THE LAWWAY WITH LAWYERS JOURNAL

SHIFTING PARADIGMS IN LAW: THEORY, POLICY AND PRACTICE

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Law, Society, and Transformation: Shaping the New Paradigm

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ISBN:- 978-81-979208-8-2

Printed in: - India

Published by: - The lawway with lawyers journal

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ACKNOWLEDGMENT

I extend my sincere gratitude to everyone who contributed to the successful publication of *"Shifting Paradigms in Law: Theory, Policy and Practice,"* brought out by **The Lawway with Lawyers Journal**. This book is a collective effort of talented law students from various colleges, whose insightful chapters and thoughtful analyses have enriched the volume beyond measure. Their dedication to research and commitment to contemporary legal discourse deserve special appreciation.

I express my heartfelt thanks to our editorial team, whose unwavering efforts ensured the academic excellence and refined quality of this publication. In particular, I would like to acknowledge and thank our esteemed editors — **Rachit Sharma, Bhavana Dhoundiyal, and Paras Yadav** — for their meticulous review, valuable guidance, and consistent support throughout the editorial process. Their expertise has played a pivotal role in shaping this book.

My deepest gratitude also goes to the entire team of **The Lawway with Lawyers Journal**. Their hard work, coordination, and passion for legal scholarship have been the cornerstone of this project's success. Without their collective effort, this publication would not have been possible.

To everyone involved in this journey — contributors, editors, reviewers, and the publication team — thank you for being an integral part of this meaningful academic endeavour.

Abhishek ray

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CHAPTER - 1

IMPACT OF BHARATIYA NYAYA SANHITA ON VICTIM-CENTRIC JUSTICE IN INDIA

Authored by:- Prem Kumar, 2nd Year BA LLB Hons. IILM University, Greater Noida

Abstract

The Indian Penal Code (IPC) has influenced India's legal system for years. While this is the bedrock upon which our legal system is based, these laws have not been in a position to handle the complexities brought about by modernised India. A new beginning has been made, and with the introduction of new criminal laws, India has taken giant steps forward towards legal growth. This reform effort started with the establishment of the Committee for Reforms in Criminal Laws (CRCL) in 2020, under the chairmanship of Prof. (Dr.) Ranbir Singh, then Former Vice-Chancellor of NLU Delhi. These three transformative statutes, Bharatiya Nyaya Sanhita (BNS), Bharatiya Sakshya Adhiniyam (BSA), and Bharatiya Nagarik Suraksha Sanhita (BNSS), are destined to rejuvenate India by replacing these outdated statutes with new ones, especially crafted to meet the needs of the nation in the twenty-first century. Emphasising accessibility, fairness, and efficiency, BNS seeks to foster trust and harmony within communities while ensuring comprehensive reforms to uphold the rule of law and justice in a globalising world. The paper discusses the vision of BNS, its impact on the legal profession, and the way it contributes to framing an inclusive justice dispensation designed to meet the needs of a fast-evolving society in India. Reforming criminal laws is an essential mechanism of adjustment to societal change, enhancement of justice, and addressing systemic inequities. The reforms aim at ensuring an effective deterrence mechanism, coupled with a proper balancing between rehabilitation and reintegration within the justice delivery system.

KEYWORDS: Bharatiya Nyaya Sanhita (BNS), 2023; Victim-Centric Justice; Criminal Law Reforms in India; Restorative and Reformative Justice; Legal Modernisation and Procedural Fairness.

Introduction

These new criminal laws in India mark a complete departure from the Indian Penal Code (IPC) of 1860, enacted during the colonial era, which was more focused on punishment rather than justice. These laws were made by a foreign ruler to run his rule and govern his subjects. One important thing to be noted is the change in nomenclature of the Bill from the Indian Penal Code, which would otherwise translate to Bharatiya Danda Sanhita, to Bharatiya Nyaya Sanhita. The change in the operative word from Danda (Punishment) to Nyaya (Justice) denotes a fundamental change in the basis of criminal prosecution-from penalising to delivering justice. This is more than a semantic shift but embodies a transition in the basis of the theory of jurisprudence from punitive to reformative, with a new emphasis on victim-centric justice. Comprehensive legislative reforms were introduced in 2023 aimed at modernising the criminal laws of India, and in one stroke, the IPC, CrPC, and Indian Evidence Act were replaced by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA), respectively. These new statutes, among others, aim at streamlining procedures and putting emphasis on victim-centric approaches, while also addressing new emerging crimes such as cyber offenses and terrorism. This reflects the aspiration of India to remove the vestiges of colonialism and marry its laws to the dynamic socio-legal environment. Changes introduced by BNS, 2023.

