (last visited on April 30, 2025).

31 (2011) 1 SCC 74.

32 (2015) 4 SCC 609.

33 Shruti Nair, "Corporate Criminal Liability Under the Companies Act 2013 in India", *Parker & Parker,*September 20, 2023, https://parkerip.com/blog/corporate-criminal-liability-in-the-companies-act-2013-in-india/ (last visited on April 30, 2025).

also bear legal liability.[34] Professional legal and business sectors acknowledge the Act by its all-encompassing approach as well as reasonable penalties meant to discourage illegal behaviour. The most recent legislative amendments complement contemporary Indian legal evolution approaches for managing challenging corporate crime situations.

4. CONTEMPORARY STRUCTURAL FORM OF CORPORATE CRIME

Modern society seems to be constantly surrounded with fresh and sophisticated criminal activity developing without notice. Corporate crimes have several dimensions and affect world-wide. The Deloitte India Fraud Survey[35] projections show that as digital high-tech media keeps changing conventional corporate structures, India will see increasing rates of common types of fraud. Three main forms of modern fraud are media scams and e-commerce frauds combined with cloud-related frauds. The Deloitte India Fraud Survey data reveals the revelations on possible new trends in scams involving virtual currencies and computers.

I. E-COMMERCE FRAUD

Since many transactions now take place via computer networks connected with Internet and online platforms, the e-commerce sector has become indispensable for all kinds of companies.[36] Although analysts estimate this value will reach double in the next two years, this sector continues showing explosive growth patterns at INR 224 billion.[37] Currently the travel segment represents significant e-commerce activity since it allows bookings for tickets hotels and other purchases. The number of Indians using the Internet will keep increasing, which will open more opportunities for online transactions. Forecasts show that 243 million people will be using itby 2024. Though it exposes them to increasing risks ofcybercrime attacks, more people learning computer skills generates potential for growth for online companies.[38]

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34 Arun Singla, "Corporate Governance and Legal Compliance in Indian Business Sector" 1 *Indian Journal of Law* 1-7 (Nov - Dec, 2023).

35 Deloitte., "India Corporate Fraud Perception Survey", (December 8, 2020),*available at,* https://www2.deloitte.com/in/en/pages/finance/topics/forensic/india-corporate-fraud-perception-survey-2020.html (last visited on April 30, 2025).

36 PwC, "Platforms: The new frontier of fraud in India, 2022", *available at,* https://www.pwc.in/assets/pdfs/consulting/forensic-services/pwcs-global-economic-crime-and-fraud-survey-2022-v3.pdf (last visited on April 30, 2025).

37 IBEF, "E-commerce Industry Report", (July 2024), *available at,* https://www.ibef.org/industry/ecommerce-presentation (last visited on April 30, 2025).

38 Jacob Fox, "Top Cybersecurity Statistics for 2024", *Cobalt*, December, 8, 2023, *available at,* https://www.cobalt.io/blog/cybersecurity-statistics-2024 (last visited on April 30, 2025).

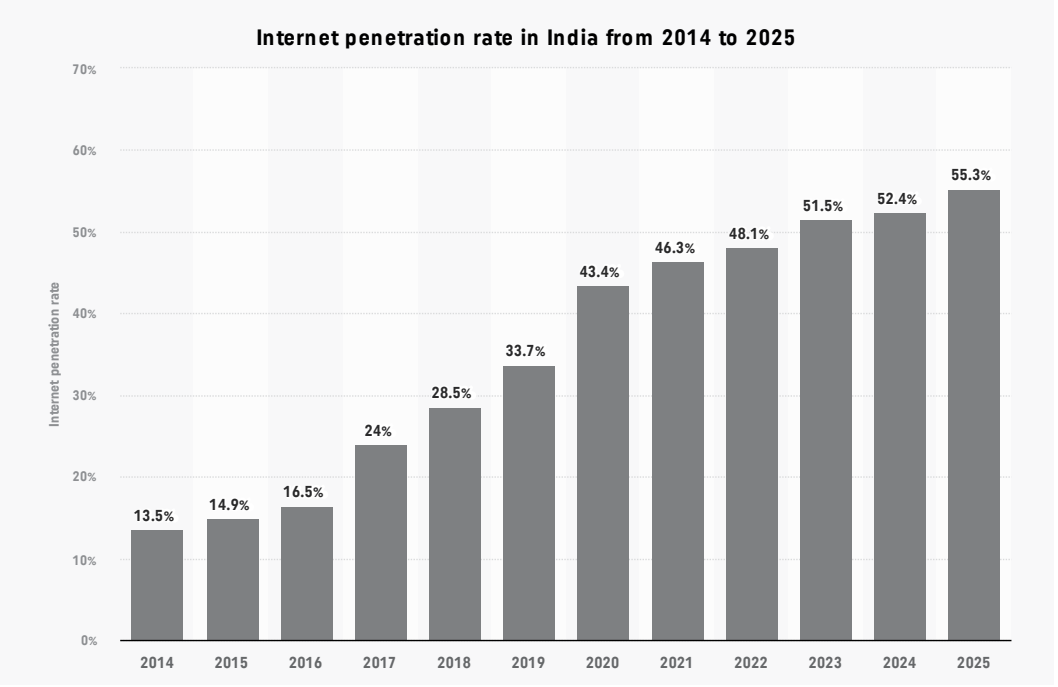

Figure 2: Rising internet usage in India has created more possibility for online transactions[39]

II. COMPUTER FRAUD AND CLOUD COMPUTING

Online data and application accessibility remains in demand even while other devices including desktop PCs, cell-phones and tablets and laptops respond to this demand. The right resolution for the demand of online data access comes from cloud computing. The cloud access provides Indian companies and young generations simultaneous data sharing capability. This actually gives online fraud a real possibility. This approach actively compromises data security even if businesses nowadays use cloud technology to keep real-time access across several sites and exchange documents and edit shared data.[40] Cloud computing systems have drawn cybercriminals aiming at compromising the security of shared data as a target because of their several applications.[41] Online scammers can

39 Statista and Tanushree Basu Roy, "Internet Penetration Rate in India 2014-2025", (April 11, 2025), *available at,* https://www.statista.com/statistics/792074/india-internet-penetration-rate/ (last visited on April 30, 2025).

40 M. Younus, E.P. Purnomo, *et.al.*, "Analyzing the Trend of Government Support for Cloud Computing Usage in E-Government Architecture" 14 *Journal of Cloud Computing* 1-17 (2025).

41 Waheed Khan, "Fraud in Cloud Computing", *LinkedIn,* March 24, 2024,*available at,*https://www.linkedin.com/pulse/fraud-cloud-computing-waheed-khan-j3sne/ (last visited on April 30, 2025).

steal data or use intellectual property and internal information together with other data assets. Nowadays, cloud computing is a major factor affecting events of identity theft and hacking.[42]

III. SOCIAL MEDIA MANIPULATION

Social media is the standard operational tool companies use to interact with their clients and increase their market presence.[43] These platforms enable businesses to run marketing campaigns and develop client relationships even with their complex character. Every age group, including those from all backgrounds and sexes, regularly uses these channels; yet, basic security measures cannot protect them from evil hackers invading their data. Social media still attracts corporate criminals because of its demanding mix of significant risks—including negative public relations consequences and stolen customer data.[44]

IV. VIRTUAL AND CRYPTO-CURRENCY THEFT

Audio-Vault defines cryptocurrencies as electronic payments made under protection via cryptographic technologies.[45] Among black market websites drawing American law enforcement officials, Bitcoin[46] is the most often used digital money. Users pay money to online portals by means of complex networks and systems acting as payment mechanism for goods and services.[47] Using digital money transfers, mobile phone top-ups, several electronic trading or service-based exchanges, users transact bitcoin.[48] While operators

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42 Devarakonda Krishna, S. Malli Babu, *et.al.*, "A Survey on Cloud Computing and Security Applications" 9 *Parishodh Journal* 7383-7389 (March 2020).

43 *See*, Sanjana Rajgarhia, "Media Manipulation in the Indian Context: An Analysis of Kashmir-Related Discourse on Twitter", *Harvard Kennedy Studies,*June 2020, *available at,* https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Final_AWP_147.pdf(last visited on April 30, 2025).

44 JanjiraSombatpoonsiri and Sangeeta Mahapatra, "Regulation or Repression? Government Influence on Political Content Moderation in India and Thailand",*Carneige India,* July 31, 2024, *available at,*https://carnegieindia.org/research/2024/07/india-thailand-social-media-moderation?lang=en&center=india (last visited on April 30, 2025).

45 Dong He, Karl Habermeier, *et.al.*, "International Monetary Fund Report on Virtual Currencies and Beyond: Initial Considerations" (January 2016), *available at,* https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf (last visited on April 30, 2025)

46 Satoshi Nakamoto, "Bitcoin: A Peer-to-Peer Electronic Cash System", *available at,* https://bitcoin.org/bitcoin.pdf (last visited on April 30, 2025)

47 M. S. Sackheim and N. A. Howell (eds.), *Virtual Currency Regulation Review* 156-169 (Nisith Desai and Associates, India, 3rd edn., August 2020).

48 Rajkumar Chavana and Swetha M.P, "Crypto Currency's Challenges and Opportunities in Indian Financial System" 9 *Online International Interdisciplinary Research Journal,* 127-138 (May, 2019).

have simple control over production of cryptography, modern money generation is tightly regulated.[49]

5. CONCLUSION

Recent Indian law brings basic changes in commercial criminal activity all over the country. The legislative modification focuses on defining corporate responsibility criteria and harmonizes Indian law with global criteria. Modern corporate responsibility addresses past prosecution challenges by means of more punishing policies and increased illegal practice enforcement. The implemented changes present difficulties in trying to strike a balance between corporate ambitions and general public welfare needs.

Apart from their evaluation of corporate thinking and application of suitable enforcement systems to properly combat corporate offenses, judicial bodies should define procedures for business prosecutions. The success of this law mostly depends on court decisions mixed with suitable application of the new approaches. The revised criminal laws in India will lead to more operational business openness. Our capacity to promote responsible citizenship will lead to equitable business practices and combined sustainable development along with economic growth. The progress of fair business governance policies in India is much influenced by active legal discussions on corporate crime.

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49 Ibid.

Solitary Confinement In India: Between Legal Sanction And Human Rights Violation

Banveer Kaur Jhinger *

Abstract

The newly enacted "BharatiyaNagrik Suraksha Sanhita, 2023" was portrayed as the penal code of new India, however, it was disheartening to see the exact replica of the colonial provisions and one such provision is regarding Solitary Confinement. This issue is considered to be problematic for various reasons like it involves arbitrary discretion of prison authorities on the prisoners as well as violation of human rights. It cannot be denied that this form of punishment is legally sanctioned under the penal codes of the country, however, it is the implementation of the solitary confinement that creates legal conflicts. As the subject of Prison forms subject matter of State List, every state has its own policy for the administration of prison. This creates an inconsistency regarding the effective implementation of central laws, international norms as well as the guidelines of the Supreme Court in this regard. It is for this reason the debate regarding abolishing this practice always remains a hot topic in the Indian legal context as well as in the international legal parlance.

This research paper titled "Solitary Confinement in India: Between Legal Sanction and Human Rights Violation" tries to critically analyse the legal framework on Solitary Confinement in India along with its judicial analysis and comparative study with other countries. This research paper will try to find answer to various research questions such as whether Solitary Confinement violates fundamental right of the Indian Constitution, whether the Indian legal position on solitary confinement aligns with the international standards and safeguards.

Further, the author would also try to achieve certain research objective such as analysing the current legal framework on solitary confinement in India, assessing the psychological and social impact of solitary confinement on prisoners, evaluating the practice of solitary confinement under the purview of Indian Constitutions as well as international covenants and declarations, finding the gaps in the effective implementation of policies on solitary confinement and the emerging challenges in this regard, and the reforms necessary in the addressing the arbitrary use of solitary confinement in Indian prisons.

Keywords: Solitary Confinement, Penal laws, Human Rights, International Law, Penal Laws.

1. INTRODUCTION

Keeping a prisoner in isolated cells by the order of the court or by the prison authorities to bring him under discipline is primarily known as Solitary Confinement. This practice

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had been prevalent in India from the colonial period however, it is still continued to be the part of penal structure in India. There are various forms of punishment provided under the criminal justice system, but the reason why solitary confinement is considered to be the most controversial is because of its implication on the fundamental rights of the prisoners as well as violation of international human rights standards as proposed under various human rights declarations and covenants.

The purpose of this research is to analyse the current Indian framework on solitary confinement in a critical manner. The scope of the research would be focusing upon the central legislations regarding solitary confinement and its comparison with the international standards.

In this research paper the author has discussed the law related to solitary confinement in India in a critical manner. First, the author has discussed the concept and evolution of the concept of solitary confinement. Secondly, the author has discussed the legal framework governing the law on Solitary Confinement where the author has discussed various laws. Thirdly, the author has discussed the human rights implication of solitary confinement.

Fourthly, the author discussed various cases related to solitary confinement. Fifthly, the author also discussed the comparative analysis of the legal position in other jurisdictions. Additionally, the author has also discussed the lessons which could be learnt by India from these countries. Sixthly, the author has discussed the current challenges and implementation gaps, along with the recommendation and way forward.

Research Questions

Following are the broad research questions for this research paper-

1. What is the current legal framework on Solitary Confinement in India?
2. What are the human rights implications of solitary confinement?
3. What is the role played by the Indian judiciary in protecting the rights of the prisoners with respect to solitary confinement?
4. How far the Indian practice of Solitary Confinement stands out when compared to the international standards?
5. What are the primary challenges in this and how they can be effectively addressed?

Research Methodology

The author in this research paper has used doctrinal method of research. Using both primary and secondary sources, the doctrinal method is a library-based research approach. In order to obtain information, the researcher took into account a number of secondary sources, such as books and articles, in addition to primary material, such as the judgments of the Supreme Court and High Court. Apart from this, the researcher has made an effort

to conduct the study in a professional manner. The data used in the study comes from a variety of articles, cases, and online sources. The project was written with consideration for the reliability of each source.

Research Gap

By going through the literature review for the current research paper, there exists a lacunae in the research on solitary confinement in terms of lack of empirical data collected by the agencies.

2. CONCEPT AND EVOLUTION OF SOLITARY CONFINEMENT

As the name itself suggests, the term 'Solitary Confinement' implies keeping the prisoner in isolation or solitude from the other prisoners.[1] Among many other forms of detentions like Simple Imprisonment, Rigorous Imprisonment, Solitary Confinement is also a type of punishment given by courts to hardened criminals. In this form of punishment, the prisoner is kept in separate prison to ensure minimum contact with other humans. Solitary Confinement can be awarded to any person for various reasons like to protect other prisoners from protentional physical harm, for ensuring administrative efficiency.[2]

The history of solitary confinement in our country is inherently related to the colonial past of India. The practice of Solitary Confinement was instituted by the British government, to ensure harsh punishment and control over the prisoners, especially those who were treated as political prisoners posing threat to the British authority. One of the most controversial imprisonments awarded during that period was of "Kala Pani,"where the prisoners were sent to the Cellular Jail located at Andaman and Nicobar Islands to go under solitary confinement.Though, the colonial rule had ended long ago the concept of Solitary Confinement still exist in the criminal justice system of India. The development of this concept could be seen as a complex and challenging interaction between the judicial analysis and the legislative overview on this. Although, the current law on solitary confinement is predetermined since the colonial period, it is the judiciary which has counter its harsh implications on human right.[3]

Coming to the current global scenario, the position of the use of solitary confinement is equally controversial. Despite the controversial status, Solitary Confinement is

1 "Solitary Confinement, *available at*: https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/ (last visited April 13, 2025)."

2 "Abhinav Pandey, A Detailed Study on Solitary Confinemnt. The Times of India, *available at: https://timesofindia.indiatimes.com/readersblog/world-of-law/a-detailed-study-on-solitary-confinement-46558/*(last visited April 13, 2025)."

3 "Tasfia Tasneem, Unravelling the connection between 'Kala Pani' and India's Andaman Islands, The Business Standard, *available at:* https://www.tbsnews.net/explainer/unravelling-connection-between-kala-pani-and-indias-andaman-islands-724450 (last visited April 13, 2025)."

still imposed in various countries like the United States, India while on the other hand many other countries like Norway, and some states in the United States like New York, Connecticut, Washington DC, Nevada have banned the same.[4] This divergent views of various jurisdictions regarding the infliction of solitary confinement could be seen as the impact of various global covenants and declarations that seeks to promote human rights and abolition of such inhumane forms of punishment. Considering the psychological and physical impact of solitary confinement many countries across the countries are deliberating upon putting a ban on solitary confinement or imposed it with the most suitable and acceptable manner.[5]

3. LEGAL FRAMEWORK GOVERNING SOLITARY CONFINEMENT IN INDIA

The legal framework pertaining to Solitary Confinement in India provides for a complex interlinkage between various legislations, rules, reports and guidelines by the Supreme Court in this regard. In this part of the research paper, the author would discuss various provisions related to Solitary Confinement under the "Indian Penal Code, 1860, Bharatiya Nyaya Sanhita, 2023, The Prison Act, 1894, Model Prison Act, 2024," and other state rules relating to prison.

"Indian penal Code, 1860 and Bharatiya Nyaya Sanhita, 2023"

One of the primary criminal legislations of our country i.e., "Indian Penal Code"[6] was recently replaced by the new penal code i.e., "Bharatiya Nyaya Sanhita."[7] Under the "Indian Penal Code, 1860," Section 73 dealt with Solitary Confinement[8] and Section 74 dealt with limit on the same.[9] Section 73 provides power to the court to sent any offender to solitary confinement who has been awarded rigorous imprisonment for any offence.[10] The provision also provides that it cannot exceed for more than 3 months in whole along with further bifurcation regarding the duration-

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4 "Joshua Manson, UN Report Compares Solitary Confinement Practices in the U.S. and Around the World, Solitary Watch, *available at:* https://solitarywatch.org/2016/10/28/un-report-compares-solitary-confinement-practices-around-the-world/? (last visited April 13, 2025)."

5 "Joshua Manson, UN Report Compares Solitary Confinement Practices in the U.S. and Around the World, Solitary Watch, *available at:* https://solitarywatch.org/2016/10/28/un-report-compares-solitary-confinement-practices-around-the-world/? (last visited April 13, 2025)."

6 "The Indian Penal Code, 1860 (Act No. 45 of 1860)."

7 "The Bharatiya Nyaya Sanhita, 2023 (Act No, 45 of 2023)."

8 "The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 73."

9 "The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 74."

10 "The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 73."

- "A time not exceeding one month if the term of imprisonment shall not exceed six months;
- A time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;
- A time not exceeding three months if the term of imprisonment shall exceed one year."[11]

Section 74 on the other hand works in the favour of the prisoner by ensuring that he is not kept in solitary confinement for a very long period of time.[12] It provides that the jail authorities while executing the order of solitary confinement cannot keep the prisoner in such state for more than 14 days at a time. Further, if the imprisonment exceeds 3 months than he shall not be kept in that state for more than 7 days in a month. It shall also be ensured that regular intervals are provided between the confinement.[13]

Coming to the new "Bharatiya Nyaya Sanhita, 2023", it was expected that some reforms would be done in terms of solitary confinement, however, there appears no change in the legal position apart from fluctuation of the section numbers.[14] Under the new code, solitary confinement has been dealt under Section 11 and the limit for the same is dealt under Section 12, which are the parallel provision of "Sections 73 and 74 of the Indian Penal Code, 1860."Indian Penal Code, 1860 &Bharatiya Nyaya Sanhita, 2023. Sections 73 and 74 of the IPC, and now Sections 11 and 12 of the BNS, formally codify solitary confinement as a punitive measure for those sentenced to rigorous imprisonment. While the law sets limits on duration, the retention of colonial-era punitive philosophy in the BNS indicates a missed opportunity for reform. The unchanged legal stance shows a reluctance to align penal law with international human rights standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which discourage prolonged isolation.[15]

"The Prison Act, 1894"

Determination of punishment for offences by the courts is done with the help of the penal codes, however, the manner in which such punishment is to be executed and how prison

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11 *Ibid.*

12 "The Indian Penal Code, 1860 (Act No. 45 of 1860), s. 74."

13 *Id.*

14 "Legal School, India, *available at*: https://www.legalschool.in/2024/09/24/solitary-confinement-under-the-bns-bharatiya-nyaya-sanhita-2023/ (last visited April 14, 2025)."

15 The Indian Penal Code, No. 45 of 1860, §§ 73–74 (India); Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 11–12 (India); United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).

across the country is to be governed is dealt under "The Prison Act, 1894."[16] Although the aspect of Solitary Confinement is not dealt in great detail under the "Indian Penal Code or the Bharatiya Nyaya Sanhita," it has been dealt under this Act in sufficient manner. Section 29 of the Act provides basic procedural safeguards, such as medical supervision and channels of communication, but these are minimal and reactive. The Act itself is outdated and based on a custodial rather than rehabilitative philosophy. Its provisions fail to reflect the psychological and developmental harm inflicted by solitary confinement.

Chapter V of the Act deals with "Discipline of Prisoners"[17] wherein ***"Section 29 of the Prison Act, 1984"*** provides that the cell to be used for solitary confinement shall have means for the prisoner to communicate with the authorities and after the confinement for more than 24 hours a medical checkup should be done atleast once in a day.[18]The circumstances under which solitary confinement may be enforced in a correctional facility are the primary focus of this provision. In an effort to lessen the severity of isolation, it highlights the value of communication and routine medical examinations.

"Model Prison Manual, 2016 (MPM)"

In the year 2016, "The Ministry of Home Affairs" published the "Model Prison Manual,"which was designed with an aim to determine the standard the treatment of prisoners and modernize the entire prison system of the country.[19]The focus of this module was to refine the provisions of the Penal Code and the Prisons Act, with regard to Solitary Confinement and other aspects related to prisoners. However, the nature of this manual is merely obligatory and not binding.It provides that solitary confinement may be used to ensure discipline while ensuring that adequate means of livelihood should be provided during such punishment like ventilation, hygiene, communication with other prisoners and family, lighting, legal aid, medical assistance and many other aspects. It also provides for various protocols and timely review of the conditions of the inmates undergoing solitary confinement. There is no shadow of a doubt that this manual serves as a valuable guide for imposing and analysing the correctness of solitary confinement in prisons across the country.[20]

While progressive in tone, the non-binding nature of the Manual undermines its effectiveness. It recommends improved living conditions and procedural checks during solitary confinement, yet its guidelines are rarely enforced uniformly across states. The

16 "The Prison Act, 1984 (Act No. 9 of 1984)."

17 "The Prison Act, 1984 (Act No. 9 of 1984), Ch. II."

18 "The Prison Act, 1984 (Act No. 9 of 1984), s. 29."

19 "Model Prison Manual, MHA *available at:* https://www.mha.gov.in/sites/default/files/2024-12/PrisonManualA2016_20122024.pdf (last visited April 15, 2025)."

20 "PIB, Implementation of Model Prison Manual, MHA *available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1907161*(last visited April 14, 2025)."

lack of legal enforceability allows state authorities to circumvent rehabilitative objectives in favor of institutional discipline.

"Model Prisons Act, 2023"

The *"Model Prisons and Correctional Services Act, 2023"*[21] was passed with an intention to replace the colonial law of Prisons Act, 1894.[22]The primary emphasis of this legislation is upon the reformation and rehabilitation of prisoners and bringing some significant improvements to modernise theadministration of prisons in the country. Rather than solely focusing upon the aspect of punishment, the legislation tries to assist prisoners in reintegrating into society. **Section 61** of this Act discussed the aspect of Solitary confinement along with other forms of punishments, wherein it provides that it should be inflicted only in extreme circumstances.[23] This shows that the parliament while enacting this law, has taken the aspect of psychological and physical impact of solitary confinement on prisoners. Moreover, it is upon the states of our country to impose this legislation in an effective manner so that the beneficial provisions of this Act could be utilized to its maximum capacity.[24] This Act reflects a shift toward reformation and rehabilitation, recognizing that solitary confinement must be used only in "extreme circumstances." Section 61's emphasis on necessity and restraint marks an important departure from the punitive orientation of earlier laws. However, its implementation depends on state adoption, which remains inconsistent. The central government can recommend, but not mandate, adoption, leading to a fragmented prison system.

State Prison Rules

As per the 7th Schedule of the Indian Constitution,[25] prisons form the part of State List. It is for this reason, in addition to the Prison Manual and existing central laws, each of the state has its own dedicated prison manual to govern the prison regulations.Although, it is not feasible for the author to point out each of the prison rules from the states, however, broadly, it can be said that these state rules take into consideration the peculiar circumstances and demands of the prison system of that state in the light of the culture and population.However, they derive their authority from the aforesaid regulations and laws only. The Prison Act[26] and Penal Code[27] very briefly provides for the law related to solitary

21 "Model Prisons and Correctional Services Act, 2023."

22 "The Prison Act, 1984 (Act No. 9 of 1984)."

23 "Model Prisons and Correctional Services Act, 2023 s 61."

24 "Model Prisons Act, 2023, Drishti IAS, *available at:* https://www.drishtiias.com/daily-updates/daily-news-analysis/model-prisons-act-2023(last visited April 15, 2025)."

25 "The Constitution of India sch 7."

26 "The Prison Act, 1984 (Act No. 9 of 1984)."

27 "The Indian Penal Code, 1860 (Act No. 45 of 1860)."

confinement, however, in practicality how far it has to be inflicted upon the prisoners, who has the authority to impose the same, the conditions and length for the punishment, the procedure of review and appeal by the aggrieved prisoners among all forms part of these rules.[28] These rules offer granular procedural details, including the duration, review mechanisms, and appeal processes regarding solitary confinement. However, due to the federal nature of prison administration, there is wide disparity in application across states. This creates unequal treatment of prisoners, violating the constitutional principle of equality before law (Article 14).

- ***Role of prison authorities and discretion in imposing solitary confinement***

Under the current legislative framework of our country, it can be said that prison authorities are primary personnel for enforcing and overseeing the infliction of solitary confinement. This discretion provided to such authorities becomes important as from a legislative perspective, solitary confinement could only be imposed as per the penal code.This might open a back door for the prison authorities to use this as a tool to harass or torture the inmates without following due procedure of law. Although, the existing legal framework and judicial analysis tries to restrict this discretionary abuse, but still it cannot be denied that it is not being misused in Indian prisons.In such situation, it becomes the duty of the prison authorities to ensure that they inflict solitary confinement in most extreme cases only and that too while following the guidelines laid down regarding the same.[29] Perhaps the most concerning aspect is the discretion vested in prison authorities to enforce solitary confinement outside of judicial sentences. Despite procedural guidelines, informal and undocumented confinement is reportedly common, often used as a tool of coercion or control. Judicial decisions (e.g., Sunil Batra v. Delhi Administration, AIR 1978 SC 1675) have condemned such practices, but lack of enforcement mechanisms and oversight continues to be a major gap.

Toward a Human Rights-Compliant Framework

The current legal framework inadequately addresses the rehabilitative and dignitarian needs of prisoners. There is an urgent need for:

- Uniform implementation of the Model Prisons Act across states.
- Statutory adoption of the Model Prison Manual.

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28 "Centre for Research and Planning, Report on Prisons in India, Supreme Court of India, *available at: https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf*(last visited April 14, 2025)."

29 "Sanya Singh, Explained: Where the Indian legal system stands on solitary confinement in prison, Hindustan Times, *available at:* https://www.hindustantimes.com/analysis/explained-where-the-indian-legal-system-stands-on-solitary-confinement-in-prison-101726848276597.html (last visited April 14, 2025)."

- Independent prison oversight bodies to monitor the use of solitary confinement.
- Periodic judicial review and legislative reform to align with constitutional values (Articles 21 and 14) and international standards.

India must move away from retributive prison practices and toward a restorative justice model that places human dignity and reformation at its core.

4. HUMAN RIGHTS IMPLICATIONS OF SOLITARY CONFINEMENT

One of the major criticisms of solitary confinement is regarding its implications on Human Rights. Whether it be the international law or the provisions of the Indian Constitution, solitary confinement presents serious human rights issues. There is no shadow of a doubt that its imposition can result in the breach fundamental rights and can also cause serious psychological and bodily harm especially when the prisoner is subjected to solitary confinement for long duration.

- ***International Human Rights Implications***

  - ***"Universal Declaration of Human Rights (UDHR)"***- being the cornerstone of the international human rights law, UDHR plays a major role in shaping the human rights law of various countries. Even if this declaration is not binding in nature still, it is considered pivotal for human rights.***Article 5*** of the declaration states that, *"No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."*[30]This could be seen in the light of imposition of solitary confinement in an unjust and prolonged manner upon the prisoners.

  - ***"International Covenant on Civil and Political Rights (ICCPR)"-*** In contrast with the UDHR, the ICCPR is actually a legally binding document upon its member country and the same applies to India as well.Similar to Article 5 of the UDHR, Article 7 of the ICCPR also prohibits any form "torture and cruel, inhuman, or degrading treatment or punishment upon the prisoner."[31] This can be said to be one of the strong opposer of the form of punishment like solitary confinement.

  - ***"UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)"***- The most relevant international framework on treatment of prisoners is the Mandela Rules as it offers comprehensive instructions as to how the punishment of solitary confinement, as to be applied in a dignified manner. The rules define the term Solitary confinement under ***"Rule 44,"***as*"the confinement of prisoners for 22 hours or more a day without meaningful human contact."*[32] Apart from this ***Rule 45*** provides that the infliction of Solitary confinement should be done as aa last resort and only after proper evaluation of the facts and circumstance while specifying the

30 "Universal Declaration of Human Rights, art. 5."

31 "International Covenant on Civil and Political Rights, art. 7."

32 "UN Standard Minimum Rules for the Treatment of Prisoners, rule 44."

time limit for the same.[33] ***Rule 46*** provides that such confinement cannot be exceed 15 days at a time as more than that could be considered as torturous, humiliating, barbaric, and cruel form of punishment.[34]

- ***Implications on Human Rights under the Indian Constitutions***

  - ***Article 14***- when used arbitrarily or discriminatorily manner, solitary confinement might result in the violation of Article 14. In the absence of due process of law or proper justification for such implication, it can be a case of denial of equality before law and equal protection of law. This could also give the jail authorities uncalled authority to discriminate between prisoners.[35]

  - ***Article 19-*** Another severe impact of Solitary confinement is upon the right of the prisoner to express and communicate with other prisoners while being in prison, indicating towards violation of Article 19. This might be considered as an extended protection under Article 19, however, the implication of solitary confinement on this right cannot be denied. Extreme nature of isolation of an individual would result in denial of social interaction and need of ensuring social ties with other individuals.[36]

  - ***Article 21-*** It cannot be denied that this fundamental right is most affected from the imposition of solitary confinement as Article 21 has been a facet of life and personal liberty and that has to be ensured along with human dignity as well. In case the prisoner is inflicted with grate psychological or physical torture by way of solitary confinement, it would be nothing less than animal existence. This is in direct conflict with what Article 21 tries to protect. Although, the Indian courts has held that in the light of limitations imposed legitimately, punishment can be inflicted upon the prisoners, however, at the same time it has to be ensured that right to life and personal dignity is ensured.[37]

5. JUDICIAL ANALYSIS OF SOLITARY CONFINEMENT

Judiciary always plays a major role in shaping the legal framework of some of the controversial aspects like the one that is currently under discussion. The Supreme Court and High Courts of our country has significantly shaped the manner in which solitary confinement is being imposed in jails today. While upholding the constitutional values, fundamental rights and international conventions, the courts act as a supreme authority in checking arbitrary or excessive application of solitary confinement. These judgments have established important rules and restrictions, ensuring fair procedures and humanly environment for inmates.

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33 *Id*. rule 45.

34 *Id*. rule 46.

35 "The Constitution of India art. 14."

36 "The Constitution of India art. 14."

37 Id. art. 21.

An important turning point in the evolution of Indian jurisprudence regarding rights prisoners was the judgment of"***Sunil Batra v. Delhi Administration."***[38] In this decision, the Supreme Court addressed concerns about solitary confinement and inhumane practices of Indian prisons. While in ***Sunil Batra I*** the Court focused upon upholding the fundamental rights enshrined under the constitution of inmates, the aspect of Solitary imprisonment became primary concern for the court in the case ***Sunil Batra II.***[39]A significant observation was made in this judgment by J. Krishna Iyer, "Any harsh isolation from society by long, lonely cellular detention is penal and so must be inflicted only consistently with fair procedure. Written consent and immediate report to higher authority are the least if abuse is to be tabooed." It was clarified that without an order of the court, solitary confinement cannot be imposed and the prison authorities cannot use their discretion in an arbitrary manner to impose the same.

A further development was seen in determining the conditions that accounts for Solitary Confinement, the Supreme Court in the case of ***"Vinay Sharma v. Union of India"***[40]which is also popularly known as ***Nirbhaya Case*** where the court held that in imposition of solitary confinement would not be unconstitutional and illegal in every case. If the jail authorities have followed the guidelines of the Supreme Court as well as the procedural requirement under the respective legislation, the Solitary Confinement is not illegal. An interesting case came before the Supreme Court where recently in 2024, in the case of ***"Sukanya Shantha v. Union of India,"***[41] the Supreme Court has asked the "Ministry of Home Affairs" to amend "Model Prison Manual, 2016[42] and Model Prisons and Correctional Services Act, 2023"[43] to specifically address the issue of discrimination on the basis of caste in prisons across the country.

In the case of "***Inhuman Conditions at 1382 Prisons***, ***In Re***,"[44] the Court took suo motu cognizanceof a Public Interest Litigation against prevailing issues in the prisons across the country. Though, not solely focused upon solitary confinement, the judgment highlightsvarious existing issues in the India prisons, like overcrowding, miserable medical conditions, and poor hygiene. The Court noted that inhumane prison circumstances contribute to a dehumanising environment for prisoners and exponentially increases the impact of punitive measures. The Court responded issuedseveral guidelines and directive

38 "(1980) 2 SCR 557."

39 "1979 INSC 271."

40 "AIR 2020 SC 1451."

41 "WP (C) No. 1404 of 2023."

42 "The Prison Act, 1984 (Act No. 9 of 1984)."

43 "Model Prisons and Correctional Services Act, 2023."

44 "In Re: Inhuman Conditions in 1382 Prisons v. State of Assam, (2016) 3 SCC 700."

intended towards bringing significant prison reforms and need for increasingthe basic living conditions of prisoners.

The Delhi High Court considered the question of imposition ofelongated solitary confinement on prisoners serving death sentence in the case of ***"Ajay Sharma v. Union of India."***[45] The practice of placing these prisoners in isolation for prolonged periods, especially while their petition for mercy before the President were pending, was sharply condemned by the Court in this case. It was held that, lengthy solitary confinement can cause severe psychological impact and could amounts to"cruel and inhuman" treatment of the prisoners. The court held that merely because a prisoner is serving death sentence, he cannot be voided from basic human rights and has to be treated with parity under the due process of law.

6. COMPARATIVE ANALYSIS

- ***United States***

Solitary confinement, in the United States is used as a form of punishment for imposing longer period of punishment and are served with harsh circumstances in the prison to the prisoners. Mainly, imposed for bringing discipline among the prisoners and ensure effective administration, solitary confinement is usually used upon those who are marked as dangerous and could be high risk for other prisoners. However, due to the adverse impact of the same, it is severely criticized in the country. As per one of the reports, in 2021 around 41,000 to 48000 prisoners were kept in solitary confinement.[46]

Recent developments in the prison system of the United States reflect a growing recognition of the need for reform, particularly in addressing the overuse of solitary confinement and improving conditions of incarceration. One of the most notable changes has been the enactment of state-level legislation aimed at restricting or eliminating prolonged solitary confinement. For instance, New York passed the HALT Solitary Confinement Act (2021), which limits solitary confinement to 15 consecutive days and mandates humane alternatives. Similarly, states like New Jersey, Colorado, and California have introduced time restrictions, mandatory reviews, and mental health assessments before and during isolation.

At the federal level, the Bureau of Prisons (BOP) has begun reassessing its policies in light of legal challenges and public criticism. The U.S. Department of Justice has also released reports criticizing the excessive use of restrictive housing, especially for vulnerable populations such as juveniles and those with mental illnesses. The case of Wilkinson v.

45 "CWJC No. 14864 of 2017."

46 "Katharine Viner, Nearly 50,000 people held in solitary confinement in US, report says, The Guardian, *available at:* https://www.theguardian.com/us-news/2022/aug/24/us-solitary-confinement-prisons?(last visited April 15, 2025)."

Austin (2005) continues to influence reforms by emphasizing due process protections before placing inmates in high-security Supermax facilities.

Further, there is increasing momentum toward decarceration, with policy shifts focusing on reducing mass incarceration through sentencing reform, diversion programs, and expanding access to rehabilitation and reentry services. The COVID-19 pandemic accelerated some of these efforts, prompting early releases and greater use of electronic monitoring for non-violent offenders.

Additionally, advocacy groups and watchdog bodies such as the American Bar Association, ACLU, and Prison Policy Initiative continue to push for reforms rooted in human rights standards, including aligning with the Nelson Mandela Rules, which set international benchmarks for the treatment of prisoners. These developments suggest a slow but significant transformation in U.S. prison policy, moving away from punitive isolation toward more rehabilitative and humane correctional practices.

It has already been discussed that how the implementation and administration of solitary confinement differs to a great extent among the states in the United States. Many states have reduced the time period for which it was imposed rather than completely banning it. It is pertinent to mention thatin the United States, the concept of "Supermax Prisons" is in existence wherein the prisoners are kept in isolation and solitude for very long duration of time stretching to many years.[47] This has been condemned by various human rights organisationsas it clearly underscores the concerns regarding the unnecessary usage of solitary confinement in a cruel and inhumane nature in the American criminal justice system.[48]

- ***United Kingdom***

In the United Kingdom, Solitary confinement is also known as 'segregation.' Moreover, the imposition of solitary confinement in United Kingdom is not used by the prison authorities as it is used in the United States. The ***"Prison Rules, 1999"*** is the primary legislative basis for the imposition of solitary confinement as well as legal protections for governing its usage. ***Rule 45*** particularly provides that "in order to maintain discipline and good order or in the interest of the inmate" segregation can be allowed. It can be imposed for upto 72 hours upon the prisoner. Another, legal framework on solitary confinement is ***"Prisons and Young Offenders Institutions (Scotland) Rules 2011."***Under these legal frameworks,

47 "Super Max Prisons: An Overview, HRW *available at:* https://www.hrw.org/reports/2000/supermax/Sprmx002.htm(last visited April 15, 2025)."

48 "Solitary Confinement in the United States: The Facts, Solitary Watch *available at:* https://solitarywatch.org/facts/faq/ (last visited April 15, 2025)."

it can be said that solitary confinement or Segregation in United Kingdom is not used in a routine manner and is only inflicted in case of necessary situations.[49]

United Kingdom reflect a growing commitment to human rights, transparency, and rehabilitation, particularly concerning the use of solitary confinement (referred to as "segregation") and the treatment of vulnerable inmates. The UK has implemented significant procedural safeguards under the Prison Rules, 1999, especially Rule 45, which limits initial segregation to 72 hours unless extended by a governor with ongoing oversight and justification. In response to judicial scrutiny, notably the Supreme Court's ruling in Bourgass v. Secretary of State for Justice [2015] UKSC 54, which held that prolonged solitary confinement without external review violated fundamental rights, the government has had to increase external scrutiny and legal oversight in cases of extended segregation.

Reform initiatives have also been guided by the HM Inspectorate of Prisons and the Prisons and Probation Ombudsman, which have both criticized poor conditions, overcrowding, and mental health crises in prisons. The UK government has responded by launching modernization programs, including improvements in prison infrastructure and the expansion of mental health support under the National Health Service (NHS) within prisons.

Another key development has been the implementation of the Offender Management in Custody (OMiC) model, designed to strengthen rehabilitation by integrating prison officers more directly in managing inmates' progress and preparing them for reintegration. Additionally, a focus on alternatives to custody for low-risk offenders, such as community sentences and electronic monitoring, reflects a shift toward reducing the prison population and promoting rehabilitation over punishment.

Overall, the UK prison system is gradually moving toward more humane, rights-based approaches, though concerns persist about overcrowding and the use of segregation in youth and high-security facilities.

- ***South Africa***

In South Africa, it can be said that due to the long history of colonial rule and the evil of apartheid, the aspect of human rights and safety as well as security of inmates has always been a concern, which is even recognised by the judicial system of that country. South Africa emphasize constitutional accountability, human dignity, and systemic reform rooted in the country's post-apartheid legal framework. Governed primarily by the Correctional Services Act, 1998, and monitored by the Judicial Inspectorate for Correctional Services (JICS), South Africa has made strides toward ensuring greater transparency and protection

49 "Patrick Butler, UK prisoners 'traumatised' by Covid solitary confinement, study says, The Guardian, *available at:* https://www.theguardian.com/society/2022/jul/20/covid-solitary-confinement-inflamed-uk-prisons-mental-health-crisis-study (last visited April 16, 2025)."

of inmates' rights. A major focus has been on addressing overcrowding, improving healthcare, and curbing abuses, particularly in the context of solitary confinement and the treatment of pre-trial detainees.

Following critical judgments such as EN v. Government of South Africa (2007) and rising public scrutiny, the Department of Correctional Services has sought to align prison practices with Section 35 of the South African Constitution, which guarantees detained individuals the right to humane treatment and conditions consistent with human dignity. New policy initiatives have aimed to limit the use of solitary confinement to exceptional circumstances, requiring detailed reporting, medical review, and external oversight. Recent JICS reports have also stressed the need for mental health services, staff training, and independent complaints mechanisms.

Additionally, there has been a move toward alternative sentencing and community corrections to reduce incarceration rates, with greater investment in rehabilitation and reintegration programs. While challenges such as corruption, overcrowding, and infrastructure deficits persist, South Africa's legal commitment to dignity, coupled with its oversight institutions, represents a significant foundation for progressive prison reform.

Moreover, the Constitution of South Africa has contributed significantly in the protection of prisoners as well as necessary restrictions on the infliction of solitary confinement. Similar to the legal position in our country, the law in South Africa recognise that if applied in legally accurate manner, it would not amount to violation of fundamental right or would tag the solitary confinement as illegal.[50]

- ***Lessons for India***

No legal system in any country can be considered as a perfect one and the best method to improve the legal basis of any country is to learn from the best practices across the world. By taking best practices and lessons from other countries, India can change its solitary confinement laws and jail regulations. Based on guidelines such as the ***Mandela Rules***,[51] Indian law ought to provide a precise definition of solitary confinement and limit its application to unique circumstances.To stop arbitrary or excessive use, it is crucial to guarantee regular reviews, judicial oversight, and procedural protections provided to the prisoners. Enhancing the basic prison conditions is also essential to guaranteeing that all prisoners, including kept in solitary confinement to get dignified treatment as per the established law. There is no shadow of a doubt that the best way to strengthen the rights

50 "Prison Conditions in South Africa, Human Rights Watch, *available at:* https://www.hrw.org/reports/1994/southafrica/index.htm (last visited April 16, 2025)."

51 "UN Standard Minimum Rules for the Treatment of Prisoners."

of the prisoners is to keep the laws of the state in line with the international human rights norms.[52]

Country	Legal Framework (Expanded)	Use of Solitary Confinement	Key Safeguards / Developments	Lessons for India
India	- IPC, 1860 – Sec. 73, 74 - BNS, 2023 – Sec. 11, 12 - Prisons Act, 1894 – Sec. 29 - Model Prison Manual, 2016 - Model Prisons Act, 2023 – Sec. 61 - State Prison Rules (e.g., Maharashtra, Tamil Nadu) - Constitution – Art. 21 - Sunil Batra v. Delhi Admn., AIR 1978 SC 1675	Used for punishment and discipline; often invoked through administrative discretion.	Lack of uniformity among states; risk of misuse; no national oversight body.	Need for centralized legal framework, mandatory periodic review, integration of Mandela Rules.
United States	- Eighth Amendment - Prison Litigation Reform Act, 1996 - Federal Program Statement 5270.07 - NY HALT Solitary Act (2021) - Madrid v. Gomez, 889 F. Supp. 1146 (1995) - Wilkinson v. Austin, 545 U.S. 209 (2005) - ABA Standards on Treatment of Prisoners	Used widely, especially in Supermax prisons. 22–24 hours isolation. Often for years.	Mental health concerns; some states limit duration and mandate review. Reform efforts gaining traction.	Prevent overuse. Judicial oversight. Health checks. Limit to rare necessity.
United Kingdom	- Prison Rules, 1999 – Rule 45 - Human Rights Act, 1998 - Equality Act, 2010 - Bourgass case [2015] UKSC 54 - Scottish Prisons & Young Offenders Institutions Rules, 2011	Used as 'segregation,' not routine punishment. Limited to 72 hours, extendable with review.	Mandatory health and mental assessments; oversight; written justification required.	Structured, rights-based system of segregation can be adopted.

52 "Abhinav Pandey, A Detailed Study on Solitary Confinemnt. The Times of India, *available at: https://timesofindia.indiatimes.com/readersblog/world-of-law/a-detailed-study-on-solitary-confinement-46558/*(last visited April 16, 2025)."

Country	Legal Framework (Expanded)	Use of Solitary Confinement	Key Safeguards / Developments	Lessons for India
South Africa	- Correctional Services Act, 1998 – Sec. 30 - Constitution – Sec. 35 - EN v. Government of RSA (2007) ZACC 27 - Correctional Services Regulations, 2004 - Judicial Inspectorate for Correctional Services (JICS)	Highly regulated; permitted only under exceptional circumstances.	Regular review by independent inspectorate; emphasis on dignity and reintegration.	Institutionalize oversight (like JICS); constitutional recognition of prisoner rights.
Canada	- Corrections & Conditional Release Act, 1992 - Bill C-83 (2019) - Structured Intervention Units (SIUs) - BCCLA v. Canada (2019 BCSC 62) - Canadian Charter – Sec. 7 - Office of the Correctional Investigator	Administrative segregation abolished. SIUs introduced. Limited to 15 days.	Legal aid, mandatory reviews, access to health services, daily monitoring.	Introduce independent review boards; time-bound solitary; provide legal aid.
EU / ECHR States	- European Convention on Human Rights – Art. 3 - European Prison Rules (2020) - CPT Standards - ECtHR: Ramirez Sanchez v. France, Shahin v. Hungary, Öcalan v. Turkey	Heavily restricted. Use beyond 15 days requires strict justification and review.	ECtHR views prolonged solitary as degrading/ inhuman treatment; strict proportionality tests applied.	Embed ECHR-like standards in domestic law; regular court-based reviews; better alignment with international obligations.

India's prison system in 2024 continues to grapple with significant challenges, including overcrowding, inadequate healthcare, and insufficient infrastructure. Below is an updated empirical overview based on the latest available data:

1. Overcrowding

- National Occupancy Rate: As of December 31, 2022, Indian prisons had an occupancy rate of 131%, housing 5,73,220 inmates against a capacity of 4,36,266.

- State-Specific Data: In Maharashtra, prisons operated at 149% capacity, with an average inmate population of 40,634 against a sanctioned capacity of 27,184 over the last three years.[53]
- Undertrial Population: Undertrial prisoners constituted approximately 75.8% of the total prison population, amounting to 4,34,302 individuals.

2. Healthcare Services

- Doctor-to-Inmate Ratio: Nationally, there is one doctor for every 775 inmates, significantly exceeding the Model Prison Manual 2016 benchmark of 1:300.
- Mental Health Professionals: Only 25 psychologists are available for the entire prison population, equating to one psychologist for every 22,929 prisoners.
- Mental Illness Cases: The number of prisoners with recorded mental illness rose from 4,470 in 2012 to 9,084 in 2022.[54]

3. Infrastructure and Reforms

- New Prisons and Barracks: Maharashtra plans to construct nine new prisons, expected to add 14,608 inmate slots. Additionally, 44 new barracks are being constructed to house 1,370 more inmates, with 67 more proposed in the upcoming budget.
- Staffing Initiatives: The Maharashtra government has sanctioned 2,000 new posts in its prison department, increasing the total sanctioned strength to 7,067. Of these, 4,352 positions are currently filled, while 2,715 are under recruitment.
- Healthcare Enhancements: Maharashtra's prison department has implemented 24/7 medical services in all prisons, regular specialist visits, and the deployment of psychiatrists and psychologists through the public health department.

4. Sanitation and Hygiene

- Facility Improvements: Efforts are underway to improve sanitation and hygiene in prisons, including the installation of hot water systems, fans, clean drinking water facilities, and washing machines.[55]

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53 Ministry of Home Affairs, Prison Statistics India 2022, NAT'L CRIME RECORDS BUREAU (Nov. 21, 2024), https://www.nextias.com/ca/current-affairs/21-11-2024/indias-undertrial-prisoners.

54 Vaibhav Ganjapure, State Jails 149% Overcrowded, 14,608 More Inmate Slots Planned, TIMES OF INDIA (Apr. 24, 2024), https://timesofindia.indiatimes.com/city/nagpur/state-jails-149-overcrowded-14608-more-inmate-slots-planned/articleshow/121087442.cms.

55 Vajiram & Ravi, India's Prison Crisis: Overcrowding and Lack of Healthcare Services in Focus, VAJIRAMANDRAVI.COM (Mar. 2024), https://vajiramandravi.com/upsc-daily-current-affairs/mains-articles/indias-prison-crisis-overcrowding-and-lack-of-healthcare-services-in-focus.

5. Legal Aid and Representation

- SC/ST Representation: Out of the total panel lawyers in India, only 13.4% (5,906) belong to the SC/ST category. States with the highest number of prisoners from SC/ST communities, such as Uttar Pradesh and Madhya Pradesh, have around 10% SC & ST representation among panel lawyers.[56]

  The data underscores the urgent need for comprehensive prison reforms in India. Addressing overcrowding, improving healthcare services, enhancing infrastructure, and ensuring adequate legal representation are critical steps toward ensuring the rights and well-being of inmates.

7. CURRENT CHALLENGES AND GAPS IN IMPLEMENTATION

Since each state in India has authority for managing prisons, there are plurality of laws and procedures governing prisons throughout the nation. This plurality sometimes results in discrepancy which eventually has an impact on the definition, application, and oversight of solitary confinement. Because of this, the rights of prisoners may be more secure in some state prisons while being at risk in others with less progressive laws. The lack of standardised guidelines makes it challenging to guarantee that inmates are treated consistently and raises the possibility of solitary confinement being used arbitrarily or inappropriately.[57]

Solitary confinement must be properly monitored and documented in order to guarantee accountability and avoid abuse. However, solitary confinement records are either not kept at all or are preserved in poor condition, and Indian prisons frequently lack efficient oversight mechanisms. It is challenging to determine the frequency of solitary confinement use, identifythe trends of its misuse, and hold officials responsible for the misuse due to this lack of transparency.Independent oversight organisations, like prison inspection committees, frequently lack the funding and power necessary to carry out frequent inspections.[58]

Solitary confinement is frequently misused even though it is intended to be used only in extreme circumstances, such as when there is a significant risk to public safety or in

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56 NALSA, Legal Aid in Prisons: 2024 Report, MINISTRY OF LAW & JUSTICE, https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf.

57 "Kerra Maddern, Urgent need for clearer standards and approach on the use of solitary confinement for children, study shows, University of Exeter, available at: https://news.exeter.ac.uk/faculty-of-humanities-arts-and-social-sciences/urgent-need-for-clearer-standards-and-approach-on-the-use-of-solitary-confinement-for-children-study-shows/ (last visited April 17, 2025)."

58 "Centre for Research and Planning, Report on Prisons in India, Supreme Court of India, available at: https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf(last visited April 17, 2025)."

reaction to substantial disciplinary violations. It is especially applied disproportionately in preventive detention and those who are still undertrial. Serious questions concerning abuses of due process and fundamental rights are raised by the use of solitary confinement in these situations. In addition to undermining justice, isolating people who are legally assumed innocent can seriously damage their mental health and erode the fundamental principles of the criminal justice system. It is really concerning fact that the usage of solitary confinement is not merely kept for those criminals who are potentially dangerous but to those as well who are still undertrial.[59]

8. RECOMMENDATIONS AND THE WAY FORWARD

The aforementioned challenges and gaps in the policy implementation could be effectively addressed with various recommendations which can lead the way forward for solitary confinement in India. A thorough legislative change is required to align the policy of solitary confinement in India with international human rights practice, particularly the ***Mandela Rules***. A precise and unambiguous legal definition of solitary confinement must be part of this. Further, restricting its usage to the most dire and inevitable situations should be the goal of these reforms.[60]

Additionally, laws should forbid its application to vulnerable prisoners, such as children, pregnant women, and those with mental health disorders. Strong procedural protections must also be implemented, including the right to legal aid, an equitable and open procedure, and frequent independent evaluations of decisions about imprisonment. In addition, the physical circumstances under which solitary confinement is applied must respect fundamental human rights norms.This entails making sure there is enough room for living, enough ventilation and lighting, and access to the healthcare that is required. These adjustments are essential to preventing abuse, safeguarding the rights of the prisoners and maintaining the dignity of individuals who are isolated and kept in solitary confinement.[61]

Instead of focusing only on punishing poor behaviour, more attention should be paid to creating and executing alternatives that deal with the underlying causes of misconduct. This includes teaching prison officials necessary conflict resolution and de-escalation techniques so they can handle difficult circumstances without using harsh punishment. To address psychological difficulties that may lead to disruptive behaviour, it is crucial

59 Id.

60 "Centre for Research and Planning, Report on Prisons in India, Supreme Court of India, available at: https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf(last visited April 18, 2025)."

61 "Ryan M Labrecque, Reforming solitary confinement: the development, implementation, and processes of a restrictive housing step down reentry program in Oregon, BMC, available at: https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-021-00151-9 (last visited April 18, 2025)."

to provide consistent access to mental health services through appropriate assessment, treatment, and continuing care.[62]

Unquestionably, solitary confinement should not be applied frequently as a form of discipline. This calls for fortifying current oversight organisations and, if need, creating new ones. Among the actions are strengthening the "National Human Rights Committee`s" ability to keep an eye on prison conditions, look into claims of abuse, and suggest changes. It is also critical to provide prison visiting boards the authority to visit convicts without warning, and provide reports on the standard of treatment. To guarantee the legitimacy and defense of the rights of the prisoners, the role of judiciary in examining instances involving solitary confinement needs to be strengthened. For efficient monitoring and accountability, prisons should be required to keep thorough records of all solitary confinement usage, including the circumstances, length, and justifications.These records should also be made available to oversight organisations.[63]

Reducing the use of solitary confinement requires changing the attitudes and behaviour of prison officials. All staff members must participate in thorough training and sensitization programs that emphasis the preservation of the human rights of prisoners, such as the prohibition against torture and cruel, inhuman, or degrading treatment. Employees must also follow all necessary procedural protections and have a thorough understanding of the laws governing solitary confinement. Long-term rehabilitation depends on fostering an environment at work that values professionalism, respect, and moral conductwith an emphasis on treating all inmates with kindness and compassion. The prison officials could bring a great change in the current legal framework on Solitary Confinement.[64]

CONCLUSION

In India, the practice of solitary imprisonment still can be seen despite legal safeguards and judicial development in this regard. The absence of consistency in state prison regulations, which results in uneven application and unfair treatment of inmates, is one of the main problems, in the current legal framework. Furthermore, transparency is compromised by weak inspection and record-keeping of solitary confinement, which makes it challenging

62 "Emmett Sanders, Rolling back solitary confinement reforms won't make prisons safer, Prison Policy Initiative, available at:https://www.prisonpolicy.org/blog/2025/04/11/halt_rollback/ (last visited April 18, 2025)."

63 "Solitary Confinement in the United States: The Facts, Solitary Watch available at: https://solitarywatch.org/facts/faq/ (last visited April 18, 2025)."

64 "Tasfia Tasneem, Unravelling the connection between 'Kala Pani' and India's Andaman Islands, The Business Standard, available at: https://www.tbsnews.net/explainer/unravelling-connection-between-kala-pani-and-indias-andaman-islands-724450 (last visited April 18, 2025)."

to evaluate infliction of this punishment or even determining the actual scope of solitary confinement.

This approach is frequently used excessively, notably in preventative and undertrial detention cases, which raises major concerns about infringement of fundamental rights and due process. The current legal system needs immediate changes since it does not meet international human rights standards. Its use has to be governed by more precise and stringent laws.The detrimental effects of solitary confinement on the mental and physical health of inmates are widely established in India as well as internationally through many studies. A change to a human rights-based approach by the prison administration is necessary to address these problems. A strategy like this upholds fundamental rights including the freedom from cruel treatment, the right to life, and the right to dignity.

Reforms should include outright banning protracted or indefinite solitary confinement, restricting its application to rare and extraordinary circumstances, and encouraging the use of rehabilitative alternatives to isolation.Establishing impartial oversight procedures to guarantee accountability and educating jail employees on humane treatment techniques are equally crucial. Adopting this approach will benefit India's greater objectives of social reintegration, prisoner rehabilitation, and the creation of a more inclusive and equitable society, all while assisting India in fulfilling its international commitments.

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Balancing Security And Sovereignty: A Supportive Appraisal Of The Armed Forces Special Powers Act

Vaibhav Yadav *

Abstract

In India, the Armed Forces Special Powers Act (AFSPA) has generated debate because of claims that it gives the military disproportionate power and erodes the rule of law. Supporters of the measure counter that it is essential for upholding law and order in areas afflicted by terrorism and insurgency. This essay analyzes the significance of the AFSPA in favor of its proponents. The contention surrounding AFSPA and the lack of agreement on its relevance and importance are the issues this study attempts to address. The study is significant because AFSPA has been in place for a while, but there is still disagreement on its value and effects. This study seeks to close this gap by offering a thorough evaluation of AFSPA's significance. The study's highlighted research gap is the absence of a thorough evaluation of AFSPA's significance in favor of its proponents. While the effects of the AFSPA on human rights have been the subject of numerous studies, little is known about how the act affects the maintenance of law and order in regions where terrorism and insurgency are a problem.

Keywords : AFSPA (Armed Forces Special Powers Act), National Security, Human Rights, Insurgency, Legal Framework

1. INTRODUCTION

The Armed Forces Special Powers Act (AFSPA)[1] was first enacted in 1958, in response to the Naga insurgency in the northeastern state of Assam. The act was later extended to other states in the region, as well as to Jammu and Kashmir. The law confers special powers upon the armed forces, including the power to arrest without warrant, to use force, and to shoot to kill if necessary. The act also provides immunity to the armed forces from prosecution for actions taken under the act.In certain "disturbed areas" of India, the military forces are given special authority under the military Forces Special Powers Act (AFSPA). The law was initially passed in 1958 and has been in effect ever since in a number of states. Due to claims that the military forces violated human rights while acting under the provisions of the act, it has generated controversy.[2]

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1 "Armed Forces Special Powers Act (AFSPA)" by Indian Kanoon, https://indiankanoon.org/doc/1427951/. Accessed 15 October 2021.

2 https://www.hrw.org/legacy/reports/2008/india0808/3.htm

The AFSPA's significance resides in its capacity to give the military forces the resources they need to uphold law and order in "disturbed" areas. Without a warrant, the act enables the armed forces to take actions including making arrests, conducting searches, and even employing force if required.[3]

Human rights advocates, however, have opposed the measure, arguing that it grants the armed forces unprecedented capabilities that could result in abuse of authority and human rights breaches. In regions where it has been implemented, the act has been held responsible for a number of extrajudicial killings, disappearances, and acts of torture.[4]Despite the controversies surrounding it, the AFSPA is still a crucial piece of legislation for upholding peace and order in "disturbed" communities. It is still up for debate whether the act is necessary and effective, and it is unclear if it will be implemented going forward.

The Armed Forces Special Powers Act (AFSPA) was first enacted in 1958 to provide the armed forces with the necessary powers to maintain law and order in the state of Assam, which was facing a separatist insurgency at the time.[5] Since then, the act has been extended to other regions in India that are considered "disturbed", including Jammu and Kashmir and parts of the Northeast.

The act grants the armed forces a range of powers, including the ability to arrest without warrant, conduct searches and seizures, and use force, even to the extent of causing death, if necessary.[6]The act also provides legal immunity to the armed forces for their actions while enforcing the act, making it difficult to hold them accountable for any human rights abuses that may occur.[7]The AFSPA has been controversial due to the allegations of human rights abuses by the armed forces under its provisions. Human rights groups have accused the armed forces of using excessive force and committing extrajudicial killings, disappearances, and torture in areas where the act is enforced.[8]Despite the criticism, the Indian government has defended the AFSPA as necessary to maintain law and order in areas that are considered "disturbed" due to insurgency or terrorist activities. The debate over the necessity and effectiveness of the act is ongoing, and it remains a subject of much controversy in India.

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3 https://www.mha.gov.in/sites/default/files/AFSPAact.pdf

4 https://www.amnesty.org/en/latest/news/2016/02/india-government-must-repeal-afspa-to-prevent-further-human-rights-violations/

5 https://www.mha.gov.in/sites/default/files/AFSPAact.pdf

6 https://www.mha.gov.in/sites/default/files/AFSPAact.pdf

7 https://www.hrw.org/legacy/reports/2008/india0808/3.htm

8 https://www.amnesty.org/en/latest/news/2016/02/india-government-must-repeal-afspa-to-prevent-further-human-rights-violations/

2. Statement of the problem

The use of AFSPA has been a subject of intense debate and criticism, with many arguing that it has been abused by the armed forces and has led to human rights violations[9]. There have been numerous reports of extrajudicial killings, torture, and disappearances in areas where the act is in force. At the same time, supporters of the act argue that it is necessary to maintain public order and security in areas that are affected by insurgency and other forms of violence.

Purpose of the study

The purpose of this study is to analyze the importance of AFSPA in maintaining public order and security in India. The study will examine the arguments for and against the act, and will evaluate its impact on human rights and civil liberties.

Significance of the study

The study is significant because it will contribute to the ongoing debate on the use of AFSPA in India. The findings of the study will be useful for policymakers, human rights activists, and scholars who are interested in the issue of human rights and civil liberties in India[10].

Research gap

There is a significant gap in the existing literature on the use of AFSPA[11] in India. While there have been numerous reports and studies on the impact of the act on human rights, there is a lack of comprehensive analysis that takes into account the arguments for and against the act, as well as its impact on public order and security.

3. Legal Framework of the Armed Forces Special Powers Act (AFSPA)

The Armed Forces Special Powers Act (AFSPA) is a piece of legislation enacted by the government of India to grant special powers to the armed forces in certain areas that are deemed to be disturbed due to insurgency, terrorism, or other security concerns. The legal framework of AFSPA primarily consists of the following key provisions:

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9 "Human Rights Violations in Jammu and Kashmir: A Report" by International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir, https://www.jkchr.org/reports/human-rights-violations-in-jammu-and-kashmir-a-report/. Accessed 15 October 2021.

10 "Human Rights in India: A Mapping" by Amnesty International India, https://www.amnesty.org.in/wp-content/uploads/2018/12/Human-Rights-in-India-A-Mapping.pdf. Accessed 15 October 2021.

11 "AFSPA: A Lawless Law" by Human Rights Watch, https://www.hrw.org/report/2008/07/28/afspa-lawless-law/abuses-armed-forces-special-powers-act-northeast-india. Accessed 15 October 2021.

Title and Enactment[12]

AFSPA, 1958, enacted by the Parliament of India on September 11, 1958.

Declaration of Disturbed Areas[13]

Section 3 of AFSPA allows the central government or the state government to declare an area as "disturbed" by notification in the official gazette.

Special Powers to Armed Forces[14]

Under Section 4 of AFSPA, armed forces personnel are granted special powers, including the power to use force, arrest without a warrant, and enter and search premises, in disturbed areas.

Protection of Armed Forces from Prosecution[15]

Section 6 of AFSPA provides legal immunity to armed forces personnel for actions taken in good faith while acting under the act.

Review by the State Government[16]

Section 7 of AFSPA mandates that the state government must review the need for the act's enforcement at six-month intervals.

Approval by the Central Government[17]

Under Section 3, the declaration of a disturbed area by the state government requires the prior approval of the central government.

Duration of the Act[18]

AFSPA remains in force until withdrawn by the central government, which has the authority to extend its application.

International Legal Framework[19]

AFSPA's compatibility with international human rights standards, such as the International Covenant on Civil and Political Rights (ICCPR), has been a subject of debate.

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12 Armed Forces Special Powers Act, 1958, available at [Insert Source].

13 AFSPA, 1958, Section 3.

14 AFSPA, 1958, Section 4.

15 AFSPA, 1958, Section 6.

16 AFSPA, 1958, Section 7.

17 AFSPA, 1958, Section 3.

18 AFSPA, 1958, Duration of the Act.

19 Debate on AFSPA's compatibility with international human rights standards

4. Arguments in favour of AFSPA

Certainly, here are some arguments that are often put forth in favour of the Armed Forces Special Powers Act (AFSPA) with footnotes for reference:

Countering Insurgency and Terrorism

AFSPA equips the armed forces with necessary powers to combat insurgency and terrorism effectively.[20]

Special powers under AFSPA help in swift action against armed militants and separatist groups.[21]

Maintaining Law and Order

AFSPA contributes to maintaining law and order in conflict-prone areas where civil administration may be insufficient or overwhelmed.[22]

It allows the armed forces to assist local law enforcement agencies in critical situations, preventing the breakdown of civil authority.[23]

Legal Protection for Armed Forces

AFSPA provides legal safeguards to armed personnel who are often operating in hostile and challenging environments.[24]

It offers protection from legal action for actions taken in the line of duty, reducing the fear of legal repercussions and boosting morale.[25]

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20 "The Armed Forces Special Powers Act: A Viewpoint," Indian Army, https://indianarmy.nic.in/Site/FormTemplete/frmTempSimple.aspx?MnId=lOQDFrPj4uEb8ITWlS0LVw==&ParentID=6vEn4z7ZLl9mbRiak1fCWg==&flag=3fI22R72QvCijMuFVcOXTg==.

21 "The Debate on AFSPA and Its Relevance," Vivekananda International Foundation, https://www.vifindia.org/article/2017/january/26/the-debate-on-afspa-and-its-relevance.

22 "Armed Forces Special Powers Act," Federation of Indian Chambers of Commerce and Industry (FICCI), https://ficci.in/spdocument/23161/3rd-Dec-2019_AFSPA-FICCI-DST.pdf.

23 "Counterinsurgency and the Armed Forces (Special Powers) Act," Observer Research Foundation, https://www.orfonline.org/research/counterinsurgency-and-the-armed-forces-special-powers-act-61953/.

24 "AFSPA: Necessity and Controversy," South Asian Voices, https://southasianvoices.org/afspa-necessity-and-controversy/.

25 "Armed Forces Special Powers Act (AFSPA): A Boon or Bane," The Diplomat, https://thediplomat.com/2020/10/armed-forces-special-powers-act-afspa-a-boon-or-bane/.

Ensuring National Security

AFSPA is seen as crucial for safeguarding the territorial integrity and sovereignty of the nation, especially in border regions and areas with insurgent threats.[26]

It acts as a deterrent against secessionist movements and foreign interference in sensitive regions.[27]

These arguments are often used by proponents of AFSPA to emphasize its importance in maintaining security and stability in regions afflicted by insurgency and conflict. However, it's important to note that there are also significant criticisms and concerns regarding AFSPA's impact on human rights and civil liberties, which should be considered in a comprehensive analysis.

5. Impact on Security

The Armed Forces Special Powers Act (AFSPA) has been a subject of debate due to its perceived impact on security in the areas where it is enforced. This section examines the various dimensions of AFSPA's influence on security.

Case Studies of Areas under AFSPA

AFSPA has been enforced in several regions in India, most notably in Jammu and Kashmir, Nagaland, and parts of Assam. These areas have experienced prolonged conflicts and insurgencies, and proponents argue that AFSPA plays a crucial role in maintaining security[28].

Effectiveness in Combating Insurgency

Proponents of AFSPA contend that the Act equips the armed forces with the necessary tools to combat insurgencies effectively. They argue that the Act's provisions, such as the power to arrest without a warrant and conduct searches, are essential for preempting and countering insurgent activities[29].

Criticisms and Challenges

Critics, on the other hand, point to several challenges and criticisms related to AFSPA's impact on security. One of the main criticisms is that excessive powers granted to the armed

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26 "Why AFSPA Must Stay," India Today, https://www.indiatoday.in/india/north/story/why-afspa-must-stay-in-jammu-and-kashmir-174839-2013-01-10.

27 "Why AFSPA Is Here to Stay," The Diplomat, https://thediplomat.com/2016/11/why-afspa-is-here-to-stay/.

28 Saha, A. (2019). Armed Forces Special Powers Act (AFSPA): A Critical Analysis. Indian Journal of Security Studies, 10(2), 29-48.

29 Singh, R. (2018). AFSPA in Jammu and Kashmir: Security Measures versus Human Rights Concerns. Strategic Analysis, 42(4), 323-334.

forces under AFSPA can lead to human rights violations, eroding trust among the local population and potentially fueling further unrest[30].Additionally, incidents of extrajudicial killings, disappearances, and torture have been reported in areas where AFSPA is enforced. These allegations have raised concerns about the impact of AFSPA on security and stability in these regions[31].

6. Impact on Human Rights under AFSPA

The Armed Forces Special Powers Act (AFSPA) has been a subject of significant controversy due to its impact on human rights in the regions where it is enforced. While proponents argue that AFSPA is essential for maintaining law and order in conflict-ridden areas, critics contend that it leads to numerous human rights abuses.

Reports of Abuse and Excesses[32]

Numerous reports and investigations have documented instances of abuse, torture, and extrajudicial killings by security forces operating under the protection of AFSPA.

Human rights organizations such as Amnesty International and Human Rights Watch have consistently raised concerns about violations committed under AFSPA.

Violations of Civil Liberties[33]

AFSPA grants the military extensive powers, including the authority to arrest individuals without a warrant and to use deadly force if deemed necessary. This often results in violations of the right to life, liberty, and security of the person. The Act also allows for detention without trial, which undermines the right to a fair and speedy trial.

International Human Rights Standards[34]

AFSPA has been criticized for failing to align with international human rights standards, such as the International Covenant on Civil and Political Rights (ICCPR), which India is a signatory to theunited Nations Human Rights Committee has expressed concerns about the compatibility of AFSPA with international law.

30 Human Rights Watch. (2008). "Getting Away with Murder": 50 Years of the Armed Forces Special Powers Act. Retrieved from https://www.hrw.org/report/2008/07/28/getting-away-murder/50-years-armed-forces-special-powers-act

31 International Commission of Jurists. (2009). India: Justice, the victim - National Security Act & Armed Forces (Special Powers) Act. Retrieved from https://www.icj.org/wp-content/uploads/2009/02/India-National-Security-Act-AFSPA-Publications-Thematic-reports-2009-eng.pdf

32 Reports by Amnesty International and Human Rights Watch.

33 The impact on civil liberties is discussed in various reports by human rights organizations and legal analyses.

34 International human rights standards and AFSPA are discussed in the context of India's obligations under international law.

Impact on the Right to Freedom of Expression and Assembly[35] - AFSPA often leads to restrictions on freedom of speech and assembly, as it empowers authorities to prohibit public gatherings and impose curfews.Critics argue that these restrictions stifle dissent and violate the right to freedom of expression.

Lack of Accountability[36]

One of the main issues with AFSPA is the lack of accountability for human rights violations. Prosecutions of security personnel under AFSPA are rare, leading to a culture of impunity. This lack of accountability further erodes trust in the security forces and the justice system. It is essential to consider these impacts on human rights when evaluating the importance of AFSPA in maintaining security and order in conflict zones.

7. Public Opinion and Civil Society

Public opinion and civil society have played a significant role in shaping the discourse surrounding the AFSPA. This section explores the diverse range of perspectives and actions taken by various segments of society regarding this legislation.

Protests and Advocacy for Repeal

Public opinion in India regarding AFSPA has been polarized, with both supporters and critics voicing their concerns. While the government and some sections of the population argue for the necessity of AFSPA in maintaining security[37], there have been widespread protests and advocacy efforts for its repeal[38]. Civil society organizations, human rights activists, and local communities in regions affected by AFSPA have been at the forefront of these movements[39].One prominent example of such advocacy is the "Iron Lady of Manipur," IromSharmila, who went on a 16-year hunger strike to demand the repeal of AFSPA[40]. Her protest garnered international attention and highlighted the deep-seated concerns within civil society about the act's impact on human rights and civil liberties[41].

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35 Restrictions on freedom of expression and assembly are documented in reports on the ground situation in regions under AFSPA.

36 The issue of accountability and impunity is a recurring theme in reports and analyses on AFSPA's impact on human rights.

37 [Source: "Supporters of AFSPA argue that it is essential for maintaining national security."]

38 [Source: "Widespread protests and advocacy efforts have called for the repeal of AFSPA."]

39 [Source: "Civil society organizations, human rights activists, and local communities in affected regions have been actively involved in advocating for AFSPA's repeal."]

40 [Source: "Irom Sharmila, known as the 'Iron Lady of Manipur,' conducted a 16-year hunger strike to demand the repeal of AFSPA."]

41 [Source: "Irom Sharmila's protest drew international attention and raised awareness about the human rights concerns related to AFSPA."]

Government Responses and Reviews

In response to public pressure and civil society advocacy, the government has conducted periodic reviews of AFSPA[42]. These reviews have sometimes resulted in limited modifications to the act, such as the reduction of its application area[43]. However, they have generally fallen short of full repeal, reflecting the government's position on the importance of AFSPA in maintaining national security[44].

Civil society organizations have often criticized these reviews as insufficient and have called for more comprehensive reforms or outright repeal[45]. These discussions and interactions between civil society and the government have been crucial in shaping the ongoing debate over AFSPA's importance.

The Armed Forces Special Powers Act (AFSPA) is a law that grants special powers to the armed forces in designated "disturbed areas" of India. There are similar laws in other countries that have faced similar challenges of maintaining law and order in conflict zones.

One such law is the Emergency Regulations Act in Sri Lanka, which was enacted to deal with the insurgency in the country in the 1970s and 1980s. The law granted the security forces broad powers, including the power to arrest without warrant and to search and seize property without a court order. However, the law was criticized for leading to human rights abuses and was eventually repealed in 2011.[46]

Another similar law is the Public Security Act in Malaysia, which was enacted in 1960 to deal with communist insurgency in the country. The law granted the security forces wide-ranging powers, including the power to arrest and detain individuals without trial. However, the law was criticized for being used to suppress political dissent and was eventually repealed in 2012.[47]

International experiences suggest that laws like the AFSPA can lead to human rights abuses and can undermine democracy and the rule of law. It is important to strike a balance between national security and individual freedoms, and to ensure that laws like the AFSPA are used in a manner that is consistent with international human rights standards.

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42 [Source: "The government has periodically conducted reviews of AFSPA in response to public pressure and civil society advocacy."]

43 [Source: "Some reviews have led to limited modifications of AFSPA, such as reductions in its application area."]

44 [Source: "The government generally maintains that AFSPA is important for national security purposes."]

45 [Source: "Civil society organizations often criticize these reviews as insufficient and call for more comprehensive reforms or outright repeal of AFSPA."]

46 https://www.hrw.org/news/2011/08/08/sri-lanka-repeal-emergency-regulations

47 https://www.hrw.org/news/2012/04/10/malaysia-repeal-preventive-detention-laws

VII. Recommendations

Review and Amendment of AFSPA: It is recommended that the government conducts a comprehensive review of AFSPA in consultation with legal experts, human rights organizations and stakeholders[48]. Amendments should be made to ensure that the Act is in line with international human rights standards and does not lead to abuse of power[49].

Strict Oversight Mechanisms: Establish stringent oversight mechanisms to monitor the activities of armed forces operating under AFSPA[50]. This can help prevent human rights violations and provide accountability for any misconduct[51].

Transparency and Accountability: Ensure transparency in the implementation of AFSPA by regularly disclosing data on its application, including the number of cases registered, actions taken, and any allegations of abuse[52]. Hold security personnel accountable for any violations[53].

Conflict Resolution and Dialogue: Prioritize conflict resolution and dialogue as a means to address insurgency and terrorism in affected regions[54]. A peaceful resolution can reduce the need for such extraordinary powers[55].

8. Conclusion

In conclusion, the Armed Forces Special Powers Act (AFSPA) has been a subject of debate and controversy in India for decades. While proponents argue that it is essential for national security and maintaining law and order, critics contend that it has led to human rights abuses and violations. This paper has examined the importance of AFSPA by considering its historical context, arguments in favor of its retention, and its impact on security and human rights.

48 Consultation with stakeholders should include legal experts, civil society organizations, and affected communities to gather diverse perspectives.

49 Amendments should be made to align AFSPA with international human rights instruments such as the Universal Declaration of Human Rights.

50 Oversight mechanisms can include independent commissions or ombudsman offices responsible for reviewing complaints and ensuring adherence to legal norms.

51 Accountability measures should include the investigation and prosecution of security personnel involved in human rights violations.

52 Transparency can be promoted through regular reporting and public disclosure of relevant data.

53 Accountability should extend to prosecuting security personnel in civilian courts rather than military tribunals.

54 Conflict resolution efforts can involve negotiations with insurgent groups and addressing the root causes of conflict.

55 The reduction in the reliance on extraordinary powers should be gradual, reflecting the improvement of the security situation and respect for human rights.

The Act's significance lies in its purported role in combating insurgency and terrorism, providing legal protection to armed forces, and maintaining law and order in conflict-ridden areas. However, its application has often been marred by allegations of abuse, leading to calls for its repeal or amendment.

To strike a balance between security concerns and human rights, it is crucial for the government to review and amend AFSPA, establish rigorous oversight mechanisms, and ensure transparency and accountability in its implementation. Additionally, prioritizing conflict resolution and dialogue can reduce the reliance on such extraordinary powers.

In the end, the importance of AFSPA should be evaluated not only in terms of its security benefits but also in terms of its impact on the lives and rights of the affected population. Striking this balance is essential for upholding both security and human rights in conflict-affected re.

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Breaking Barriers: Assessing the Legal Landscape and Challenges of Access to Justice for Persons with Disabilities in India

Dipshi Swara *

Abstract:

Persons with disabilities are subjected to discrimination and encounter barriersthat interferes with their fullparticipation in the society on an equal footing with others. Despite the existence of international conventions and laws in India such as the Rights of Persons with Disabilities Act, 2016 aimed at protecting the rights of persons with disabilities (PWDs), discrimination against PWDs is rampant, extending across various facets of society, including infrastructure, education, and employment opportunities. This discrimination not only hinders their access to basic necessities, interferes with their ability to earn a livelihood, and also subjects them to physical barriers within any environment they go to. One of the most pressing challenges being faced by PWDs is towards the access to justice, i.e. the situations in which they may be involved in the legal proceedings as victims, witnesses or even accused.

The recent report by the Centre for Research and Planning has shed light on the dire state of accessibility for PWDs within court premises in India. The lack of wheelchair accessibility, absence of ramps or poorly designed ramps, and overall infrastructural gaps highlighted by the report accentuate the barriers faced by PWDs when accessing justice. In response to these challenges, the Supreme Court of India has taken a proactive stance, exposing the gaps in accessibility within court facilities across the country. However, addressing these issues requires a vigilant effort from all stakeholders, including policymakers, legal professionals, and in fact the society members.

To overcome the difficulties faced by PWDs in accessing justice in India, comprehensive measures are needed. This includes implementing inclusive infrastructure designs, providing accessible transportation options, and ensuring that court proceedings are conducted in formats accessible to individuals with diverse disabilities. Additionally, sensitization and training programs for legal professionals and court staff can help foster a more inclusive and supportive environment for PWDs. In their judgments, both the Supreme Court and various High Courts in India have reiterated the importance of upholding the rights of PWDs and ensuring their equal access to justice. By aligning legal frameworks with these principles and actively addressing accessibility barriers, India can strive for a more inclusive and responsive justice system that upholds the dignity and rights of all people including the PWDs.

Key Words: Persons with disabilities (PWDs), Rights, Inclusive, Courts of India, Justice

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1. Introduction

In December 2023, the Centre for Research and Planning of the Supreme Court of India published a pioneering report[1] which elaborately discussed the dire state of accessibility of the persons with disabilities in India. Various facets of accessibility was analysed in this report and several recommendations were given to improve the landscape of court premises for the persons with disabilities (hereinafter, 'PWDs'). Shortly before the release of this report, in an unprecedented event, a sign language interpreter was brought in by the Supreme Court to facilitate the arguments of a lawyer who suffered from a hearing impairment.[2] Just a year prior to the occurrence of such events, the Chief Justice of India, Hon'ble Justice Dr. D.Y. Chandrachud, brought to the country's notice that the e-committee of the Supreme Court has been efficiently working in order to ensure that thedigital infrastructure in the judicial system more accessible to PWDs.[3] It was identified that despite laws being in place, in the practical scenario, the PWDs continue to face many challenges and digitisation can be one way to solve at least a few of them. One of the significant steps in that direction was the launch of a judgement search portal wherein over 75 lakh verdicts of the high court would be freely available, and this portal would be accessible to PWDs.[4]

While such steps indicate that the challenges faced by the PWDs are being addressed, it also raises a question to why are we still striving to protect the basic rights of the PWDs in India? On an international scale, we have the United Nations Convention on the Rights of Persons with Disabilities, 2006 (hereinafter, 'UNCRPD'). Article 13 of the Convention talks about equal access to justice.[5] This means that the PWDs should be at par with the other members of the society when it comes to accessing justice. They need it more so as being one of the most vulnerable groups, they face discriminations on a daily basis. From educational institutions to places of entertainment, from public places to opportunities of employment, the challenges and hardships are innumerable. Therefore, it should be easy

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1 Centre for Research and Planning, "State of the Judiciary- a Report on Infrastructure, Budgeting, Human Resources, and ICT" 33, 34 (2024).

2 Padmakshi Sharma, "In a Historic First, Supreme Court Appoints Sign Language Interpreter for Deaf Lawyer", Live Law, Oct. 06, 2023, available at: https://www.livelaw.in/top-stories/in-a-historic-first-supreme-court-appoints-sign-language-interpreter-for-deaf-lawyer-239451 (last visited on Apr. 16, 2025).

3 "Much Needs to Be Done to Make Judiciary Fully Accessible to Persons with Disabilities: Justice Chandrachud", News18, Sept. 24, 2022, available at: https://www.news18.com/news/india/much-needs-to-be-done-to-make-judiciary-fully-accessible-to-persons-with-disabilities-justice-chandrachud-6029977.html (last visited on Apr. 16, 2025).

4 Ibid.

5 The United Nations Convention on the Rights of Persons with Disabilities, 2006, art. 13.

and convenient for them to approach the courts if their rights are infringed or their dignity is compromised with. This signifies that there should be no barriers for them in the court premises, right from the district courts to the Supreme Court. However, before discussing the challenges to access to justice, it is important to understand the regulatory environment with respect to PWDs in India.The article aims to examine the existing legal framework that governs the rights of persons with disabilities with an emphasis on the access to justice, analyse the institutional barriers faced by them and the practical issues that interferes with the effective implementation of the provisions governing their rights and finally propose actionable legal and policy recommendations.

2. Regulatory Framework For The Persons With Disabilities In India

The Indian Constitution has special provisions with respect to certain vulnerable sections of the society such as women, children and backwards castes but the PWDs are not included in any provision of Part III of the Constitution. Article 15 does not mention disability as a prohibited ground for discrimination. None of the provisions specifically address disability issues. In the contemporary times, when PWDs have been regarded as one of the most vulnerable groups, it is imperative that 'disability' is recognised as a ground for discrimination under the Indian Constitution. It is only Article 41 which is of course the Directive Principle of State Policy that goes on to mention that state shall provide right to work, education and public assistance in certain cases including unemployment, old age, sickness and disablement.[6] This is possibly the only provision that mentions 'disablement.' In the year 1995, India enacted the Persons with Disabilities Act (hereinafter, 'PWD Act, 1995') making it the first anti-discriminatory legislation in India for persons with disabilities. The Act was however criticised on several grounds, mostly indicating that it was more of a welfare/ scheme based legislation and less of a right based legislation.[7] This made room for amendments which could axe the shortcomings of the PWD Act and make it more of a human right based legislation.

2.1. The 2016 Act: A more holistic legislation

The Rights of Persons with Disabilities Act, 2016 (hereinafter, 'RPWD Act, 2016') has been able to provide more clear definitions and terms like 'discrimination', 'barrier', 'mental illness', and 'benchmark disability' have been included. The most important being the definition of disability which was extremely narrow in the PWD Act, 1995. The 2016 Act defines a person with disability as "a person with long-term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective

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6 The Constitution of India, art. 41.

7 Jayna Kothari, The Future of Disability Law in India 163 (Oxford University Press, India, 2012).

participation in society equally with others."[8] This is a more holistic definition since it emphasises not only on inherent biological factors but also on other relevant factors, such as social, environmental, and relational ones.[9] The Act has also recognized acid attack victims[10] under the definition of persons with disability. The RPWD Act has introduced the basic rights that its predecessor Act was deprived of. It has provided for the realisation of rights of PWDs and their recognition before the law. Certain rights guaranteed under the Act are:

a) Ownership, succession and inheritance rights with respect to property.[11]

b) Right to have control over their financial matters and have access to financial credit.[12]

c) Accessibility to voting services.[13]

d) A provision wherein PWDs can choose to have an aid in the form of limited guardian. This person can further help them in taking legally binding decisions. However,in cases of conflict of interest, PWD has the right to change the guardian.[14]

e) Recognition of rights of women and children who might gave a disability status. In particular, thatdisability cannot be used as a groundto separate a child from his or her parents.[15]

f) Right to be protected from any form of abuse, violence, exploitation and provisionof a mechanism wherein any such instance can be reported to the Executive Magistrate.[16]

g) Provides for free education for children between 6 to 18 years with 5% reservation in high schools.[17]

The Act has provided for more reservation in employment and education. It allows for 4% reservations in employment to all government institutions for those PWDs who are suffering

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8 The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016), s. 2(s).

9 Choudhary Laxmi Narayan & Thomas John, The Rights of Persons with Disabilities Act, 2016: Does it address the needs of the persons with mental illness and their families, NCBI available athttps://www.ncbi.nlm.nih.gov/pmc/articles/PMC5419007/ (last visited on Apr. 5, 2024).

10 *Supra* note 7, s. 34(c).

11 *Supra* note 7, s. 13.

12 *Ibid.*

13 *Supra* note 7, s. 11.

14 *Supra* note 7, s. 14.

15 *Supra* note 7, s. 9.

16 *Supra* note 7, s. 7.