356 Clauses: The IPC[1] consists of 511 sections and 23 chapters, touching upon a vast arena of offenses and punishments corresponding to them. The BNS contains 356 clauses divided into 19 chapters. It deals not only with offenses and penalties but also enshrines basic principles of criminal liability, viz., mens rea and actus reus, causation, defences, and other relevant matters. Further, the BNS has deleted many outdated provisions and filled the void with new offenses to meet the demands of contemporary challenges. To be precise, the BNS has substituted the offense of sedition with a new offense dealing with waging war against India or its allies, thus adopting an enlightened approach to offenses against the state and national security.

Five Punishments: The IPC provided six types of punishments[2]: death penalty, life imprisonment, rigorous or simple imprisonment, forfeiture of property, fine, and whipping. Whipping was abolished in 1955 in independent India. The BNS provides

[1] The Indian Penal Code, 1860, No. 45 of 1860

[2] The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 4

five kinds of punishments, namely, the death penalty, life imprisonment, rigorous or simple imprisonment, fine, and community service. More importantly, for every offence in the BNS, the minimum and maximum sentences can be prescribed, but in the IPC, only the maximum sentence can be prescribed. In addition, the BNS makes it obligatory, in certain cases, to compensate the victim. On the whole, with an expanding legal culture, the BNS will establish a sound legal framework that addresses traditional crimes and responds to new ones thrown up by industrialisation, automation, and resulting alterations in human values.

New Offences: The IPC classifies offences against the state, public order, human body, property, public health, safety, morals, and other areas[3]. Similarly, the BNS defines such offences, but with changes and additions. For example, its controversial sedition law is replaced by a new provision that deals with acts of waging war against India or its allies. The BNS incorporates a variety of new offences to deal with modern challenges and socio-economic concerns. These include cybercrime, terrorism, hate speech, workplace sexual harassment, acid attack, and other new forms of criminal behaviour. This addition illustrates the emerging faces of criminal activities in modern society and the need for specific legal frameworks to combat such crimes effectively. Under IPC, the philosophy was to provide justice through punishment and retribution[4]. Under BNS, the underlying philosophy is restorative justice, with rehabilitation of the offender and placing the victim at the centre. IPC was drafted by the British under their supervision and ideological framework. BNS is drafted for modern India, with a special focus on the ever-evolving legal landscape[5]. Further, the BNS amends the existing offences like rape, murder, theft, and others. This is done to make the definitions and punishments more comprehensive and gender-neutral. By doing so, BNS aims to ensure that all aspects of criminal behaviour are covered under a modern legal framework that would converge with emerging socio-economic norms and values.

New offences under BNS

Sexual Intercourse on false pretext of marriage

According to Clause 69 of the Bharatiya Nyaya Sanhita, any individual who deceives a woman or falsely assures marriage with no intent to honour it and has sexual

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[3] The Indian Penal Code, 1860, No. 45 of 1860, §§ 121–511, Gazette of India (Oct. 6, 1860)

[4] Ratanlal & Dhirajlal, *The Indian Penal Code* 2 (36th ed. 2020)

[5] Law Commission of India, *Report No. 267: Reform of Criminal Justice System* (2017)

intercourse with her, which does not qualify as rape, shall face imprisonment up to ten years and may also be fined. The legal system is notorious for penalising sexuality outside of marriage, especially when it concerns women. One pertinent example is the criminalisation of cases involving false promises to marry. While there is a broader debate on whether deceptive sexual practices should be criminalised in general, the specific treatment of deception related to marriage raises significant issues. It's worth noting that this is not a new offence; originally, the judiciary classified such cases as rape, arguing that consent obtained under false pretences is invalid and thus constitutes rape. However, this approach has faced criticism for stretching the definition of rape too far and for criminalising consensual sexual relations that are socially sanctioned outside of marriage.