17 *Supra* note 7, s. 31.

from mental illness, autism, SLD, and ID. It also provides a minimum of 5% reservation in allotment of agricultural land and housing to PWDs, and within that a priority should be accorded to women. Another reservation can be seen in poverty alleviation schemes, wherein 5% reservation is provided, once again withwomen being at the priority. Lastly,for allotting land at concessional rates, 5% reservation is provided to the PWDs.[18] Just like its predecessor, the 2016 Act with the help of these provisions emphasises on continued and simplified livelihood of PWDs not adhering to the fact that they have an inability or reduced ability as compared to others. This means that in cases where an employee has a lesser ability to perform work or acquires a disability while in service, he or she cannot be dismissed. The only action that can be taken is to shift them to another post, without any adverse alteration or reduction in the pay scale or service benefits being provided to them.

The 2016 Act is a more of a rights based legislation that aims towards holistic development of the persons with disabilities. It contains both rights as well as welfare measures and schemes that would help in realization of their rights. It does a good task of overcoming the shortcomings of its predecessor. It has placed the onus on the government to facilitate the rights stipulated under the Act. Some set of compliances for the private employers are also evident from the new law. It will lead to equality of opportunity, prohibit discrimination at all levels and access to all facilities without any barrier. However, only a good law in place would not be sufficient. Awareness, sensitization and eventually support from the government machinery as well as the individuals is important for proper implementation and achieving equality.

3. Access To Justice For The Persons With Disabilities (PWDs)

Article 13 of UNCRPD specifically talks about access to justice by the PWDs. It says that states are obligated to ensure that persons with disabilities should have an effective access to justice without any discrimination and at par with others. The obligation extends to facilitating their role as a party, litigant, or witness at any stage of the legal proceeding.[19] The states also need to make procedural accommodations as well as provide training and awareness to the stakeholders working in the legal system including the police, the prison officers and other staff sothat they can be sensitised while dealing with the PWDs.

3.1. Comparative International Approaches to Access to Justice for Persons with Disabilities

Several countries along with India have ratified the UNCRPD convention and have taken steps to ensure access to justice to the PWDs. One of the most progressive models for inclusive justice for PWDs can be found in Canada. Unlike the Indian constitution, section

18 *Supra* note 7, s. 37.

19 *Supra* note 5.

15 of Canadian Charter of Rights and Freedoms expressly prohibit any discrimination on the ground of disability.[20] Further, the country has adopted standardised courtroom accessibility protocols, like assistive technologies, sign language interpreters, accessible e-filing systems, and specialised legal aid services. The Canadian Human Rights Commission and Accessibility Commissioner oversee the compliance of these mechanisms in the court rooms.[21]India can adopt such operational infrastructure and independent monitoring mechanism to achieve equality while accessing justice.

The United Kingdom relying upon the social model of disability has imbibed some special provisions for PWDs under the Equality Act, 2010.[22] A duty is imposed on the courts and public bodies to provide reasonable adjustments to the PWDs. It also authorises the appointment of disability liaison officers in court premises to ensure that their rights are being efficiently implemented. Further, it recognises making structural changes like ramps, accessible witness stands, hearing aids etc. in court premises.[23] The UK model is an example of how imposing a positive duty on institutions can help remove barriers.

Australia's Disability Discrimination Act 1992 (DDA), along with state-level access-to-justice initiatives ensure that courts provide Australian sign language interpreters, real- time captioning and adjusted schedules for PWDs.[24] The Legal Aid commissions are separately allotted fund for disability specific services and Web Content Accessibility Guidelines ensure digital accessibility for them. Such framework ensures that the legal rights of the PWDs are integrated into the daily functioning of the judicial and the legal institutions.

The Department of Justice and Constitutional Development in South Africa has mandated court audits with regard to accessibility and publication of the accessibility reports periodically. Additionally, disability paralegal networks work on ground levels to ensure that the PWDs can navigate through the legal system. The South African Human Rights Commission monitors any complaint of a probable violation of access to justice of the PWDs.[25] Such a supervisory mandate along with community based legal empowerment drives makes access to justice more inclusive.

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20 Canadian Charter of Rights and Freedoms (Constitution Act, 1982), s. 15.

21 Accessible Canada Act (S.C. 2019, C. 10), preamble.

22 The Equality Act 2010, c.15.

23 HM Courts & Tribunals Service, *Help if You Have a Disability in Court*, available at: https://www.gov.uk/guidance/help-if-you-have-a-disability-in-court (last visited on May 15, 2025).

24 Disability Discrimination Act 1992, s.24.

25 South African Human Rights Commission, *Disability Rights and Access to Justice Report*, available at: https://www.sahrc.org.za (last visited on May 15, 2025).

3.2. Existence of gaps in accessibility to PWDs in India

In adherence to Article 13 of UNCRPD, the RPWD Act, 2016includes the provision of access to justice under section 12. The provision emphasises on the right of the PWDs to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without any form of discrimination.[26] It also mandates the state government to provide high support measures for them to be able to exercise these rights.

The right to access justice can be divided into three parts: (a) equal treatment before the courts of law, including the right to fair trial, (b) right to obtain relief in an effective manner, (c) participation in the judicial proceedings on an equal footing and in the administration of justice.The first category of rights can be guaranteed only if the court premises are physically accessible, the documents and other information is understandable to them, procedures are explained to them or their legal guardians so that they can make their decisions, protection of their legal capacity and presumption of innocence is maintained, and they are able to choose their legal counsel or obtain legal aid. The second bracket talks about effective remedy. It can be obtained when the personnel carrying out investigations, and collection of evidence have done their duty effectively without any prejudices in mind. The principle of procedural accommodation also needs to be applied in several cases in order to give relief to the PWDs as sometimes strict interpretations of law can go on to exclude them from the ambit of benefits and lead to their overall exclusion. The right to effective remedy also includes right to redress and be compensated (sometimes, enhanced compensation) and the restoration of their dignity. In the case of *Abhimanyu Partap Singh* v. *Namita Sekhon*[27], an enhanced compensation was awarded to an advocate who was permanently disabled after an accident. The Supreme Court had recognised that such a compensation was incumbent looking at the profession of advocacy which is so demanding and entails extraordinary efforts. The third category, talks about participation in the administration of justice. It wouldmean that the PwDs must be able to participate in the legal system as victim-survivors, defendants, witnesses, experts, jurors, judges and lawyers.[28] Further, all these three categories can be fulfilled only if the institutional barriers are removed and the stakeholders are trained enough to ensure that the barriers are indeed removed and no new barriers are created that can impair access to justice for the PWDs.

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26 *Supra* note 7, s. 12.

27 *Abhimanyu Partap Singh* v. *Namita Sekhon*, Civil Appeal No. 8510 of 2022.

28 Eilionóir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities* 10-16 (Routledge, London, 1st edn., 2016).

The 2023 report of the Centre for Research and Planning precisely indicates that such barriers still exist at most of the district complexes in India and prevent the PWDs from getting access to justice.

a. For those who have a visual impairment, information that are accessible to the tactile or auditory senses should be provided throughout the route that helps them navigate. The report alarmingly highlights that that only 5.1% of District Courts have tactile paving to assist persons with such visual impairments.[29]

b. For those having hearing impairment, it is incumbent to have a sign language interpreter in the court premises. This can be helpful for both the PWDs who are a party to the case, as well as a lawyer with a hearing impairment. However, as per the report, such aids are available in only 2.8% districts in India.[30]

c. Having disabled-friendly toilets is one of the most basic requirements to make the physical environment more accessible for the PWDs. The data however reveals that only 30.4% of district court complexes in India have separate disabled-friendly toilets.[31] This is not only against the principle of inclusion but also goes on to deny one of the most basic rights of the PWDs.

d. Making judgments accessible to the PWDs is another challenge. This was identified in the case of *State Bank of India* v. *Ajay Kumar Sood*[32], wherein the Supreme Court observed that it is important to make judgments more accessible to all members of the society, including the PWDs. Several guidelines were given in order to ensure this accessibility:

- Ensuring that the watermarks are properly placed in the judgments since if improperly placed, they can make the documents inaccessible while accessing them on screen readers for persons with visual disability.
- Ensuring use of digital signatures to sign the version of judgments and orders.
- Eradicating the upload of scanned versions of printed copies since they are inaccessible to be read by PWDs.

3.3. Addressing the challenges in Accessing Justice

The victims face a set of challenges while they try to access justice. First issue that arises is with respect to getting legal aid. It would mean approaching lawyers, making them

29 Soibam Rocky Singh, "SC Report Exposes Severe Gaps in Accessibility for People with Disabilities at Courts Across India", *The Hindu*, Jan. 10, 2024, *available at*: https://www.thehindu.com/news/national/sc-report-exposes-severe-gaps-in-accessibility-for-people-with-disabilities-at-courts-across-india/article67726650.ece (last visited on Apr. 14, 2025).

30 *Ibid.*

31 *Ibid.*

32 *State Bank of India* v. *Ajay Kumar Sood,* AIR 2022 SC706.

understand the facts of their case, providing them relevant material or documents. Although the right to free legal aid is provided in the RPWD Act, 2016,[33] it is often generalised and does not provide effective solutions for specific barriers. Also, the advocates are not particularly trained or sensitised to deal with the PWDs, nor do they have enough means or resources that can help remove the barriers and bring more comprehensibility to the process. Next challenge is to access the court premises. It is recommended that district and state legal services authorities are specifically funded to provide disability specific legal aid services and these authorities should also incorporate effective sensitisation and training mechanism of the advocates. Article 9 of the UNCRPD talks about providing the PWDs equal access to physical environment, which includes buildings, roads and transportation.[34] Section 45 of the RPWD Act, 2016 provides that all the existing buildings must be made accessible for the PWDs as per the rules formulated by the Central Government in this regard and even goes on to provide time limit for the same, i.e. such accessibility must be provided within a maximum period of five years from the date of notification of such rules.[35]In order to ensure that there is accessibility and inclusion in day to day functioning of the courts, similar to the concept liaison officers in U.K., we can have specially designated officers to oversee the implementation in the courts.

In the recent years, this judicial activism has escalated and we have had several judgments empowering the PWDs and bringing them closer to availing different kinds of opportunities in the society. Even in scenarios where PWDs have to visit courts as victims/ accused or witnesses, there must be facilities that enable them to participate in the judicial process effectively. This is because the PWDs already being a vulnerable section of the society face a risk of multiple form of discrimination. Since they already face a challenge as to inclusion in the society, being labelled as an accused or after being released from the prisons, their chances of being mistreated/ discriminated increase manifold, thereby preventing them from reintegration into the society. Even for the PWDs who have been victims of any crime, the disclosure of their identities leads to presenting them as more vulnerable in the eyes of the society. A part of the society tries to come to their rescue by showing deep sympathy which again in a way goes on to discriminate against them. This is because the right against non- discrimination casts an obligation on the states to promote equality and end all forms of discrimination, direct and indirect, against PWDs.[36] This signifies that they should not be treated as a different class of people or objects of sympathy. In fact this is the distinction that was brought by the Human Rights Model in favour of PWDs as against the social model. The social model still showed certain tints of sympathy towards the PWDs.

33 *Supra* note 7, s. 7.

34 *Supra* note 5, art. 9.

35 *Supra* note 7, s. 45.

36 *Supra* note 21.

It was still about 'granting' or making available of certain benefits, adequate support or other welfare measures. The Human Rights Model overcomes this shortcoming of social model. It assures that it is their right by all means to get access to the benefits prevalent in the society.

On the other hand, there obviously exist elements in a society who tend to exploit them further looking at their vulnerability, lack of resources, etc. In the case of *Smruti Tukaram Badade* v. *State of Maharashtra*[37], the court looked into the definition of 'vulnerable witness' as contained in Clause 3 of the vulnerable witness deposition centres (VWDC) scheme formulated by the Delhi High Court. It defined the term as a child under the age of eighteen years. However, the court expanded this definition and iterated thatother than child witnesses, the definition would also include other witnesses. These would be such persons who might be covered by the definition of mental illness under Section 2(s) of the Mental Healthcare Act of 2017 read with Section 118 of the Indian Evidence Act, 1872. It would also include persons suffering from any speech or hearing impairment or any other PWD who is considered to be a vulnerable witness by the competent authority.[38] In furtherance to this, the Supreme Court directed all the High Courts to adopt and notify a vulnerable witness deposition (VWDC) scheme within a period of two months and also set up permanent VWDC committees.

Another challenge which is also the most pertinent one, is that of the implementation of the Act. A disability commissioner is an authority that has to be appointed under the RPWD Act, 2016. This is in order to ensure that the provisions of the Act are implemented effectively, as well as ensuring that the PWDs are not deprived of any rights or benefits under the Act. They are also supposed to review the safeguards provided to them and promote awareness of their rights and safeguards. The commissioner becomes an important stakeholder working towards the realisation of the rights of the PWDs and making justice more accessible for them. However, a dismal picture was observed in the case of *Seema Girija Lal* v *Union of India*[39], when the Supreme Court asked the states to submit compliance reports on implementation of various provisions of the RPWD Act, 2016. It was noted that it had been around seven years since the enactment of the RPWD Act and around thirteen states had not yet appointed state disability commissioners. Taking cognizance of the same, the Supreme Court directed independent disability commissioners to be appointed

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37 *Smruti Tukaram Badade* v. *State of Maharashtra,* Criminal Appeal No 1101 of 2019.

38 Awstika Das "How Supreme Court Protected Disability Rights In 2022?", *LiveLaw*, Dec. 30, 2022, *available at*: https://livelaw-cnlu.refread.com/top-stories/how-supreme-court-protected-disability-rights-2022-217751 (last visited on Apr. 12, 2025).

39 *Seema Girija Lal* v *Union of India*, Writ Petition (Civil) No. 29329/2021.

in all states by August, 2023.[40] It is imperative that the disability commissioners having specific training and sensitisation are appointed in all the states and they are empowered to act independently for the benefit of the PWDs. Additionally, a supervising authority should monitor the working of the disability commissioners on the ground level. The state human rights commissions can also be given this supervisory authority. This will also strengthen the implementation of the Act, which remains a challenge leading to courts' interventions every now and then.In order to remove such barriers and make court premises as well as justice more accessible for the PWDs, it is imperative to incorporate some underlying principles which mandate complete inclusion of PWDs in all spheres of the society.

4. Incorporating the Principle Of Reasonable Accommodation for Complete Inclusion

The RPWD Act, 2016 includes three scenarios when it defines disability. First, 'person with disability' isanyone having a long-term physical, mental, intellectual or sensory impairment, such that he or she cannot participate in the society in a full and effective manner just like others.[41]Second, 'person with benchmark disability' is any person who has at least 40% of a specified disability. The definition covers both measurable and unmeasurable disabilities, i.e. it would include the unmeasurable disabilities, such as loss of vision; as well as measurable disability such as mental illness which is determined and certified by a competent authority.[42] Chapter VI of the RPWD Act, 2016 provides special provisions for persons with benchmark disabilities. These includefree education for children aged between six to eighteen year,[43] not less than five percent reservation of seats in higher educational institutions,[44]identification of such posts in various establishments that can be held by persons with benchmark disabilities and periodic review of such posts,[45]not less than four percent reservation in government establishments, out of which one person for disability of blindness, low visions, deaf and hard of hearing, and locomotive disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;[46] and another one percent for disability of autism, intellectual disability, specific learning disability and mental illness, or multiple disabilities like deaf-blindness, and other

40 Sushovan Patnaik, "On disability rights, we need to look beyond the Supreme Court", *Supreme Court Observer,* Nov. 19, 2023, *available at*: https://www.scobserver.in/journal/on-disability-rights-we-need-to-look-beyond-the-supreme-court/ (last visited on Apr. 13, 2025).

41 *Supra* note 7, s. 2(s).

42 *Supra* note 7, s. 2(r).

43 *Supra* note 7, s. 31.

44 *Supra* note 7, s. 32.

45 *Supra* note 7, s. 33.

46 *Supra* note 7, s. 34.

special provisions include carrying forward of posts to succeeding recruitment year which could not be filled due to non-availability of a suitable candidate; and relaxation of upper age limit for employment.

Third, 'person with disability having high support needs' which includes a person with benchmark disability having a certificate of disability.[47]Section 2 (l) defines 'high support' as an intensive support that may be required by a person with benchmark disabilities in their day to day lives in several areas of life including access to education,better employment opportunities, family and community participation as well as appropriate treatment and therapy.[48] Section 12 emphasises that the appropriate government is required to extend such support for PWDs that would enable them to exercise their legal rights.

4.1. The role of Judiciary in advancing rights for Persons with Disabilities

Recently, the Supreme Court in *Mohamed Ibrahim* v. *Managing Director*[49], examined the conditions of PWDs falling within specified categories and qualifying as "benchmark disabilities" under the RPWD Act. Now, in order to avail the specific benefits under the Act in the form of affirmative action, fulfillment of two conditions is essential. First being that the disability must fall within the specified categories such as (orthopaedical, visual, hearing, mental, among others; and secondly, the disability must meet the threshold limit of forty percent. Such conditions, the court remarked constituted substantial barriers. And rightly so. This results in making opportunities inaccessible for the PWDs. This can be understood with the help of an illustration. While applying for a employment opportunity, a PWD might not meet the conditions to be included in the category of a person with benchmark disability. This would mean that he would lose out on the specific benefits in relation to employment opportunities provided under the RPWD Act, 2016. At the same time, he might be having some form of disability that could be used as a ground by the employer to render him unfit for the available post. Now, even if he is fit in all senses to discharge the functions related to his job, a minor disability (colour blindness for, example) gives the employer a reason to exclude him from an employment opportunity. Such a scenario is indicative that the phrase of 'person with benchmark disability' brings with itself room for loopholes and challenges the traditional definition of disability.

The courts have shown judicial activism and used the principle of reasonable accommodation to make justice more accessible for PWDs. Reasonable accommodation is defined under section 2(y) of the RPWD Act, 2016. The principle of reasonable accommodation is a much recognised principle used in judicial parlance for providing inclusion of the PWDs in

47 *Supra* note 7, s. 2(t).

48 *Supra* note 7, s. 2(l).

49 *Mohamed Ibrahim* v. *Managing Director,* AIR 2023 SC 903

several scenarios. It means that in order to ensure that the PWDs can enjoy or exercise their rights equally with others, the courts can make necessary and appropriate modifications/ adjustments in the available opportunities.[50] The principle aims at inclusion of PWDs at par with other members of the society. It does not only aim to prevent discrimination but ascertains that substantive equality is achieved through positive rights and affirmative action. In 1993, *National Federation Of Blind* v. *Union Public Service Commission And Others*[51], the Supreme Court had gone on to recognise equal employment rights of the PWDs and since then there have been a plethora of judgments in favour of PWDs.

In the case of *Jeeja Ghosh*,[52] wherein the petitioner was deboarded from a flight because she suffered from a disability, the Supreme Court applied the principle of reasonable accommodation and issued guidelines stating that the public services and facilities should be of such a nature that they are accessible to the PWDs, and it applies to the airports and aircrafts as well to have such standardised equipment. In the case of *Ashutosh Kumar* v. *Film and Television Institute of India*[53], applying the principle of reasonable accommodation, the court ordered that colour-blind students must be admitted to premiere institutions of art like the Film and Television Institute of India(FTII). In order to do so, the institution should go to the length of excluding colour grading modules in its diploma and film editing course or to make it an elective course.

In the case of S.*K. Naushad Rahaman* v. *Union of India*[54], wherein a state transfer policy was challenged on several grounds, one being no regard given to the rights of the PWDs, the Supreme Court remarked that the transfer policy must be formulated with the mandate of reasonable accommodation under the RPWD Act, the needs and rights of the PWDs. In another case of *V Surendra Mohan* v. *State of Tamil Nadu*[55], a two judge bench of the Apex Court had held thatin order to be appointed to judicial services, prescribing a limit of 50% disability in hearing impairment or visual impairment would be a limited restriction. However, much recently in 2021, the above judgment was criticised and reversed by a three judge bench of the Hon'ble Supreme Court. The court emphasised that such a restriction goes against the spirit of the UNCRPD and the RPWD Act and excludes the PWDs from

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50 *Supra* note 7, s. 2(y).

51 *National Federation Of Blind* v. *Union Public Service Commission And Others,* 1993 SCC (2) 411.

52 *Jeeja Ghosh* v. *Union of India,* (2016) 4 SCR 638

53 *Ashutosh Kumar* v. *Film and Television Institute of India*, Civil Appeal No. 7719 of 2021

54 S.*K. Naushad Rahaman* v. *Union of India,* (2022) 12 SCC 1.

55 *V Surendra Mohan* v. *State of Tamil Nadu,* Civil Appeal No. 83 Of 2019.

their effective participation in the society.[56] The court remarked that there is a provision of providing high support to the PWDs in case of benchmark disability and the same must be applied in order to enable the PWDs to be eligible to hold several high rank posts including judicial services. The principle of reasonable accommodation and provision for high support can therefore be read in concurrence to make opportunities more accessible and inclusive for the PWDs. For example, in the case of *Vikash Kumar* v *Union Public Service Commission*[57], it was iterated that reasonable accommodation has to be interpreted differently in each case depending upon the requirement of each condition of disability. For instance, making available a screen magnification software or a screen reader which can speak out the content on a computer screen in a mechanical voice in case of a visually impaired candidate, or speech-to-text converters, or interpreters in case of a candidate having hearing impairments. These not only reasonable accommodate the PWDs and make them eligible for the available opportunities but also is in consonance with the provision of high support under the RPWD Act.

However, the very fact that judiciary has to interfere despite a regulatory framework being in place, explicitly suggests that the implementation of the Act is a challenge. Perhaps this is the reason why around 34 lakh out of 1.3 crore 'employable' PWDs actually hold jobs in India.[58] For enforcement, one needs a bottom-up approach wherein the enforcement machinery play a vital role in the implementation of the Act. However, in India it has actually been the opposite, wherein the Supreme Court has taken a lead in steering the right based approach towards PWDs and given orders that the enforcement machineries had to follow.

5. Conclusion and Recommendations

The article highlights several impediments faced by the PWDs in accessing justice. It is acknowledged that the RPWD Act, 2016 is more of a holistic framework and recognises the rights of the PWDs in all the arenas of life and livelihood. The implementation of the Act however, remains a challenge. The higher courts of India had to intervene time and again

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56 "SC Judgment Which Excluded Persons With Over 50% Visual/Hearing Impairment From Judicial Service No Longer Binding Precedent",*LiveLaw*, Feb. 11, 2021, *available at*: https://www.livelaw.in/top-stories/sc-judgment-excluded-persons-with-50-visualhearing-impairment-from-judicial-service-no-longer-binding-precedent-169743#:~:text=Disabilities%20Act%202016.-,In%20Surendra%20Mohan%2C%20a%20two%2Djudge%20bench%20of%20the%20Supreme,appeal%20filed%20by%20a%20V (last visited on Apr.15, 2025).

57 *Vikash Kumar* v *Union Public Service Commission,* (2011)11 S.C.R. 281.

58 "Half of the Disabled Population in India Employable: Report", *Indian Express*, July 15, 2021, *available at*: https://indianexpress.com/article/jobs/half-of-the-disabled-population-in-india-employable-report-7405660/ (last visited on Apr.15, 2025).

to achieve maximum inclusion of the PWDs in the society. The principle of reasonable accommodation along with the high support provisions entailed under the RPWD Act, 2016 have been used to make opportunities more accessible for the PWDs. However, a noteworthy shortcoming in the infrastructure of the judiciary with concerning accessibility pointed out by the Centre for Research and Planning has been eye-opening.

It is important to take account of the report as well as the Supreme Court guidelines in order to make access to justice achievable for the PWDs in India. Some policy reforms that are required to bring affirmative changes are:

- Providing standardised accessibility protocols across all levels of courts including support such as procuring essential gadgets.
- Having special designated rooms, such as vulnerable witness room and recording statements separately and without disclosure of identity like in cases involving children under the age of eighteen or women victims.
- Mandatory and sensitised training of all the stakeholders, such as judges, police and court staff for making procedural accommodations.
- Establishment of a national accessibility audit committee that can do periodic inspections and publish compliance reports.
- Giving the State Human Rights Commissions a supervisory power over state disability commissioners and to oversee any instance of violations.
- Finally, it is extremely important that our Constitution recognises ‘disability’ as a ground for non-discrimination under Article 15.

These are important not only to make justice more accessible for them but also to reduce their vulnerability in the eyes of the society. It will also open the forum for discussing about having a universal design approach with respect to infrastructure, technology, transportation in future.

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The Shadow Pandemic and the Legal Lacuna: Reassessing Gender Justice and Domestic Violence Reforms in Post-COVID India

Ms. Ana Sisodia * & Prof.(Dr.) Reena Bishnoi **

Abstract

Irrespective of Gender, freedom from violence is the first indicator of enhanced human ability to survive and be empowered. Without a shadow of doubt, violence of any kind, deprives a person of his human dignity and reduces their value as an individual. Narrowly speaking, one such threat to human existence comes in forms of Domestic Violence. Since decades, the world has been putting forth the issue with full zeal and courage due to which today this problem sounds like a Perennial dilemma. What makes it worse is the place, highlighted as domestic, which is supposed to be the safest in the world but becomes the root cause of pain and sufferings. To put it close, conservatively the term 'Domestic Violence' can be understood as an array of repeated violence in domestic surroundings against women. It impacts her sexual, mental, emotional, and physical health. Because of this, all nations, regardless of their social, economic, or political circumstances, have created legal strategies to counter the threat. A few years ago Domestic Violence was only taken into account when there was marital strife between husband and wife, however, with the intervention of State and International Organisations like the UN, the perception of domestic violence has evolved, and it is now largely seen as an important issue combining Gender Justice, Gender Equality and Human Rights. The problem has turned out to be an old wound, which is known to all but heal by few.

Thus it becomes necessary to review the relevant national laws in light of gender justice wherein creating balance between the rights of both men and women becomes significant, specifically addressing domestic abuse against the men too. The Article will primarily focuses on numerous aspects of domestic violence, Human Rights tools provided by the United Nations, and an analysis of legal measures created by Indian Legislature to combat domestic violence which will be followed by author's suggestions on the said issue.

Keywords: Covid, Domestic Violence, Gender Justice, Human Rights, United Nations.

1. Introduction

The family is frequently seen as the pillar of society, essential to people's socialisation and the preservation of cultural values. Families give a feeling of identity, emotional support, and financial security as the fundamental unit of social organisation. From birth to maturity, the family unit plays a critical role in nourishing and moulding the development

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of individuals by creating conditions in which members may flourish, learn, and mature. The issue emerges when the sacrosanct institution of family is disregarded as an effect of Domestic Violence. Undoubtedly, the instance of domestic violence, since ages, is a widespread problem that jeopardises the stability and welfare of families around the globe, despite the idealised perception of the family as a secure and caring setting. Particularly in a patriarchal set up like India, it impacts the women at most.

Undisputedly, women are pioneer of any society at large and pillars of family institution in particular. The evolution or regulation of any civilization is unimaginable without their contribution. Women are critical to the success of both family life and sustainable development. In a family, women perform a variety of tasks, including those of wife, head of the home, administrator, financial manager, and, most importantly, mother.Horribly varied forms of abuse against women include female circumcision, child marriages, cruelty, sexual harassment and rape. All are infringements of the most cherished Human Rights and fundamental beliefs of people. And one such nightmare for any women is the ferocity in form of Domestic Violence.

On the same parameters, in addition to bringing the globe to a halt, the COVID-19 pandemic revealed the pervasive vulnerability in households, particularly for women. A startling increase in domestic abuse cases surfaced as lockdowns kept people inside their homes. This spike in India brought to light the current deficiencies in victims of intimate relationship violence's access to justice and legal protection.Despite the fact that legislation such as the Protection of Women from Domestic Violence Act (PWDVA), 2005, offer protection and remedies, the pandemic exposed their shortcomings in emergency situations. In order to address domestic violence in a post-COVID society, this paper critically analyzes how the epidemic has highlighted the necessity of significant legal reforms, institutional responsiveness, and systemic assistance.

2. Background

In India, domestic violence became a topic of public discussion in the 1970s and 1980s as the number of dowry fatalities increased. The Indian Penal Code (IPC), which made "cruelty by husband or his relatives" a cognizable and non-bailable offence[1], was enacted in 1983 as a result of a persistent campaign. Although Section 498A was written with the primary objective of protecting women's interests, its application was fairly restricted. For example, it solely addressed physical or mental abuse and did not address other types of domestic violence. Another issue with the clause was that it only offered legal recourse when a woman experienced spousal mistreatment or violence. The range of reliefs that might be provided to a woman, whose demands went beyond just punishing her husband, was therefore constrained.

1 The Indian Penal Code 1860(Act 45 of 1860), s 498A.

Therefore, following decades of struggle by women's rights movements across the nation, the PWDV Act went into effect in 2006. The Act was created to provide access to justice for women who might not necessarily want legal action but still want to maintain the possibility of reconciliation.

According to the National Family Health Survey (NFHS), 2019–2021, *"3.1 percent of pregnant women aged 18–49 who are married Indian women have experienced physical violence during their pregnancy; 29.3 percent of married Indian women have experienced domestic/sexual violence."* Only 507 domestic violence cases were reported in India in 2021 under the Protection of Women from Domestic Violence Act of 2005, compared to 136,000 complaints under Section 498A of the Indian Penal Code (cruelty by spouse or his family). NFHS data show that 87% of married women who experience spousal abuse do not seek assistance.[2]

Between 2001 and 2018, there was a 53% rise in domestic violence cases in India. The researchers' data came from four domestic violence crime categories in the yearly reports of the National Crimes Record Bureau (NCRB). [3] Also, prior to the current data, according to a survey released by the National Crime Record Bureau in 2018, a crime against woman is committed in India in every 1.7 minutes, and a woman experiences domestic abuse in every recurring 4.4 minutes.[4] Apart from it, due to the predominance of traditional societal values on domestic violence, most cases go unreported, hence these figures don't provide us an accurate picture of the level of violence present in the nation. Because they are afraid of their in-laws and the issues they could encounter when their spouse or partner is freed, the majority of women don't report the situations.

Prior to the above-mentioned Data, according to the National Family Health Survey (NFHS-4), conducted in 2015–16, thirty percent of Indian women between the ages of fifteen and forty-nine have been physically abused. According to the analysis, an alarming 83 percent of married women who ever reported having experienced physical, sexual, or emotional abuse name their husbands as the prime abusers. This is followed by abuse

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2 Nearly 30% of married Indian women face domestic violence, shows data,*available at*:https://www.business-standard.com/india-news/nearly-30-of-married-indian-women-face-domestic-violence-shows-data-123051400486_1.html(last visited on August 1, 2023).

3 Domestic violence cases in India increased 53% between 2001 and 2018: Study,*available at:* https://indianexpress.com/article/cities/pune/domestic-violence-cases-in-india-increased-53-between-2001-and-2018-study-7893930/(last visited on August 1, 2023).

4 Domestic Violence In The View Of Covid-19, *available at:* https://www.legalserviceindia.com/legal/article-3618-domestic-violence-in-the-view-of-covid-19.html(last visited on August 2, 2023).

from the husbands' dads (33 percent), mothers (56 percent), and siblings (27 percent)[5], according to the study.

3. Research Objectives

1. To examine the evolution and implementation of the PWDVA, 2005 in the context of domestic violence in India.
2. To assess the impact of the COVID-19 pandemic on the prevalence and reporting of domestic violence, with a focus on legal accessibility during lockdowns.
3. To evaluate the systemic limitations in the Indian legal framework that hinder the enforcement of domestic violence laws, especially during emergencies.
4. To analyze the role of international human rights instruments in reinforcing gender justice and their relevance to domestic violence jurisprudence in India.
5. To propose gender-just legal reforms and policy-level interventions to enhance protection mechanisms and institutional responsiveness post-COVID.

4. Research Methodology

Using a doctrinal legal methodology, this study critically examines international legal instruments, judicial precedents, and statutory frameworks that are pertinent to gender justice and domestic abuse. The Protection of Women from Domestic Violence Act, 2005 (PWDVA), constitutional requirements, and other human rights documents, such as the Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), are all critically examined in this mostly qualitative study.

5. A Global Perspective

International organisations like the United Nations have made significant contributions to the development of human rights in modern times, with the 1948 adoption of the Universal Declaration of Human Rights (UDHR) being the most notable advance. The declaration, which has approximately 30 articles, is the first international document to codify human rights with worldwide reach. The rights guaranteed by the UDHR include not only the individual's physical and personal rights, but also the right of society as a whole, as well as the nation-State's duties and obligations in ensuring the meaningful fulfilment of such

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5 The link between lockdown, COVID-19, and Domestic Violence' *available at:* https://idronline.org/the-link-between-lockdown-covid-19-and-domestic-violence/?gad_source=1&gclid=CjwKCAiAsIGrBhAAEiwAEzMlC99d65fyE1V4UFQBgDJRWoNgEF9lueFGWDvxZ988kkei0kSH6FQK7xoChRgQAvD_BwE(last visited November 25, 2023).

rights. UDHR via Article 3, states, "*Everyone has the right to life, liberty and security of person*."[6]

The International Covenant on Civil and Political Rights (1966), which safeguards the rights to life (Article 6) and to liberty and personal security (Article 9), reiterated this right.[7] Domestic abuse cases involve these rights as well as those found in the UDHR, ICCPR, and International Covenant on Social, Economic, and Cultural Rights (ICESCR), such as the right to the best possible level of physical and mental health.

Moreover, the Convention on the Elimination of All Forms of Discrimination against Women, which included women in the realm of human rights, was ratified by the United Nations General Assembly in 1979, that document only made passing reference to the issue of violence against women. But the main objective of CEDAW, which calls on State Parties to "condemn discrimination against women in all its forms," has been understood to include violence against women[8]. However, lack of an apt and pertinent definition of gender-based violence is one of its flaws.

Because violence against women is seen as the most extreme manifestation of discrimination on a spectrum, the Committee on the Elimination of All Forms of Discrimination Against Women, which is responsible for overseeing the CEDAW, approved General Recommendation No. 19. Gender-based violence was listed explicitly in this proposal as a kind of discrimination protected by CEDAW.

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women was approved by the General Assembly in 1999. Two methods were created by the Optional Protocol to ensure compliance with CEDAW. First, it set up a communications channel for women to submit claims of CEDAW violations after domestic remedies had run out. Second, the Optional Protocol set up a structure for investigations that permits the Committee to investigate cases of "severe or persistent violations" of women's rights. The findings from these discussions and queries are available to the public

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6 Universal Declaration of Human Rights,*available at:*https://www.standup4humanrights.org/en/article.html(last visitedAugust 4, 2023).

7 International Covenant on Civil and Political Rights, *available at:*https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights(last visited August, 1 2023).

8 Convention on the Elimination of All Forms of Discrimination against Women,*available at:*https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women(last visited August, 4 2023).

on the UN Women website. Both procedures are only available in cases where the State has ratified the Convention and the Optional Protocol.[9]

The Committee Against Torture, which oversees the Convention Against Torture (CAT), has also supported the viewpoint. The States that have ratified the Convention Against Torture forbid torture of any kind, which is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted" for obtaining information, punishing offenders, intimidating or coercing them, or for any discriminatory reason[10].

When the Copenhagen World Conference of the United Nations Decade for Women: Equality, Development, and Peace approved the resolution on "Battered women and violence in the family" in 1980, specific concern for this issue started to emerge[11]. Similarly, the Third World Conference's Nairobi Forward-looking Strategies for the Advancement of Women (1985)'s paragraph 288 called for particular actions to address violence against women[12].

During the planning stages for the United Nations World Conference on Human Rights, which took place in Vienna in June 1993, this process accelerated. The women's movement proposed that the Universal Declaration of Human Rights be revised from a gender perspective, which does not only consider the situation of women but also takes into account all aspects of society, and that it include specific references to gender-based violence[13]. The United Nations General Assembly's resolution 48/104 on ending violence against women and an inter-American convention on the prevention, punishment, and eradication of violence against women proposed by the Organisation of American States through its Inter-American Commission of Women are two recent examples of new international instruments that would recognise that all forms of gender-based violence are violations of human rights.

In 1993, the UN issued the Declaration on the Elimination of Violence Against Women. It collaborates closely with the Vienna Declaration and Programme of Action, UDHR, and

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9 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, available at:https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-elimination-all-forms(last visited August, 11 2023).

10 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,*available at:*https://redress.org/wp-content/uploads/2018/10/REDRESS-Guide-to-UNCAT-2018.pdf(last visited August 10, 2023).

11 The United Nations work on Violence Against Women,*available at*: https://www.un.org/womenwatch/daw/news/unwvaw.htm (last visited August 1, 2023).

12 Ibid.

13 Division for the Advancement of Women,*available at*: https://www.un.org/womenwatch/daw/news/unwvaw.html(last visited August 3, 2023).

CEDAW. The proclamation has led to the 25 November being recognised as *"International Day for the Elimination of Violence Against Women."* The declaration's primary goal focuses on raising awareness among the States about the fact that domestic abuse against women is much more than just a private home issue. Therefore, the statement urges direct State action and reaffirms the UN's responsibility in promoting and defending women's rights globally.[14] In the Declaration, it is acknowledged that it is necessary to grant women the same rights and precepts that apply to everyone else in terms of equality, security, liberty, integrity, and dignity.

Conference in Beijing and Platform of Action (1995) has also played a noteworthy role in this respect. According to the report, physical assault against women is a world-wide problem that affects 17–38% of women worldwide at some point in their lives. Therefore, the platform of action said that "Violence against women constitutes a violation of a fundamental human right and is a barrier to the realisation of the goals of equality, development, and peace."[15]

6. Domestic Violence and Covid-19: A Brief Statistics

Domestic abuse reports to the National Commission for Women (NCW), which receives reports from all around the nation, had increased by more than a factor of two during the time of the nationwide Coronavirus lockdown. From 116 complaints in the first week of March (March 2–8, 2020) to 257 in the last week (March 23–April 1, 2020), there were more complaints from women overall.[16]

Everyone is on edge due to job loss, income reductions, and the uncertain future brought on by the lockdown. Sunanda Desai, a professional lady from an upper-middle-class household in Mumbai, says, "*I see my self-esteem being crushed every single day*." "I get questioned daily about things that weren't done correctly. Both my house and my place of employment are stressful. My spouse, my in-laws, and even my kids yell at me. In my 10 years of marriage, there have never been any arguments or violence in the home, she claims.[17]

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14 Vienna Declaration and Programme of Action, *available at:* https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action(last visited August 5, 2023).

15 Beijing Declaration and Platform for Action,*available at:* https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf (last visited August 5, 2023).

16 Domestic Violence Cases Across India Swell Since Coronavirus Lockdown,*available at:*https://www.outlookindia.com/website/story/india-news-rise-in-domestic-violence-across-all-strata-of-society-in-the-coronavirus-lockdown-period/350249(last visited August 2, 2023).

17 Ibid

The National Commission for Women reports that during the lockdown, domestic violence against women has reached a 10-year high. The number of instances reported during these four lockdown stages is equal to the number of cases reported throughout the previous 10 years.[18]

Alongside, during the sharp surge in COVID-19 cases worldwide in 2020, a number of international bodies have recognised that the lockdowns that followed have contributed to an increase in domestic violence cases worldwide. The frequency of distress calls from women who were caged in restricted spaces with violent spouses increased by 15–30%, according to reports from many nations[19].

Undoubtedly, Pandemics create a climate of dread and uncertainty that can facilitate a variety of violent crimes against women. In addition, loneliness, unstable finances, and economic insecurity are a few other elements that lead to an increase in the frequency of domestic violence.

Regrettably, there is a widespread underreporting of domestic violence, particularly during pandemics like COVID-19. In India, the grip of those who commit domestic violence has grown during the epidemic. Victims of abuse find it challenging to ask for assistance since they are cut off from their normal networks of support.

The rise in these occurrences was caused by a number of variables. The lockdown made women powerless since it made it impossible for them to escape dangerous and abusive circumstances to safer places. Men and women who lived together for longer periods of time saw a decrease in women's privacy and an increase in violent events. Furthermore, the majority of Indian women are unable to utilise the Whatsapp number that the NCW supplied since not all of them own phones and even fewer have access to the internet.

It is also odd to see that the remedies provided by the 2005 Protection of Women from Domestic Violence Act were not considered essential services during the lockdown. The non-governmental organisations were unable to interact with the victims face-to-face, the protection officers were unable to visit their homes, and the police officers who were fighting COVID-19 on the front lines were overworked and unable to assist the victims sufficiently.

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18 Behind Locked Doors!- Lockdown and the Sharp Rise in Domestic Violence,*available at:* https://www.brainboosterarticles.com/post/behind-locked-doors-lockdown-and-the-sharp-rise-in-domestic-violence(last visited August 2, 2023).

19 Locked-down: Domestic Violence Reporting in India during COVID-19 *available at:* https://www.oxfamindia.org/blog/locked-down-domestic-violence-reporting-india-during-covid19?gad_source=1&gclid=CjwKCAiAsIGrBhAAEiwAEzMlC26cwuY5iO1bTgnAni3BPTDKgJVCt-lb9eWbg6Z0VttJ-lQoOHIzHBoCEZkQAvD_BwE(last visited November 25, 2023).

Therefore, if one is in an atmosphere with aggressive or manipulative people, there may be an increase in the frequency and intensity of threats, physical, sexual, and psychological abuse, humiliation, intimidation, and dominating behaviour. A lockdown facilitates monitoring an individual's whereabouts, isolates them from friends and family, and limits their access to financial, professional, medical, and educational resources. These actions can significantly impact a person's general and mental health and typically have long-lasting impacts on them.

For most individuals, the lockdown message "Stay Home. Stay Safe" was comforting. However, it was a period of brutally enforced incarceration with their tormentors for many others, particularly women. The non-governmental group Akshara, which is situated in Mumbai and promotes women's empowerment, has released a study on domestic abuse that occurred during the countrywide lockdown in 2020. "Grappling with the Shadow Pandemic: Women's Groups and Domestic Violence in India," a 56-page paper, compiles victim testimonies and attempts to provide the government a model of remedies in the event that a situation such to this one arises in the future[20].

Therefore, without any shade of doubt, it is safe to conclude that violence against women surged to all-time highs globally after lockdowns, which is evident from the fact that in a 2021 study on domestic abuse in 13 countries in Africa, Asia, South America, Eastern Europe, and the Balkans, the UN referred to the issue as a "shadow pandemic[21]." Numerous lockdown and quarantine protocols closely followed the global spread of COVID-19. After urging a worldwide truce so that attention might be directed towards combating the virus, UN Secretary General António Guterres stated in early April of 2020, *"Violence is not confined to the battlefield. For many women and girls, the threat looms largest where they should be safest. In their own homes…We know lockdowns and quarantines are essential to suppressing COVID-19. But they can trap women with abusive partners[22]."*

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20 Domestic violence during COVID lockdown,*available at:*https://frontline.thehindu.com/social-issues/gender/domestic-violence-during-covid-lockdown/article38034608.ece(last visited November 25, 2023).

21 Shadow pandemic of domestic violence, *available at:*https://news.harvard.edu/gazette/story/2022/06/shadow-pandemic-of-domestic-violence/(last visited November 23, 2023).

22 No safer place than home?: The increase in domestic and gender-based violence during COVID-19 lockdowns in LAC, *available at*: https://www.undp.org/latin-america/blog/graph-for-thou ght/no-safer-place-home-increase-domestic-and-gender-based-violence-during-covid-19-lockdowns-lac?gad_source=1&gclid=CjwKCAiAsIGrBhAAEiwAEzMlC52__hgtIbFG1zzikeTKGob7g1sO2FUkul47BFL1E9j3UvlPqLvHyRoCwSgQAvD_BwE>(last visited November 25, 2023).

Ironically, though orders to stay at home may be required to protect individuals from the virus, but they may also unintentionally increase the risk of other fatal hazards, such as the possibility of domestic and gender-based violence.

7. Gender Justice and Fallacies of Domestic Violence

To understand the research issue, a clear relationship between gender justice and domestic violence must be established. Women's rights have frequently been advanced via the employment of legal, social, and economic strategies by gender justice. It is common to use terms like "gender equity," "gender equality," "women's rights," and "women's empowerment" interchangeably. But if social justice is the prism through which we see gender justice, then gender justice means establishing laws that will improve the fairness and equality of society for men and women.

The country's domestic abuse laws now promise to protect just roughly half of the population, purposefully keeping their eyes closed to the rest. Article 14, which states that no one should be denied equality before the law[23], should technically be stepping in at this point. The State shall not discriminate on the basis of sex[24], and should ensure the right to life and personal liberty[25] in its true spirit. Although India's Constitution requires lawmakers to enact comparable rules for both the sexes under the Fundamental Rights clause, the reality shows a very different picture.

There is now no statutory remedy in place to protect men and provide them the power to pursue legal action in such cases, despite the fact that there have been instances in recent years where males have been the "victim" of harassment in marital conflicts. The majority of nations in the globe have domestic violence laws that protect both men and women. Men may also ask a judge to issue restraining orders, which prohibit an abusive spouse or partner from harming the victim or even making contact with them. While there is no legal protection for males who are the targets of domestic abuse from their wives or other female family members, it is nearly legal in India. In several instances, a woman has tormented, beaten, and bashed a husband while working with her own family.

When it comes to gender studies, the matter gets trickier. This is where the word "gender," not "feminism," has to be emphasised. Gender takes into account how men and women, not only women, fit into society overall. It is an endeavour to create a balance in society that upholds gender equality or is totally gender-neutral when needed, not a conflict between men and women.

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23 The Constitution of India, art. 14.

24 The Constitution of India, art.15.

25 The Constitution of India, art. 21.

The Domestic Violence Act of 2005 was put into effect by the legislature to protect women from harassment of any kind. Although much emphasis was placed on this topic, it was regrettably overlooked that men could also become victims of harassment in these situations. As a result, it is now necessary to reconsider how to protect men from women as well.

The Honourable Supreme Court ruled in the case of *Dr. N. G. Dastane v. Mrs. S. Dastane*[26] that there are two types of cruelty: mental and physical. Although it may be true that a powerful spouse tends to perpetuate physical traits in most cases, this isn't necessarily the case. In the event of mental cruelty, it is also the other way around. However, in the vast majority of cases of mental abuse, the woman is virtually always the one who abuses her husband mentally.

In the *Shushil Kumar Sharma v. Union of India*[27] case, the Apex Court made the observation that an abuse of the clause might lead to the emergence of a New Legal Terrorism. The question now is: Can laws intended to safeguard women be abused? "Unfortunately, a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony, and happiness of the society," the Honourable Supreme Court observed in a case in response to this question.

The Supreme Court made this statement in relation to the Domestic Violence Act. It is crucial to remember that cruelty cannot be limited to a female perspective. This may also affect males, and in some situations, cruelty or harassment can take the form of mental abuse as well as physical abuse. In these situations, victimisation of male partners and police harassment are also significant problems.

Police officers and errant women abuse the laws designed specifically for women. Courts and society as a whole do not hear the cries of abused men and their families. According to the practice, "the true goal of the women-related specifies laws is misapplied, and as a result, husbands suffer without fault."

In the case of *Vijaylakshmi V. Punjab University*[28], it was decided that the State might discriminate against males while not discriminating against women due to the combined application of Article 15(1) and (3). It is a civil right to be protected against domestic abuse, but it is equally important to remember that this right should not be abused.

8. Conclusion and Suggestions

In this context, the term "legal dereliction" refers to the inability of the legal institutions to preserve gender equality and defend the rights of victims of domestic abuse. Gender

26 AIR 1975 SC 1534.

27 AIR 2005 SC 3100, Preeti Gupta V. State of Jharkhand, AIR 2010 SC 3363.

28 AIR 2003 SC 3331.

biases in the legal profession, inadequate legal safeguards, and a lack of political will to prioritise gender justice are some of the reasons for this failure. For example, a lot of places still consider domestic abuse to be a private affair and are reluctant to become involved in family matters. This viewpoint not only downplays how severe the crime is, but it also helps to maintain a climate of impunity and quiet.

The primary function of the family as a source of stability and support is disrupted by domestic violence. Abuse shatters confidence, instills fear, and upsets the balance within the family. Because domestic violence is so common, its repercussions spread, impacting entire communities and cultures. For example, there are significant financial consequences associated with domestic violence, including missed wages, medical bills, and legal fees.

It is rather regrettable that we mistreat the ladies we worship and revere in the guises of Durga, Saraswati, Parvati, and Kali when we are in those four walls. The status of women in India has changed significantly during the last several millennia in a number of important ways. India has a rich history of women, from their mainly unrecognised status in prehistoric times to the dark ages of the mediaeval era to the popular support of equal rights by reformers. Violence against women is mostly caused by gender relations, which implicitly assume that men are superior to women.

Domestic abuse also contributes to gender inequality since it disproportionately affects women. This not only perpetuates negative gender norms and stereotypes but also makes it more difficult for women to engage fully in social, political, and economic life. Therefore, efforts to stop domestic abuse are essential to advancing gender equality and giving women more authority.

The heinous crime of domestic violence against women is caused by a variety of factors, including a lack of education, legal ignorance, extramarital affairs, doubts, poverty, the demand for dowries, sociocultural factors, orthodox attitudes of the populace, hatred of the populace towards girl children, the long-standing belief among the populace that women are the inferior group of people in society, and a preference for the male child. These factors are to blame for the orthodox attitudes of the populace.

Therefore, it follows that domestic violence is a serious violation of human rights that can only be eradicated from society when all pertinent parties share in the collective duty for doing something about it. States should seek to strictly enforce domestic violence laws, and those who break them should face harsh consequences. Every counting day, more people are becoming aware of domestic violence. Changes in the fields of instruction, legal aid, counselling, rehabilitation, and self-regulatory norms will be extremely beneficial to the cause.

Although the PWDVA contains a comprehensive range of safeguards for domestic violence victims' rights, there have been some difficulties in implementing this Act. The absence of Protection Officer appointments across the nation has been a major obstacle. The Act has not yielded noticeable results because of this important technical challenge—that many States simply do not appoint Protection Officers. Concerns about how well this Act will be executed have also grown out of arguments about its potential abuse.

Considering that the act is a civil law document. In contrast to the amount of complaints filed in a district, there is no needed number of protection officers. Additionally, the quantity of service providers that have been hired is insufficient. The problem is that the government has hired the protection officers for a different task in addition to their mandate to address women's difficulties. Although all of the provisions are specified in the Act's text theoretically, in practise, their execution is simply absent, and the protocol lacks consistency.[29]

At the same time, we should adopt a wider perspective and start accepting that women are not always victims of domestic violence and are not necessarily weaker than men. Additionally, the legal system falls short in protecting men from domestic violence which bring us aloof of the fact that these victims also need legal and psychological support. Also, building sensitivity and spreading knowledge about it among people and organisations requires a sincere effort. The Current national laws in this regard need to be revisited in light of Gender Justice and balanced out with various judicial interpretations.

Comprehensive societal and legal initiatives are necessary to address domestic violence. Strong legal systems that protect victims and hold offenders accountable are necessary. This entails putting laws against domestic abuse into effect and upholding them, offering resources and assistance to victims, and raising public awareness and educating people about the problem.

Social interventions are just as important. Shelters, hotlines, and counselling programs are examples of community-based support networks that provide vital resources to victims trying to flee abusive circumstances. Campaigns for public awareness can shift social perceptions of domestic abuse and encourage a zero-tolerance culture.

On the basis of the above analysis of the law, these are the following suggestions, specifically in light of Gender Justice through a social perspective in light of human rights:

1. *Increased Awareness of Anti-Domestic Violence Legislations***:** It is important to sensitize all segments of society, not only with respect to the laws in implementation but the procedure it imbibes within themselves, because majority of the sufferers

29 A critical Analysis of Domestic Violence Act, *available at:*https://www.studocu.com/in/document/sambalpur-university/master-in-law/artice-on-critical-analysis-of-domestic-violence-act/34128026>(last visited August 5, 2023).

does not know their rights and remedies available. Women living in rural or distant locations, where access to legal and support resources is restricted, may not find the act to be relevant or accessible.

2. *Easy access to Redressal Mechanisms and effective implementation*: Just formulating a procedure is not sufficient in itself, it gets important to generate confidence of providing justice to victim as the Act's implementation faces several obstacles, such as a lack of funding, a shortage of qualified staff, and a limited ability to assist women who have been the victims of domestic abuse. The legislation includes a number of sanctions against those who commit domestic abuse, but their efficacy is constrained by insufficient enforcement and the drawn-out nature of the court system.

   The government's inadequate attempts to uphold the fundamental goal of the laws made it more difficult to implement the law during the lockdown. Eventually, the number of domestic violence cases rose because middle-class and lower-class women were unable to report their assault.

3. *Eliminating Social and Cultural barriers at individual level*: The effectiveness of the act may be hindered by deeply rooted societal and cultural conventions that support violence against women, since women may feel under obligation to put up with or conceal domestic abuse.

4. *Training of Gender Sensitivity to gatekeepers of law enforcement machinery:* As the complexities and forms of Domestic Violence changes with advent of modernization in our culture, it becomes significant to sensitize Judges, bureaucrats, lawyers, police officers, protection officers and other authorities mentioned in the Act so that they may be vehemently trained in respect of gender sensitivity.

5. *Adherence to Human Rights and Constitutional imperatives*: The domestic laws should be so formulated and executed so as to accommodate both human rights and constitutional imperatives within themselves. Both at International and National levels, efforts must be put forth to come up with a more stringent and binding machinery to curb domestic violence.

6. *Gender Sensitization training at school levels:* The young generation, both boys and girls should be trained as on measures to combat with violence, help available and building a strong foundation against violence.

7. *Psychological help to women*: Although the statute focuses on the legal justice for Indian women, it strangely neglects to offer them practical aid in the form of clothes and money as well as psychological help in the form of trauma treatment. This just prevents the victims from pursuing legal action and instead encourages them to internalise abuse.

8. *Balancing Rights of both Men and Women in light of Gender Justice*: In urban areas where there is sufficient knowledge of the PWDVA (DV Act), 2005, discussions

regarding its abuse may be frequent, but in the majority of Indian villages, women still don't know how to leave their homes when they are being abused. The act may be slightly skewed to benefit Indian women over males, but when we acknowledge how many women are actually vulnerable, the necessity for that becomes evident.

9. *Reshaping Remedies*: Because there is little civil legislation regarding domestic abuse, women have been compelled to submit petitions for divorce, judicial separation, or injunctions prohibiting removal from their marital residence. The definition of the marital dwelling remains ambiguous under Indian law. A woman might not want to separate from her husband. She could just be trying to find a method to stay away from violence and want to feel protected in the marital house. In this instance, it is crucial that any new law consider the experiences of women who have been abused at home and address these women's urgent needs rather than trying to provide long-term solutions. The reason for this is that victim care and healing have been subordinated in favour of discovery and punishment under the law on violence against women. There is no chance of reconciliation when a woman accuses her husband of being a criminal; she has to leave their married home since the criminal is being prosecuted in a criminal court and the criminal courts are unable to provide support for women and their children while the case is pending. The criminal justice system is powerless to save women from losing their homes to eviction. All women in intimate relationships should have access to justice and legal remedies under the new law.

The institution of the family is extremely important for forming people and preserving social order. But there's a real risk to this institution since domestic violence is so common. In addition to protecting victims, ending domestic abuse also protects the core roles of the family and advances the general well-being of society. Societies may strive towards ending domestic violence and making sure that the family continues to be a haven of love, support, and security by bolstering legislative safeguards, improving support networks, and addressing cultural practices that encourage abuse.

In conclusion, there has been a general failure to attain gender equality, which is reflected in the prevalence of domestic abuse and the insufficient reaction of judicial institutions. To really protect everyone's rights and establish a just society, a concentrated effort is required to solve the legal and cultural problems that encourage domestic abuse. To achieve this, people at all societal levels—from community members to legislators—must make a commitment to confront and demolish the systems that uphold gender-based violence and injustice.

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Arbitration and Insolvency in India: Legal Conflicts and Practical Guidelines

Joseph Cyriac* & Elizabeth P. Mathai**

Abstract

This article examines the interconnection between arbitration and insolvency law in India, focusing on the conflicts arising from their different objectives: arbitration's emphasis on party autonomy versus insolvency's collective creditor-centric framework under the Insolvency and Bankruptcy Code (IBC), 2016. The study addresses three core research questions: (1) How do statutory provisions like the Section 14 moratorium and the "clean slate" doctrine under the IBC impede arbitration proceedings and enforceability of awards? (2) What judicial and legislative strategies can reconcile these regimes while preserving their core principles? (3) How can India adopt global best practices to harmonise arbitration and insolvency in cross-border disputes?

The objectives are also threefold: to map jurisdictional overlaps and legislative gaps,analyse landmark judicial rulings, and propose actionable reforms. Through a doctrinal analysis of case law, statutes, and comparative frameworks, the article identifies systemic friction points, including enforcement delays for foreign awards and judicial overreach in reviewing arbitral findings.

Key findings reveal that legislative clarity on exceptions to the moratorium, adoption of the UNCITRAL Model Law on Cross-Border Insolvency, and procedural synergies are critical for harmonisation. The study concludes that India's legal evolution depends on practical reforms, balancing creditor rights with contractual autonomy, to position itself as a global arbitration hub while safeguarding insolvency's transformative goals.

Keywords : Arbitration, Insolvency and Bankruptcy Code (IBC), Moratorium, UNCITRAL, Cross-Border Disputes.

1. Introduction to Arbitration and Insolvency Law in India

As a new insolvency regime came up in India, it is important to look into both the arbitration and insolvency aspects deeply. As only limited information was available about the new law, a lot of arbitration procedures were halted due to the new law. In 2016, India went through a sudden change in the legal system of insolvency. The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) significantly reshaped arbitration processes, altering their interplay with insolvency proceedings.. Actually, there are no direct provisions about arbitration in the code except for the imposition of a moratorium. In the post-COVID era, the number of business disputes has increased in the commercial arena. The lack of clarity in rules has made this a tough area to operate. A fresh initiation

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of arbitration or a continuation of the process does not seem to be easy. It gradually became confusing. A US Court once ruled that this is a framework that will lead to polarized views. Bankruptcy policy will create more centralization, while arbitration policy stands by the side of decentralization.[1]The code was introduced to improve insolvency resolution. According to the code, a financial[2]or operational creditor[3] having an outstanding due of 1 Crore[4].A corporate debtor can proceed to initiate the Code before the National Company Law Tribunal.[5]

This law is a key area in legal proceedings. Especially for people fighting financial distress, this law is important in solving and dealing with the insolvency issue. Arbitration is a way to solve cases outside the court without involving the legal process and procedural delay of courtroom activity. The Arbitration and Conciliation Act, 1996 is the base legislation governing arbitration in India. This rule provides a clear framework for arbitration proceedings. The Act provides proper regulation for everything related to arbitration ranging from appointment of arbitrator to enforcement of award. Insolvency framework handles issues like financial trouble and bankruptcy. The Base law governing concerns related to insolvency is The Insolvency and Bankruptcy Code, 2016. This code provides detailed guidance regarding insolvency process and procedure. Insolvency is a situation of financial distress that arises when a person or company does not have enough assets to finance its liabilities. At this stage a complex process is initiated to arrive at a solution. Firstly, professionals are appointed to handle the issue. These professionals should have good touch regarding law and commerce to take actions on the occasion of insolvency. Then the proceeding of insolvency is carried out. There is a proper method cited by the act on how to distribute the asset to creditors having a claim. The professionals will follow the code and provide necessary support in improving entrepreneurship through this whole process. So, Arbitration and insolvency framework together plays a prominent role in solving disputes in the case of financial distress. These laws require careful application as they affect the way our economy works.

2. History of Arbitration and Insolvency Jurisprudence in India

Arbitration in India dates back to ancient time. It included settling disputes between communities. It was not backed by formal courts. So the societal imbalance affected decision making through arbitration, making things operate through a formal legal system once again. After the growth of an official legal system, arbitration became a practice

1 In Re United States Lines Inc. 197 F.3d 631 (2nd Cir. 1999)

2 s. 5 (7), Insolvency and Bankruptcy Code

3 s. 5 (20), Insolvency and Bankruptcy Code

4 Notification under s. 4 of the Code, available on https://ibbi.gov.in//uploads/legalframwork/48bf32150f5d6b30477b74f652964edc.pdf

5 s. 7,9,10 of the Code

within communities. It existed as a part of Hindu Law and Muslim Law. Some Vedic texts of Hinduism show clear evidence that arbitration existed as a part of religion. Islamic texts also leave such information. During the British period arbitration got a legal framework. The Bengal regulation of 1882 drew guidelines on how to settle disputes outside court. Similar laws came in other British presidencies like Bombay, Madras etc. Indian Arbitration Act 1899 was the first rule that unified arbitration laws for the whole country. Then the Civil Procedure Code which came into effect on 1908 played a prominent part in becoming the face of arbitration rules of India. Second Schedule of the Act was fully about arbitration. Afterwards a fully separate rule came in for arbitration. The Arbitration Act came into effect from 1940. After India attained Independence, these provisions were amended to suit the changes. Arbitration and Reconciliation Act came into effect from 1996. The Civil Procedure Code was amended in 1999. These revised regulations gave a clear shape into arbitration process in India.

The origin of insolvency law in India can be tracked back from the colonial era. The British put forward the first official insolvency governance with the introduction of the Presidency Towns Insolvency Act of 1909, which guided and directed insolvency activities in Bombay, Calcutta, and Madras. Gradually, the Provincial Insolvency Act of 1920 was set up to cater to insolvency related issues in other areas of India. Both acts included the British influence and were mainly focused at safeguard creditors' interests.[6] Post-independence, there was a high need for a complete, multidimensional insolvency framework. This led to the formation of the Companies Act, 1956, which contained guidelines for winding up of companies. However, the act was observed to be incomplete in handling insolvency problem effectively. To address the flaws, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was enacted to rescue and restructure sick industrial companies.[7] The notable change came with the setting up of the Insolvency and Bankruptcy Code (IBC) in 2016, which tried to gather and change the rules related to reconstruction and insolvency resolution. The IBC resulted in a total shift, concentrating more on the rehabilitation of debtor institutions and increasing the value of assets for owners.[8] It took in a time-bound resolution practice and introduced the Insolvency and Bankruptcy Board of India (IBBI) for looking into the implementation.[9] The shift of insolvency law in India clarifies a change from creditor-focused laws to a more just approach incorporating both creditor and debtor concerns. The IBC has been prominent in revolutionizing India's insolvency framework, improving its position in the Ease of Doing Business rankings internationally.[10]

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6 The Presidency Towns Insolvency Act, 1909

7 The Sick Industrial Companies (Special Provisions) Act, 1985

8 The Insolvency and Bankruptcy Code, 2016

9 Insolvency and Bankruptcy Board of India (IBBI)

10 World Bank Ease of Doing Business Report, 2020

Understanding Insolvency Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code (IBC), 2016, marks a landmark reform in the terrain of insolvency and bankruptcy rules in India. The IBC incorporates and improves rules relating to reconstruction and insolvency resolution, offering a time-bound procedure to overcome insolvency between joint stock companies, partnership businesses, and individuals. This Code is significant in guaranteeing that the stake of all parties is protected and the value of assets is improved through the insolvency procedure. While looking into the background, we can understand how important IBC implementation was. Before the enactment of the IBC, India had a broken and inadequate legislation regarding both insolvency and bankruptcy. Multiple laws existed to guide the procedure, including the Sick Industrial Companies Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), and the Companies Act, 1956. These legislations led to overlong and expensive insolvency procedure, often incapable of resolving the financial distress of companies in a needy manner. The IBC was thus formed to question these issues, providing a complete framework for insolvency proceedings in India.[11]One of the salient features of the IBC is its focus on a timely resolution process. The Code clearly provides a maximum time limit of 180 days; this can be extended by 90 days, to finish the Corporate Insolvency Resolution Process (CIRP).[12] This guarantees that insolvent firm is handled quickly, preventing further diminishment in value.

Also, the IBC put forward the idea of the Insolvency and Bankruptcy Board of India (IBBI), which governs as the regulator overlooking insolvency procedures and guarantees maintaining the Code.[13] The IBC also formed the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunal (DRT) as the associate authorities for meeting with corporate and individual insolvency.[14] The new regulation of the IBC has remarkably improved India's position in the World Bank's Ease of Doing Business Index, especially in the area of providing solution to insolvency. The Code has been a significant achievement in developing increased recovery rates and minimizing the time taken for resolving insolvency cases.[15] Anyway, the enactment of the IBC has not been without issues. The NCLT has come across problems associated to ability and time constraint in decision-making. Also, the COVID-19 pandemic has created further challenges, creating temporary suspensions of insolvency procedures to provide help to companies fighting financial distress. The Insolvency and Bankruptcy Code, 1996, presents a landmark step in India's legislation for dealing with insolvency and bankruptcy. By incorporating various laws and

11 Report of the Bankruptcy Law Reforms Committee, 2015

12 Insolvency and Bankruptcy Code, 1996, s. 12

13 Insolvency and Bankruptcy Code, 1996, s. 188.

14 Insolvency and Bankruptcy Code, 1996, s. 5 (1)

15 World Bank's Doing Business Report, 2020

bringing a timely resolution process, the IBC has definitely improved the efficiency of insolvency process in India. While issues remain, the total impact of the Code has been affirmative, leading to a more sound insolvency resolution framework.

3. Arbitration Agreements and Insolvency Proceedings: How do they Operate

Arbitration agreements and insolvency proceedings are two key aspects of the law and financial governance in India, each providing distinct services but sometimes intersecting in difficult ways. Arbitration is a process of resolving issues outside of the regular court system, depending on the concerned parties' opinion to compromise in their disputes to the arbitrators appointed. Insolvency procedure, on the other hand, is legislative actions which help financially distressed individuals or firms to attain relief from their financial issue. In the Indian scenario, the intersection between these two systems has been a matter of important legislative and judicial explanation. Arbitration efforts are overseen by the Arbitration and Conciliation Act, 1996 (ACA) in India. This Act provides a comprehensive foundation for the operation of arbitration process and the provision of arbitral awards. The ACA is developed to enable efficient and timely resolution of important disputes, creating a party-driven method to resolution of cases. Parties to an agreement or contract often opt arbitration clauses to make sure that any future cases will be dealt with arbitration rather than traditional courtroom process. Insolvency proceedings in India are overseen by the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC gives a robust and timely framework for fighting insolvency issues and works to improve the value of the debtor's holdings, guarantee just distribution to creditors, and promote business activities. The IBC also gives importance to the reconstruction and development of the business, whenever possible, as a better solution than liquidation.

The crossing of arbitration deeds and the insolvency process involves several questions. One of the key issues here is the instillation of the arbitration process when a party turns insolvent. The IBC includes provisions that order a moratorium on the beginning or continuation of legal process, including arbitration, once insolvency steps begin.[16] This moratorium is aimed at giving operating space for the debtor to re-launch its debts and avoid more than one process that could affect the insolvency process. Anyway, this moratorium can sometimes cause conflicts with the principle of party given priority, which is important to arbitration. Parties might be directly choosing arbitration as their choice of dispute resolution process, and the inclusion of a moratorium can really override their contract. Indian courts have been asked to balance these conflicting choices and have generally upheld the supremacy of the IBC in insolvency related cases.[17] The courts in India have

16 Section 14 of the Insolvency and Bankruptcy Code, 2016.

17 K. Sashidhar v. Indian Overseas Bank & Anr., Civil Appeal Nos. 10673, 10719-10720, and 10793-10794 of 2018.

been prominent in shaping the intersection between arbitration and insolvency. In certain cases, Indian courts have clearly stated that once a moratorium under the IBC comes into force, the arbitration process cannot move ahead without explicit permission from the National Company Law Tribunal (NCLT).[18] This condition guarantees that the goals of the IBC are primary while giving prominence to the arbitration agreement as much as possible. In some situations, courts have allowed the process of arbitration to continue if it does not affect the insolvency resolution process. For instance, if the arbitration relates to an issue that does not bother the debtor's assets or the demands of creditors, it may be permitted to proceed.[19] Also, courts have clarified that arbitral awards given before the start of insolvency proceedings can be enacted, provided they do not contradict with the insolvency resolution process.[20] The intersection between arbitration agreements and insolvency proceedings in India is an important and continuously changing area of law. The foundation provided by the ACA and the IBC asks to balance the interests of debtor and creditor in commercial disputes and the long-term goals of insolvency resolution. While issues remain, judicial verdicts have been key in synchronizing these two systems, guaranteeing that the benefits of arbitration are not fully lost in the situation of insolvency, and that the intention backing the insolvency process is maintained.

4. Court Rulings on Arbitration and Insolvency

The judicial interpretation of the Insolvency and Bankruptcy Code, 2016 in relation to arbitration has influenced the outlook of insolvency proceedings in India. Landmark rulings have clarified the scope of disputes, the evidentiary value of arbitral awards, the impact of the moratorium, and the precedence of the IBC over other legal frameworks.

4.1. Interpretation of "Dispute in Existence" Under Section 5(6), IBC 2016

Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.

Section 5(6) of the IBC defines a "dispute" to include suit or arbitration proceedings that relate to the existence of the debt, the quality of goods or services, or violations of representation or warranty[21]. In this case, the Supreme Court interpreted that the term "dispute" is inclusive rather than exhaustive. The ruling cleared that if any reasonable contention exists before a demand notice is issued under Section 8, the insolvency application under Section 9 must be rejected[22]. This prevents the misuse of the IBC as a mere debt recovery tool.

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18 Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd. & Ors., Civil Appeal No. 16929 of 2017.

19 Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., Writ Petition (Civil) No. 99 of 2018.

20 K. Kishan v. Vijay Nirman Company Pvt. Ltd., Civil Appeal No. 21824 of 2017.

21 The Insolvency and Bankruptcy Code, 2016(Act 31 of 2016),s.5(6)

22 *Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd,* AIR 2017 SC 4532

Similarly, in K. Kishan, the court held that a challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act qualifies as a pre-existing dispute. This disqualifies an operational creditor from initiating the Corporate Insolvency Resolution Process (CIRP) when a genuine dispute is already in place[23]. Both cases establish that the IBC is not a substitute for a regular civil suit or arbitration, thereby safeguarding the interests of all parties involved.

4.2. Arbitral Awards as Proof of Debt

Annapurna Infrastructure Pvt. Ltd. &Anr. v. Soril Infra Resources Ltd.

In the Annapurna Infrastructure case, the NCLAT held that an arbitral award constitutes a valid document evidencing "operational debt" under Sections 3(11) and 5(21) of the IBC. The decision indicates that even if the execution of the award is pending, it does not prevent the creditor from initiating the CIRP, provided there is no stay under Section 34 of the Arbitration Act.[24] This interpretation is relevant because it is in par with the IBC's objective of ensuring time-bound resolution, thus preventing the debtor from delaying insolvency proceedings through prolonged execution processes

4.3. Impact of Moratorium Under Section 14, IBC

Section 14 of the IBC institutes an automatic moratorium that prohibits the institution of new suits or arbitration proceedings, the continuation of pending legal actions and the execution of judgments against the Corporate Debtor.

K. S. Oils Ltd. Vs the State Trade Corporation of India Ltd. &Anr.

Thetribunal held that even pending arbitration must be stayed once the moratorium is in effect. This blanket prohibition is designed to shield the debtor during the resolution process. [25] However, the Power Grid decision provided a different perspective by allowing proceedings under Section 34 aimed at challenging an arbitral awardto continue, as they are not primarily enforcement actions and do not disrupt the insolvency process.[26]

4.4. Parallel Arbitration and Insolvency Proceedings

Fourth Dimension Solutions Ltd. v. Ricoh India Ltd. & Ors.

In a situation where insolvency proceedings have already been initiated, the Supreme Court in the Fourth Dimension Solutions case clarified that arbitration proceedings can continue even after the Committee of Creditors has approved a resolution plan. The decision, however, makes it clear that such arbitration is subject to the arbitral tribunal's discretion

23 *Id.*at 20

24 *Annapurna Infrastructure Pvt. Ltd. vs SORIL Infra Resources Ltd* (2017) 380 SCC

25 *K.S. Oils Ltd v. The State Trade Corporation of India*(2018) 146 SCL 588

26 *Power Grid Corporation of India Ltd. v. Jyoti Structures Ltd.*(2017) SCC Online 12189

and should not interfere with the resolution plan's implementation. This ruling is significant as it acknowledges the potential for parallel proceedings in commercial disputes, balancing the need for both expedited insolvency resolution and the right to arbitrate disputes related to non-included liabilities.[27]

4.5. Overriding Nature of IBC - Section 238

Swiss Ribbons Pvt. Ltd. v. Union of India

Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund

Section 238 of the IBC stipulates that the IBC has an overriding effect over all other laws in the event of a conflict. In Swiss Ribbons, the Supreme Court held that once insolvency proceedings are initiated, all other legal proceedingsincluding arbitrationmust be stayed until the resolution process is complete. [28]

In Indus Biotech, the court further clarified that if the tribunal admits the CIRP, the dispute becomes non-arbitrable. Conversely, if the CIRP application is dismissed, the parties are free to pursue arbitration. This legal doctrine ensures that the IBC's collective resolution mechanism is not fragmented by concurrent proceedings, reinforcing insolvency law's supremacy over conflicting statutes.[29]

5. Current Scenario of insolvency proceedings and arbitration

India's legal system is witnessinga complex relationship between insolvency and arbitration, which often collides.This friction arises from their objectives. Insolvency prioritises asset preservation and equitable distribution, whereas arbitration seeks binding resolution of disputes through party autonomy procedures. The judiciary has decided on this clash through various rulings, but legislative ambiguity and evolving cross-border complexities keep the landscape in friction.

The moratorium u/s 14 of the Indian Bankruptcy Code,which freezes all legal proceedings against a corporate debtor upon admission of an insolvency petition,arises as a critical point. Courts held that arbitrations initiated against the corporate debtor post-moratorium are void.[30] But exceptions exist. Tribunals may allow proceedings by the CD to recover dues over it.In Power Grid Corp. v. Jyoti Structures Ltd, the Delhi High Court permitted arbitration to proceed because the potential award would not deplete the debtor's estate.[31] Similarly, counterclaims filed by the CD during insolvency are permissible to avoid

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27 *Fourth Dimension Solutions Ltd. v. Ricoh India Ltd*., (2021) SCC Online SC 830.

28 *Swiss Ribbons Pvt. Ltd. v. Union of India*, [2019] 3 S.C.R. 535

29 *Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund*, (2021) 6 SCC 436

30 *Supra note*18 at 5

31 *Supra note* 26 at 8

procedural inequity.[32]These rulings balance collective creditor rights with the CD's ability to maximise asset value.

The timing of insolvency petitions vis-à-vis arbitration also shapes outcomes. Until the NCLT formally admits an insolvency petition, disputes remain arbitrable. For example, in the Indus Biotech case, the SC allowed arbitration to continue during the pre-admission phase,which underlines that insolvency's in rem nature crystallises only post-admission.[33] But, the IBC's overriding effect under Section 238 empowers creditors to bypass arbitration clauses entirely. Operational creditors, in particular, often invoke Section 9 of the IBC directly, as arbitration agreements cannot stall insolvency petitions if a default is established.[34]

Under IBC, the arbitral award itselfserves as conclusive evidence of debt.[35]Foreign awards, however, pose unique challenges. While the Mumbai NCLT in Agrocorp v. National Steel accepted an unenforced foreign award as proof of debt, uncertainty persists over whether enforcement under Part II of the Arbitration Act is mandatory. Tribunals increasingly adopt a flexible approach, prioritising commercial realities over procedural rigidity.[36]

The "clean slate"[37] doctrine further complicates matters. Once a resolution plan is approved under the IBC, all prior claims against the CD are extinguished, rendering subsequent arbitration non-arbitrable. The Delhi High Court in *Indian Oil Corp. v. Arcelor Mittal* barred post-resolution claims to preserve the finality of insolvency outcomes.[38] This aligns with global trends-Singapore's courts, for example, similarly prioritise insolvency's collective ethos over arbitration agreements that could disrupt creditor hierarchies.

Judicial innovation has filled legislative gaps. Courts permit constitutional writ petitions during moratoriums if public interest outweighs insolvency's objectives, as seen in disputes involving state-owned entities. Meanwhile, the Supreme Court's recent curative intervention in Delhi Metro Rail Corp. v. Delhi Airport Metro Express, setting aside a

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32 *Jharkhand Bijli Vitran Nigam Ltd. v. IVRCL Ltd.*, (2018) ibclaw.In 266 NCLT

33 *Supra note* 29 at 8

34 *Hasan Shafiq v. CT Technologies Aps & Ors.*, (2018) ibclaw.In 266 NCLT

35 *Kotak Mahindra Bank Ltd. v. A. Balakrishnan,* (2022) SCC OnLine SC 706

36 *Agrocorp International Pte Ltd. v. National Steel and Agro Industries Ltd.*, [2022] 1 Comp. Law Rep. 567 (NCLT Mumbai).

37 Debdatta Mukhopadhyay, The theory of clean state under the IBC, 2016 in light of the Ghyansham Mishra Case,*ibc laws, available at* https://ibclaw.in/the-theory-of-clean-slate-under-the-ibc-2016-in-light-of-the-ghyansham-mishra-case-by-debdatta-mukhopadhyay/?print=pdf(last visited on 27/04/2025)

38 *Indian Oil Corporation Ltd. v. Arcelor Mittal Nippon Steel India Ltd.*(2023) SCC OnLine Del 6318

₹7,200 crore arbitral award, has sparked debates about judicial overreach in arbitration.[39] Draft amendments to the Arbitration Act, aiming to institutionalise emergency arbitration and streamline timelines, signal a legislative push to modernise India's dispute resolution framework.

Arbitration and insolvency clash in India's legal landscape : The intersection of arbitration and insolvency in India faces significant issues, including the moratorium under Section 14 of the IBC, which halts arbitration proceedings against corporate debtors and restrains recovery efforts[40]. Ambiguities persist over the arbitrability of disputes, particularly post-resolution claims extinguished under the IBC's "clean slate" doctrine, which clashes with arbitration's contractual autonomy[41]. Enforcement of arbitral awards is complicated by the requirement of "undisputed" debt for triggering insolvency[42]and uncertainties around foreign awards, often delaying cross-border recoveries[43]. Jurisdictional overlaps between tribunals and insolvency courts, coupled with legislative gaps, lead to inconsistent rulings and procedural deadlocks[44], while judicial interventions risk overreach when revisiting arbitral findings under the form of **"**patent illegality" or public policy[45].

6. Bridging Arbitration and Insolvency in India

To harmonize these regimes, India must adopt legislative reforms such as codifying exceptions to the moratorium for debt recovery by corporate debtors and integrating the UNCITRAL Model Law on Cross-Border Insolvency to resolve jurisdictional conflicts[46]. Procedural synergy, like aligning arbitration timelines with the IBC's 330-day resolution window[47] and institutionalising insolvency expertise in tribunals would enhance efficiency. Drawing from global practicessuch as the UK's allowance of non-core arbitrations during insolvency[48]and Singapore's public-priority balancing[49].India can craft a hybrid framework

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39 *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd. (*2024) SCC OnLine SC 522

40 *Supra note* 18 at 5

41 *Id* at 38

42 *Supra note* 20 at 6

43 *Agrocorp International Pte. Ltd. v. National Steel and Agro Industries Ltd.*, (2022) SCC OnLine NCLAT 447

44 *KK Ropeways Ltd. v. Billion Smiles Hospitality Ltd.*, (2023) SCC OnLine NCLAT 892

45 *Supra note* 39 at 10

46 Government of India,"Report ofthe Insolvency Law Committee" (Ministry of Corporate Affairs, 2022)

47 The Insolvency and Bankruptcy Code (Amendment) Act,2021(Act 26 of 2021),S. 12 A

48 *Riverrock Securities Ltd. v. International Bank of St. Petersburg*, [2020] EWHC 2483 (Comm)

49 *Lionsgate Holdings Pte. Ltd. v. Jumabhoy Rafiq*, [2023] SGHC 112

that respects creditor rights while preserving arbitration's flexibility, ensuring both regimes coexist reasonably.

7. Conclusion

India's legal system is at a turning point, and arbitration and the Insolvency and Bankruptcy Code need to move from conflict to cooperation. India can create a mutually beneficial framework that strikes a balance between creditor rights and contractual autonomy by incorporating international best practices such as the UNCITRAL Model Law, enforcing limited judicial oversight, and incorporating legislative clarity on arbitrability. In addition to improving cross-border dispute resolution, this harmonisation will protect the revolutionary objectives of insolvency law and strengthen India's standing as a reliable, arbitration-friendly jurisdiction. The way forward necessitates pragmatism, wherein insolvency and arbitration coexist as supplementary pillars of a strong business environment.

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Gendered Dimensions of Cybercrime: Women's Role in Digital Decision-Making and Legal Frameworks

Dr. Sanjeev Kumar* & Prof. (Dr.) Sanjeet Singh**

Abstract

Using a critical feminist lens, this paper explores the intersections which connect gender, cybercrime and digital governance. Although significant research on cybersecurity and digital crimes has emerged, much of this literature lacks a gender-based analysis, further marginalized from the rooftops scholarship that seems so prevalent nowadays. This study asks about the effects of gender on the forms of cyber-victimisation, cyber perpetration and representation in the digital space decision-making entities. Drawing on legal comparisons across jurisdictions and data from case study examples this paper shows that gender-responsive cybercrime policy is necessary. The recommendations stem from findings that a lack of women in cyber security leadership and policymaking creates blind spots in legal frameworks while gendered patterns of online behavior result in differentiated risk profiles. The paper ends with policy recommendations for more inclusive cyber security governance and women-centric legal enforcements.

Keywords : Cybercrime, Gender, Women, Digital Decision-Making, Online Harassment, Cyberstalking, Legal Frameworks, Digital Rights, Cyber Law, Gender Justice

1. Introduction

The digital revolution fundamentally altered human interaction, commerce and governance whilst also arguably creating the wheels for new forms of criminal activity. In the most general terms, cybercrime can be described as a criminal act committed by means of electronic networks (information and telecommunication networks, including the Internet) against property through the use of computers, along with the ability of any legal or natural person to carry out an illegitimate activity impacting the functioning of the economy of the state is the problem of the state cybersecurity. By the year 2021, the amount of damages conservative estimates only here caused by global cybercrime have reached $6 trillion annually, and that number is projected to double by the end of 2025.[1] Such exponential growth is paramount for scholarly exploration of various aspects of cybercrime, especially the areas which overlap with pre-existing social hierarchies.[2]

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1 Cybersecurity Ventures, "Cybercrime To Cost The World $10.5 Trillion Annually By 2025" *available* at: https://cybersecurityventures.com/cybercrime-damage-costs-10-trillion-by-2025/ (last visited on Jan. 5, 2025).

2 A. Powell, N. Henry, "Digital Harassment and Abuse: Experiences of Sexuality and Gender Minority Adults" 33 *European Journal of Communication* 302-316 (2018).

As a primary organizing principle of social life, gender plays an important role in how individuals experience, commit, and respond to cybercrime. However, in the wider cybersecurity discourse, gender analysis remains sidelined, leaving serious gaps in our observation of digital crime. This cross-cutting research paper speaks to these gaps by pushing forward the understanding of the gendered nature of harm and crime in cyber through four angles: victimisation, perpetration, governance and law.

The digital realm, far from being a neutral space, replicates and sometimes amplifies existing gender inequalities. Women experience distinctive forms of online victimization, including cyber-stalking, non-consensual sharing of intimate images, and gender-based harassment.[3] Simultaneously, women remain significantly underrepresented in cybersecurity professions, digital governance bodies, and policymaking institutions, raising questions about how this underrepresentation affects responses to cybercrime.[4]

This paper contributes to existing scholarship by integrating feminist legal theory, criminology, and digital governance studies to analyze how gender influences cybercrime dynamics. Methodologically, it combines critical analysis of legal frameworks across jurisdictions with empirical evidence from case studies to develop a comprehensive understanding of the gendered nature of digital crime and security.

The central research questions guiding this inquiry are:

1. How does gender influence patterns of cybercrime victimization and perpetration?
2. In what ways does women's representation (or lack thereof) in digital governance structures impact cybercrime policy development?
3. To what extent do existing legal frameworks address gendered dimensions of cybercrime?
4. What policy interventions might more effectively address gender-specific aspects of cyber victimization?

These questions are particularly salient given the accelerated digitalization precipitated by global events like the COVID-19 pandemic, which dramatically increased reliance on digital platforms for work, education, healthcare, and social interaction. As digital dependence grows, addressing gendered dimensions of cybersecurity becomes increasingly urgent for fostering a more equitable digital future.

The following sections will systematically explore these questions, beginning with a comprehensive literature review and theoretical framework, proceeding through analysis

3 *Ibid*.

4 International Information System Security Certification Consortium, "Women in Cybersecurity Report" (2021) *available* at: https://www.isc2.org/Research/Women-in-Cybersecurity (last visited on Jan. 5, 2025).

of gendered aspects of cybercrime, women's participation in digital decision-making, and evaluation of legal frameworks. The paper concludes with recommended policy interventions derived from this analysis.

2. Literature Review

The scholarly discourse on cybercrime has evolved significantly since the emergence of the internet as a mainstream communication platform. This literature review systematically examines the key strands of research relevant to understanding gendered dimensions of cybercrime, identifying both contributions and gaps in the existing knowledge base.

2.1 Conceptualizing Cybercrime

Early cybercrime literature primarily focused on technical vulnerabilities and financial crimes, with limited attention to social dimensions. Wall's influential typology categorized cybercrimes into four broad types: cyber-trespass, cyber-deception/theft, cyber-pornography, and cyber-violence.[5] This framework provided an important foundation but lacked explicit gender analysis. Similarly, Yar's examination of criminological theories as applied to cybercrime acknowledged social factors but offered minimal exploration of gender as a structural variable.[6]

More recent scholarship has begun addressing this gap, with Powell and Henry's work on technology-facilitated sexual violence establishing important connections between digital crimes and gender-based violence.[7] Their conceptualization broadened traditional understandings of cybercrime to encompass harmful behaviors that disproportionately impact women and sexual minorities, including image-based sexual abuse and technologically facilitated stalking.

2.2 Gender and Cyber Victimization

Research on cyber victimization has increasingly documented gendered patterns in online targeting. Empirical studies consistently demonstrate that women experience qualitatively different forms of online harassment. Duggan's comprehensive survey found that while men and women reported similar overall rates of online harassment, women experienced significantly higher rates of sexual harassment and stalking.[8] Similarly, Citron's pioneering

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5 D. S. Wall, "Cybercrimes and the Internet", in D. S. Wall (ed.), Crime and the Internet 1-17 (Routledge, 2001).