Revival of Section 303 Honourable Supreme Court of India struck down Section 303 of IPC, 1860 in the case *Mithu v. State of Punjab*[6], making it unconstitutional. The new legislation under clause 104 provides an alternative punishment for murder by life imprisonment.[7] And saves it from an earlier anomaly. The scope has been widened with the addition of a provision for imprisonment for life, which shall mean the remainder of that person's natural life.

Mob Lynching

In India, mob lynching has emerged as a significant challenge to law and order, causing societal tensions over the past few years. According to media sources, more than 100 individuals have lost their lives in incidents of mob violence since 2015. Clause 103(2) of BNS provides punishment when a group of five or more persons acting in concert murders on the ground of race, caste or community, language, sex, place of birth, personal belief or any other similar ground, each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to a fine[8].

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[6] *Mithu v. State of Punjab*, A.I.R. 1983 S.C. 473

[7] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 104

[8] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 103(2)

Organised crime

BNS,2023 defines organized crime as; any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of person acting in concert, singly or jointly, either as a member of an organised crime syndicate, shall constitute organised crime[9]. Moreover, an inclusive definition of "economic offence"[10] is also stated. Organised Crime is punishable with death or imprisonment for life and a fine not less than ten lakhs if such offence has resulted in the death of any person[11]. In any other case, it's punishable with imprisonment for a term not less than five years, which may extend to life imprisonment and a fine not less than five lakh rupees[12].

Terrorist Act

The legislation under clause 113(1) defines terrorism as actions intended to undermine the unity, integrity, and security of the nation, intimidate the general public, or disrupt public order. A terrorist act encompasses the use of firearms, explosives, or hazardous substances (biological or chemical) to cause death, endanger lives, or spread fear. It also includes activities such as destroying property or disrupting essential services and activities specified under Section 2(g) of the Unlawful Activities (Prevention) Act, 1967, such as unlawful seizure of aircraft or detaining hostages. The penalties for attempting or committing terrorism include either the death penalty or life imprisonment in cases where the offence results in death. For other instances, imprisonment ranges from a minimum of five years to life imprisonment.[13].

Petty Organised Crime

Under the Bharatiya Nyaya Sanhita, special care has been taken to address petty organised crime. The offenses included in this category are those that do not fall under big crimes like terrorism or large-scale organised crime but have, nonetheless, been causing a significant challenge to public safety and order. The BNS comprehensively

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[9] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 111(1).
[10] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 111(1)(iii)
[11] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 111(2)(a)
[12] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 111(2)(b)
[13] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 113(2)(b)

identifies and defines these offences and has strived to address issues regarding theft, snatching, cheating, selling of tickets unauthorizedly, unauthorised betting or gambling, selling of question papers of any public examinations, or any other similar criminal act[14]. It was a conscious effort on the part of the BNS to categorically deal with such activities in law so that the prevalence and impact of such practices become minimal.

Acts endangering the sovereignty, unity and integrity of India

The BNS repeals the offence of sedition, which has faced widespread criticism as a colonial-era restriction on free speech and dissent. It is now "Acts endangering the sovereignty, unity and integrity of India". According to new legislation, whoever, purposely or knowingly, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India, will be punishable with imprisonment for a term which may extend to seven years or life imprisonment, with or without fine. Sedition has been surrounded by controversies due to its arbitrary nature, whereas the new provision provides punishment for treason.

Hit and Run

New Legislation provides for a separate offence under Clause 106(2), whoever causes the death of any person by rash and negligent driving of a vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or magistrate soon after the incident. The punishment for such an offence is imprisonment for a term which may extend to ten years, and shall also be liable to a fine. This offence impacts society in present times, where road accidents are increasing, and focuses towards public awareness.

Judicial Intervention in Strengthening Victim-Centric Justice under BNS and BNSS

Supreme Court confirms victim's right to appeal acquittal

The Supreme Court affirmed in June 2025 that a victim has the right to contest an acquittal under Section 372 CrPC, which also applies to Section 413 of the BNSS.

[14] *The Bharatiya Nyaya Sanhita*, No. 45 of 2023, cl. 112

This greatly increases victim participation by enabling victims to pursue justice even in cases when an accused person is originally found not guilty.