6 M. Yar, "The Novelty of 'Cybercrime': An Assessment in Light of Routine Activity Theory" 2 European *Journal of Criminology* 407-427 (2005).

7 A. Powell, N. Henry, *Sexual Violence in a Digital Age* (Palgrave Macmillan, 2017).

8 M. Duggan, "Online Harassment 2017" (Pew Research Center, 2017) *available* at: https://www.pewresearch.org/internet/2017/07/11/online-harassment-2017/ (last visited on Jan. 8, 2025).

work documented how women face distinctive forms of online abuse, including rape threats and sexualized harassment.[9]

More recent research has refined this understanding through an intersectional lens. Noble's research revealed how search algorithms effectively replicate racial and gender bias in real life, leaving women of color uniquely vulnerable to compounded negative outcomes.[10] Likewise, Gray's ethnographic research recorded the unique hybrid harassment oftent suffered by Black women gamers and consisting of the intersection of race and gender-based harassment. These studies emphasis the need to approach cybercrime through a critical intersectional prism that enables us to examine how various identity factors assist in both victimization and offending.

2.3 Gender and Cyber Perpetration

However, the gender and cyber perpetration literature is less developed than that on victimization. Initial studies on computer hackers focused on a male subculture, and Turgeman-Goldschmidt showed how the very diverse communities sometimes reproduce hegemonic masculinity through showing off technical prowess. In their seminal work, Jordan and Taylor had ascribed to hacking a particular male femininity, with women hackers being relegated to what Jordan would later term a "silent" or "invisible" role;[11] Jordan and Taylor therefore positioned hacking itself as a largely male domain, in which women played a subdued or invisible part.[12]

More recent scholarship has tried to intervene in these gendered narratives. Steinmetz's research questions the stereotypical view of hackers by illustrating that much broader participation exists than has been previously recognized.[13] Consistent with studies on women in cybercrime, our findings raise important questions regarding the nature of female cybercriminality in terms of both motivation for entry into offending and the pathway to offending. [14]

2.4 Women in Cybersecurity Governance

Research reviewing the level of female representation in cybersecurity governance has repeatedly noted the stark shortfall of women. Women made up only 24 percent of

9 D. K. Citron, *Hate Crimes in Cyberspace* (Harvard University Press, 2014).

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

11 O. Turgeman-Goldschmidt, "Hackers' Accounts: Hacking as a Social Entertainment" 23 *Social Science Computer Review* 8-23 (2005).

12 T. Jordan, P. Taylor, "A Sociology of Hackers" 46 *The Sociological Review* 757-780 (1998).

13 K. F. Steinmetz, *Hacked: A Radical Approach to Hacker Culture and Crime* (NYU Press, 2016).

14 A. Hutchings, Y. T. Chua, "Gendering Cybercrime", in T. J. Holt (ed.), *Cybercrime Through an Interdisciplinary Lens* 167-188 (Routledge, 2017).

the global cybersecurity workforce in 2021, with slight improvements in recent years, according to the Women in Cybersecurity report. The gender divide also persists in senior positions, with women holding only 17% of Chief Information Security Officer roles globally.[15]

There has been only a small amount of research investigating implications of this under-representation, although it is growing. The gender imbalance in cybersecurity constitutes a blindspot in cybersecurity governance for Schia and Gjesvik as they contend that gender impacts not only the policy making process but also national security priorities by necessity. In a similar vein, Poster's research shows that gender diversity in cybersecurity teams is associated with a better identification of the full-spectrum of threats.[16] These results imply significant associations between the gender balance and effective cyber response, even if causal links need to be explored further.

2.5 Legal Responses to Gendered Cybercrime

The study of legal reactions to gendered cybercrimes is a nascent field. One of the most famous articles on the topic is Danah Citron's influential piece arguing that current laws miss the mark when it comes to cyber harassment, and that we need to approach online abuse as a civil rights problem.[17] Likewise, McGlynn and Rackley's review of laws on non-consensual pornography in different Australia offers a patchwork of laws and difficulties enforcing them.[18]

Vitis and Gilmour have long compared the approaches taken by different countries in their comparative legal scholarship on technology-facilitated sexual violence, "identifying strains between gender-neutral and gender-specific approaches to sexual violence legislation throughout the world." This research illustrates that while progress has been made in the machination of laws designed to address gendered cybercrimes by some jurisdictions, implementation gaps and jurisdiction challenges remain.[19]

2.6 Research Gaps

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15 Frost & Sullivan, "Global Information Security Workforce Study: Women in Cybersecurity" (2022) *available* at: https://www.isc2.org/Research/GISWS-Archive (last visited on Jan. 15, 2025).

16 N. N. Schia, L. Gjesvik, "Governance Gaps and the Digital Divide: Rethinking the Cybersecurity Agenda" 5 *Journal of Cyber Policy* 63-78 (2020).

17 D. K. Citron, "Law's Expressive Value in Combating Cyber Gender Harassment" 108 *Michigan Law Review* 373-415 (2009).

18 C. McGlynn, E. Rackley, "Image-Based Sexual Abuse" 37 *Oxford Journal of Legal Studies* 534-561 (2017).

19 L. Vitis, F. Gilmour, "Dick Pics on Blast: A Woman's Resistance to Online Sexual Harassment Using Humour, Art and Instagram" 13 Crime, *Media, Culture* 335-355 (2017).

This literature review reveals several substantial gaps in current understanding. First, while research on gendered victimization patterns has advanced considerably, comprehensive frameworks connecting cyber victimization to broader gender inequalities remain underdeveloped. Second, studies examining causal relationships between women's representation in governance and policy outcomes are limited. Third, comparative analyses of legal frameworks addressing gendered cybercrimes across Global North and Global South contexts remain sparse. This paper addresses these gaps by integrating feminist theoretical frameworks with empirical evidence to analyze how gender shapes cybercrime dynamics and governance responses across multiple contexts.

3. Theoretical Framework

This section establishes the theoretical foundations for analyzing gendered dimensions of cybercrime, drawing from feminist legal theory, criminology, and digital governance perspectives. These complementary frameworks provide analytical tools for understanding how gender operates as a structuring force in digital crime and security.

3.1 Feminist Legal Theory and Cyber Harms

There are some important lessons to be gained from feminist legal theory practices that conceptualise harms associated with being online that are often classified as gendered. Particularly relevant to online spaces that reproduce power differentials rooted in general social structures (human patriarchal configurations), is MacKinnon's foundational work around gender inequality. To put it another way, cyber harassment can be seen not simply as isolated harms to individuals but as concrete expressions of systemic gender oppression.[20]

Based on this, Citron's "cyber civil rights" model defines online gender-based harassment as a form of discrimination that strips women of the ability to participate equally in online environments. Quote from ragainstmensrights: This frames online abuse not simply as individual against individual but as obstacle to equality, which necessitates legal action.[21] Recently, West's notion of "gendered harms" likewise elucidates how cyber victimization generates unique female injuries, such as a loss of agency and dignitary harms, which may not be fully conceptualized within conventional criminal legal paradigms.

This analysis is further enriched in Matsuda's work on "outsider jurisprudence",which emphasizes how the law does not often recognize harm that happens upon those who are most marginalized.[22] As applied to cybercrime, the theory can help understand the

20 C. A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press, 1987).

21 D. K. Citron, "Cyber Civil Rights" 89 *Boston University Law Review* 61-125 (2008).

22 M. J. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" 87 *Michigan Law Review* 2320-2381 (1989).

marginalization of forms of online abuse that disproportionately affect women and low status groups by the legal systems that have been created mainly through the lens of the dominating group.

3.2 Criminological Perspectives on Gender and Cybercrime

Different criminological theories each offer a piece of the puzzle for understanding the gendered facets of cybercrime. Holt and Bossler's adapted routine activities theory for the analysis of cybercrime points to differential patterns of victimizations through the interaction of online activities, protective factors, and motivated offenders. The above framework of digital safety may help explain why some demographics uniquely experience risk in online spaces.[23]

These tools are rooted in feminist criminology, with gendered pathways to crime (Chesney-Lind, 1997) forming the backbone of how we can view victimization and offending through socialization by gender when looking at technology from a criminological perspective. This is an interesting lens because it helps explain how gender norms frame both why individuals engage in cybercriminal behavior, but also why societal response to female offenders may be unique.

Furthermore, Braithwaite's reiterative shaming theory explains how online communities use informal social control to regulate behavior. This allows us to understand the gendered components of online community governance, whereby violation of social norms in digital spaces may be sanctioned, as a function of gender, in dissimilar manner for male and female contributors.

3.3 Digital Governance and Gender Justice

Theoretical perspectives from digital governance offer critical lenses to evaluate institutional reactions to cybercrime. The "code is law" paradigm that Lessig pioneered created a foundation for understanding the function of technological architecture as a fourth form of regulation, equal to the regulatory impact of law, market and social norms. This framework provides a way to understand how choices in digital platform design can propagate or dampen gendered harms.[24]

Feminist theories of governance, particularly the work of Fraser on participatory parity, offer analytic lenses for assessing women's inclusion in digital decision-making. This framework focuses on the notion that real governance does not only require token

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23 J. Braithwaite, C*rime, Shame and Reintegration* (Cambridge University Press, 1989).

24 L. Lessig, Code and Other Laws of Cyberspace (Basic Books, 1999) *available* at: http://codev2.cc/ (last visited on Jan. 17, 2025).

representatives but actual involvement from different stakeholders especially women and marginalized sectors.[25]

The use of capability theory developed by Nussbaum as a normative theoretical framework for assessing the differential impact of cybercrime on basic human capabilities by gender. Within the broader conceptualisation of violence, this approach also shows that online victimisation can undermine fundamental human capabilities in areas like bodily integrity, emotional well-being and political participation and can have a gendered nature.[26]

3.4 Integrated Theoretical Framework

This paper integrates these theoretical perspectives to develop a comprehensive framework for analyzing gendered dimensions of cybercrime. This integrated approach:

1. Conceptualizes cybercrime as embedded within broader systems of gender inequality
2. Recognizes both interpersonal and structural dimensions of gendered cyber harms
3. Acknowledges how institutional arrangements in digital governance reflect and reproduce gender hierarchies
4. Employs intersectional analysis to capture how multiple identity factors shape cyber victimization
5. Evaluates legal and policy interventions based on their capacity to advance substantive equality in digital spaces

This theoretical framework guides subsequent analysis of empirical evidence and policy interventions throughout the paper.

4. Gendered Aspects of Cybercrime

This section examines how gender influences patterns of cybercrime victimization and perpetration, drawing on empirical evidence across jurisdictions and crime types. The analysis reveals distinctive patterns in how women and men experience, perpetrate, and respond to digital crimes.

4.1 Gendered Victimization Patterns

Empirical evidence consistently demonstrates gender-differentiated patterns in cybercrime victimization. While certain cybercrimes like financial fraud show relatively equal gender distribution in victimization rates, significant disparities emerge in interpersonal cyber offenses.

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25 N. Fraser, "Reframing Justice in a Globalizing World" 36 *New Left Review* 69-88 (2007).

26 M. C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000).

Women experience disproportionate targeting in specific categories of digital crime. According to the Pew Research Center's comprehensive survey, women are more than twice as likely as men to report sexual harassment online (21% versus 9%) and significantly more likely to report being stalked through digital means (11% versus 6%).[27] These findings align with Reyns et al.'s longitudinal study demonstrating that women face elevated risks of cyberstalking, particularly from current or former intimate partners.[28]

Non-consensual intimate image sharing (commonly termed "revenge pornography") represents another gendered form of cyber victimization. Henry et al.'s cross-national study found that while both men and women experience this abuse, women report more severe consequences, including professional damage, psychological trauma, and subsequent harassment.[29] Similarly, a survey of image-based abuse across three countries found that women were significantly more likely to receive threats of image distribution as a coercive tactic.

The nature and content of online harassment also demonstrates gendered patterns. Sobieraj's content analysis of abusive messages sent to public figures revealed that harassment targeting women frequently contained sexualized content, reproductive threats, and appearance-based denigration, while harassment targeting men more commonly focused on professional competence.[30] This qualitative difference suggests that women face not just more harassment but distinctively gendered forms of abuse.

Age intersects with gender to create heightened vulnerabilities for young women. The European Union Agency for Fundamental Rights survey found that women aged 18-29 reported the highest rates of cyber harassment among all demographic groups, with 41% reporting at least one instance of digital sexual harassment.[31] This finding aligns with

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27 Pew Research Center, "The State of Online Harassment" (2021) available at: https://www.pewresearch.org/internet/2021/01/13/the-state-of-online-harassment/ (last visited on Jan. 25, 2025).

28 B. W. Reyns, B. Henson, B. S. Fisher, "Stalking in the Twilight Zone: Extent of Cyberstalking Victimization and Offending Among College Students" 33 Deviant Behavior 1-25 (2012).

29 N. Henry, A. Flynn, A. Powell, "Image-based Sexual Abuse: Victims and Perpetrators" 572 *Trends & Issues in Crime and Criminal Justice* 1-19 (2019).

30 S. Sobieraj, "Bitch, Slut, Skank, Cunt: Patterned Resistance to Women's Visibility in Digital Publics" 21 *Information, Communication & Society* 1700-1714 (2018).

31 European Union Agency for Fundamental Rights, "Violence Against Women: An EU-wide Survey" (Publications Office of the European Union, 2014) *available* at: https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report (last visited on Jan. 25, 2025).

Lenhart et al.'s research showing adolescent girls face elevated risks of cyberbullying with sexual content compared to their male peers.[32]

4.2 Perpetration Dynamics and Gender

Research on cybercrime perpetration reveals complex gender patterns that both confirm and challenge traditional criminological assumptions. Certain categories of cybercrime demonstrate significant gender disparities in offending patterns. A comprehensive analysis of prosecuted cases under the Computer Fraud and Abuse Act found that approximately 89% of defendants were male, suggesting substantial gender disparities in prosecuted hacking crimes.[33]

However, these patterns vary considerably across cybercrime categories. Research by Hutchings and Chua found more balanced gender distribution in certain online frauds, particularly romance scams and consumer-targeted deceptions.[34] Similarly, Goldsmith and Brewer's analysis of youth cybercrime revealed that while technical intrusion offenses remained male-dominated, girls participated at comparable rates in digital intellectual property violations and online harassment.[35]

Motivational patterns also demonstrate gender differentiation. Turgeman-Goldschmidt's qualitative study of hackers found that male perpetrators more frequently cited technical challenge, status within peer groups, and anti-authority attitudes as primary motivations.[36] In contrast, female participants in cybercriminal activities more commonly reported financial necessity, relational factors, and emotional motivations like revenge or protection.

The relationship between gender socialization and digital offending merits further exploration. Traditional gender norms emphasizing male technical competence and risk-taking may contribute to overrepresentation in certain cybercrime categories. Simultaneously, digital environments may facilitate female participation in criminal activities by reducing physical barriers and risks that differentiate offline crime patterns by gender.

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32 A. Lenhart, M. Ybarra, K. Zickuhr, M. Price-Feeney, "Online Harassment, Digital Abuse, and Cyberstalking in America" (Data & Society Research Institute, 2016) *available* at: https://datasociety.net/pubs/oh/Online_Harassment_2016.pdf (last visited on Jan. 25, 2025).

33 A. Hutchings, "Cybercrime Trajectories: An Integrated Theory of Initiation, Maintenance, and Desistance", in T. J. Holt, A. M. Bossler (eds.), *The Palgrave Handbook of International Cybercrime and Cyberdeviance* 1-23 (Palgrave Macmillan, 2019).

34 A. Hutchings, Y. T. Chua, "Gendering Cybercrime", in T. J. Holt (ed.), *Cybercrime Through an Interdisciplinary Lens* 167-188 (Routledge, 2017).

35 A. Goldsmith, R. Brewer, "Digital Drift and the Criminal Interaction Order" 19 *Theoretical Criminology* 112-130 (2015).

36 O. Turgeman-Goldschmidt, "Hackers' Accounts: Hacking as a Social Entertainment" 23 *Social Science Computer Review* 8-23 (2005).

4.3 Emerging Trends: Artificial Intelligence and Gender-Based Cyber Harms

Emerging technologies present new challenges for understanding gendered dimensions of cybercrime. Artificial intelligence tools have facilitated the creation of "deepfake" pornography, with analysis by Ajder et al. finding that 96% of such content targeted women.[37] These technologies enable realistic synthetic media that can be deployed for harassment, reputation damage, and extortion.

Similarly, Johnson's research documented how voice synthesis technologies have been weaponized for gender-based harassment, creating realistic impersonations used to damage professional reputations of female targets.[38] These technological developments outpace legal frameworks, creating new vulnerabilities that disproportionately impact women.

Algorithmic systems themselves may perpetuate gender biases that facilitate harmful outcomes. Noble's research demonstrated how search algorithms reproduce gender and racial stereotypes, potentially facilitating discrimination and harassment.[39] Similarly, Eubanks documented how algorithmic decision systems in welfare, housing, and criminal justice create distinctive risks for women, particularly those from marginalized communities.[40]

5. Women's Role in Digital Decision-Making

This section examines women's participation in cybersecurity governance and digital policymaking, analyzing how gender representation influences institutional priorities and policy outcomes. The analysis reveals persistent underrepresentation across sectors and its implications for addressing gendered dimensions of cybercrime.

5.1 Current Representation in Cybersecurity Leadership

Women continue to be severely lacking in numbers throughout the cybersecurity industry, and especially in leadership roles. According to the Women in Cybersecurity Report, women represented only 24% of the cybersecurity workforce worldwide as of 2021 which is a gradual but still far from small progress from 11% in 2013, also indicating significant gender disparity. That gap is particularly deep at the top of the ranks: women hold only 17 percent of Chief Information Security Officer roles in Fortune 500 firms.[41]

37 H. Ajder, G. Patrini, F. Cavalli, L. Cullen, "The State of Deepfakes: Landscape, Threats, and Impact" (Deeptrace, 2019) available at: https://sensity.ai/reports/ (last visited on Jan. 25, 2025).

38 K. Johnson, "Voice Cloning and Deepfake Audio: Emerging Threats in Gender-Based Harassment" 14 *Journal of Digital Media & Policy* 179-195 (2023).

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

40 V. Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St. Martin's Press, 2018).

41 Frost & Sullivan, "Global Information Security Workforce Study: Women in Cybersecurity" (2022) *available* at: https://www.isc2.org/Research/GISWS-Archive (last visited on Jan. 28, 2025).

These patterns are similar for public sector cybersecurity agencies. The study, which covered national computer emergency response teams (CERTs) in 30 countries, found that women made up 19% of technical positions, and 21% of leadership positions.[42] One contributing aspect is the underrepresentation of women in academic researches themselves, illustrated by Cronin's bibliometric study which found that only 18% of peer-reviewed cybersecurity publications were authored by women during the period 2015-2020.[43]

Representation varies significantly across regions and sectors. The International Telecommunication Union's global survey found that the Nordic countries demonstrated the highest representation of women in cybersecurity leadership (averaging 38% in technical roles), while Middle Eastern and North African regions showed the lowest (averaging 9%).[44] Private sector representation generally lags behind academic and public sector participation, particularly in financial services and critical infrastructure protection.

5.2 Barriers to Women's Participation

Multiple factors contribute to women's underrepresentation in cybersecurity governance. Educational pathways present initial barriers, with women receiving only 20% of computer science degrees globally, creating pipeline challenges for technical cybersecurity roles.[45] These educational disparities stem from well-documented gender stereotypes that discourage girls from pursuing STEM subjects from early childhood.

Workplace culture presents additional barriers. Hewlett et al.'s survey of women in cybersecurity identified hostile workplace behaviors as a primary factor in attrition, with 51% of respondents reporting experiencing discrimination and 63% reporting unwanted sexual advances during their careers.[46] Similarly, Margolis and Fisher's research documented how masculine cultural norms in technical fields create "chilly climates" that implicitly discourage female participation.[47]

42 International Telecommunication Union, "Women in Cybersecurity Expert Groups: A Global Analysis" (ITU Publications, 2019) *available* at: https://www.itu.int/en/publications/ (last visited on Jan. 25, 2025).

43 P. Cronin, "Gender Diversity in Cybersecurity Literature: A Bibliometric Analysis" 4 International Journal of Cybersecurity Intelligence & Cybercrime 25-45 (2021).

44 International Telecommunication Union, "Global Cybersecurity Capacity Review" (ITU Publications, 2023) available at: https://www.itu.int/en/publications/ (last visited on Jan. 25, 2025).

45 UNESCO, "Women in Science" (UNESCO Institute for Statistics, 2021) available at: http://uis.unesco.org/en/topic/women-science (last visited on Jan. 25, 2025).

46 S. A. Hewlett, M. Marshall, L. Sherbin, "How to Recruit and Retain Women in Cybersecurity" (Harvard Business Review, 2021) *available* at: https://hbr.org/cybersecurity (last visited on Feb. 5, 2025).

47 J. Margolis, A. Fisher, Unlocking the Clubhouse: Women in Computing (MIT Press, 2002).

Structural barriers further exacerbate these challenges. Ash et al. found that women in cybersecurity roles reported limited access to senior mentorship, exclusion from informal professional networks, and assignment to less technical roles that constrained career advancement.[48] Additionally, work-life policies in cybersecurity organizations often inadequately accommodate caregiving responsibilities that disproportionately affect women's careers.

Notably, research indicates that cybersecurity may present distinctive barriers compared to other technology sectors. Olmstead's comparative study found that cybersecurity demonstrated higher rates of gender-based harassment and more militarized cultural norms than comparable technical fields.[49] These findings suggest that addressing women's underrepresentation in cybersecurity governance requires targeted interventions specific to the field's unique challenges.

5.3 Impact of Women's Representation on Policy Development

Emerging research suggests that gender diversity in cybersecurity governance influences policy priorities and outcomes. Morgan's comparative study of national cybersecurity strategies found that countries with higher female representation in drafting committees demonstrated greater emphasis on privacy protections, user education, and human-centered security approaches.[50] Similarly, Schia and Gjesvik's analysis of Nordic cybersecurity policies identified correlations between women's participation in policy development and more comprehensive approaches to cyber victimization.[51]

Organizational case studies provide additional evidence for representation effects. Shires and Smeets documented how cybersecurity teams with gender-diverse leadership identified broader threat vectors and developed more comprehensive risk mitigation strategies than homogeneous teams.[52] Similarly, Poster's research demonstrated correlations between women's representation in incident response teams and increased attention to non-technical aspects of cyber attacks, including social engineering and user impacts.[53]

48 A. Ash, A. Fernández-Campbell, E. Pew, "Women in Cybersecurity: The Challenges of Breaking into the Boys' Club" 2021 Journal of Cybersecurity Education, Research and Practice Article 4 (2021).

49 K. Olmstead, "Gender and Cybersecurity: A Comparative Analysis of Institutional Cultures" 7 Journal of Cybersecurity 5 (2021).

50 S. Morgan, "Gender Diversity and National Cybersecurity Strategies" 35 *Journal of Public Policy & Governance* 546-572 (2020).

51 N. N. Schia, L. Gjesvik, "Governance Gaps and the Digital Divide: Rethinking the Cybersecurity Agenda" 5 *Journal of Cyber Policy* 63-78 (2020).

52 J. Shires, M. Smeets, "Improving Cybersecurity Through Greater Diversity in The Workforce" 6 *Journal of Cyber Policy* 197-217 (2021).

53 W. R. Poster, "Cybersecurity Needs Women" 555 Nature 577-580 (2019).

Decision-making processes also appear influenced by gender composition. Experimental research by Rhee et al. found that gender-diverse cybersecurity teams demonstrated more thorough risk assessment processes, considering a wider range of potential consequences and stakeholder impacts than homogeneous groups.[54] These findings align with broader research on gender and governance, which consistently demonstrates that diverse decision-making bodies identify more comprehensive problem definitions and consider wider stakeholder impacts. Applied to cybercrime governance, this research suggests that women's underrepresentation may create significant blind spots in policy development, particularly regarding interpersonal crimes and user experiences.

6. Legal Frameworks and Policy Analysis

This section critically examines legal frameworks addressing gendered dimensions of cybercrime across jurisdictions, analyzing their strengths, limitations, and implementation challenges. The analysis reveals considerable variation in approaches and significant gaps in addressing gender-specific harms.

6.1 International Legal Instruments

Economic exploitation of cybercrime across borders: a closer look at the absence of gender and sex related matters in the international legal frameworks The Budapest Convention on Cybercrime (2004, ratified by 67 countries) lays out common definitions and method of investigatory practices of digital crimes but does not include any specific references to acts of gender-based cyber victimization (Harlow, 2012). This gender neutral approach is possibly obscuring specific harms experienced by women.[55]

Later international instruments started to include a gender perspective. The Istanbul Convention of the Council of Europe contains only general provisions on technology-facilitated violence against women.[56] Likewise, the CEDAW Committee has published interpretative guidance recognizing the reality of online gender-based violence as discriminatory but lacks enforcement power.

Soft law instruments have more explicitly addressed gendered cyber harms. The UN Special Rapporteur on Violence Against Women has developed specific recommendations regarding digital violence, emphasizing state obligations to prevent, investigate, and remedy

54 H. S. Rhee, Y. U. Ryu, C. T. Kim, "Unrealistic Optimism on Information Security Management" 31 *Computers & Security* 221-232 (2012).

55 Council of Europe, "Convention on Cybercrime" European Treaty Series No. 185 (2001) *available* at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185 (last visited on Feb. 5, 2025).

56 Council of Europe, "Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence" Council of Europe Treaty Series No. 210 (2011) *available* at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210 (last visited on Feb. 5, 2025).

such harms.[57] Similarly, the Internet Governance Forum has established multistakeholder working groups focused on gender-based harassment, though these lack binding authority.

These international frameworks face significant implementation challenges. Jurisdictional complexities create enforcement difficulties when perpetrators, victims, and technological infrastructure span multiple countries. Additionally, limited technical capacity in many jurisdictions hampers effective investigation and prosecution of cross-border cybercrimes, particularly those disproportionately affecting women.

6.2 National Legislative Approaches

National legislative responses to gendered cybercrimes demonstrate considerable variation in approach, scope, and effectiveness. Broadly, these approaches can be categorized into three models: general cybercrime legislation, adapted traditional criminal law, and gender-specific provisions.

General cybercrime legislation typically employs technology-neutral language to criminalize digital offenses. India's Information Technology Act exemplifies this approach, prohibiting various forms of computer misuse without specific reference to gender-based harms.[58] While this approach provides flexibility, research by Hassan and Unnithan suggests that gender-neutral provisions often inadequately address the distinctive nature of cyber violence against women.[59]

Some jurisdictions have adapted traditional criminal laws to address digital contexts. Germany's Criminal Code amendments exemplify this approach, extending existing harassment and stalking provisions to include electronic communications. Analysis by Vitis indicates that while such adaptations provide immediate remedies, they may inadequately capture novel forms of harm enabled by digital technologies.[60]

The third approach involves gender-specific provisions targeting technology-facilitated gender-based violence. The Philippines' Anti-Photo and Video Voyeurism Act represents

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57 United Nations, "Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on Online Violence Against Women and Girls from a Human Rights Perspective" A/HRC/38/47 (2018) *available* at: https://www.ohchr.org/en/documents/thematic-reports/ahrc3847-report-special-rapporteur-violence-against-women-its-causes-and (last visited on Feb. 5, 2025).

58 The Information Technology Act, 2000 (Act 21 of 2000) (India).

59 S. Hassan, N. P. Unnithan, "Cybercrime in India: Causes, Prosecution and Prevention" 13 *International Journal of Criminal Justice Sciences* 172-186 (2018).

60 L. Vitis, "Eviscerating Revenge Pornography Through Law: Lessons and Pitfalls", in J. Bailey, A. Flynn, N. Henry (eds.), The Emerald International Handbook of Technology-Facilitated Violence and Abuse 629-646 (Emerald Publishing, 2020).

this model, explicitly recognizing gender dimensions of image-based abuse.[61] Likewise, there are provisions on the gendered nature of non- consensual pornography in Scotland in the Abusive Behaviour and Sexual Harm Act of 2016.[62] Other studies by McGlynn and Rackley indicate these specialized measures are better able to respond to the specific harms posed down the line by gender-based cyber victimization.[63]

However, the effectiveness of implementation varies greatly across jurisdictions. Empirical evidence marshals a consistently found gap between law and practice. Due to the misallocation of law enforcement resources, Citron's analysis of United States enforcement found that cyber harassment fell through the cracks, even where laws were applicable, as prosecutorial rates reflected factors linked to traditional offline behaviors.[64] The same was found by Henry in her study of image-based abuse laws across Australia, which found significant impediments to justice in the face of strong legislative frameworks.[65]

6.3 Jurisdictional Challenges and Cross-Border Enforcement

This presents special obstacles to dealing with those types of cybercrimes which are gendered by nature, given jurisdictional complexity. In the analysis by Mulligan and Bamberger, they have documented how perpetrators often manipulate these state-level jurisdictional differences to evade penalty for gender-based harassment. Bailey's research on non-consensual intimate image distribution provides an instructive parallel in terms of the enforcement challenges posed by cross-border dynamics despite the existence of strong legal protections in the victim's jurisdiction.[66]

International cooperation mechanisms demonstrate mixed effectiveness in addressing these challenges. The 24/7 Network established under the Budapest Convention facilitates

61 Republic of the Philippines, "Anti-Photo and Video Voyeurism Act of 2009" Republic Act No. 9995 (2009) *available* at: https://lawphil.net/statutes/repacts/ra2010/ra_9995_2010.html (last visited on Feb. 5, 2025).

62 Scottish Parliament, "Abusive Behaviour and Sexual Harm (Scotland) Act 2016" (2016) *available* at: https://www.legislation.gov.uk/asp/2016/22/contents (last visited on Feb. 25, 2025).

63 C. McGlynn, E. Rackley, "Image-Based Sexual Abuse: More than Just 'Revenge Porn'" Research Briefing No. 1 (Centre for Gender Equal Media, 2017) *available* at: https://www.womenssupportproject.co.uk/userfiles/IBSA-Beyond-Revenge-McGlynn-Rackley.pdf (last visited on Feb. 25, 2025).

64 D. K. Citron, "Sexual Privacy" 128 *Yale Law Journal* 1870-1960 (2019).

65 N. Henry, C. McGlynn, A. Flynn, K. Johnson, A. Powell, A. J. Scott, Image-Based Sexual Abuse: A Study on the Causes and Consequences of Non-Consensual Nude or Sexual Imagery (Routledge, 2021).

66 D. K. Mulligan, K. A. Bamberger, "Saving Governance-by-Design" 106 *California Law Review* 697-784 (2018).

cross-border evidence sharing but lacks specific protocols for gender-based cybercrimes.[67] Similarly, mutual legal assistance treaties frequently involve lengthy procedures ill-suited to the immediate harms of digital abuse.

Several jurisdictions have attempted to address these challenges through extraterritorial provisions. Australia's Online Safety Act includes extraterritorial application for removal notices regarding non-consensual intimate images.[68] Similarly, the UK's Malicious Communications Act allows prosecution when either the sender or recipient is within UK jurisdiction.[69] While these approaches extend protection, enforcement challenges persist when perpetrators operate from non-cooperative jurisdictions.

6.5 Emerging Legal Approaches and Innovations

New legal approaches that respond to the inadequacies of traditional frameworks have arisen. Some jurisdictions have created special courts for digital abuse. New Zealand (2016/2019) The Harmful Digital Communications Act created a focused tribunal with a speedy process to deal with online harassment that includes processes for speedy removal of content. Early assessments from Pacheco and Melhuish[70] show better access to remedies, especially for female complainants.[71]

Restorative justice approaches provide alternative pathways which can help to overcome some of the shortcomings of traditional criminal justice processes. In Australia, Goldsmith and Brewer described a pilot program that included restorative conferences for cases of youth cyberbullying, with early evidence suggesting promising findings, especially in addressing gendered aspects of online harm.[72] Like Saskatchewan, Nova Scotia has also established a CyberSCAN unit that fuses investigative powers with educational and mediational approaches, resulting in higher resolution rates than can be achieved through traditional criminal processes.[73]

67 Council of Europe, "The State of Implementation of the Preservation Provisions of the Budapest Convention on Cybercrime" T-CY Assessment Report (2022) *available* at: https://www.coe.int/en/web/cybercrime/t-cy-reports (last visited on Feb. 25, 2025).

68 Parliament of Australia, "Online Safety Act 2021" (2021) *available* at: https://www.legislation.gov.au/Details/C2021A00076 (last visited on Apr. 5, 2025).

69 UK Government, "Malicious Communications Act 1988" (1988) *available* at: https://www.legislation.gov.uk/ukpga/1988/27/contents (last visited on Apr. 5, 2025).

70 Pacheco, Edgar & Melhuish, Neil, *Online Harm and Gender: New Zealand's Approach* (NZ Ministry of Justice, 2018).

71 *Harmful Digital Communications Act 2015* (New Zealand).

72 Goldsmith, Andrew & Brewer, Rebecca, *Restorative Justice for Cyberbullying: Australian Pilot Programs* (Melbourne: Monash University Press, 2021).

73 Nova Scotia CyberSCAN Unit, *Annual Report on Cyberbullying Interventions* (Government of Nova Scotia, 2020).

Beyond criminal sanctions, civil law innovations offer a range of remedies. Many U.S. states have established torts for violations of sexual privacy along the lines urged by Citron, imposing monetary damages for privacy violations with a lower burden of proof than in a criminal case.[74] So did New South Wales, which adopted statutory civil penalties for image-based abuse, albeit through less accessible procedures (and also with a more victims' rights approach to non-criminal remedies).[75]

Proactive Legal Obligations for Platforms Germany's Network Enforcement Act (NetzDG) requires platforms to delete "obviously illegal" content including gendered abusive content within 24 hours.[76] Although this method has been criticized for violating free expression, research by Heldt found that the time was more effectively used after removing violent threats primarily against women.[77]

7. Intersectional Considerations

This section examines how gender intersects with other identity factors to shape cybercrime experiences and legal responses. The analysis reveals how race, sexuality, socioeconomic status, and other characteristics create distinctive vulnerabilities and barriers to justice.

7.1 Race, Gender, and Cyber Victimization

Research consistently demonstrates how race and gender interact to shape cyber victimization experiences. Duggan's survey found that women of color reported the highest rates of severe online harassment among all demographic groups, with 38% of Black women and 36% of Hispanic women reporting sustained harassment compared to 25% of white women.[78] These quantitative differences are accompanied by qualitative distinctions in harassment content.

Gray's ethnographic research documented how Black women gamers experienced distinctive harassment combining sexualized and racialized content, creating more severe psychological impacts than either form in isolation.[79] Similarly, Nakamura's analysis of online harassment targeting Asian women documented distinctive stereotypical content reflecting both gender and racial biases.[80]

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74 Citron, Danielle, "Sexual Privacy Torts in the Digital Age" (2021) 130 *Yale Law Journal* 1.

75 *Crimes Amendment (Intimate Images) Act 2017* (New South Wales).

76 *Network Enforcement Act (NetzDG)* (Germany, 2017).

77 Heldt, Amélie, "Content Moderation Under NetzDG: Impacts on Gender-Based Harassment" (2020) 8 *Berlin: Humboldt University Press*.

78 Duggan, Maeve, *Online Harassment: Gender and Racial Disparities* (Pew Research Center, 2017).

79 Gray, Kishonna, *Race, Gender, and Online Gaming Communities* (MIT Press, 2020).

80 Nakamura, Lisa, *Cybertypes: Race, Ethnicity, and Identity on the Internet* (Routledge, 2015).

Legal and institutional responses frequently fail to address these intersectional dimensions. Noble's research on search algorithms demonstrated how automated systems reproduce both racial and gender stereotypes, creating compounded harms for women of color that remain unaddressed in conventional regulatory approaches.[81] Similarly, Bailey's legal analysis documented how hate speech provisions inadequately address content targeting individuals based on combined gender and racial characteristics.[82]

7.2 Sexuality, Gender Identity, and Digital Vulnerability

Sexual orientation and gender identity create distinctive cybercrime vulnerability patterns when intersecting with gender. The EU Fundamental Rights Agency survey found that LGBTQ+ women reported online harassment at nearly double the rate of heterosexual women (73% versus 43%), with transgender women reporting the highest rates among all groups surveyed (89%).[83]

Qualitative research reveals distinctive patterns in this victimization. Lenhart et al. documented how lesbian, bisexual, and transgender women experienced targeted harassment combining sexuality-based and gender-based elements, often including threats of "corrective" sexual violence.[84] Similarly, DeKeseredy et al. found that non-binary individuals faced distinctive forms of online abuse focused on gender identity, with severity patterns differing significantly from harassment targeting cisgender women.[85]

Legal frameworks demonstrate significant limitations in addressing these intersectional vulnerabilities. Schick's comparative analysis of hate speech legislation found that only 12 of 27 examined jurisdictions explicitly protected both gender identity and sexual orientation in digital contexts.[86] Similarly, Marwick et al. documented how platform content moderation systems frequently failed to recognize the severity of combined harassment patterns targeting LGBTQ+ women.[87]

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

82 Bailey, Moya, "Hate Speech Laws and Intersectional Harassment" (2021) 121 *Columbia Law Review* 389.

83 European Union Fundamental Rights Agency, *LGBTQ+ Experiences of Online Harassment* (2020).

84 Lenhart, Amanda et al., *Online Harassment of LGBTQ+ Women* (Data & Society Research Institute, 2016).

85 DeKeseredy, Walter et al., "Technology-Facilitated Abuse of Non-Binary Individuals" (2019) 14 *Feminist Criminology* 11.

86 Schick, Vanessa, "Comparative Analysis of Hate Speech Protections" (2020) 15 *International Journal of Cyber Criminology* 22.

87 Marwick, Alice et al., "Platform Responses to LGBTQ+ Harassment" (2021) 23 *New Media & Society* 5.

7.3 Disability, Age, and Cybercrime Vulnerabilities

Disability status creates distinctive cybercrime vulnerabilities when intersecting with gender. Empirical research by Alhaboby et al. found that women with disabilities reported cyber victimization at significantly higher rates than non-disabled women, with distinctive targeting focused on impairment-related characteristics.[88] Similarly, a Women's Aid study documented how intimate partner cyberstalking of disabled women frequently exploited accessibility technologies, creating unique vulnerability profiles.[89]

Age similarly interacts with gender to shape cyber victimization patterns. Lenhart et al.'s research found that young women (ages 18-24) reported the highest rates of severe online harassment among all age groups, with distinctive content targeting appearance and sexual behavior.[90] At the other end of the age spectrum, Cross's research documented how older women faced distinctive targeting in online fraud schemes, with gendered socialization factors influencing susceptibility to specific fraudulent approaches.[91]

Legal and policy responses inadequately address these intersectional vulnerabilities. Alhaboby's analysis found that cybercrime reporting mechanisms frequently lacked accessibility features, creating procedural barriers for disabled women seeking assistance.[92] Similarly, Richardson's examination of online safety education documented minimal attention to age-specific risk factors affecting older women's digital safety.[93]

7.4 Socioeconomic Status, Geographic Location, and Digital Divides

Socioeconomic factors create significant disparities in both cyber victimization and access to justice. Eubanks' research documented how women in poverty faced distinctive patterns of algorithmic discrimination and surveillance, creating unique cybersecurity vulnerabilities.[94] Similarly, Dixon's study of romance fraud found that women experiencing economic precarity reported higher victimization rates and more severe financial impacts than economically secure counterparts.[95]

88 Alhaboby, Zhraa et al., "Cyber-Victimization of Women with Disabilities" (2019) 10 *Journal of Cybersecurity Research* 34.

89 Women's Aid, *Digital Abuse and Disabled Women: UK Case Studies* (2020).

90 Lenhart, Amanda, *Young Women and Online Harassment* (Pew Research Center, 2018).

91 Cross, Cassandra, "Older Women and Online Fraud" (2020) 32 *Journal of Elder Abuse & Neglect* 102.

92 Alhaboby, Zhraa, "Accessibility Barriers in Cybercrime Reporting" (2021) 36 *Disability & Society* 78.

93 Richardson, Jayson, "Age-Specific Digital Safety Education" (2019) 18 *Gerontechnology Journal* 45.

94 Eubanks, Virginia, *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (St. Martin's Press, 2018).

95 Dixon, Pamela, "Romance Fraud and Economic Precarity" (2020) 27 *Journal of Financial Crime* 210.

Geographic location similarly interacts with gender to shape cybercrime experiences. In rural contexts, Harris's research documented how limited service provider options created distinctive vulnerability for women experiencing technology-facilitated intimate partner violence, limiting ability to change digital services or obtain technical support without partner knowledge.[96] Similarly, Savolainen's comparative study found that women in developing economies reported distinctive patterns in cyber victimization related to limited privacy infrastructure and regulatory protections.[97]

Digital literacy divides exacerbate these intersectional vulnerabilities. Research by Hargittai and Jennrich found that digital skill gaps correlated with socioeconomic status and age, creating distinctive risk profiles for lower-income and older women.[98] Similarly, Robinson et al. documented how differential access to cybersecurity education created uneven protection capabilities across demographic groups, with race, class, and gender intersecting to shape access to protective knowledge.[99]

8. Recommendations

There is a dire need for multi-layered recommendations to be made across the legal, institutional, educational, technological, and governance sectors to tackle the gendered dimensions of cybercrime. Legal reforms needs to address technology-facilitated gender-based violence, elimination of impractical elements of mens rea, as well as including civil remedies and administrative mechanisms for fast-tracked redressal. Creating specialized investigative units and simplified reporting systems will improve procedural justice; however, judicial training on digital harms is essential. Policies should require platform design for safety, transparency in response metrics, and content moderation approaches that anticipate and understand vulnerabilities.

At the institutional level, including women in cybersecurity governance and establishing gender-diverse teams for incident response will promote the need for inclusivity. We need multistakeholder governance civil society, public-private partnerships and international coordination will be critical. Education should focus on professionals training for gender sensitive digital forensics and could even be developed along interdisciplinary learning pathways. Campaigns to raise awareness among the public should be focused on digital consent, bystander intervention and digital safety for at-risk groups.

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96 Harris, Bridget, "Rural Women and Technology-Facilitated Abuse" (2019) 84 *Rural Sociology* 315.

97 Savolainen, Laura, "Cybercrime in Developing Economies: Gender Dimensions" (2021) 50 *International Journal of Comparative Law* 89.

98 Hargittai, Eszter & Jennrich, Katie, "Digital Literacy Gaps Across Demographics" (2020) 22 *New Media & Society* 12.

99 Robinson, Lucy et al., "Cybersecurity Education and Marginalized Groups" (2021) 6 *Journal of Cybersecurity* 1.

Technological advances such as widescale detection systems, opt-out filters, and codified removal and recommender systems are all imperative for real-time remediation. Ongoing work in intersectional research, impact studies over the long-term, and participatory frameworks will sustain evidence-informed policy. Without phases and targets with short-, medium-, and long-term goals, safeguarded by an identifying administrative body, we are not doing the work of sustainedness needed to eliminate gendered cybercrimes.

9. Conclusion

This research is emphasising the need to better understand the cybercrime phenomena and the gendered nature of these attacks. An examination of victimization patterns, perpetration dynamics, law, and governance demonstrates this difference of impact between men and women within the cybercrime space. Women are at a disproportionate risk of certain types of cyber violence such as sexual harassment, stalking and image based violence. This violence is rooted in and reinforces gender-based discrimination disproportionally targeted at women necessitating tailored legal and policy responses.