Supreme Court mandates speedy compensation in serious offences

Sessions Courts were mandated by Supreme Court rulings in late 2024 to provide victim compensation under CrPC Section 357-A (now BNSS Section 396), especially for women and minors who had been sexually assaulted or suffered physical harm. Even before a victim is found guilty, courts must make sure they obtain temporary relief.

Madras High Court upholds protections for women under BNSS. The Madras High Court took up the topic of women being arrested at night under the BNSS (formerly CrPC Section 46(4)) in March 2025. It concluded that the prohibition on women being arrested between sunset and daybreak is advisory rather than required, demonstrating a balance between procedural flexibility and victim safety.

Impact on legal practice

The introduction of new criminal laws can change legal practice in many ways, including how lawyers defend clients and prosecute cases and interact with the judiciary. Here are some of the ways in which new criminal laws may influence legal practice:

1. **Expanded Definitions and Offences:** Many new laws bring with them expanded definitions of criminal offences or completely new categories of crimes; this puts criminal defence lawyers in a continuous updating cycle regarding the latest statutory definition and elements of offences to effectively defend their clients.
2. **Stricter Penalties:** Changes in criminal laws often involve adjustments to penalties, including higher fines, longer prison sentences, or mandatory minimum sentences for certain offenses. Lawyers must advise clients on potential consequences and negotiate plea bargains or alternative sentencing where applicable.
3. **Enhanced Protections or Rights:** New laws might enhance protections for victims, witnesses, or defendants, such as provisions for victim compensation, whistle-blower protections, or expanded rights to legal representation. Lawyers need to understand these rights and ensure their clients' rights are protected throughout the legal process.

4. **Intersection with Other Areas of Law:** New criminal laws may intersect with other areas of law, such as immigration, corporate compliance, or environmental regulations. Lawyers handling cases involving multiple legal dimensions must navigate these intersections to provide comprehensive legal advice and representation.
5. **International Implications:** If new criminal laws align with international treaties or standards, lawyers handling cross-border criminal cases must understand extradition laws, mutual legal assistance agreements, and international human rights norms that could impact their clients' cases.
6. **Challenges in Enforcement:** Implementation challenges and judicial interpretations of new criminal laws may create uncertainties in legal practice. Lawyers need to stay informed about evolving case law and legal precedents to anticipate potential challenges or opportunities in their cases.

Overall, the introduction of new criminal laws demands continuous learning and adaptation from legal professionals. It requires staying updated on statutory changes, understanding their implications on procedural rights and penalties, and strategising effectively to uphold clients' interests within the framework of evolving legal standards and societal expectations.

Victim-Centric Provisions in Indian Law

While Indian criminal law has begun to recognise the importance of the rights of victims, its efforts are fractured and mostly under-implemented. Compensation to victims through Sections 357 and 357A of the Bharatiya Nagarik Suraksha Sanhita, 2023, is an effort to compensate victims monetarily. The former empowers the courts to award compensation out of the fine levied on the convict, while the latter requires state governments to award compensation through comprehensive victim compensation schemes drafted in consultation with the Legal Services Authorities. While Section 377 of the BNSS provides that a victim may appoint an advocate who has the right to assist the public prosecutor, his role is largely passive and advisory, and not decisive on charge framing, plea bargains, or sentencing. This limits the ability of victims to have any meaningful impact on outcomes concerning their rights and interests.15 As far as appellate rights are concerned, the victims do not have a direct right of appeal against acquittal or leniency of sentence. They are usually restricted to filing a Special Leave Petition under Article 136 of the Constitution discretionary remedy which is neither practical nor real. Further, the Juvenile Justice

(Care and Protection of Children) Act, 2015, provides for a few restorative measures, such as victim-offender reconciliation and rehabilitation orders in special cases, particularly those relating to 'children in conflict with the law'.

A Way Forward

The *Bharatiya Nyaya Sanhita (BNS)* marks a transformative step in India's criminal justice framework, replacing colonial-era provisions with contextually relevant and victim-centric reforms. While the removal of the term "sedition" from the statute is a progressive shift, its replacement with "acts endangering sovereignty, unity, and integrity of India" continues to raise concerns due to its broad and ambiguous scope, potentially enabling over-criminalisation. Similarly, despite efforts to define offences like "organised crime" and "terrorist acts" more precisely, apprehensions persist regarding their expansive interpretation and possible misuse. Institutional challenges such as judicial vacancies, case backlogs, inadequate infrastructure, and the urgent need for forensic and technological capacity-building, including audio-video recording of witness statements, must be systematically addressed for the reforms to be effective[15]. The former Chief Justice of India D.Y. Chandrachud described the enactment of the three new criminal laws as a watershed moment, asserting that their success depends on the adaptability and accountability of those implementing them[16]. He emphasised that these statutes align with contemporary societal needs and are designed to safeguard victims' rights while ensuring efficient investigation and prosecution processes.[17].

The *BNS* envisions a forward-looking criminal justice system that merges traditional Indian principles of fairness with modern legal mechanisms. It aims to promote transparency, accessibility, and efficiency, thereby restoring public trust and strengthening social harmony. By embedding inclusivity and innovation within its framework, the law aims to ensure the equitable application of justice and foster long-term institutional resilience. Union Home Minister Amit Shah, while introducing the Bill in Parliament, highlighted that the reforms represent an attempt to infuse "soul"

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[15] Law Commission of India, Report No. 245: *Arrears and Backlog—Creating Additional Judicial (Wo)manpower*, at 1–2 (July 2014) https://lawcommissionofindia.nic.in/report_twentieth/

[16] D.Y. Chandrachud, "' Watershed Moment for Our Society': CJI D.Y. Chandrachud on Enactment of New Criminal Laws," *Indian Express* (Apr. 20, 2024), https://indianexpress.com/article/india/india-criminal-justice-system-enacted-laws-cji-9281068/

[17] India's Progressive Path in the Administration of Criminal Justice System, Ministry of Law and Justice

into India's criminal justice system. Transitioning from a punishment-oriented colonial model to one centred on justice for victims, the legislation aspires to achieve "ease of justice" through fair, time-bound, and evidence-based trials, enhanced police accountability, and reduced judicial burden. As India moves toward this unified and equitable justice system, the BNS symbolises a decisive stride toward a more humane, efficient, and transparent legal order[18].

Conclusion

An important paradigm shift from an offender-oriented criminal justice system to one that protects the rights, dignity, and well-being of victims is reflected in the development of victim-centric justice in India. Many of these long-standing recommendations have been addressed by legislation with the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The essential spirit of the committee's recommendations is reflected in these new codes, which include restorative justice, improved procedural safeguards, compensation systems, and larger victim definitions. But how well these improvements are implemented will be their real test. The idea of a truly victim-centric legal system will remain aspirational in the absence of sufficient institutional support, professionally trained staff, and victim-sensitive protocols. Therefore, to guarantee that victims are not merely passive witnesses but active participants in the administration of justice, ongoing judicial scrutiny, ongoing policy evaluation, and a dedication to human dignity are crucial.

[18] Lok Sabha, Synopsis of Debates, December 20, 2023

CHAPTER- 2

THE CRIMINALIZATION OF MARITAL RAPE UNDER THE BHARATIYA NYAYA SANHITA, 2023: A PROFOUND MISSED OPPORTUNITY FOR GENDER JUSTICE

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Abstract

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, replacing the colonial-era Indian Penal Code (IPC), 1860, was heralded as a moment of significant criminal law reform in India. However, this paper argues that the BNS, 2023, represents a missed opportunity by retaining the Marital Rape Exception (MRE). Section 63[19] of the BNS, which defines rape, continues to exempt a husband's non-consensual sexual intercourse with his adult wife (over the age of eighteen) from the purview of rape, thereby perpetuating a patriarchal legacy.[1]

This research critically examines the provisions of the BNS, 2023, concerning sexual offences, particularly its failure to fully criminalize marital rape, in light of India's constitutional commitment to gender equality, bodily autonomy, and the Right to Life (Article 21). It conducts a comparative analysis with the former legal framework and prevailing international human rights standards, which overwhelmingly recognize marital rape as a criminal offense.[2] The study also analyzes key judicial pronouncements, including the split verdict of the Delhi High Court in *RIT Foundation v. Union of India*, which highlights the legal and social tensions surrounding the MRE.