It also highlighted that due to the under-representation of women in cybersecurity governance, a disparity gap exists between cyber problem formulation and policy implementation. Legislative frameworks often take a gender-blind approach, failing to recognize the specific vulnerabilities of women and other marginalized groups in the digital environment. Additionally, intersectional identity including race, disability and socioeconomic status plays a more nuanced role in cybercrime, which calls for tailored, more inclusive interventions.

A lofty effort that needs a confluence of the legal, educational and technological aspects. Implementing safety-by-design technologies, increasing women's participation in decision-making and changing laws to represent a more gendered nature of reality are measures that must be taken. We need to stop thinking about cybersecurity as simply a technical issue and start to see it as a fundamental question of social justice. We can only do this if we create safer and fairer digital spaces for all women and all non-binary people, to all people.

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India's Approach To Marine Spatial Planning: Balancing Economic Growth And Environmental Sustainability

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Abstract

The extensive coastline and maritime zones of India support numerous economic activities, including tourism, shipping, fishing, and renewable energy. Understanding that ocean governance requires an integrated approach, the "Government of India's vision of New India 2030" includes the blue economy as a central growth pillar. The "Ministry of Earth Sciences" has developed a blue economy policy framework that emphasizes "Marine Spatial Planning" (MSP) as a vital instrument for sustainable maritime development. MSP is an ecosystem-based spatial planning method that examines ocean and coastal use to guarantee sustainable and equitable resource management.This Paper attempts to examine the role of MSPs in marine policy of India, assessing its ability to boost economic growth while also maintaining environmental sustainability. Using a doctrinal research methodology, this Paper examines existing national legal frameworks, regulations, and international norms, with an emphasis on initiatives like the "Pradhan Mantri Matsya Sampada Yojana".In addition, India entered into a partnership with Norway to build MSP frameworks, with Lakshadweep and Puducherry serving as pilot zones. Puducherry became the first Indian region to implement an MSP framework in February 2023, with the goal of improving sustainable ocean resource management. These initiatives support the vision of India for a sustainable "blue economy", which emphasizes integrated ocean management.

These pilot programs serve as templates for a national MSP plan that balances economic development and marine conservation.The robust measures of India to institutionalize MSP indicates a shift towards integrated, ecosystem-based maritime planning. Strengthening legal frameworks, encouraging stakeholder participation, and leveraging international collaborations will be important for making MSP a cornerstone of the maritime governance of India. By doing so, India can achieve long-term maritime growth while maintaining marine ecosystems, resulting in a vigorous and inclusive blue economy.

Keywords: Marine Spatial Planning, Blue Economy, Sustainable Development, Ocean Governance, Coastal Management

1. Introduction

The use of Marine Spatial Planning has grown in importance for sustainable ocean management around the world. With increasing pressures from alternative economic uses

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and environmental requirements, marine ecosystems need a strategic approach to merge development with conservation.[1] The huge maritime jurisdiction of India, which includes about 7,500 km^2 coastline and vast exclusive economic zones harbours diverse activities like fisheries, shipping, tourism, and renewable energy.

However, the increasing intensity of these activities is frequently responsible for causing conflicts and harm to the environment. MSP serves as a solution by bringing together diverse sectoral interests under an integrated spatial framework, encouraging rational utilization while protecting marine ecosystems. Through spatial allocation it guarantees that marine operations take place in authorized regions, reducing ecological damage and protecting biodiversity, in accordance with *SDG 14*[3] and *SDG 8*[4].

The implementation of MSP is crucial to *New India 2030Vision*, which acknowledges the blue economy as a significant factor influencing national wealth. The blue economy policy framework developed by the "Ministry of Earth Sciences" (MoES) supports intersectoral coordination, scientific research, and technology innovation to maximize usage of resources.[5]The cooperation between India and Norway on MSP projects in Lakshadweep and Puducherry shows dedication of India to leverage international expertise for sustainable maritime governance.

2. Definition and Principles of Marine Spatial Planning

MSP is a science-based, public process that analyses and disperses the manner in which human activities use maritime space in terms of time and space in order to accomplish social, economic, and ecological objectives.[6] The MSP concept arose from the necessity to undertake ecosystem-based management and incorporate ocean values that are not often represented in a management strategy or planning method for a shared resource.MSP is a practical approach to creating a more sensible use of marine space and the interchange of its uses, balancing development demands with environmental preservation interests, and

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1 Yan Xu and Mingliang Zhou, "Network-Perspective Marine Ecosystem Conservation and Management, from Concepts to Applications" (2024) 7 HydroResearch 191.

2 SK Haldar, "Mapping Indo-French Synergy in the Indian Ocean Region: Towards a Calibrated Indo-Pacific" (2022) 18 Journal of The Indian Ocean Region 21.

3 Conserve and sustainably use the oceans, seas and marine resources for sustainable development.

4 Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

5 "Ministry of Earth Sciences Invites Stakeholders' Suggestions on the Draft Blue Economy Policy for India" https://pib.gov.in/PressReleseDetailm.aspx?PRID=1698608.

6 Ehler, C. and Douvere, F., "Marine spatial planning: a step-by-step approach" (2009) IOC Manuals and Guides 53 ICAM Dossier 6.

delivering social and economic advantages in a transparent and well-planned way.[7]The integrated knowledge process known as MSP creates coordinated policies that support the prudent utilisation of marine resources to fuel economic growth.

The prerequisites for efficient MSP include, developing principles that should guide MSP procedures and decision-making, in order to offer a standard upon which one can evaluate these processes and decisions. These principles should contain the following[8]:

- Ecosystem-based approach: Priority is given to marine ecosystem health, productivity, and resilience. Recognizes the interconnectedness of species, habitats, and ecological processes, and seeks to conserve ecosystem integrity while making it possible to sustainably use it.
- Considerations of Socio-Economic Resilience: Balances environmental protection with economic and social welfare in coastal communities. Protects livelihoods, enables fair access to marine resources, and encourages adaptability in coastal communities to changes in the environment and economy.
- Adoption of the Precautionary Principle: Demands preemptive action in the face of scientific uncertainty. Even in the absence of conclusive evidence, vigilance is advised to avoid irreversible harm.
- Open and Adaptive Management: Emphasized transparency and flexibility through inclusive stakeholder involvement, transparent communication, and open decision-making. Facilitates ongoing learning by incorporating new scientific information and adapting strategies to evolving situations.
- Integrated and Strategic: Encourages a whole-systems approach by integrating across sectors, and jurisdictions. Aligns marine planning with other environmental, economic, and social policies to prevent conflict and promote synergy.
- Spatial Efficiency: Reduces conflict among various users and enhances returns from marine resources by careful zoning, best-site selection, and determining compatible uses.
- Equality: Ensures equity and fairness by providing all stakeholders, including marginalized and indigenous communities, equal opportunities to participate in decision-making. Strives for just distribution of benefits and burdens of marine resource use.

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7 Brice Trouillet, "Reinventing Marine Spatial Planning: A Critical Review of Initiatives Worldwide" (2020) 22 Journal of Environmental Policy & Planning 441.

8 Wesley Flannery and Micheál Ó Cinnéide, "A Roadmap for Marine Spatial Planning: A Critical Examination of the European Commission's Guiding Principles Based on Their Application in the Clyde MSP Pilot Project" (2012) 36 Marine Policy 265.

- Sustainability: Pursues ecological integrity, economic sustainability, and social welfare for current and future generations. Directed by intergenerational equity, environmental stewardship, and long-term management of resources.

3. Blue Economy Policy Framework

The MoES is at the forefront of blue economy policy-making in India, acknowledging MSP as a key instrument of integrated maritime administration. The *Blue Economy Policy Framework* (hereinafter referred as Policy), emphasizes the significance of spatial planning towards ensuring sustainable development and management of resources.MSP plays a central role in this framework by integrating economic and ecological objectives through systematic governance.

The Policy recognizes important sectors that are central to blue economy of India, including fisheries, maritime transport, offshore renewable energy, and coastal tourism.[9] It supports an ecosystem-based management system, ensuring participatory governance by engaging the local community, industry players, and scientific institutions. By encouraging stakeholder engagement, it creates a strong foundation for data-driven policymaking and real-time marine monitoring systems, enabling informed decision-making.

Further, the Policyalso promotes adaptive management methods, including constant monitoring, review, and modification of spatial planning initiatives. This improves the adaptability of MSP initiatives, enabling policymakers to respond proactively to changing environmental and socioeconomic situations.

4. Legal Foundations for Marine Spatial Planning

The legal framework of MSP in India is a complex and dynamic system underpinned by a robust body of international conventions and agreements that are adapted to suit national legislative structures to meet economic growth requirements while ensuring environmental sustainability. The advanced approach ensures maritime governance in India is on par with global standards, which guarantees the strategic and equitable use of marine and coastal resources.The "United Nations Convention on the Law of the Sea, 1982" (UNCLOS), often called the "Constitution of the Oceans",is a major international convention that serves as the framework for maritime law and regulation.[10]

India enshrined these principles in the "Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976". This Act[11]specifically establishes

9 Dinoj K Upadhyay, "Blue Economy: Emerging Global Trends and India's Multilateral Cooperation" [2020] Maritime Affairs: Journal of the National Maritime Foundation of India.

10 Scott SV, "The LOS Convention as a Constitutional Regime for the Oceans," Stability and Change in the Law of the Sea: The Role of the LOS Convention (Brill | Nijhoff 2005).

11 Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, s 3.

that India has sovereignty over territorial waters, and asserts its sovereign rights to explore, utilise, protect, and manage natural resources on the continental shelf[12] and exclusive economic zones[13] respectively. The central government has the authority toconserve and protect the marine environment[14], which is in direct accordance with UNCLOS, which requires signatory States to maintain and conserve the marine ecosystem.[15]

In addition, the "Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981", enforces maritime rights of India by regulating fishing activities by the foreign vessels within the exclusive economic zone. This Act necessitates these foreign fishing vessels to be licensed[16] and granted a permit[17], which ensures control and compliance to sustainable fishing practices. In accordance with the commitment of India to the UNCLOS clauses regulating the long-term utilisation of live marine resources, the authorities have the authority to implement measures such as the detention of ships that violate conservation and management standards.[18]

The adherence of India to biodiversity conservation is influenced significantly by the "Convention on Biological Diversity, 1992" (CBD), with emphasis on using biological resources in a sustainable manner and equitable distribution of benefits. The provisions of CBD are reflected in the "Biological Diversity Act, 2002" which requires the central government to prepare national strategies and programs for biodiversity conservation, including marine ecosystems.[19]This Act also allows for the formation of "Biodiversity Management Committees" at local levels to ensure community involvement in the management and the prudent management of biological resources, which is a crucial part of the ecosystem-based strategy that forms the basis of MSP.[20]

The coastal governance framework of India borrows substantial impetus from international conventions that espouse environmental conservation and sustainable development. The "Coastal Regulation Zone Notification" (CRZ Notification), initially released in 1991 and

12 Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, s 6.

13 Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, s 7.

14 Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976, s 15.

15 United Nations Convention on the Law of the Sea [1997], art 192.

16 Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act 1981, s 4.

17 Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act 1981, s 5.

18 Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act 1981, s 7.

19 Biological Diversity Act 2002, s. 36.

20 Biological Diversity Act 2002, s. 41.

amended in 2019, closely mirrors the "Ramsar Convention on Wetlands, 1971", with its thrust towards the preservation and judicious utilisation of coastal habitats and wetlands.[21] Released under *Sec.3*[22] of the "Environment Protection Act, 1986", the CRZ Notification[23] classifies coastal areas into CRZ-I to CRZ-IV depending on ecological sensitivity and allowable usages. It enforces strict limits on industrial and infrastructural activities around ecologically sensitive areas and requires environmental impact assessments for developmental schemes, balancing protection of coastal biodiversity with sustainable development.

The involvement of India in regional and international cooperative systems also reinforces its MSP regime. The "Nairobi Convention, 1985" encourages cooperative MSP for the *Western Indian Ocean* region by placing special importance on integrated management of coastal zone and strategic environmental assessments.[24]The "FAO Code of Conduct for Responsible Fisheries, 1995", also strongly influences fisheries policies of India by setting globally accepted standards of sustainable management of fisheries, including ecosystem-based management and the precautionary approach.[25]

The evolving plans on MSP in India also reflects global climate resilience policies articulated under the "Paris Agreement, 2015*"* (The Agreement), in the "United Nations Framework Convention on Climate Change". The Agreement underscores adaptation[26] and mitigation[27] in the context of climate change, principles which India integrates into its marine and coastal management policies. The *National Climate Change Adaptation Fund* and the policies of *Coastal Regulation Zones* incorporate climate resilience into MSP.[28]

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21 Sakthivel M and Khan N, "Protection of the Indian Coastal Ecosystem through Coastal Regulation Zone (CRZ) Notifications", The Routledge Companion to Indian Ethics (Routledge India 2024).

22 Section 3 of the Environment (Protection) Act, 1986 gives the Central Government the power to protect and improve the environment.

23 Ministry of Environment, Forest and Climate Change, CRZ Notification 2019, dt. 18 January, 2019https://crz.elaw.in/crz2019.html.

24 Alex Midlen, "Enacting the Blue Economy in the Western Indian Ocean: A 'Collaborative Blue Economy Governmentality'" (2023) 7 Environment and Planning E: Nature and Space 627.

25 Jurgen Friedrich, "Legal Challenges of Nonbinding Instruments: The Case of the FAO Code of Conduct for Responsible Fisheries" (2008) 9 German Law Journal 1539.

26 The Paris Agreement, art 7.

27 The Paris Agreement, art 8.

28 Andrea Bryndum-Buchholz, Derek P Tittensor and Heike K Lotze, "The Status of Climate Change Adaptation in Fisheries Management: Policy, Legislation and Implementation" (2021) 22 Fish and Fisheries 1248.

5. Pradhan Mantri Matsya Sampada Yojana

The "Pradhan Mantri Matsya Sampada Yojana" (PMMSY), inaugurated in 2020, is a flagship initiative aimed at increasing the productivity of fisheries, promoting sustainable aquaculture, and improving the means of subsistence of coastal communities.[29] PMMSY, a crucial component of blue economy strategy of India, promotes sustainable utilization of resources and ecosystem-based management, which conforms to the guiding principles of MSP.

PMMSY focuses on the modernization of fishing facilities, capacity development, and technological innovation, such as the establishment of fishery clusters and coastal aquaculture areas. Through programs such as the creation of *Fisheries Management Plans*, PMMSY facilitates spatial planning for fisheries, minimizing the risk of overfishing and habitat destruction.[30]

Furthermore, PMMSY includes provisions for the preservation of marine biodiversity through the restoration of mangroves and coral reefs and the encouragement of environmentally friendly fishing. Through the incorporation of these conservation initiatives into economic development objectives, PMMSY represents the balanced MSP approach of reconciling marine expansion with ecological sustainability.

6. India-Norway Integrated Ocean Management and Research Initiative

A "Memorandum of Understanding" (MoU) was signed by Norway and India to establish the *India-Norway Ocean Dialogue*.[31]Additionally, a *Blue Economy Task Force for Sustainable Development* was established.[32]The significance of moving towards integrated and ecosystem-based methods to the management of renewable and non-renewable natural resources was emphasized by both Norway and India. The "Norwegian Ministry of Foreign Affairs, the Norwegian Ministry of Climate and Environment and Indian Ministry of Earth Sciences*"* decided to continue the cooperation by launching the *India-Norway Ocean Management and Research Initiative*.

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29 Latha Shenoy and Shridhar Rajpathak, "Overview of Recently Launched Pradhan Mantri Matsya Sampada Yojana (Pmmsy) In India," Sustainable Blue Revolution in India: Way Forward (CRC Press 2021).

30 Agarwal M and Dwivedi R, "Pradhan Mantri Mudra Yojna:A Critical Review" (2017) 13 Parikalpana: KIIT Journal of Management 97.

31 "Cabinet Approves MoU between India and Norway on India-Norway Ocean Dialogue" (Prime Minister of India) https://www.pmindia.gov.in/en/news_updates/cabinet-approves-mou-between-india-and-norway-on-india-norway-ocean-dialogue/.

32 "India-Norway Blue Economy Collaborative Model Is Good for Economic Growth, Climate and Marine Environment" https://www.norway.no/en/india/norway-india/news-and-events/newsnde/india-norway-blue-economy-collaborative-model-is-good-for-economic-growth-climate-and-marine-environment.

This collaboration focused on integrated ocean management, including relevant domains such as MSP. Norwegian experts delivered technical guidance on data provision, stakeholder consultations, and electronic mapping processes vital for effective MSP implementation.[33] One of the crucial elements within this collaboration involved establishment of scientific and technical MSP infrastructure comprising detailed marine databases and superior spatial decision-support systems.

As part of the efforts to implement MSP, the MoES through *National Centre for Coastal Research*, *Institute of Marine Research*, and the *Norwegian Environment Agency*chose Lakshadweep and Puducherry as pilot regions.[34] These locations were opted because they were ecologically sensitive, economically dependent on the marine environment, and had the ability to showcase integrated ocean management frameworks. The choice was informed by the necessity of creating region-specific MSP frameworks that balance economic development with conservation requirements.

The MSP pilot project in Lakshadweepaimed at resolving issues of coral reef destruction, lack of regulation of fishing, and growing pressures from tourism.[35] The scheme involved spatial zoning mechanisms to establish marine protected areas, environmentally friendly fishery zones, and regulated tourism corridors. This project integrated science and community participation with the intention of improving conservation of marine biodiversity and ensuring the security of livelihoodfor local fishers.

Similarly, the pilot project in Puducherry emphasized on managing the coastal zone, sustainable fishery, and climate change adaptation. The work included mapping coastal ecosystems, dividing usage areas, and defining legal structures for management of coastal use.[36] A notable aspect of Puducherry MSP was framing a multi-stakeholder system of governance where government agencies, local people, and private stakeholders were involved and engaged actively.

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33 JG Winther, M Dai, T Rist and others, "Integrated Ocean Management for a Sustainable Ocean Economy" (2020) 4 Nature Ecology & Evolution 1451.

34 Anjali Marar, "MoES Plans First Coastal Spatial Mapping Initiative for Sustainable Ocean Activities" The Indian Express (March 5, 2021) https://indianexpress.com/article/india/moes-to-perform-first-ever-coastal-spatial-mapping-towards-sustainable-future-of-oceans-7215680.

35 MV Ramana Murthy and others, "Marine Spatial Planning for a Resilient and Inclusive Blue Economy: Lakshadweep, India, a Pilot Study" (2024) 126 Current Science 229.

36 Chronicle Team, "Lakshadweep And Puducherry – Pilot Sites For Marine Spatial Planning" (Chronicle indiaPvt. Limited, March 3, 2021) https://www.chronicleindia.in/current-affairs/3179-lakshadweep-and-puducherry-ndash-pilot-sites-for-marine-spatial-planning.

7. Marine Spatial Planning Framework

Puducherry was the first Indian territory to successfully execute a holistic MSP framework in February 2023.[37] This achievement was made through joint efforts with the MoES, state government departments, and global partners. The implementation procedure was organized around scientific evaluations, consultations with stakeholders, and regulatory developments for sustainable management of coastal and marine resources.

The MSP agenda of Puducherry integrated vital aspects like marine zoning, fisheries management integration, and coastal infrastructure planning.[38] By allocating marine zones for various activities such as conservation, tourism, and aquaculture, the framework endeavored to reduce conflicts and maximize resource use. It also provisioned regulatory mechanisms for environmental monitoring, impact assessment, and policy compliance to guarantee long-term sustainability.

The successful implementation of MSP in Puducherry has created a precedent for national-level implementation, offering a scalable model for other coastal states in India. The project has also emphasized inter-agency coordination, scientific research, and stakeholder participation as key drivers to the success of effective marine governance. In the future, the experience gained from MSP framework of Puducherry will guide the extension of MSP to other maritime zones, assisting in the overall blue economy goals of India.

8. Institutional and Stakeholder Collaboration

MSP in India is underpinned by a strong institutional support headed by principal government agencies and ministries. MoES has a pivotal role in developing and implementing MSP policies, linking them to national development objectives and global obligations. MoES works with other ministries such as the "Ministry of Environment, Forest and Climate Change"to enable sustainable growth in the coastal and marine industries.

The "Department of Fisheries under the Ministry of Fisheries, Animal Husbandry and Dairying" is a key stakeholder, particularly in the implementation of the PMMSY. The department aims to improve fisheries productivity and use resource management initiatives and spatial planning to ensure that marine resources are used sustainably.[39] State-level

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37 The Hindu Bureau, "Marine Spatial Planning Framework, Country's First, Launched in Puducherry" (The Hindu, February 14, 2023) https://www.thehindu.com/news/cities/puducherry/marine-spatial-planning-framework-countrys-first-launched-in-puducherry/article66507666.ece.

38 "First Marine Spatial Planning (MSP) Framework: Puducherry" https://learnfinite.com/ca/first-marine-spatial-planning-msp-framework-puducherry.

39 Tarachand Kumawat and Lalit Kumar Tyagi, "National Legislations: Best Practices and Challenges in India for Sustainable Management of Fish Genetic Resources," Sustainable Management of Fish Genetic Resources (Springer Nature Singapore 2024).

coastal zone management institutions complement MSP implementation by enforcing local developmental and environmental policies to ensure that MSP is aligned with regional ecological and socio-economic contexts.

Effective MSP demands the active participation of local communities and industry players, with planning processes capturing multiple interests and knowledge systems.[40]Communities around the coast, particularly those dependent on tourism and fishing, are critical to the successful application of MSP through the provision of traditional ecological knowledge and involvement in decision-making. Community-based organizations and non-governmental organizations ensure grassroots participation, promoting the fair sharing of marine resources and the safeguarding of livelihoods.

The private sector is equally important in MSP application, especially in industries such as maritime transport, offshore renewable energy, and coastal tourism.[41] Industry engagement ensures that economic activities are harmonized with sustainable development principles, reducing environmental impacts while maximizing economic returns. Public-Private Partnerships encourage investment in marine conservation and infrastructure projects, driving innovation and resource efficiency. Integrating community and industry views, MSP improves social equity, environmental sustainability, and economic resilience.

International collaborations have played a key role in promoting MSP in India, introducing technical assistance, funding, and knowledge sharing mechanisms.[42] The Indo-Norwegian MSP collaboration exemplifies such partnerships, working on building science-informed planning tools and capacity development programs, highlighting the strengths of cross-country cooperation in maritime governance.

Multilateral organizations such as the “United Nations Environment Programme”and the “World Bank” also enable MSP initiatives in India through finance and technical support.[43] Such alliances ensure the embracement of global best practices, maximizing the impact and scalability of MSPframework in India. Such collaborative efforts with regional agencies ensure greater harmonization of marine policy to ensure unified approaches to cross-border environmental concerns and common objectives.

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40 Robert Pomeroy and Fanny Douvere, “The Engagement of Stakeholders in the Marine Spatial Planning Process” (2008) 32 Marine Policy 816.

41 Marilena Papageorgiou, “Coastal and Marine Tourism: A Challenging Factor in Marine Spatial Planning” (2016) 129 Ocean & Coastal Management 44.

42 TundiAgardy, Giuseppe Notarbartolo di Sciara and Patrick Christie, “Mind the Gap: Addressing the Shortcomings of Marine Protected Areas through Large Scale Marine Spatial Planning” (2011) 35 Marine Policy 226.

43 UN Environment, “Marine Spatial Planning of the Western Indian Ocean BlueEconomy” (UNEP - UN Environment Programme) https://www.unep.org/resources/report/marine-spatial-planning-western-indian-ocean-blueeconomy.

9. Conclusion and Suggestions

While the ocean supports diverse ecosystems, its capacity to sustain ecological and economic activities is limited. Therefore, evaluating the capacity of ocean and monitoring adherence to the plan are core components of MSP. Implementation of appropriate incentives can foster compliance. To achieve long-term blue economy infrastructure sustainability, ocean resources need to be employed wisely. Measures like coastal eutrophication, plastic contamination levels,average sea acidity, and the level of protected areas should be reviewed from time to time to determine ocean health.

The development of sustainable financial mechanisms is required to guarantee the effectiveness of MSP. Taxes on sea users have been applied in certain nations such as China and Australia as a method of raising revenues.[44] In the case of trans boundary MSP, there is also the possibility of establishing regional funds to reduce disputes over space and resource utilization while supporting planning processes. MoU scan also be formulated between coastal states to share the financial burden. A notable instance is the utilization of ocean-based debt conversion by the Seychelles government and the issuance of a sovereign blue bond to finance all ocean-based activities in a sustainable way.[45]

Several institutional capacities, technology integration, and data generation, storage, and analysis-related challenges need to be resolved. Poor data management can negatively affect the MSPdecision-making process. In order to transcend such limitations in knowledge scope considered for MSP management, specialized agencies should aggregate data. Additionally, acquisition of the data needed to estimate social and non-market complications calls for a fluid strategy towards knowledge generation and fusion.

These complex challenges require a strong and visionary policy response. India needs to give high priority to the creation of a comprehensive legal and institutional framework committed to MSP. The enforcement of specific MSP legislation would give the legal mandate required for integrated ocean governance, defining the roles and responsibilities of regulatory agencies and ensuring coordination among different maritime policies.

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45 Anja Menzel, “Blue Finance, Sustainability, and Maritime Security: Insights from Seychelles,” Advanced Sciences and Technologies for Security Applications (Springer International Publishing 2024).

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Online Harassment and Legal Protection: A Mental Health Perspective

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Abstract

Online harassment-including cyber bullying, cyber stalking, and digital abuse-has emerged as a significant threat to mental health in India. Victims often experience anxiety, depression, and post-traumatic stress, yet legal protections remain fragmented and reactive. This paper examines the psychological toll of online harassment, evaluates India's legal framework, and proposes reforms to integrate trauma-informed mental health support into legal redress mechanisms.

Keywords:

1. Meaning and Concept of Online Harassment

Online harassment refers to the utilization of information and communication technologies by an individual or a group to repeatedly inflict harm upon another person. This may encompass issuing threats, causing embarrassment, or inducing humiliation in a virtual environment. The behaviour extends to the expression of discriminatory attitudes and beliefs, such as sexism, racism, xenophobia, homophobia, Trans Phobia, or ablest prejudices. This harassment can be called cyber aggression, cyber bullying, cyber-harassment, cyber hate, cyber victimization, and deviant online conduct.

These occurrences across various online platforms, including but not limited to social media *(such as Facebook, Instagram, Snapchat, Reels, Twitter etc)*, SMS, instant messaging and email.

Online harassment, or even dealing with negative content online, can be distressing. It threatens the wellbeing of our community, our freedom of expression and the ability to participate fully in conversation and community.

2. Kind of Online Harassment

The most common kind of online harassment is:

- ✓ **Cyber Stalking**
- ✓ **Cat fishing**
- ✓ **Online Impersonation**
- ✓ **Doxing**
- ✓ **Trolling**
- ✓ **Pornography**

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Digital revolution has transformed communication but also facilitated new forms of abuse. Online harassment-ranging from trolling and doxing to revenge porn and cyber stalking-disproportionately affects women, LGBTQ+ individuals, and adolescents. Despite its prevalence, legal and psychological responses in India remain underdeveloped.

- **Cyber Bullying**

An umbrella term (like "online harassment") meant to encompass a number of harassing online behaviors. Like physical bullying, "cyber bullying" is generally aimed at young people and may involve threats, embarrassment, or humiliation in an online setting.

- **Cyber mob attacks**

Cyber-mob attack occurs when a large group gathers online to try to collectively shame, harass, threaten, or discredit a target. Targets overwhelmingly belong to traditionally marginalized groups. "Outrage mobs" or "shaming mobs" are a distinct kind of cyber mob made up of internet users who collectively troll individuals in the hopes of silencing or publicly punishing them. Targets of outrage mobs are often attacked for expressing opinions on politically charged topics or ideas the outrage mob disagrees with and/or has taken out of context in order to promote a particular agenda. Outrage mobbing can sometimes have severe consequences offline and has even resulted in targets losing their jobs.

- **Cyber Stalking**

In a legal context, "cyber stalking" is the prolonged use (a "course of conduct") of online harassment intended to kill, injure, harass, intimidate, or place under surveillance a target. Cyber stalking can comprise a number of harassing behaviours committed repeatedly or with regularity that usually cause a target to suffer fear, anxiety, humiliation, and extreme emotional distress.

- **Denial of Service (DOS)**

Denial of Service attack is a cyber-attack that temporarily or indefinitely disrupts internet service by overwhelming a system with data, resulting in the web server crashing or becoming inoperable. By targeting your computer and its network connection, or the computers and network of the sites you are trying to use, an attacker may be able to prevent you from accessing email, websites, online accounts or other services that rely on the affected computer.

- **Doxing**

Doxing involves publishing someone's sensitive personal information online in an attempt to harass, intimidate, extort, stalk, or steal the identity of a target. "Sensitive information" can include social security numbers, phone numbers, home addresses, personal photos, employment information, email addresses, and family members' personal information.

- **Hateful speech and online threats**

By far the most common form of online harassment, hateful speech or threats, both explicit and implicit, can be issued by an ill-intentioned internet user pretty much anywhere on the web. Hateful speech is a form of expression attacking a specific aspect of a person's identity, such as one's race, ethnicity, gender identity, religion, sexual orientation, or disability. Hateful speech online often takes the form of ad hominem attacks, which invoke prejudicial feelings over intellectual arguments in order to avoid discussion of the topic at hand by attacking a person's character or attributes. Threats issued online can be just as frightening as they are offline and are frequently meant to be physically or sexually intimidating.

- **Message bombing**

"Message bombing" is the intentional flooding of a person's or institution's phone or email accounts with messages meant to limit or block a user's access to a device's operating system or platform. Because large numbers of messages sent in a short period of time can typically render a person's account unusable, this is an effective way for a harasser to prevent you from using your devices or accessing your online accounts. Message bombing typically occurs over texting apps, chat apps, or email accounts.

- **Non-consensual, intimate images and videos (such as "revenge porn")**

The dissemination of non-consensual intimate images **(NCII)** – often called "revenge porn" – is the distribution of private, sexual or intimate images or videos of a person without their consent. This can also fall under the category of "sextortion," i.e. the threat of distributing a nude or sexually explicit image or video in an effort to blackmail an individual.

- **Online impersonation**

"Online impersonation" is a strategy whereby harassers create hoax social media accounts, usually in order to post offensive or inflammatory statements in your name. In most cases, the harasser's intention is to defame or discredit you, often by convincing others to believe the fake quotes attributed to you, which might then incite others to commit additional acts of harassment. Impersonation trolling can also happen when a harasser impersonates someone you know in order to offend or hurt you.

- **Online Sexual Harassment**

Online sexual harassment which is targeted at women at a far higher rate than men – encompasses a wide range of sexual misconduct on digital platforms and includes some of the more specific forms of online harassment, such as "revenge porn". It often manifests as hateful speech or online threats. There are four distinct types of online sexual harassment:

non-consensual sharing of intimate images and videos; exploitation, coercion and threats; sexualised bullying; and unwanted sexualisation.

- **Trolling**

"Trolling" is one of those terms that's evolved so much over time as to have no single agreed-upon meaning. The term "trolling" is defined here as the repetitive posting of inflammatory or hateful comments online by an individual whose intent is to seek attention, intentionally harm a target, cause trouble and/or controversy, and/or join up with a group of trolls who have already commenced a trolling campaign. There are three subcategories of trolling to be aware of: concern trolling, where harassers pose as fans or supporters of your work with the intention of making harmful or demeaning comments masked as constructive feedback; dog piling, where a group of trolls works together to overwhelm a target through a barrage of disingenuous questions, threats, slurs, insults, and other tactics meant to shame, silence, discredit, or drive a target offline; and botnet or sock-puppet trolling, which are used for a variety of reasons, from promoting propaganda to amplifying hate or defamation against targeted individuals.

3. Concept of online harassment

This report measures online harassment using six distinct behaviours:

- ✓ Offensive name-calling
- ✓ Purposeful embarrassment
- ✓ Stalking
- ✓ Physical threats
- ✓ Harassment over a sustained period of time
- ✓ Sexual harassment

Respondents who indicate they have personally experienced any of these behaviours online are considered targets of online harassment in this report. Further, this report distinguishes between "more severe" and "less severe" forms of online harassment. Those who have only experienced name-calling or efforts to embarrass them are categorized in the "less severe" group, while those who have experienced any stalking, physical threats, sustained harassment or sexual harassment are categorized in the "more severe" group.

Indeed, 20% of Americans overall representing halves of those who have been harassed online say they have experienced online harassment because of their political views. This is a notable increase from three years ago, when 14% of all Americans said they had been targeted for this reason. Beyond politics, more also cite their gender or their racial and ethnic background as reasons why they believe they were harassed online.

While these kinds of negative encounters may occur anywhere online, social media is by far the most common venue cited for harassment a pattern consistent across the Centre's work over the years on this topic. The latest survey finds that 75% of targets of online abuseequalling 31% of Americans overall say their most recent experience was on social media.

As online harassment permeates social media, the public is highly critical of the way these companies are tackling the issue. Fully 79% say social media companies are doing an only fair or poor job at addressing online harassment or bullying on their platforms.

But even as social media companies receive low ratings for handling abuse on their sites, a minority of Americans back the idea of holding these platforms legally responsible for harassment that happens on their sites. Just 33% of Americans say that people who have experienced harassment or bullying on social media sites should be able to sue the platforms on which it occurred.

- **Psychological Impact of Online Harassment**

Depression and Anxiety, Low Self-Esteem and Social Withdrawal, Difficulty Concentrating, Suicidal Ideation, Physical Symptoms, Perceived Permanence, Lack of Escape, Anonymity, Some Suggestions, Seek Support, Utilize Online Resources, Promote Online Safety Education, Develop Online Safety Policies, Encourage Help-Seeking etc.

People who have dealt with online abuse may feel anxious and stressed when they may have to do their routine activities too. This can cause serious distress to the victims:

- ✓ Low self-esteem
- ✓ Depression
- ✓ Suicidal thoughts
- ✓ Suicidal attempt
- ✓ Poor performance in school

4. Legal Framework in India

Some legal aspects:

- **Information Technology Act, 2000:**
- ✓ **Section 66E:** Punishes violation of privacy.
- ✓ **Section 67:** Penalizes publishing or transmitting obscene material in electronic form. Lawarticle.in
- **Indian Penal Code (IPC), 1860:**
- ✓ **Section 354D:** Addresses stalking, including cyber stalking.

- ✓ **Section 354D:** Addresses stalking, including cyber stalking.
- ✓ **Section 509:** Deals with words, gestures, or acts intended to insult the modesty of a woman.

- **Judicial Precedents:**

- ✓ SuhasKatti v. State of Tamil Nadu (2004): First convictionUnder Section 67 of the IT Act for posting obscene messages online.

However, these laws often fall short in encompassing the multifaceted nature of cyber bullying and online harassment.

- **Gaps in Legal Protection**

Despite existing laws, several gaps persist:

- ▪ **Lack of Specific Legislation:** India lacks comprehensive laws specifically addressing cyberbullying.
- ▪ **Enforcement Challenges:** Difficulty in identifying anonymous offenders and lack of awareness among law enforcement officials.
- ▪ **Inadequate Mental Health Support:** Legal redress mechanisms often do not integrate psychological support for victims.

5. Some Suggestions and Recommendations

- ✓ **Policy Reforms:** Enact specificAnd updated cyber laws recognizing psychological harm.
- ✓ **Mental Health Support:** EstablishTrauma-informed legal procedures and counseling for victims.
- ✓ **Education and Digital Literacy:** Implement campaigns promoting respectful online behaviour and awareness of legal rights.
- ✓ **Tech Accountability:** MandateReporting systems, content moderation, and collaboration with law enforcement.

6. Conclusions

The research advice that online harassment is not merely a legal issue but a public mental health crisis.It requires aMultidimensional approach involving Law, Psychology, and digital governance. Incorporating mental health perspectives into legal protections will ensure more empathetic, effective, and sustainableResponses.

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Global Trends in Immigration Control and Deportation Policies: A Comparative Legal Analysis of India, United States and the European Union

Mr. Abhilash Aggarwal *

Abstract

Immigration control has increasingly become a central element of modern governance, shaped by critical issues such as national security, economic considerations, humanitarian obligations, and political dynamics. In India, deportation policies are driven by laws like the Foreigners Act of 1946 and the Passport Act of 1920, underscoring a strong emphasis on national security and managing illegal migration. Recent practices in the past decade, notably the implementation of the National Register of Citizens (NRC) in Assam and controversial deportations of Rohingya refugees, have sparked significant debate and criticism concerning human rights and judicial oversight.The United States demonstrates a highly politicized and evolving approach to immigration control, governed primarily by the Immigration and Nationality Act. Policies under recent administrations illustrate significant fluctuations from the stringent "zero tolerance" and family separation policies under the Trump administration to the Biden administration's attempts at reform and moderation. The extensive use of Title 42 during the COVID-19 pandemic further reflects ongoing tensions between public health, border security, and humanitarian concerns.The European Union's deportation policies, framed by the Dublin Regulation and Return Directive, aim at harmonization but face substantial challenges in consistent implementation across member states. The 2015 migration crisis significantly reshaped EU policies, prompting stricter enforcement measures, controversial external agreements like the EU-Turkey and Italy-Libya deals, and ongoing debates around compliance with international human rights standards.This study offers a detailed comparative analysis of immigration control and deportation policies across India, the United States and the European Union, highlighting key global trends and their implications. Each region examined maintains distinct legal frameworks and policy approaches, influenced by their unique historical and socio-political contexts.

The comparative evaluation highlights a complex interplay between effective immigration management and adherence to human rights obligations. It calls for policy reforms emphasizing transparency, fairness and humanitarian considerations to better align deportation practices with international human rights standards and ethical responsibilities.

Keywords: Immigration Control, Deportation Policies, Human Rights, International Law, Comparative Legal Analysis

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1. Introduction

In recent decades, immigration control and deportation policies have emerged as fundamental issues within the global political and legal landscape. The rapid movement of people across borders whether due to conflict, economic opportunity, environmental challenges or personal aspirations has prompted governments around the world to reevaluate their immigration laws and practices.[1] Immigration control, including deportation policies, has become a defining feature of contemporary governance, touching upon not only legal frameworks but also political, economic and ethical considerations.

Immigration control can be defined as "the policies and laws that a government uses to regulate who can enter, stay and leave a country".[2] It includes mechanisms such as visa requirements, border checks and the authority to grant or deny entry based on criteria like nationality, criminal history and health status. According to *Castles, Hans and Miller*, immigration control refers to "the set of laws and policies designed to regulate the movement of people across borders and within countries," reflecting the state's power to control borders and manage migration flows for various socio-political and economic reasons.[3] It is *Professor Malcolm Shaw*, which defines immigration control as, "the process by which a country regulates and manages the entry, stay, and exit of individuals, through a variety of legal frameworks, including laws concerning visas, asylum and refugee status".[4]

The global significance of immigration control stems from its multifaceted nature. On one hand, nations have a legal right to manage and regulate immigration in order to safeguard their sovereignty, protect national security and maintain the integrity of their social systems. On the other hand, the increasing mobility of individuals in today's globalized world has given rise to complex socio-political dilemmas.[5]

Deportation, as an extension of immigration control, often symbolizes the stark consequences of crossing borders without legal authorization or overstaying visas, with varying levels of legal protection available to individuals based on their status and the country they are in.[6]The growing importance of border security and deportation policies has become particularly pronounced in response to escalating global crises, such as the refugee

1 Saleem H. Ali, Dominic Kniveton and RiyantiDjalante, *Human Migration And Natural Resources: Global Assessment of an adaptive complex system*(United Nations Environment Programme, 2023).

2 Oxford English Dictionary, *Immigration, n.* (Oxford University Press, 10th ed., 2024).

3 Stephen Castles, Hein de Haas and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*32 (The Guilford Press, 5th ed., 2013).

4 Malcom N. Shaw,*International Law* (Cambridge University Press, 8th ed., 2018).

5 Laura Thompson, "Protection of Migrants' Rights and State Sovereignty", 50(3)*Migration* (2013).

6 Daniel I. Morales, "Illegal" Migration Is Speech", 92(2) *Indiana Law Journal* 735-788 (2017).

crisis, mass migration due to climate change, and the rise of transnational organized crime. Countries are increasingly using deportation as a tool to manage immigration and deter illegal crossings, as seen in heightened border security measures and stricter immigration enforcement in countries like the *United States of America* (US), members of the *European Union*(EU) and *India*.

Deportation, as defined by the *Oxford English Dictionary*, is "the act of forcing somebody to leave a country, usually because they have broken the law or because they have no legal right to be there".[7] It is a legal process through which an individual is removed from a country, often after violating immigration laws. *Sassen* describes deportation as a form of "state violence" where individuals who do not meet the immigration requirements of a country are forcibly removed, reflecting the state's power to exclude and control its borders.[8] The *Global Detention Project* also defines deportation as "the formal expulsion of a person from a country based on violations of immigration law, typically involving administrative or judicial processes that lead to removal orders."[9]

However, deportation policies are not solely governed by legal frameworks; they are deeply influenced by political ideologies and national interests. In many countries, immigration and deportation have become politically charged topics, fueling debates around national identity, the protection of economic resources and the preservation of social order.[10] Economic considerations, such as the impact of migrant labor on domestic job markets and public welfare systems, often inform policies, making deportation a method to balance resource allocation and public opinion.[11] Similarly, deportation measures reflect ethical challenges how to reconcile national security with the protection of individual human rights, including the treatment of vulnerable populations like refugees, children and undocumented migrants.[12]

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7 James A. H. Murray (ed.), Deportation, n. (Oxford University Press, Vol. VII (O-PF) Part-I, 1933).

8 Saskai Sassen, Expulsions: Brutality and Complexity in the Global Economy132 (Harvard University Press, 2014).

9 Global Detention Project, Deportation (Geneva, 2020), available at: https://www.globaldetentionproject.org (last visited Apr. 3, 2025).

10 Diana Roy, Claire Klobucista and Amelia Cheatham, "The U.S. Immigration Debate", Council on Foreign Relations (Aug. 7, 2024 11:45 AM), *available at:*https://www.cfr.org/backgrounder/us-immigration-debate-0 (last visited Apr. 5, 2025).

11 Manoj Dias-Abey, "Determining the Impact of Migration on Labour Markets: The Mediating Role of Legal Institutions", 50(4) *Industrial Law Journal* 532-557 (2021).

12 AretiSianni, "Refugee Protection: A Case for Balance Between National Security & Humanitarian Concerns", (UNHCR, India) Feb. 4, 2024, *available at:*https://www.unhcr.org/in/news/speeches-and-statements/refugee-protection-case-balance-between-national-security-humanitarian(last visited Apr. 1, 2025).