The paper contends that the retention of the MRE undermines the progressive intent of the new penal code, reinforces the archaic and legally unsound notion of irrevocable consent within marriage, and denies married women equal protection under the law. It concludes that a comprehensive and gender-just criminal code

[19] Section 63 Bharatiya Nyaya Sanhita, 2023

necessitates the complete abolition of the MRE to ensure that the law upholds the sexual sovereignty of every woman, irrespective of her marital status.

Keywords: Bharatiya Nyaya Sanhita (BNS) 2023, Marital Rape Exception (MRE), Criminalization, Gender Justice, Bodily Autonomy, Legal Reform, Sexual Sovereignty.

Introduction

The Bharatiya Nyaya Sanhita (BNS), 2023, replaces the colonial Indian Penal Code (IPC), 1860, aiming to modernize India's criminal justice system and align it with constitutional morality and gender justice. However, its retention of the Marital Rape Exception (MRE) contradicts this vision. Section 63, Exception 2[20] of the BNS continues to exempt husbands from prosecution for non-consensual sex with their wives above 18, echoing Section 375[21] of the IPC. This exception denies women's sexual autonomy and equality, sustaining colonial and patriarchal beliefs that marriage implies permanent consent. Despite claims of reform, the BNS's failure to criminalize marital rape exposes a deep constitutional and moral regression, undermining Articles 14[22], 15[23], and 21[24] of the Constitution and contradicting India's international commitments to gender equality. The law's silence on marital rape reflects incomplete decolonization—modern in language but patriarchal in substance.

2.1 Historical and Legal Context of the Exception

The marital rape exception (MRE) in the Bharatiya Nyaya Sanhita (BNS), 2023 is a direct legacy of colonial law. Originating in the IPC, 1860, it reflected British and Indian patriarchal norms that denied women autonomy within marriage. This continuity from IPC to BNS shows how colonial ideas of female subordination still shape India's legal system, contradicting constitutional values of equality and dignity.

2.1.1 Legacy of the IPC: Implied Consent and Patriarchal Ownership

The IPC's MRE was rooted in English common law and Sir Matthew Hale's doctrine that marital consent is irrevocable. This transformed wives into property and rendered

[20] Section 63 exception 2 Bharatiya Nyaya Sanhita, 2023
[21] Section 375 Indian Penal Code, 1860
[22] Article 14 The Indian Constitution, 1950
[23] Article 15 The Indian Constitution, 1950
[24] Article 21 The Indian Constitution, 1950

sexual violence within marriage invisible. Colonial drafters preserved these patriarchal structures, and post-independence, the State continued this fiction, avoiding reforms despite constitutional guarantees of liberty and equality.

2.2 Judicial Interventions Before the BNS

Courts began questioning the constitutional validity of the exception as the legislature remained silent.

(a) *Independent Thought v. Union of India* (2017):

The Supreme Court protected minor wives by raising the age of consent to 18, affirming that marriage cannot override consent.

(b) *RIT Foundation v. Union of India* (2022):

A split verdict emerged one judge struck down the exception as unconstitutional; the other argued reform lies with Parliament. This revealed the conflict between constitutional morality and societal morality and highlighted the urgent need for legislative action.

2.3 The BNS, 2023: Reform Deferred

Though presented as a decolonized and victim-centric law, the BNS retains the marital rape exception under Section 63.

(a) Retention of the Exception:

By excluding married women from full protection against rape, the BNS violates Articles 14 and 21 and continues to privilege marital harmony over bodily autonomy.

(b) "Living Separately" Clause:

Criminalizing forced sex only when spouses live apart, and with reduced punishment, implies autonomy begins only after separation—reinforcing patriarchal control.

3. Critical Analysis: The Constitutional Failure and Missed Opportunity

The Bharatiya Nyaya Sanhita (BNS), 2023, while projected as a decolonial and gender-sensitive reform, paradoxically entrenches one of the most patriarchal and colonial remnants of the Indian Penal Code—the Marital Rape Exception (MRE). This provision, inherited from Lord Hale's 17th-century English common law dictum, rests on the archaic notion that a wife's consent to sexual intercourse is irrevocably presumed upon marriage. Its continuation in the BNS represents not just a legal anomaly but a profound constitutional betrayal.

At its core, the MRE stands in stark contradiction to the constitutional guarantees of equality, liberty, and dignity. It perpetuates the systemic subordination of women,

legitimizes coercive sexual relations within marriage, and violates the transformative spirit of the Indian Constitution as envisioned by the framers. Far from aligning with the objectives of modernization, the BNS's retention of this provision demonstrates the enduring strength of patriarchal and moral conservatism within legislative discourse.

3.1. Violation of Article 14: The Right to Equality

Article 14 enshrines two key components: equality before the law and equal protection of the laws. The MRE offends both. It creates a legal dichotomy where the same act—non-consensual sexual intercourse—is treated differently depending solely on the marital status of the victim. This differential treatment not only fails the constitutional tests of reasonable classification and rational nexus, but also reflects an entrenched structural bias that treats marriage as a space of male privilege immune from constitutional accountability.

(a) Arbitrary Classification Based on Marital Status

The BNS, by exempting husbands from prosecution for rape, effectively asserts that a woman's right to sexual autonomy is contingent upon her marital status. The classification between married and unmarried women is not founded on any intelligible differentia that bears a rational relation to the purpose of rape laws—which is to protect individuals from sexual violence. On the contrary, it undermines that very purpose.

This legislative discrimination is reminiscent of what Justice D.Y. Chandrachud described in *Navtej Singh Johar v. Union of India* (2018) as the "tyranny of the majority's morality." The marital status of a woman cannot be a constitutionally valid ground to dilute her fundamental right to bodily integrity. The notion that marriage justifies a separate standard of criminal liability is nothing short of an institutionalized gender hierarchy.

(b) Substantive Equality and Structural Discrimination

The Supreme Court, through its progressive jurisprudence, has consistently emphasized that formal equality—mere sameness of treatment—is insufficient; what the Constitution guarantees is substantive equality, which dismantles social hierarchies and power imbalances. In *Anuj Garg v. Hotel Association of India* (2008)[25], the Court invalidated a paternalistic labor law on the ground that it

[25] Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1

perpetuated stereotypes of women as weak and dependent. Similarly, the MRE perpetuates the stereotype that a wife's primary identity is relational—defined through her husband—and not as an autonomous individual.

Furthermore, the MRE reinforces a structural inequality deeply rooted in patriarchy. By exempting the husband from liability, it legalizes a gendered power asymmetry that denies women equal agency in intimate relationships. In doing so, it contradicts the Court's affirmation in *Vishaka v. State of Rajasthan* (1997) that equality under Articles 14 and 15 extends to all spheres, including the workplace and home. Thus, the BNS perpetuates what feminist scholar Catherine MacKinnon terms "the law of male dominance"—a legal structure that defines and limits women's rights through male privilege.

(c) The Constitutional Test of Reasonableness

When tested against the *E.P. Royappa v. State of Tamil Nadu* (1974)[26] standard, the MRE's arbitrariness becomes evident. The Court held that "arbitrariness is antithetical to equality." The exemption is manifestly arbitrary because it denies protection to the very group that requires it most—married women, who often lack the social and financial independence to resist or report sexual violence within marriage. The legislative inaction thus creates a perpetual zone of impunity, violating the equality guarantee of Article 14.

3.2. Violation of Article 21: The Right to Life and Personal Liberty

The retention of the MRE also directly violates Article 21, which guarantees the right to life and personal liberty. Over decades, the Supreme Court has expanded Article 21 to encompass a wide spectrum of rights essential to human dignity, including privacy, bodily autonomy, decisional freedom, and mental well-being. The MRE contravenes each of these constitutional dimensions.

(a) Bodily Autonomy as a Core Constitutional Value

The concept of bodily autonomy lies at the heart of Article 21. In *Suchita Srivastava v. Chandigarh Administration* (2009), the Supreme Court recognized that a woman's right to make reproductive choices is a dimension of personal liberty. This necessarily implies her right to control her body and sexual agency. The MRE annihilates this autonomy by presuming perpetual consent within marriage, thereby reducing a

[26] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3

woman's body to an instrument of conjugal duty rather than a locus of self-determination.