Alvarez further argues that deportation is "the forced return of migrants or refugees to their home country, typically as a result of visa violations, illegal entry, or other legal infractions." He emphasizes the humanitarian challenges and political tensions surrounding deportation, particularly for vulnerable populations.[13] Deportation, therefore, cannot be viewed purely through the lens of legal statutes and enforcement mechanisms; it also embodies broader socio-political and economic ideologies. The policies surrounding deportation raise critical questions about human dignity, the right to migrate and the extent to which a state can control and restrict the movement of individuals across its borders. As these policies evolve, they continue to shape the legal and moral landscape of international migration, with lasting consequences for both migrants and the countries involved.[14]

1.1 Aims and Objectives

Despite the shared challenges of illegal immigration and the pressure to regulate cross-border movement, *India*, the US and the EU adopt very different approaches to immigration control and deportation policies. A comparative study of their legal frameworks will not only highlight the variances in their national strategies but also reveal the wider implications for human rights and security in a globalized world.The paper aims to analyze the legal and political motivations behind the policies of deportation in each region and assess their alignment with international human rights standards. The objectives of this paper are to:

1. Compare the legal frameworks governing immigration and deportation policies in India, the United States and the European Union.
2. Analyze the humanitarian impact of these policies, especially in relation to human rights protections.
3. Identify the key legal challenges and opportunities for reform in each region's deportation laws.

1.2 Research Methodology

This paper focuses primarily on the legal frameworks and policy trends from the last two decades, particularly addressing deportation in the context of criminal offenses, asylum seekers and irregular migration. While the scope is limited to these three regions, the implications of the findings may offer broader insights into global immigration law and policy. This research will adopt a qualitative approach, utilizing comparative legal analysis to examine the deportation laws and policies of the US, the EU and India. The study will review legal texts, court rulings and relevant scholarly articles to identify key trends, challenges and humanitarian impacts of the policies.

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13 Sofia Espinoza Álvarez and Martin Guevara Urbina (eds.),*Immigration and the law: Race, citizenship, and social control*212 (University of Arizona Press, 2018).

14 Alana M.W.Lebrón (et. al.), "Immigration and Immigrant Policies, Health, and Health Equity in the United States", 101(S1) *Milbank Quarterly*119-152 (2023).

The paper is organized in three sections, Section II will review the legal frameworks of deportation in India, the U.S. and the EU. Section III will provide a comparative analysis of these policies, highlighting key differences and similarities, while assessing the humanitarian implications of these policies, including their impact on human rights. The research will conclude by offering valuable insights into how deportation policies can be reformed to better align with international human rights standards, ensuring fair treatment of migrants while addressing national security concerns.

2. Legal Framework of Deportation

In today's increasingly interconnected world, immigration and deportation policies play a critical role in shaping the dynamics of nations' borders, security and human rights. India, the US and the EU each have distinct legal frameworks governing deportation, rooted in their unique historical, political and social contexts. While each region seeks to control immigration and ensure national security, their approaches vary significantly, reflecting a balance between enforcement, humanitarian considerations and adherence to international obligations.

2.1 India

India's legal framework governing deportation is grounded in a mixture of statutory provisions, judicial rulings and executive orders, aimed at regulating the entry, stay and removal of foreign nationals. These laws provide the legal backdrop for deportation practices, which have become a matter of increasing attention in the context of national security, migration management and human rights.[15]

The core legislation governing deportation in India is the *Foreigners Act, 1946*. This statute is the cornerstone of the country's immigration laws and has been pivotal in shaping the deportation framework. *Section 3* of the Act empowers the Indian government to make orders for the removal of foreign nationals who violate immigration laws. This provision allows the government to deport individuals whose stay in India is deemed unlawful, whether due to overstaying, illegal entry, or violation of the terms of their visa.[16]

Section 14 of the Act further stipulates penalties for foreign nationals found violating immigration laws. Specifically, this section provides for the detention and deportation of those who have entered India illegally or overstayed their permitted duration of stay. Over the years, judicial interpretations have emphasized the broad discretion given to

15 Ashish Bose, "Migration in India: Trends and policies." In *State policies and internal migration*137-182. (Routledge, 2022).

16 Anupama Roy, *Mapping citizenship in India* (Oxford University Press, 2010).

the government under this Act to ensure compliance with national security concerns and migration policies.[17]

The Passport (Entry into India) Act, 1920 complements the Foreigners Act by establishing the framework for regulating the entry of foreign nationals into India. This law provides the government with authority to issue orders for the deportation of foreign nationals who have entered the country without valid documentation or have overstayed their visas.[18] The dual enforcement of these two laws, the Foreigners Act and the Passport Act offers a robust legal mechanism for the deportation of individuals in breach of their immigration status.

Issued under the provisions of the Foreigners Act, the *Immigration (Check) Rules, 1992* provide detailed procedures for the enforcement of immigration controls in India. These rules set forth the process for verifying the status of foreign nationals, particularly those who may be subject to deportation. The rules also outline the steps to be followed by immigration authorities when dealing with suspected illegal immigrants, ensuring that deportation is carried out in accordance with due process and fairness.[19]

India's judiciary has played a significant role in interpreting the deportation laws, ensuring that deportation actions adhere to constitutional provisions, particularly regarding human rights. The *Supreme Court* (SC) has been instrumental in determining the legality of deportation orders, particularly in cases where national security concerns intersect with fundamental rights. In the landmark case of *N.D. Jayal v. Union of India*[20], the SC ruled that deportation orders must follow principles of natural justice and that foreign nationals facing deportation must have the opportunity to be heard. The court further emphasized that deportation cannot be carried out arbitrarily, and deportees must not face the risk of persecution in their home countries. Similarly, the *L. Chandra Kumar v. Union of India*[21] judgment reiterated the importance of judicial review in matters of deportation, asserting that individuals have the right to challenge deportation orders on grounds of legality, fairness, and human rights violations.

A more recent debatable development in India's deportation landscape is the *National Register of Citizens* (NRC) in Assam. This initiative, while specific to the state, has wider implications for the country's approach to immigration control. The NRC was designed to identify illegal immigrants, particularly from neighboring Bangladesh, and streamline the

17 Rumyana Van Ark and Tarik Gherbaoui, "Excessive Judicial Deference as Rule of Law Backsliding: When National Security and Effective Rights Protection Collide," 20 *Utrecht Law Review* 26–41 (2024).

18 A. N. Sinha, "Law of citizenship and aliens in India", 14(3) *India Quarterly* 253-269 (1958).

19 AsifaMaariaHussain, "The impact of and perceptions of Conservative immigration policy in relation to immigrants from the Indian sub-continent 1979-90: with special reference to Glasgow." (PhD diss., University of Glasgow, 1997).

20 [2003] Supp. (3) S.C.R. 152.

21 (1997) 3 SCC 261.

process for deportation. The *Assam Accord* of 1985, a key political and legal agreement, underpins the NRC, marking a shift towards more systematic identification and deportation procedures for suspected illegal migrants. However, the NRC and its implementation have been controversial, with critics alleging that it disproportionately affects minority groups, particularly Muslims. The government has faced mounting criticism for the perceived lack of safeguards and the potential for arbitrary deportation under the NRC framework.[22]

In the past five years, the period from January 2020 to March 2025, India has undertaken several key initiatives to address illegal immigration and streamline the deportation process. *The Ministry of Home Affairs* has issued new guidelines to strengthen enforcement mechanisms, facilitating faster identification and deportation of illegal immigrants.[23] The Indian government has also worked closely with countries like the United States to repatriate undocumented Indian nationals residing abroad. In 2025, reports indicated plans to repatriate approximately 18,000 undocumented Indian nationals from the U.S., which underscores the proactive approach being adopted to regulate the presence of foreign nationals in India and abroad.[24]

Furthermore, the deportation of refugees and asylum seekers, such as the Myanmar refugees who fled the military coup in 2021, has drawn attention to India's deportation practices. While India's legal provisions provide for the deportation of foreigners who violate the terms of their stay, they also raise questions about the treatment of refugees and their legal protections under international conventions.[25]Recent instances, such as the deportation of 104 Indian nationals from the U.S. in February 2025, have raised concerns about the treatment of deportees and the effectiveness of existing legal safeguards.[26]

22 MonishBhatia, "State Violence in India: From Border Killings to the National Register of Citizens and the Citizenship Amendment Act." In *Stealing Time: Migration, Temporalities and State Violence* 171-196 (Springer International Publishing, 2021).

23 PIB, "Union Home Minister and Minister of Cooperation, Shri Amit Shah, replies to the discussion on the Immigration and Foreigners Bill, 2025 in the Lok Sabha, After the discussion, the lower house passed the Bill", *The Ministry of Home Affairs*, Mar. 27, 2025, 9:24PM, *available at:*https://pib.gov.in/PressReleseDetailm.aspx (last visited Apr. 9, 2025).

24 Hannah Ellis Petersen, "Modi's government planning to repatriate 18,000 Indians living in US illegally", *The Guardian*, Jan. 21, 2025, 5:48 PM, *available at:*https://www.theguardian.com/us-news/2025/jan/21/modi-government-planning-to-repatriate-18000-indians-living-in-us-illegally (last visited Apr. 4, 2025).

25 Tora Agarwala, "India deports Myanmar refugees who fled 2021 coup", *Reuters*, May 2, 2024, 5:07 PM, *available at:*https://www.reuters.com/world/india/india-deports-myanmar-refugees-who-fled-2021-coup-2024-05-02/ (last visited Apr. 2, 2025).

26 PTI, "India strongly registered its concerns with U.S. authorities on treatment meted out to deportees, says Government", *The Hindu*, Mar. 22, 2025, 01:07 PM, *available at*: https://www.thehindu.com/news/national/india-strongly-registered-its-concerns-with-us-authorities-on-treatment-meted-out-to-deportees-says-government/article69360949.ece(last visited Apr. 2, 2025).

2.2 United States of America

The US deportation laws are governed by a complex set of statutory provisions, judicial rulings, and administrative practices that regulate the removal of foreign nationals who violate immigration laws. These laws have evolved significantly over the years, and recent policy initiatives have further reshaped the landscape of deportation, especially in light of ongoing debates over immigration control, national security and human rights.

The foundation of U.S. deportation law is rooted in the *Immigration and Nationality Act (INA)* of 1952. The INA is the primary statute governing immigration, visa issuance, and deportation procedures. The Act has undergone multiple amendments, but it remains the core framework for determining grounds for removal from the United States. *Section 237* of the INA outlines the various grounds for deportation, which include *"Violation of Immigration Law"*, for individuals who enter the U.S. illegally, overstay their visas or fail to comply with the terms of their visa may face deportation; "*Prevention Against Criminal Activity",* for non-citizens convicted of certain crimes, including drug trafficking, violent offenses and sexual assault, to be subject to removal under the *Criminal Alien Program (CAP)* and "*Prevention Against Security Threats*", against individuals associated with terrorist organizations or deemed a threat to national security may be deported based on provisions in Section 237(a)(4) of the INA.These grounds are further elaborated in the *Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)* of 1996, which introduced additional bars to immigration relief and expanded the categories of individuals who could be removed from the U.S.[27]

In the modern era, deportation enforcement is primarily conducted by *Immigration and Customs Enforcement (ICE)*, an agency within the *U.S. Department of Homeland Security* (DHS). ICE carries out deportation orders and detains individuals awaiting removal proceedings. The agency has been at the centre of contentious debates over the treatment of detainees, especially under the Trump administration's approach to mass deportations. From 2017 to 2021, under President *Donald Trump*, the United States adopted an aggressive "zero tolerance" approach to illegal immigration, which significantly ramped up deportation efforts. This policy expanded ICE's enforcement capabilities, particularly through increased detentions and expedited removals.[28]

One of the most controversial aspects of the Trump administration's deportation policy was the implementation of "family separations" at the U.S.-Mexico border. Under the "zero tolerance" policy, parents were often deported separately from their children, leading to widespread criticism from human rights organizations and international bodies. The policy

27 Torrie Hester, *Deportation: The origins of US policy* (University of Pennsylvania Press, 2017).

28 James Cohen, "Zero tolerance: The Trump administration's permanent anti-immigrant offensive and its repercussions in the Americas", 2 *Politiqueaméricaine* 39-60 (2021).

was partially reversed following significant public outcry and legal challenges.[29]The Trump administration also sought to end the *Deferred Action for Childhood Arrivals (DACA)* program, which provided protection from deportation for undocumented immigrants brought to the U.S. as children. The rescinding of DACA led to the threat of deportation for nearly 700,000 individuals. However, the U.S. Supreme Court ruled in *Department of Homeland Security v. Regents of the University of California*[30] that the termination of DACA was unlawful, though the future of the program remains uncertain.

Deportation laws in the United States have been subject to various judicial rulings, many of which have had significant implications for the procedural fairness of removal proceedings and the treatment of deportees.A historically significant case, the *Fong Yue Ting*[31] decision upheld the government's authority to deport non-citizens without a hearing. The decision set a precedent for the U.S. to take unilateral actions on deportations, though it has been subject to growing legal scrutiny in modern times, especially in the context of due process and human rights. Similarly, the landmark judgment of 2001[32] by US Supreme Courtaddressed the issue of indefinite detention for deportees awaiting removal. The Court ruled that the government could not indefinitely detain immigrants who had completed their criminal sentences but could not be deported due to the lack of a destination country. The ruling set a limit on detention duration, emphasizing due process and the rights of non-citizens under U.S. law.

Since the election of President *Joe Biden* in 2020, U.S. deportation policy has undergone a shift, with an emphasis on more targeted and less aggressive enforcement.Upon taking office, President Biden's administration implemented new guidelines for ICE, focusing on the deportation of individuals who pose a direct threat to national security, public safety, or border security. The priority shifted away from mass deportations, especially for individuals without criminal records. This policy, announced in *The U.S. Immigration and Customs Enforcement (ICE) Memo* in February 2021, marked a stark contrast to the aggressive deportation measures under the previous administration.[33]

A major challenge to the Biden administration has been its attempt to end the "*Remain in Mexico*" policy, which required asylum seekers to wait in Mexico while their claims

29 Jeffrey R. Baker and Allyson McKinney Timm, "Zero-tolerance: the trump administration's human rights violations against migrants on the southern border", 13 *Drexel L. Rev.* 581 (2020).

30 591 U.S. 1 (2020).

31 *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

32 *Zadvydas v. Davis,* 533 U.S. 678 (2001).

33 Eileen Díaz McConnell and Lisa M. Martinez, "Change in Administration, Change in Deportation Worry? Analyzing the Reduction of US Latinos' Worries About Deportation from 2019 to 2021." *International Migration Review* (2024).

were processed. This policy was criticized for exposing migrants to dangerous conditions, and in June 2021, the Biden administration announced plans to phase it out. However, the Supreme Court intervened, ruling in 2022[34]that the administration must reinstate the policy until a formal change could be made. This ruling has continued to influence ongoing debates on immigration enforcement and deportation.

A highly publicized instance of deportation occurred in September 2021 when the U.S. government deported thousands of *Haitian migrants* who had gathered under the *Del Rio International Bridge* in Texas. The images of *Border PatrolUnits* on horseback chasing the migrants sparked outrage and condemnation from both domestic and international human rights organizations, including the United Nations, who criticized the U.S. for its handling of the migrant crisis.[35]

Deportation policies have remained a focal point of debate in the U.S., especially in light of ongoing international scrutiny over the treatment of migrants. The human rights implications of mass deportations, family separations and the treatment of asylum seekers continue to raise concerns.For instance, reports in *The Guardian* and *BBC* in 2024 highlighted ongoing concerns regarding the treatment of migrant families and the deportation of individuals to countries where they face persecution. Critics argue that the U.S. is not living up to its international obligations under conventions like the *1951 Refugee Convention* and the *International Covenant on Civil and Political Rights (ICCPR)*.The Trump administration's policies, such as the mass deportation strategy discussed in December 2024, have intensified enforcement actions, leading to debates about their economic and social impacts.[36]

2.3 European Union

The EU's deportation laws are shaped by a combination of EU-wide regulations, national laws, and judicial rulings that govern the removal of foreign nationals. Over the years, the EU has developed a set of common standards for deportation, yet individual member states maintain significant discretion in enforcement. This framework aims to balance the need for effective immigration control with respect for fundamental human rights.These laws

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34 *Biden v. Texas*, 597 U.S. ___ (2022).

35 Bill Chappell, "U.S. Border Agents Chased Migrants On Horseback. A Photographer Explains What He Saw", *NPR,* Sept. 21, 2021, 10: 22 PM, *available at:*https://www.npr.org/2021/09/21/1039230310/u-s-border-agents-haiti-migrants-horses-photographer-del-rio (last visited Apr. 5, 2025).

36 Nadine Yousif, "Six big immigration changes under Trump and their impact so far", *BBC*, 27 Jan. 27, 2025, *available at:*https://www.bbc.com/news/articles/clyn2p8x2eyo (last visited Apr. 7, 2025).

are principally governed by several key legislative instruments. The most significant of these include the *Dublin Regulation*[37] and the *Return Directive*[38].

The *Dublin Regulation* is a cornerstone of the EU's immigration policy, particularly concerning the management of asylum seekers. This regulation establishes the criteria and procedures for determining the member state responsible for examining an asylum application. Under the Dublin system, if a migrant first enters the EU through one country, that country is generally responsible for handling the asylum claim.*Article 3 and Article 10* of the regulation allow for the transfer of asylum seekers to the responsible country. If an individual is found to have entered illegally, or if their asylum claim is rejected, they may be subject to deportation to the country responsible under the Dublin Regulation. It has been a point of contention, especially regarding countries on the EU's borders like Greece and Italy, which have been overwhelmed with asylum seekers. This has led to calls for reform, especially as EU countries have increasingly challenged the effectiveness of the system.[39]

Adopted in 2008, the *Return Directive* sets common standards and procedures for the return of illegally staying third-country nationals. The directive aims to ensure that deportations are conducted in a humane and dignified manner while guaranteeing the rights of deportees.*Article 6* of the directives mandates that detention of irregular migrants should be used only as a last resort and for the shortest time possible. While, *Article 8* establishes the requirement for providing deportees with a reasonable period of voluntary departure before being forcibly removed.The Return Directive also guarantees certain safeguards for minors, ensuring that deportation does not unduly impact their rights under *Article 9*.The directive sets the basic framework for deportation, but the implementation of deportation measures remains within the purview of individual member states. Some countries, particularly in Western Europe, have faced criticism for their slow or inconsistent implementation of the Return Directive.[40]

While the EU provides a legal framework, each member state retains authority to enact national laws that define the specific procedures for deportation. Some countries, such as *Germany* and *France*, have robust systems in place for managing deportation, while others, such as *Hungary* and *Poland*, have often been criticized for non-compliance

37 The Dublin Regulation (EU) No. 604/2013.

38 The Return Directive (2008/115/EC).

39 Francesco Maiani, *The Reform of the Dublin III Regulation* (Parlementeuropéen, 2016).

40 Madalina Moraru, "EU Return Directive: a cause for shame or an unexpectedly protective framework?." In *Research Handbook on EU Migration and Asylum Law* 435-454 (Edward Elgar Publishing, 2022).

with EU standards on deportation and migrant rights.[41]Section 60, of *The Residence Act* (Aufenthaltsgesetz), 2008 governs the deportation process in *Germany*. It provides that deportation may occur when an individual is residing in the country without a valid legal basis. However, Germany has provisions that allow individuals to appeal deportation orders based on humanitarian grounds or the risk of facing persecution in their home country.[42]

In *France*, the *Code of Entry and Stay of Foreigners and the Right to Asylum, 2004* (CESEDA) governs deportation. It allows for the removal of foreign nationals who do not meet residency requirements, including those involved in criminal activities. However, recent legal reforms have sought to limit deportations, particularly for individuals with established families or humanitarian needs.[43]

The *European Court of Justice* (ECJ) has played a crucial role in interpreting EU deportation laws, ensuring that deportation practices across the Union adhere to fundamental rights.In the case, *M and Others* v.*CommissaireGénéral aux Réfugiéset aux Apatrides*[44] the ECJ ruled that EU member states must ensure that deportation does not occur if the migrant faces a risk of inhuman or degrading treatment in their home country. The judgment reinforced the requirement that deportations should not be executed where there is a genuine risk of harm. Also in *Jafari*v. *Germany*[45], the ECJ ruled that Germany violated EU law by deporting an Afghan asylum seeker without sufficient consideration of his asylum application. This ruling emphasized the need for fair proceedings and proper assessment of the risks asylum seekers face in their countries of origin. However, The EU's approach to deportation has evolved in recent years, particularly in response to the 2015 migrant crisis, which saw a significant influx of refugees and migrants, particularly from Syria, Afghanistan and sub-Saharan Africa. Several developments have shaped recent EU deportation policies.[46]

One of the EU's most controversial policies in recent years has been the establishment of *hotspotcentres* in frontline countries, such as *Greece* and *Italy*, to process asylum seekers

41 Monika Kabataand An Jacobs, "The 'Migrant Other' as a Security Threat: The 'Migration Crisis' and the Securitising Move of the Polish Ruling Party in Response to the EU Relocation Scheme", 31(4)*Journal of Contemporary European Studies* (2022).

42 Constantin Hruschka, "Hyperactive and Incoherent Legislation and Policy: Germany's Fragmented Migration Management Within the European Framework." In *Law and Migration in a Changing World* 369-407 (Springer International Publishing, 2022).

43 Nicolas Fischer, "The detention of foreigners in France: Between discretionary control and the rule of law", 10(6) *European Journal of Criminology* 692-708 (2013).

44 C-348/16, (2018).

45 C-646/16, (2017).

46 Anke Hassel and Bettina Wagner, "The EU's 'migration crisis': Challenge, threat or opportunity", *Social policy in the European Union: state of play* 61-92 (2016).

and irregular migrants.[47] The goal of these centers was to quickly identify individuals who should be deported under the Dublin Regulation or Return Directive.However, the effectiveness of this policy has been called into question, with human rights groups criticizing the overcrowded conditions in these centers and the delay in processing asylum claims. In 2021, reports from The *BBC* raised concerns about the lack of proper safeguards for deportees in Greece, especially after incidents where migrants were left stranded in dire conditions for prolonged periods.[48]

Frontex, the EU's border control agency, has been increasingly involved in deportation activities, particularly through its operations in countries like Italy and Spain. In 2020, it was criticized for its role in facilitating pushbacks where migrants are forcibly returned to their country of origin without due process especially along the "Greece-Turkey" border. The European Parliament has called for more stringent oversight of Frontex, urging transparency and accountability in its deportation operations. Human rights organizations like *Amnesty International* have documented instances where the agency failed to uphold migrants' rights during deportation, leading to calls for reform and greater respect for international law.[49]

In response to the increasing pressure on EU borders and the continued migrant crisis, the European Commission proposed a "*New Pact on Migration and Asylum*" in 2020. The pact aims to overhaul EU migration policy, including deportation procedures. The pact emphasizes the need for more *effective border controls* and *faster deportations* of individuals not eligible for asylum. It includes measures for *solidarity* between EU countries, including *relocation mechanisms* for asylum seekers, which would reduce the burden on frontline states like Greece and Italy.This pact also includes provisions to ensure better *protection* for children, survivors of trafficking and other vulnerable groups during deportation processes.[50]

Deportation from EU countries has often been a source of international scrutiny, particularly regarding the treatment of migrants and asylum seekers. Among the most highly reported cases in international news, it was in 2021, that EU countries, including *Germany* and *France*, resumed deportations of Afghan nationals back to *Afghanistan*, despite the

47 Kevin Appleby, "How Europe is Slowly Closing Its Doors to Asylum-Seekers", *Centre for Migration Studies*, Apr. 30, 2024, *available at:*https://cmsny.org/how-europe-closing-doors-to-asylum-seekers/ (last visited

48 Nikos Papanikolaou& Phelan Chatterjee, "Greek opposition urges investigation after BBC migrant deaths report", *BBC*, Jun. 18, 2024, *available at:*https://www.bbc.com/news/articles/cz779jxkwxdo (last visited Apr. 8, 2025).

49 Mariana Gkliati, "The EU Returns Agency: The Commissions' Ambitious Plans and Their Human Rights Implications," 24 *European Journal of Migration and Law* 545–69 (2022).

50 Eleni Karageorgiou, "Guest Note on the New Pact on Migration and Asylum", 3(2) *Nordic Journal of European Law* (2020).

escalating security situation following the Taliban's takeover. The move sparked outrage from human rights organizations, including *Human Rights Watch*, which condemned the deportations as dangerous and contrary to international obligations. Similarly, reports from *Al Jazeera* in 2024 highlighted the practice of pushbacks in the Mediterranean, where boats carrying migrants were reportedly returned to Libya without the opportunity to apply for asylum. The European Court of Human Rights has heard multiple cases involving pushbacks, underscoring the growing concerns over the EU's treatment of asylum seekers at sea.[51]

3. Comparative Analysis of Deportation Policies and Humanitarian Conflicts

While all three have legal provisions for deportation, the procedures and grounds for deportation vary. The U.S. emphasizes criminal grounds for removal, whereas the EU focuses on the legality of stay. India's approach is influenced by its unique demographic and geopolitical considerations.Deportation policies, as tools of immigration control, have become increasingly contentious worldwide. Countries such as India, US and the EU have developed their own distinct approaches, with each balancing national security interests against the protection of fundamental human rights. While all three share the goal of curbing illegal immigration, their methods and their humanitarian consequences differ substantially.

At the core of the deportation systems in India, the U.S. and the EU are varying legal frameworks that reflect their respective priorities.India relies on laws like the *Foreigners Act*of 1946 and the *Passport Act* of 1920, which empower the government to remove foreign nationals found staying illegally. Deportation procedures, however, are often criticized for their lack of transparency and judicial oversight. Individuals facing deportation have limited avenues for legal recourse, which has raised concerns about fairness and accountability[52]. *The United States,* governed by the *Immigration and Nationality Act (INA)*, operates a more structured process for deportation, with *Immigration and Customs Enforcement (ICE)* taking the lead. Here, deportation is commonly enforced against individuals who violate immigration laws or pose a national security threat. The procedures, however, have been subject to heavy political debate, particularly under the Trump administration's "zero tolerance" policies, which were criticized for their aggressive stance, including family

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51 Diane Taylor, "UK immigration strategy increases risk of exploitation, say charities", *The Guardian*, Aug, 30, 2024, *available at:* https://www.theguardian.com/uk-news/article/2024/aug/30/uk-immigration-strategy-increases-risk-of-exploitation-say-charities (last visited Apr. 6, 2025).

52 Salah Punathil, "Precarious citizenship: detection, detention and 'deportability'in India", 26(1) *Citizenship Studies* 55-72 (2022).

separations. While the Biden administration has sought to recalibrate these practices, the U.S. system remains entrenched in an often-contentious political landscape.[53]

The European Union, through the *Dublin Regulation* and *Return Directive*, has established a framework for deportation across its member states. The EU aims to standardize deportation practices, but implementation varies significantly across countries. While countries like Germany have established legal systems that provide clear paths for appeal, others like Greece and Italy struggle with overburdened systems, often leading to delayed or inconsistent enforcement. Furthermore, the EU's externalization of deportation practices such as agreements with countries like Libya, has sparked human rights concerns about the safety and treatment of deportees.[54]

Over the past decade, these regions have navigated complex political and social landscapes, responding to rising migration flows, security concerns and human rights debates. Since 2015, deportation policies in the EU, India, and the US have undergone significant shifts, shaped by political pressures, humanitarian concerns, and legal frameworks.In the EU, the 2015 *European Migration Crisis* marked a critical turning point, as over a million refugees and migrants entered Europe, straining asylum systems and sparking political backlash. This led to stricter deportation measures and agreements like the 2016 "EU-Turkey deal", aimed at controlling irregular migration by returning migrants to *Turkey*.[55]Similarly, in 2017, *Italy* collaborated with *Libya* to intercept and return migrants attempting sea crossings, drawing criticism due to humanitarian abuses faced by migrants in *Libya*. *Denmark* in 2021 controversially revoked temporary protections for "Syrian refugees", urging their return by declaring parts of Syria safe, although actual deportations were practically stalled. From 2022 onwards, the EU has been working on the *New Pact on Migration and Asylum* to streamline deportations, highlighting a growing EU consensus on tougher deportation practices, balancing security with human rights obligations.

India's deportation policies since 2017 have notably hardened, particularly regarding the Rohingya refugee community. The government initiated a drive in 2017, labelling *Rohingyas* a security threat and explicitly ordering their deportation despite international criticism. This policy led to actual deportations beginning in 2018, which faced warnings from human rights organizations about the risks of persecution in *Myanmar*. India's 2019 NRC exercise in Assam excluded approximately 1.9 million residents, raising

53 Sarah Tosh, "Race and United States immigration policy: from criminalization to deportation." In *Handbook on Border Criminology* 121-137 (Edward Elgar Publishing, 2024).

54 IoanaVrăbiescu, "Deportation, smart borders and mobile citizens: using digital methods and traditional police activities to deport EU citizens." In *The Digital Empowerment-Control Nexus* 71-88(Routledge, 2024).

55 Alexandra Popescu, "The EU "costs" of the Refugee Crisis", 10(1) *Europolity-Continuity and Change in European Governance* 105-120 (2016).

fears of mass statelessness and deportations. Concurrently, the *Citizenship Amendment Act* (CAA) provided a controversial pathway to citizenship excluding Muslims, igniting nationwide protests over alleged religious discrimination. The Supreme Court in 2021 upheld deportation plans against Rohingyas, reflecting a judicial endorsement of India's sovereignty over international human rights norms.[56]

In the *United States*, deportation practices have experienced pronounced swings, particularly under recent presidential administrations. The *Trump Administration's* "zero tolerance" policy in 2017 drastically broadened deportation targets and led to the controversial family separation policy, creating significant moral and political fallout.[57] The COVID-19 pandemic in 2020 further transformed deportation practices through *Title 42* expulsions, rapidly returning migrants at the border under public health laws without normal immigration processes, affecting over 2.7 million individuals. Although the Biden administration aimed for a softer stance, including a failed attempt at a 100-day deportation moratorium in 2021, legal challenges and political disputes kept U.S. deportation policy contentious. By 2025, the U.S. policy landscape remained complex, reflecting an ongoing struggle between stricter enforcement and humanitarian considerations, amidst intense political and judicial debates.[58]

3.1 Case Studies

In 2025, several notable deportation cases have unfolded across the United States, India, and the European Union, reflecting the complex interplay between immigration enforcement and humanitarian considerations.In April 2025, the U.S. government moved to deport *Henry Josue Villatoro Santos*, previously identified as a leader of the MS-13 gang. This action followed the dismissal of a federal gun charge against him, highlighting the challenges in prosecuting alleged gang leaderswhich was on 10th April, 2025 dropped by the US government.[59]On similar lines a month before, a Columbia University student and legal permanent resident, *Mohd.Khalil* was detained in March 2025 amid protests against U.S. foreign policy. The government accused him of supporting Hamas, a claim he

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56 ManavKapur, "India's Citizenship (Amendment) Act: A Throwback to Debates around the 'Long Partition'",3 *Statelessness & Citizenship Rev.* 208 (2021).

57 Brandy Molina, "Implicit Actions of the Trump Administration Zero Tolerance Immigration Policy: A Policy Analysis." (PhD diss., California State University, Northridge, 2019).

58 Edward Alden and Laurie Trautman. *When the World Closed Its Doors: The Covid-19 Tragedy and the Future of Borders* (Oxford University Press, 2025).

59 Nicholas McEntyre, "DOJ moves to drop charge against top MS-13 leader who was busted in major Virginia operation", *New York Post*, Apr. 10, 2025, 1:42 A.M., *available at:*https://nypost.com/2025/04/10/us-news/doj-moves-to-drop-charges-against-ms-13-leader-henrry-josue-villatoro-santos-busted-in-virginia/ (last visited Apr. 12, 2025).

denied. An immigration judge ordered the government to provide evidence justifying his deportation.[60]

In late March 2025, *Mass Deportation Operation* in New York was conducted by ICE for five days, apprehending 133 individuals, including three convicted murderers. This operation underscores the administration's intensified focus on deporting individuals with criminal records. Between January and April 2025, the United States deported 682 Indian nationals, primarily for attempting illegal entry. This surge has prompted discussions in India about the treatment of deportees and the need for stronger measures against illegal immigration.[61]

The Members in Opposition in Indian Parliament have protested the alleged mistreatment of 104 Indian immigrants deported by the U.S., citing reports of handcuffing and leg chaining during transit. These incidents have strained diplomatic relations and sparked debates over the humane treatment of deportees.[62]Similarly, *Germany* faced criticism in April 2025 for deporting four pro-Palestinian activists, including Irish national *Roberta Murray*. Despite having no criminal convictions, these individuals were deported due to their involvement in protests criticizing Israeli actions, raising concerns about the use of immigration law for political purposes.[63]

These cases highlight the ongoing debates and challenges surrounding deportation policies, especially when intersecting with issues of national security, human rights and international diplomacy.

4. Conclusion and Suggestions

Since 1950, deportation practices in India, US and EU have significantly evolved, shaped by shifting political landscapes, security concerns, humanitarian crises and changing public attitudes toward migration. In India, deportation trends have often been influenced by national security and ethnic tensions. Post-1962, India's internment and subsequent deportation of Chinese-origin residents highlighted *wartime xenophobia*. The 1971

60 Matt Lavietes, Chloe Atkins and Juliette Arcodia, "Judge permits Trump administration to deport Columbia student Mahmoud Khalil", *NBC News*, Apr. 12, 2025, 5:18 AM, *available at:*https://www.nbcnews.com/news/us-news/judge-order-columbia-student-mahmoud-khalil-rcna200835 (last visited Apr. 12, 2025).

61 Alexandra Berzon (et. al.),"Social Security Lists Thousands of Migrants as Dead to Prompt Them to 'Self-Deport'", *New York Times*, Apr.10, 2025, *available at:*https://www.nytimes.com/2025/04/10/us/politics/migrants-deport-social-security-doge.html (last visited Apr. 12, 2025).

62 *Supra* note 26.

63 Sal Ahmad, "'We condemn Germany's complicity in genocide': Activists defiant in face of deportation", *Middle East Eye*, Apr. 7, 2025, *available at:*https://www.middleeasteye.net/news/germany-palestine-activists-deportation-state-repression(last visited Apr. 12, 2025).

Bangladesh Liberation War marked a massive refugee crisis, after which India strongly advocated repatriation. However, the issue of illegal migration became highly contentious during the Assam agitation (1979-1985), culminating in the Assam Accord of 1985, which sought to deport migrants who entered after March 1971. The subsequent implementation challenges and controversial legal frameworks, such as the *Illegal Migration (Determination by Tribunals) Act of 1983*, severely restricted deportations until the Act was struck down in 2005. Recently, India's policies toward Rohingya refugees since 2017 and the citizenship debates around NRC and CAA have underscored India's toughening stance, reflecting a trend toward nationalist and security-oriented migration policies.

In the US, deportation policies since the mid-20th century have swung dramatically, driven largely by economic, security, and political factors. The Immigration Act of 1965 and the *Immigration Reform and Control Act of 1986* marked significant turning points, initially liberalizing and later tightening immigration control, respectively. Post-1996 laws, notably the IIRIRA, dramatically expanded deportation powers, ushering in an era of mass deportations and mandatory detention practices. The events of 9/11 significantly influenced immigration enforcement, intertwining national security with deportation policies, exemplified by the establishment of the DHS and ICE. The Obama administration notably introduced humanitarian measures such as DACA but also expanded deportations through programs like Secure Communities. The Trump administration intensified enforcement through "zero-tolerance" policies and controversial border practices such as family separations. Under Biden, despite attempts at moderation, deportation policy remains contentious, with ongoing political and judicial battles.

The EU's deportation policies since the 1970s have evolved from initial reliance on incentivizing voluntary returns, like West Germany's repatriation grants, toward a more unified, legally harmonized approach. Landmark measures include the Schengen Agreement of 1985, which necessitated collaborative external border management and returns, and the Dublin Regulations, beginning in 1990, establishing mechanisms for managing asylum applications and deportations within the EU. The 2015 migration crisis significantly shaped EU policy, leading to controversial agreements such as the EU-Turkey Deal and Italy-Libya cooperation, emphasizing externalizing border controls and deportations. Additionally, high-profile incidents like *France's Roma expulsions* in 2010 and the *UK's Windrush Scandal* of 2013 highlighted the tensions between national interests and EU human rights norms. By 2025, the EU's New Pact on Migration and Asylum represents ongoing efforts to balance enforcement and humanitarian obligations, though practical and ethical challenges persist.

Collectively, the deportation histories of India, the USA, and the EU demonstrate a complex interplay of legal, humanitarian, security and political considerations. Each region continues to navigate these issues, balancing national sovereignty, human rights

obligations and public sentiment, indicating that deportation policy will remain a critical and contested issue in the coming years. While there are notable similarities in the deportation policies of India, the U.S., and the EU, the differences in enforcement and the humanitarian consequences cannot be ignored. Each region's approach has sparked debates over human rights, the treatment of refugees, and the balance between security and compassion. The need for reform is evident across the board, with calls for more transparent, humane and fair deportation processes that respect the dignity of migrants while ensuring that national borders are effectively managed. In the face of rising global1 migration pressures, finding this balance will remain a challenge. As these regions move forward, the spotlight will undoubtedly remain on how they address the critical issue of deportation and whether they can reconcile security measures with their moral and legal obligations to protect the most vulnerable.

Despite procedural differences, all three regions share similar concerns related to national security and border control. Each of these regions places a premium on maintaining border integrity. In India, concerns about illegal immigration, particularly from neighboring *Bangladesh*, have led to the implementation of harsh deportation measures. Similarly, in the U.S., deportations are often linked to national security concerns, with many individuals facing removal after criminal convictions or violations of immigration law. The EU, grappling with the migrant crisis of recent years, has similarly ramped up deportation measures to curb irregular migration flows, particularly from countries like *Syria*, *Afghanistan* and *sub-Saharan Africa*.

Reforming deportation laws requires a nuanced approach that considers security concerns, economic impacts and human rights. By adopting comprehensive reforms, enhancing legal protections and ensuring humane treatment of migrants, India, the USA, and the EU can develop deportation policies that are both effective and just. Based on the analysis, we need reforms aimed at aligning deportation policies with international human rights standards while addressing national security and immigration control concerns. India should enhance bilateral agreements with destination countries to ensure the humane treatment of deportees and establish comprehensive support systems for returnees to reintegrate into society. United States to implement policies that prioritize the deportation of individuals with serious criminal convictions, while providing protections for families and vulnerable populations. Increase transparency and oversight of deportation processes to prevent abuses. While European Union should reassess external deportation strategies to ensure compliance with human rights standards, considering alternatives like voluntary return programs with adequate support. Strengthen cooperation with international organizations to monitor and protect the rights of migrants.

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Reimagining Futurability of Legal Education Amid Artificial Intelligence: A Study of Possibilities.

Dr Nitesh Saraswat* & Mr. Sanjeet Singh

Abstract

The role of technology in reshaping legal education and legal service delivery has gone unnoticed for more than two decades & is yet to be explored. In times to come, technology, including artificial intelligence has been considered as an instrument to potentially contribute to the ongoing disruptions or trends in legal system. It is felt that there needs to be more literature on how they can be enlaced. The research problem is, to what extent does the choice of technology in legal education curriculum and teaching pedagogy can streamline and integrate reforms in the legal system? As a limitation, this correlation should not be understood causally, as other underlying potential factors also exist. This article undertakes to fill that gap by utilizing epistemological &multidisciplinary approaches from the theories & practices of law and technology.

Key Words: Artificial Intelligence, Legal Education, Law & Technology, Legal Education Curriculum.

1. Introduction

"Not everything that can be counted counts, and not everything that counts can be counted."[1]

About 80 years of Industrial Revolution[2] paralleled the innovation that occurred in a millennium before. The innovation of last 150 years collimate with last few decades. This analogy exhibits the exponential pace of innovations in continuous shorter periods. The economic exploitation of innovations was accelerated since Thomas Alwa Edison' Menlo Park ventures & adventures. Law is a laggard in discarding the old & switching to the new. This is the age of consequences & if law does not change, its scope & operations are going to be limited. The challenges the modern world facing are so complex that any legal system remain intractable.

How to bring technology into legal profession? It is through the magnificent gates of legal education. Once the legal education familiarizes itself with technological challenges, the legal profession will soon follow. In a peculiar manner, the path taken is in reverse gear.

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1 Kevin T. Jackson, The Scandal Beneath the Financial Crisis: Getting a View from a Moral-Cultural Model, 33 HARV. J.L. & PUB. POL'Y, 735, 747 (2010) (attributing quote to Albert Einstein).

2 The period from 1760 to 1840. The beginning was around the Battle of Plassey (1757).

The policy design is always faulty. Allow technological reforms in legal education through swift changes in the curriculum and the rest will quickly follow. This article inquired the academic curriculum across National Law Universities & Central Universities' Law Faculties and without much astonishment found that there is little that has changed in the curriculum because the consequences of AI technology are yet to be visualized. At few places, law and technology is being taught, not mandatorily but as elective subject. Metaphorically, the approach is much non serious than the way Environmental Studies are being taught.

In the rapidly evolving terrain of legal education, one must ponder the gravity of India's lag in integrating modern technology. Is this just a minor setback, or is it a colossal chasm separating India from the global vanguard? As the world races ahead, embracing digital revolution in law, why does India's legal education system remain tethered to antiquated methods, akin to a bygone era of parchment and quill? This stark disparity is not merely a gap; it is a gaping void.

Law and computer science uses semiotic systems of interpretation in forming arguments & drawing conclusions. Various views run against findings because they are partly subjective & arational, which shape meanings. What differentiates law from technology is not the subject area, but the method applied.

This article progresses into ten aspects unfolding the pertinent legal pedagogy, the basics of AI are untangled. When these basics are viewed from the prism of legal education, disruptions appear. That asserts to change the curriculum & the method of teaching pedagogy. It envisions a paradigm shift in the way of learning. The next step is to appraise technology adoption at the global level and compare it with acquisition in Indian legal education system. This dialectical approach may help in bringing our house in order. The article then runs into AI challenges and the opportunities coming out of those challenges. After a brief analysis of the techno-legal jurisprudence, metaphorically, law schools have been asked to tend their roses. Finally, the article concludes after displaying that legal education and profession are attached by umbilical cord.

2. AI disruptions in Legal Education

None knows what will happen from one day to the next.[3]

It must be noted that how and to what extent the changes within legal profession are going to impact legal education and vice-versa. Law faculties must contemplate holistically what their students will do whenever they enter the legal profession. Artificial Intelligence is about emphasizing on developing skills rather than knowledge. For example, making students aware about the technique of research databases rather

3 Guan Hanching, Yuan Dynasty.

than cramming a large list of cases. The acid test is how law schools are preparing students for the world of technology. In fact, AI will not substitute lawyers but the way legal service delivery takes place will be drasticallly changed to 'digital lawyering.'

This AI-driven legal landscape is not just altering traditional roles but also paving the way for new ones like legal technologists and AI legal application developers, blending legal expertise with technical skills. Furthermore, as AI permeates the legal sector, ethical and privacy considerations become paramount, requiring lawyers to navigate the intricacies of AI implementations with a keen understanding of their legal and societal implications. In this rapidly evolving arena, AI literacy is becoming a cornerstone of legal practice, enhancing efficiency, precision, and client relations, thereby redefining the competencies and career prospects of modern legal professionals.

The contemporary epoch demands that legal academia transcends its traditional boundaries, weaving AI, and technology-focused curricula into the very tapestry of legal scholarship. It is imperative that the jurists of tomorrow are not merely custodians of conventional legal wisdom but are also sagacious pioneers, adept at navigating the uncharted waters of AI's vast potential in legal practice. This integration of technological prowess with legal acumen ship is not just an academic ideal; it is an existential necessity, ensuring that the legal profession remains at the vanguard of innovation, efficiency, and ethical practice in an increasingly digitised world.

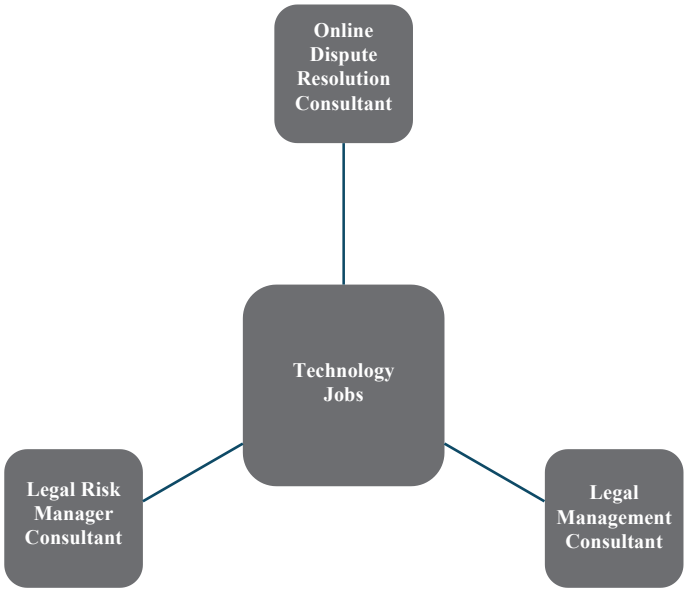
Technology will be offering entirely different career paths for future lawyers reflecting the changing legal market and legal service delivery. To survive amidst myriads of complex and interconnected challenges, legal professionals need a reflective legal education that is based on developing meta-recognition, consisting of life-long learning programmes that promotes innovative thinking. The shifting of legal profession due to the development of digital

technologies will deeply impact on the professional identity and tasks of both law students and lawyers. In 2017, Richard Susskind identified ten new jobs for law students, and after six years these are no more new jobs as many already exist.[4]

4 R. Susskind, TOMORROW'S LAWYERS 133 (Oxford, Oxford University Press, 2017).

Source of the below diagram[5]

Source of the Below diagram[6]



5 Ibid.

6 R. Susskind, TOMORROW'S LAWYERS 133 (Oxford, Oxford University Press, 2017).

3. Legal Pedagogy in the age of AI

The mountain road is steep, The stone paths dangerous,
It is not the road that slows me, but the stone in the shoe.[6]

In the age of artificial intelligence, we are in dire need to change our approach of how students should learn. Taking literally, the difference between teachers and students is merely half an hour-teachers come prepared. The way teachers can impart greater understanding need rethinking in pedagogy again. Or, does artificial intelligence imply renewal of what we mean by pedagogy? Technology influencers have opinions about AI revolutionizing learning in the age of chat GPT, but the fundamentals of what it takes to learn has not been challenged. Pedagogy will keep guiding the learners but deeper research is required to understand what technology offers. Artificial Intelligence touches off and develops a different type of relationship between students at law. It is required to remodel legal curriculum so that students at law is in control of their learning. Technology influencers overplay the potential of technologies. Law teachers are there to stay but the pedagogy will be entirely changed.

Teaching pedagogy is about guiding how to learn. Teachers, no doubt have the greater challenge more than ever before because now students have no dearth of information, and mere information supply will amount to teaching in disguise. With the change in curriculum, introduction of new courses, students at law must discover how best to utilize technologies to support learning. Wider consultations between legal academicians, professionals & policy makers will become a sine qua non.

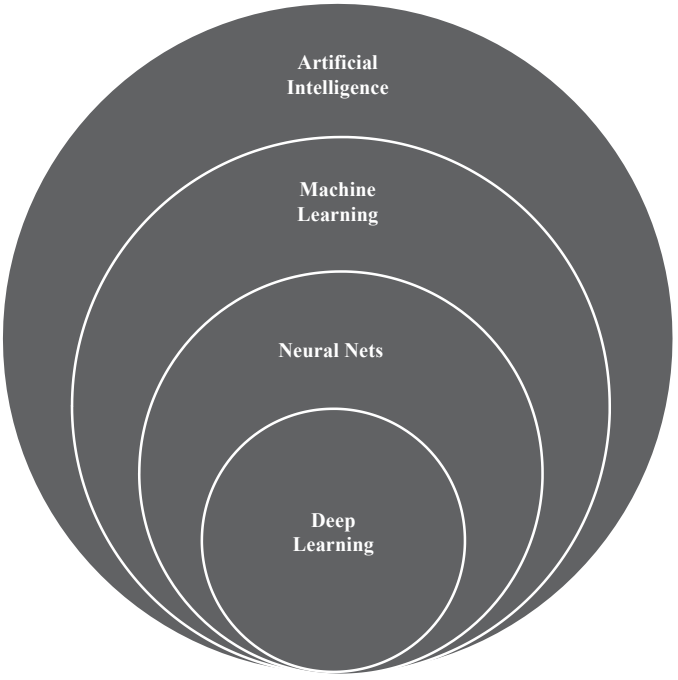
Through this article the authors try to turn the corner before it is too late. It urges to redesign the curriculum likewise. Although, the present education policy has adopted a more practice ready pedagogy, the challenge remains that legal education & its forms remain unchanged. It is still conventional, devoid of the latest technological advancements. Consequently, people do not understand the value of law in their daily lives because, one, of being not technologically updated, and two, the barriers to legal education remains too high.

4. A Guide to Artificial Intelligence

AI is an umbrella concept, continually evolving without any frame, encompassing technologies. Global networks fuelled the world with gigantic data and the world of technology was never the same. It is the backbone of modern technologies because we seek efficiency and want every application to be smarter and with full of ideas with problem solving as fundamental to it. The problems are complex in the modern world and solving them is a tricky task.

Technology has become critical to shape the society. It reshapes how human beings think, communicate and act. Technology is the practice to achieve specific tasks that are unimaginable for humans to perform. The idea of Machine Learning is to train computers to perform intelligent functions through experience rather than relying on a set of instructions.[7] It discovers new patterns. There are no predefined rules, all is based on trial and error. In the evolving world of legal education, the impact of Artificial Intelligence is akin to a modern-day Renaissance, reshaping the landscape much like the cultural rebirth of Europe centuries ago.The advent of AI in the legal domain globally parallels the transformative effects of Gutenberg's printing press, that made it easy to get information, like RTI Act, and profoundly altered societal structures. However, Indian legal education is at a pivotal juncture, reminiscent of the pre-printing press era, with many countries already integrating AI in legal practices, from research to predictive analytics. This slow adoption in India poses a risk of lagging behind in the global legal reformation. The disparity in AI integration not only affects current practices but also threatens the future adaptability of Indian legal professionals in a technology-driven global legal environment.

Source of the Diagram[8]



7 Rajiv Malhotra, Artificial Intelligence, and the Future of Power, 7 Rupa Publications 2021.

8 Algorithms, Technology, Culture, and Politics: Tobias Matzner Routledge 2024.

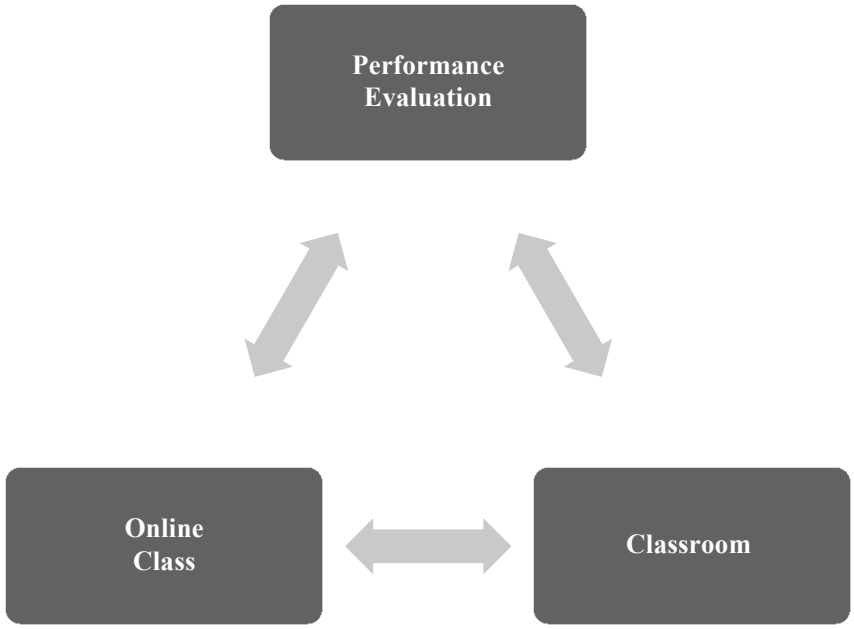
With new data, algorithms recognize data better than before. Isolated data has no worth. It must be processed, analysed & bring to use. That is why we as individuals do not feel that giving data is so significant. But certainly, fight for data has become intense. The above diagram illustrates the intricate neural networks.

The adage in Mahabharata is timely- "The kings have become like dogs that snatch meat from one another."[9] Data will drive the world of technology. Data is not only an epistemological issue, it is highly relevant too, ontologically. Isolated data has no worth. That is why we as individuals do not feel that giving data is so significant. But certainly, data fight has become intense.

5. Mixed Teaching Curriculum using AI

It consists of- Online Teaching, Classroom Teaching & performance evaluation.

Source of the Diagram.[9]



Unlike the conventional method to conduct mid and end term exams, online teaching is student based, personalized platform, where everyone takes responsibility to complete online learning. Teachers monitor real time progress & evaluate performance. For instance, online class can utilize the platform to assess students' learning progress & classroom teaching can analyse student' comprehension by unfolding frank discussion and case studies. The course structure is readjusted to help the students develop the core aspects of legal understanding. There are two ways of learning-teacher-driven pedagogy &

9 Supra n. 6.

learner driven pedagogy. While the former is confined to the teacher's own knowledge and methods, in the latter, the receiver of knowledge draws from many diverse sources, assimilate knowledge and there is a possibility of becoming more knowledgeable. Both have their parallels in artificial intelligence.

Paradigm Shift in Legal Education

The use of the phrase "paradigm shift" is a common occurrence these days. It is the most used & the least understood concept. It is to change the interconnections between the elements of a system or to change its purpose. For example, paradigm shift is to change the way people think, or see the world, what values they follow, how they view progress & how institutions change. These pillars or changes open the possibilities for large scale system change. For example, AI in legal design can make law & policy more accessible & interactive to many.

In any field, shifting paradigms including legal education, is transformative and has the potential to fundamentally change the world. Historical examples illustrate this: Copernicus' heliocentric model laid the groundwork for modern astronomy and technologies like satellites[10], Einstein's theory of relativity opened the door to nuclear energy[11], and Adam Smith's economic theories revolutionized trade and markets[12]. These shifts, driven by changes in underlying beliefs and values, have profoundly altered our practices and behaviours. Achieving such a paradigm shift is challenging yet powerful, often requiring the dismantling of old structures to build new ones. The development of the internet transformed how we communicate, access information, and conduct business. It has shaped global societies, economies, and cultures, offering a new platform for innovation and connectivity. This concept reinforces the importance of transformative thinking in addressing complex challenges and advancing society.

The intersection of technology and law is ushering in a new paradigm shift in legal education marked by the integration of Artificial Intelligence. This technological leap is not just a trend but a paradigm shift, reshaping how legal concepts are taught, understood, and applied. As legal systems worldwide become increasingly intertwined with digital technologies, the role of AI in legal education becomes a critical factor in preparing the next generation of legal professionals. This shift represents a significant

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10 Humanidades.com, "Nicolaus Copernicus," accessed January 30,2024, https://humanidades.com/en/nicolaus-copernicus/.

11 Smithsonian Magazine, "The Theory of Relativity, Then and Now," accessed January 30, 2024, https://www.smithsonianmag.com/innovation/theory-relativity-then-now-180978289/.

12 Foundation for Economic Education, "Adam Smith: Ideas Change the World," accessed January 30, 2024, https://fee.org/articles/adam-smith-ideas-change-the-world/.

evolution from traditional legal education methods, signalling a future where law and technology are inextricably linked.

6. Global Ai Integration with Legal Education

The global impact of AI in legal education extends beyond individual initiatives like Stanford's CodeX Center[13]. It encompasses a broader trend where major legal education institutions worldwide are integrating AI and technology into their curriculums. This includes the development of specialized courses that emphasizes upon the intersection of law and emerging technologies, applying AI tools for legal research and analytics, and partnerships between law schools and tech companies.

This shift is driven by the recognition that the legal profession is increasingly becoming reliant on technology. Law students are being prepared not just with traditional legal skills, but also with an understanding of how AI can aid in legal processes, from predictive analytics to automating routine tasks. This preparation is crucial for new lawyers to be competent in a legal terrain that is rapidly evolving due to technological advancements.

Moreover, this global perspective signifies a change in how legal problems are approached, encouraging innovative thinking and a multidisciplinary approach that blends law, technology, and data science. This holistic educational model aims to equip future legal professionals with the tools and knowledge necessary to navigate and shape the future legal environment.

The integration of AI into legal education is still taking baby steps in India, lagging global trends. Despite progressive initiatives like the Supreme Court of India's AI project SUPACE[14], which aims to leverage AI for legal research and data management.

7. AI Integration in Indian Legal Education

Space we can recover, time never.15

There is a noticeable disconnect in the technological advancement and their adoption within legal system. For instance, while there are sporadic instances of tech-focused seminars or workshops, comprehensive and systematic incorporation of AI and

13 Stanford Law School. "CodeX - The Stanford Center for Legal Informatics." Available at: https://law.stanford.edu/codex-the-stanford-center-for-legal-informatics/.

14 "SUPACE: Artificial Intelligence in Indian Courts." Available at: https://www.justitietransparenta.md/en/supace-artificial-intelligence-indian-courts/.

15 Napoleon, 1769-1821.

technology into the curriculum of law schools is rare. This contrasts with other institutions, which offers an "Iron Tech Lawyer" competition, fostering practical AI skills[16].

Moreover, Indian law schools often lack the infrastructure and resources necessary for wide- scale AI implementation. This is in stark contrast with universities of other countries which offers a course titled "AI for Lawyers," preparing students for a tech-savvy legal environment[17].

In the Indian legal education arena, small steps are being taken by a select few institutions in integrating AI into their curriculum. Notable examples include Bangalore National Law School (NLSIU)[18] and National Law University Delhi[19], offering specialized courses such as "Artificial Intelligence and the Law" and "AI Law & Policy[20]." Similarly, Gujarat National Law University[21] and the IIT Kharagpur[22] have taken a lead.

These pioneering efforts, though commendable, highlight that the integration of AI in legal education is still not a widespread phenomenon across India, starkly contrasting with the more extensive adoption seen in other countries. This situation underscores the pressing need for broader and more comprehensive adoption of AI-focused education within the Indian legal academic sphere.

The above discussion highlights the requisite for the Indian legal education to evolve, embracing AI not only for judicial functions but also as a fundamental part of legal training. This evolution is necessary to prepare future lawyers for a legal landscape increasingly shaped by technology and AI.

16 Georgetown Law. "Master of Law and Technology." Available at: https://curriculum.law.georgetown.edu/llm/llm-programs-non-lawyers/masters-law-technology/.

17 University of Toronto Faculty of Law. "Governance of Artificial Intelligence (LAW496H1S)."

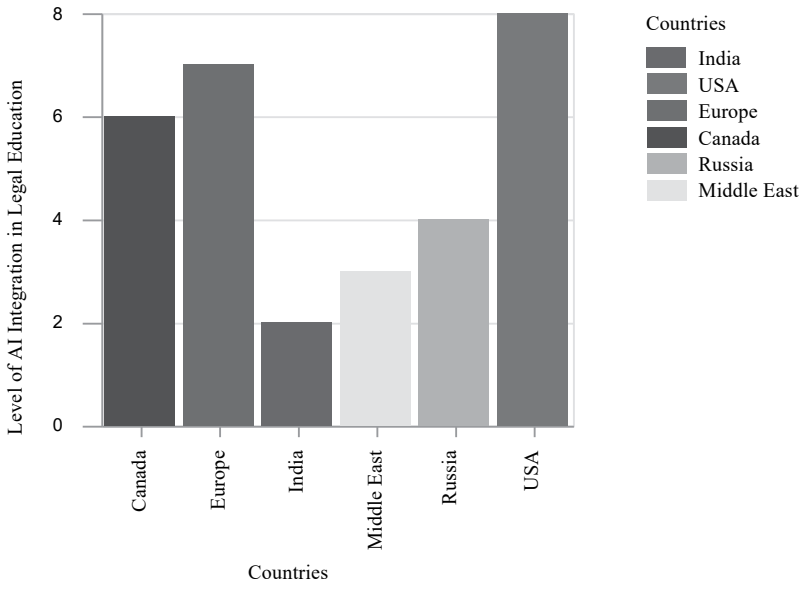
18 National Law School of India University. "NLSIU - National Law School of India University." Accessed January 22, 2024. https://www.nls.ac.in/.

19 National Law University, Delhi. "National Law University Delhi." Accessed January 22, 2024. https://nludelhi.ac.in/.

20 Available at: https://www.law.utoronto.ca/course/2023-2024/governance-artificial-intelligence.

21 Gujarat National Law University. "Gujarat National Law University." Accessed January 22, 2024. https://www.gnlu.ac.in/.

22 Indian Institute of Technology, Kharagpur. "Indian Institute of Technology Kharagpur." Accessed January 22, 2024. http://www.iitkgp.ac.in/.



Comparative Analysis of AI Integration in Legal Education.

8. AI Challenges in Indian Legal Education

"A path along a stream is full of peril."[23]

The challenges facing Indian law schools in integrating AI are multi-faceted. The absence of Artificial Intelligence (AI) and technology law courses in Indian law schools mirrors a gardener nurturing a garden traditionally by overlooking the need to adapt to a changing climate requiring new tools and techniques. This traditional focus in legal education has led to a noticeable gap, leaving emerging legal professionals ill-equipped to address the intricate legal bottlenecks that appear in these rapidly evolving fields.

First, there is often a significant lack of infrastructure for technology in the field of legal education as prevalent across various educational sectors in India. This includes limited access to advanced AI tools for practical learning.

Second, there are not enough law teachers who are adept in both legal subjects and AI. This gap in expertise hampers the progress of comprehensive AI-related legal courses. In contrast, universities like MIT and Stanford, have faculty who specialise in the intersection of technology and law.

Third, financial limitations represent another significant challenge. Like many educational institutions worldwide, Indian law schools face budgetary limitations that

23 Zhang Kejiu, Yuan Dynasty.

hinder the adoption of necessary AI software and technology upgrades. The issue is not just about buying the resources but also about maintaining them.

Fourth, bureaucratic inertia is another hurdle. There's often resistance within the educational system to bring new reforms and move away from obsolete methods, a trend observed globally. This resistance can slow down the adoption of innovative, tech-driven educational approaches.

Fifth, it is a gigantic task to bring collaboration between the tech and legal sectors in India. In countries like the US, partnerships between law schools and tech companies have been crucial in facilitating AI integration. This collaborative model is less common in India, affecting the pace and efficacy of AI adoption in legal education.

Six, the reluctance to embrace AI in legal education may limit the exposure of Indian law students and professionals to essential skills and tools. Generative AI, such as GPT-3 and GPT-4, has revolutionized legal writing and research, tasks traditionally requiring highly trained individuals. These AI models assist in drafting legal documents and conducting research, skills that Indian law graduates might lack without exposure to such technologies[24].

Finally, there is no coherent memorandum of understanding for AI in legal education. The New Education Policy does not address it. There is no policy document that elucidate it.

In contrast to the European Union's digital education strategies, India lacks clear policies and guidelines, creating uncertainty and inconsistency in efforts to integrate AI into legal education. This policy gap needs to be addressed to enable a structured and effective approach to AI integration in legal studies.

9. AI Opportunities in Indian Legal Education

'I might teach the horse to fly!'[25]

The word 'crisis is in Chinese language consists of two characters- one represents danger and the other opportunity. AI challenges present unique opportunities. For instance, collaborations with tech companies and institutions specialising in AI can provide both the necessary technological resources and expertise. This could be possible through combined programs, guest lectures, or research partnerships. An example is the collaboration between Cornell Tech and Cornell Law School in the US, which brings together legal and tech expertise.

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24 Law.com International, "AI in Law: Navigating the New Frontier of Legal Practice," accessed January 30, 2024, https://www.law.com/international-edition/2024/01/28/ai-in-law-navigating-the-new-frontier-of-legal-practice/.

25 STORY RELATED IN R. G. H. SIU, THE CRAFT OF POWER.

Indian law schools have a unique opportunity to pioneer in developing context-specific AI applications tailored to the need for the Indian legal system. This could involve creating AI tools for interpreting the vast array of Indian laws and regulations, which often vary across different states. For instance, AI could be used to analyse and predict outcomes of cases based on past judgments, particularly in areas with a high volume of litigation-like property or family law. Additionally, AI can assist in language translation and interpretation, considering the linguistic diversity in Indian legal proceedings. These context-specific toolkits will not only upgrade legal education but also improve the efficiency and accessibility of legal services in India.

By focusing on the needs and nuances of the Indian legal system, these AI applications would offer invaluable, practical learning experiences for law students. Embracing these opportunities thrusts a transformative shift in legal education in India, making it more aligned with the demands of a rapidly evolving, technology-driven legal landscape.

To bridge the gap in AI integration in Indian legal education, a strategic and comprehensive approach is necessary. This involves revamping the curriculum to include AI and legal technology, a move that would mirror efforts seen in leading global institutions. Furthermore, investing in technological infrastructure is critical, allowing students to gain hands-on experience in legal tech. Simultaneously, training faculty in AI-related subjects is essential to ensure effective teaching. Collaborations with industry leaders and tech firms could provide practical exposure through internships and guest lectures, fostering a culture of innovation. Additionally, encouraging student-led tech initiatives to stimulate a practical understanding of AI applications in law. This holistic approach aims not only to update the educational framework but also to cultivate a future-ready legal workforce in India.

10. Indian Contribution to Global Techno-Legal Jurisprudence

Do not stand by a tree stump and waiting for a hare.[26]

Integrating Artificial Intelligence into Indian law school curricula is also crucial to stay updated within the global legal trends and ensuring the holistic development of Indian jurisprudence. AI's influence in the legal domain is profound, as it penetrates various aspects like legal research, contract analysis, predictive analytics, document review, and legal chatbots. This technological advancement in the legal field streamlines tasks, enhances efficiency, and opens new avenues for legal practice and research[27].

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26 Han Fei Zi, Spring and Automn period.

27 Anndy Lian, "Legal Implications And Regulatory Measures For AI Integration In The Indian Legal System," anndy.com, accessed January 30, 2024, Anndy Lian.

When compared to other countries where AI's incorporation into legal education is more advanced, Indian jurisprudence is much slower. For instance, in the developed world, including China, law firms and legal education institutions are actively exploring AI for tasks like legal research, case prediction, and contract analysis. These advancements streamline legal practices and at the same time open new possibilities for AI application in legal studies[28].

This disparity in AI integration is hindering the growth of Indian jurisprudence in law and AI both. Indian legal professionals face challenges in adapting the global legal environment increasingly influenced by AI. For example, AI's role in enhancing legal research and document review has been transformative, introducing efficiency and accuracy that were previously unattainable. This advancement in legal practices, seen globally, could remain a missed opportunity for Indian professionals if AI is not integrated into their training[29].

A significant example in the Indian context is the of Kira by Shardul Amarchand Mangaldas, an AI tool designed for contract analysis and document review[30]. Kira's implementation illustrates the practical applications of AI in streamlining legal processes, emphasizing the need for Indian legal education to include such technologies in its curriculum to prepare students for contemporary legal challenges.

Moreover, AI's application in litigation and trial preparation further accentuates the necessity of its inclusion in legal education. AI can analyse trial transcripts in real time, offering insights that assist lawyers in making strategic decisions during trials. The ability to leverage such technology is becoming increasingly crucial in legal practice, and the lack of AI integration in Indian legal education could result in a significant skills gap for Indian legal practitioners[31]. Consequently, there is a perception that Indian jurisprudence lacks the necessary sophistication or technical understanding to tackle modern, technology-driven legal challenges effectively.

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28 Kimmy Gustafson, "Artificial Intelligence (AI) & Increasing Automation in Legal Studies," Forensics Colleges.com, January 29, 2024, Forensics Colleges.

29 Thomson Reuters, "How the use of AI in legal services evolved: A year in review," Legal Blog, accessed January 30, 2024, https://legal.thomsonreuters.com/en/insights/articles/how-the-use-of-ai-in-legal-services-evolved.

30 Brookings, "How AI will revolutionize the practice of law," accessed January 30, 2024, https://www.brookings.edu/research/how-ai-will-revolutionize-the-practice-of-law/.

31 Kira Systems, "Kira," accessed February 11, 2024, https://kirasystems.com/.

11. Law Schools as Watchful Gardeners

"The glory of gardening: hands in the dirt, head in the sun, heart with nature. To nurture a garden is to feed not just the body, but the soul."[32]

Consider the legal arena as an ecosystem, where the conventional law is akin to well-known flora, while AI and technology law represent new, exotic species that are rapidly becoming dominant. Indian law schools, focusing on traditional legal studies, are like gardeners skilled in tending to familiar plants but inexperienced in cultivating these new, technologically advanced species. As a result, emerging legal professionals, much like inexperienced gardeners, find themselves ill-equipped to nurture and understand these burgeoning aspects of the legal ecosystem.[33]

This educational shortfall is evident when considering the complexities of modern legal challenges. For instance, issues like data privacy, cybersecurity, and intellectual property in AI demand a deep understanding of technology and its legal implications. The Facebook-Cambridge Analytica data scandal is a prime example of it. It showcased the intricate interplay between technology and privacy laws, a domain where Indian legal professionals might find themselves at a disadvantage due to their lack of education in this field.

Just as a gardener who ignores the changing climate and evolving gardening practices can lose their crops, so too can a lawyer unversed in AI and technology law fall short in effectively addressing modern legal issues. This unpreparedness leads to a perception that Indian jurisprudence lacks the necessary sophistication or technical understanding to effectively tackle these challenges. The rapidly evolving field of AI ethics, involving issues like algorithmic bias and automated decision-making, requires not just legal expertise but also a strong grasp of the underlying technology, which current legal education in India does not sufficiently provide.

The educational gap in AI and technology law results in a lack of nuanced legal opinions and judgments from Indian professionals in these fields. It is a missed opportunity for Indian legal professionals to contribute to and shape the global discourse in technology law. Incorporating AI and technology law into Indian legal education is not just an enhancement; it is a necessity for the legal profession to remain relevant and effective. Just as the gardener must learn to cultivate a variety of plants, Indian law schools must equip future lawyers with the tools and knowledge to navigate the intractable legal aspects of a technology-driven world. This adaptation will ensure that Indian

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32 Traditional Chinese Saying.

33 Legal Research." ROSS Intelligence Blog. Available at: https://blog.rossintelligence.com/category/legal-research.

jurisprudence keeps pace with global legal developments and contributes meaningfully to the broader legal ecosystem.

12. Mutualism of Legal Education & Profession

Those who wear the silk do not rear the worms.[34]

In an era where artificial intelligence (AI) is redefining the boundaries of numerous professions, the legal structure is undergoing a particularly profound transformation. This calls for delving into the ramifications of the absence of AI-focused education in legal curriculums, particularly the challenges and limitations it imposes on aspiring legal professionals.

AI in the legal sector is revolutionizing the job market, necessitating a new wave of skills and adaptability among future lawyers. AI technologies like ROSS Intelligence are transforming legal research[35], enabling lawyers to conduct thorough and efficient document reviews.

Predictive analytics tools, such as Lex Machina[36], are reshaping litigation strategies by forecasting case outcomes, while AI-driven platforms like Kira Systems[37] and LawGeex[38] are revolutionizing contract analysis and automation, demanding a blend of legal acumen and technological proficiency. In the world of due diligence and compliance, AI solutions like those offered by Diligent Corporation[39] are becoming indispensable. Furthermore, the application of AI in online dispute resolution, exemplified by platforms like eBay's resolution centre[40], is creating new avenues for legal services.

The field of intellectual property is also undergoing a metamorphosis with AI tools such as Trade Mark Now[41], enhancing the efficiency of trade Mark searches and infringement analysis. E-discovery platforms like Relativity[42] and Logikcull[43] are drastically reducing

34 Traditional Chinese saying.

35 Supra n. 36.

36 Lex Machina. "Legal Analytics by Lex Machina." Available at: https://lexmachina.com.

37 Legal.io. "Kira | Legal.io Legal Software." Available at: https://www.legal.io/legal-software/3536765/Kira.

38 LawGeex. "Conquer Your Contracts." Available at: https://www.lawgeex.com.

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41 Corsearch. "TrademarkNow Is Now a Part of Corsearch." Available at: https://corsearch.com/trademarknow/. 42

42 Relativity. "eDiscovery & Legal Search Software Solutions." Available at: https://www.relativity.com.

43 Logikcull. "Logikcull: eDiscovery & Legal Holds Software for Legal Teams." Available at: https://www.logikcull.com.

the time and costs involved in legal proceedings. The emergence of legal chatbots, like 'Do Not Pay'[44], signifies a shift in client-lawyer interactions, necessitating an understanding of AI integration in customer services.

We must envision a future where Artificial Intelligence (AI) is seamlessly woven into the fabric of legal education in India. This integration is not merely an upgrade; it is a revolutionary leap. Imagine law students analyzing complex legal scenarios with AI-driven simulations, enhancing their ability to strategize and solve the problem. Envision virtual courtrooms where students enhance their advocacy skills with AI-generated cases, preparing them for real-world challenges with unparalleled sophistication.

The absence of AI in legal education is not just a missing element; it is a glaring void that threatens to leave our future lawyers in the shadows of obsolescence. Without AI, they remain unprepared for the torrent of technological advancements sweeping the legal domain across the world. From blockchain's impact on contract law to AI's role in forensic analysis, the lack of AI training is a disservice to their potential and detrimental to the profession's evolution.

To rectify this, law schools must not only embrace but making AI an integral part of their curriculum. This means creating dynamic curriculums that include AI in legal analytics, predictive policing, and digital rights management. It calls for partnerships with technology pioneers, fostering an environment where law and technology coexist and complement each other. By doing so, Indian legal education will not just fill the current void but will emerge as a beacon of innovation and excellence, guiding the legal profession into a future bright with possibilities and advancements.

13. Conclusion

The authors advocate a systemic change. We are at the cross section of the end of one age & the beginning of the other. The Stone Age did not end because we ran out of stone. The Iron Age replaced it with new technology. AI will not replace the law; it will entirely change the way we work. The great challenge of our time is to identify the seemingly intractable problems[45]. It requires a paradigm shift in mindsets & behaviours. By many measures, the modern era, relatively the last two decades of the inclusion of technology in legal education has been impressive. Globally, surely, much remains to be done, but overall, its -glass remains half full. Nevertheless, the Indian story remains – glass half empty. More specifically, what would be the future of the Indian legal education system that does not meaningfully address or proactively include technology in its curriculum?

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44 DoNotPay. "DoNotPay - YourAI Consumer Champion." Available at: https://donotpay.com.

45 Sometimes called "wicked problem," because they have many interlinked causes and there are no clear solutions.

While countries globally leapfrog into a future where AI, machine learning, and digital analytics redefine the legal profession, India's slow pace in adopting these transformative technologies paints a concerning picture. But is it just lagging, or is it riskily teetering on the brink of obsolescence? This dramatic lag is more than a cause for concern; it poses a profound question: is it a clarion call for urgent, sweeping reforms? As the world moves forward, can India afford to ignore the wake-up call that, if unheeded, threatens to leave its legal education in the shadows of global progress, stranded in an era that the world has long since transcended? The magnitude of this disparity compels us to ask: what steps must India take to bridge this technological divide and ensure its legal education system is not just catching up, but is also innovating and leading in the realm of legal technology?

If the situation is so stark, one may be allowed to ask, can we make this transition through incremental change or a transformative movement is necessary? This challenge compels us to overcome the false notion of cognitive dissonance. The present world of Indian legal education & policy is intentionally myopic. How come this myopia can resolve the complex challenges of the massive legal system? The inclusion of AI as a mandatory course for legal education have a great practical impact. But this paradigm emphasizes quality over quantity. Exploring mountains offers a clear view of the valley below. The purpose is to drop the old stereotypes to grasp the new. The greater the breadth of consultations & catching the change, the more novel the understanding. The student at law need to raise new questions, and new possibilities in newer technology, and regard the old questions from a new angle. Also, when seeking an answer to one question, an answer to another question often emerges. It is required to explore new ideas in real-time, augment clarity about daunting challenges legal education faces amidst AI' disruptions. Birds sit on trees with the tallest branches, to have complete bird eye view. Likewise, Indian legal education needs to achieve that goal where other countries of the world learn from that. At the same time, the use of AI in legal arena will make the laws and legal system easily accessible to all, it will also make the justice delivery system effective, efficient, cheap, not only this it will also help in justice delivery system faster and transparent. There has been a steady increase in the use of AI & other related technologies in the field of legal education. The use of efficient technologies can solve the issues of lack of infrastructure & lower education budgets by being cost-effective and surgical in approach. But it demands a paradigm shift from conventional to ultra tech-savvy approach to legal education. AI has the potential to train the next generation of law students and professionals. The law schools and universities can be at the forefront of addressing and turning the crisis into opportunity by inculcating the different aspects of AI into legal education.

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Book Review of KRISHNA AND MEDIATION by Professor (Dr.) V. K. Ahuja, former Vice – Chancellor, National Law University and Judicial Academy, Assam,Hajo Road, Amingaon, Kamrup Guwahati - 781031 Assam 2023, ISBN Number: 978-81-954276-3-5 (2023)

***Dr. jayanta Ghosh**

"The culture of settlement by an informal agency is in the roots of our society, where matters are resolved at the very local level by elderly or reputed persons".

- Justice Sharad A. Bobde Former Chief Justice of India.

Since the beginning of human civilization, conflicts and disputes have always been there since they are an inherent element of human activity. As a result, it is asserted that disputes have existed from the beginning of human society. No society on the face of the earth can be completely devoid of disagreements and conflicts. It is not possible to conduct a complete assessment of the first chapter of the book that have provided because of the limits thathave imposed. This chapter dives into the underlying concepts of mediation, drawing from ancient Hindu texts and the teachings of Lord Krishna. It does so in order to illustrate the divine and historical roots of mediation techniques. This book sheds light on the cultural and philosophical foundations that position mediation not just as a technique for conflict resolution but also as a deeply established component of societal and ethical frameworks. In addition to highlighting the relevance of these historical practices to contemporary legal systems, the article advocates for a wider acceptance and incorporation of mediation as a tool to attain justice and societal harmony.

The word "Dharma" originates from the word "धारणा" which means "to hold." The concept of "dharma" is what gives society its cohesiveness. Therefore, if there is something that is capable of bringing people together, then it is only dharma that can do so. The fact that "Manusmriti, The Law of Manu" also establishes dharma for everyone is an important fact to remember. A historical investigation of mediation in ancient India is presented at the beginning of the book. This investigation traces the origins of mediation all the way back to the Vedic period and highlights its prevalence across the various ages. Ahuja places a strong emphasis on the relevance of key personalities such as Angada, who served as a mediator between Rama and Ravana, and finally centres his attention on Krishna's function as a mediator in the epic Mahabharata. According to Professor Ahuja, the attempts that Krishna made to mediate between the Pandavas and the Kauravas offer as a compelling illustration of the possibilities and limitations of this form of conflict resolution. In spite of the fact that his efforts were eventually unsuccessful in preventing the conflict, the book

places an emphasis on the vital lessons learnt about the process, the difficulties, and the everlasting significance of mediation.

After that, the focus of the book switches to modern-day India, where it discusses the increasing acceptability and usage of mediation as a means of addressing the ever-increasing backlog of cases in the court system. In contrast to the more typical judicial proceedings, Ahuja emphasises the advantages of mediation, which include its ability to preserve relationships, its cost-effectiveness, and its ability to resolve conflicts more quickly. In his analysis, Professor Ahuja does not confine himself to India. He investigates the international landscape of mediation and the growing acceptance of mediation as an effective instrument for conflict resolution in a variety of circumstances.

In addition, the book "Krishna and Mediation" provides a fresh viewpoint on the process of mediation. This book does an excellent job of demonstrating the continuing importance of this approach of conflict resolution by making parallels between ancient traditions and modern reality. The following is a list of some of the book's strength: A compelling new dimension is added to the investigation of mediation through the utilisation of the story of Krishna. The historical foundations of mediation in India are examined in this article, which provides useful insights. This book discusses the classical as well as the modern applications of mediation. The benefits of selecting mediation over other techniques of conflict resolution are laid out in a clear and concise presentation.

It would be useful to have a more nuanced discussion of the circumstances in which mediation might not be the most effective method, while first accepting the limitations of the mediation process. There is a possibility that the case presented in the book may be strengthened by briefly identifying and addressing some of the potential critiques of mediation. These arguments include concerns about power imbalances or the possibility of manipulation. In general, "Krishna and Mediation" is an invaluable resource for anyone who is interested in conflict resolution, particularly when this topic is considered in the context of India. The analytical analysis and engaging writing style of Professor Ahuja make this book a thought-provoking read for anybody who is interested in gaining a better knowledge of the power of mediation, including legal professionals, academics, and anyone else involved in the field.Numerous books have been written about Krishna and meditation, and each of these books offers a different point of view and a different set of insights. The ancient Hindu scripture known as the "Bhagavad Gita" details a conversation that took place between Lord Krishna and the warrior prince Arjuna. It touches on a variety of topics pertaining to life, responsibilities, and spirituality, such as meditation and coming to terms with oneself.A book written by Osho titled "Krishna: The Man and His Philosophy" Osho, a well-known spiritual teacher, explores the life and teachings of Lord Krishna, providing significant insights into meditation and the path to self-discovery. He does this by analysing the life of Lord Krishna.An article written by A.C. Bhaktivedanta

titled "Krishna Consciousness: The Matchless Gift" The practice of Krishna consciousness, which includes meditation on the holy form of Lord Krishna as a method to reach spiritual enlightenment, is the subject of this book, which is written by Swami Prabhupada.

The autobiography titled "The Journey Home: Autobiography of an American Swami" was written by Radhanath Swami. Although it does not solely focus on meditation, it does recount Radhanath Swami's spiritual journey. This journey includes his encounters with a variety of spiritual practices, including meditation, as he sought to discover a more profound meaning in life.

Although it is not directly about Krishna, Swami Satyananda Saraswati's book "Meditations from the Tantras" offers practical direction on meditation techniques that are taken from Tantric traditions. These techniques can be included into a spiritual practice that is centered on Krishna.

This is just a small selection of the many books that are available on the topic; there are many more titles available. It is possible that various works will be more pertinent to your practice than others, depending on the unique interests and spiritual path that you are on. With its one-of-a-kind combination of legal analysis and philosophical and religious ideas, this approach offers a comprehensive perspective on mediation. A number of references to ancient writings and contemporary legal ideas are included, with an emphasis placed on the usefulness of mediation in the process of conflict resolution. The work, which was inspired by the teachings of Lord Krishna, provides a profound insight into the possibilities of mediation as a tool for conflict resolution. While this highlights the everlasting significance of such wisdom in promoting peace and justice, it also highlights the fact that the actual use of such wisdom in the legal system may necessitate striking a balance between classic insights and contemporary requirements.

The book is not intended to be a legal treatise for the reader. Because it is presented from the perspective of a layperson, the purpose of this book is to gain an understanding of how meditation has been used in India since ancient times to resolve conflicts and bring about peace and harmony in the society. However, the attention has been placed on Krishna's mediation during the Dwapar Yuga, despite the fact that the institution of mediation can be traced back to the Vedic period and the Treta Yuga, when it was invoked to prevent a conflict between Rama and Ravana. The rationale behind this action is that Krishna has been regarded as the Lord of the Universe. When the Lord of the Universe himself adopts a certain way of conflict resolution, it serves to energise the entire society and urge individuals to resolve their disagreements and conflicts via the use of that mode. Kulani, Sreni, Puga, Mahajan, Mediation, and Panchayats were all components of the indigenous justice delivery system. From the beginning, mediation has been considered one of the most significant approaches to resolving disagreements and conflicts. In the Treta Yuga, Angada

served as a mediator between Rama and Ravana. In the Dwapar Yuga, Lord Krishna served as a mediator between the Kauravas and the Pandavas. Finally, the Supreme Court served as a mediator in the Ram Janambhoomi issue. It is unfortunate that none of the three mediations were successful. Despite this, the community became aware of its potential as a mechanism of conflict resolution and utilised it in an uncountable number of situations in an informal setting. In the role of Mediator, Lord Krishna has been given a lot of attention. Mediation in India and on a global scale in the present day is the topic of discussion in this book. In addition to this, it addresses the number of cases that are currently pending, which is expected to reach the figure of 5 crores, which is greater than the combined population of a number of countries.The book addresses how mediation has the potential to become a game-changer and reduce the number of cases that are now pending.

There is a common belief among Indian mediators that both the idea and practice of mediation have sacred roots and serve a divine purpose. On the other hand, this is the first book that takes a comprehensive approach to investigating the heavenly roots of the idea and practice of mediation in India. It is the attempt that Dr. Ahuja takes to demonstrate that, despite the fact that democratic constitutionalism in both the West and India began with the complete rejection of the divine powers of monarchs to govern, the most effective method for studying mediation is to investigate the divine origins of mediation in India. This is what makes Dr. Ahuja's work so interesting. These are still fundamentally court decongestion procedures, which are currently being lauded in an elaborate judicial discourse by the Supreme Court of India in the case of Salem Advocate Bar v. Union of India (2005) 6 SCC 344(which was decided no later than August 2, 2005). A critical turn of phrase is "giving mediation a chance" because common law and colonial past convey a legal fate winner-take-it-all mentality. This is why giving mediation a chance is so important. In the context of the resolution of people's problems in Rangpur, Gujarat, I have attempted to demonstrate how and why disagreements and even conflicts move from takrar to karar, and how mediation is the means by which really participatory democratic outcomes are accomplished. The entire story is told by Dr. Ahuja in terms of the various notions of Dharma Yuddha, which extend to the realm of conflicts and disagreements (which the knowledgeable author elucidates at the beginning of the story). This is something that must be appreciated.

The book does a good job of highlighting the benefits of mediation; however, it would be beneficial if it included a more nuanced examination of the limitations of mediation and the potential objections that could be levelled against it. It is possible that the justification for mediation as a technique of dispute resolution could be strengthened by addressing problems such as power imbalances, manipulation, and cultural prejudices. Furthermore, a more in-depth investigation into the practical hurdles and constraints that are encountered

in the process of putting mediation initiatives into action would provide readers with a more full grasp of the topic.

In its entirety, "Krishna and Mediation" is an investigation that is both thought-provoking and enlightening, as it delves into the historical origins of mediation in India as well as its contemporary uses. The book is an invaluable resource for legal professionals, scholars, and anybody else who is interested in conflict resolution because of the rigorous research conducted by Professor Ahuja, the engaging writing style, and the insightful analysis within the book. By bridging the gap between traditional wisdom and modern legal principles, this book highlights the everlasting significance of mediation in the process of building peace, justice, and societal harmony in India and beyond.

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“धर्मो विश्वस्य जगतः प्रतिष्ठा।
लोके धर्मिष्ठं प्रजा उपसर्पन्ति।
धर्मेण पापमपनुदति।
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