Justice D.Y. Chandrachud, in *Puttaswamy v. Union of India* (2017), emphasized that privacy and autonomy are intrinsic to the right to life. By immunizing husbands from criminal liability, the State sanctions forced sexual invasion of bodily integrity, violating the fundamental principles of autonomy and privacy.

(b) The Right to Dignity and Psychological Integrity

The Supreme Court has consistently held that the right to life includes the right to live with dignity (*Francis Coralie Mullin v. Administrator, Delhi*, 1981[27]; *Maneka Gandhi v. Union of India*, 1978)[28]. Marital rape, by its very nature, constitutes a violent assault on a woman's dignity. It inflicts not only physical harm but also deep psychological trauma, reinforcing her subjugation and fear within the marital space.

The law's refusal to recognize this harm effectively devalues the lived experience of women and signals that their suffering is less worthy of legal redress than that of unmarried women. This hierarchical valuation of dignity violates the constitutional promise of equal respect and individual worth.

Further, the MRE's retention contradicts the principles set out in *Joseph Shine v. Union of India* (2019)[29], where the Court decriminalized adultery on the ground that women cannot be treated as property. The same logic applies here: by preserving a husband's unilateral sexual right over his wife's body, the law reduces her to chattel, resurrecting precisely the kind of patriarchal ownership that the Constitution sought to abolish.

(c) The Myth of Marital Privacy and Constitutional Morality

One of the most frequent arguments in defense of the MRE is that criminalizing marital rape would violate the "privacy of marriage." This argument collapses when measured against the doctrine of constitutional morality, articulated in *Navtej Singh Johar* and *Joseph Shine*. Constitutional morality demands that all relationships—including those within the private sphere—be governed by the principles of dignity, equality, and liberty.

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[27] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3

[28] Maneka Gandhi v. Union of India, (1978) 1 SCC 248

[29] Joseph Shine v. Union of India, (2019) 3 SCC 39

Marriage is not a constitutional enclave of immunity. As the Court observed in *Joseph Shine*, "The autonomy of an individual is the ability to make decisions on vital matters of concern to life." By ignoring this, the MRE perpetuates the colonial public-private divide that insulated domestic violence and sexual coercion from state intervention.

In effect, the MRE constructs the home as a site of legalized oppression, where the Constitution's guarantees stop at the bedroom door. This erasure of women's rights in the private sphere is not only unconstitutional but incompatible with India's identity as a democratic republic committed to justice and equality.

3.3. Contradiction with Global and Domestic Reform Mandates

(a) Global Human Rights Standards

The retention of the MRE starkly contrasts with global legal developments. Over 150 countries have criminalized marital rape, recognizing that consent is central to all sexual relations, irrespective of marital status. Jurisdictions such as the United Kingdom (*R v. R*, 1991), South Africa, Canada, and Nepal have long dismantled this colonial relic, affirming that marriage does not nullify consent.

India's inaction places it in breach of international instruments it has ratified, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR)[30]. The CEDAW Committee, in its 2022 recommendations, explicitly urged India to criminalize marital rape and to align its domestic laws with global standards of gender justice.

By retaining the exception, the BNS violates Article 2 of CEDAW[31] (requiring the elimination of discriminatory laws) and Article 5[32] (requiring the modification of social and cultural patterns based on gender stereotypes). The State's failure to act despite repeated international urging reveals a troubling pattern of selective compliance—embracing modernization where convenient, but clinging to patriarchal norms where gender power is at stake.

(b) Domestic Reform Movements and Judicial Cues

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[30] International Covenant on Civil and Political Rights, 1966

[31] Article 2 Convention on the Elimination of All Forms of Discrimination Against Women, arts. 2 & 5 (CEDAW)

[32] Article 5 Convention on the Elimination of All Forms of Discrimination Against Women, arts. 2 & 5 (CEDAW)

Domestically, the Justice Verma Committee Report (2013)[33]—constituted after the Nirbhaya case—strongly recommended the deletion of the marital rape exception, noting that "the relationship between the accused and the victim is not relevant when the act is without consent." Yet, the legislature chose to ignore this recommendation, citing vague concerns about "misuse" and "family harmony."

The Delhi High Court's split verdict in RIT Foundation v. Union of India (2022)[34] further exposed the constitutional tension. Justice Shakdher held that the exception violated Articles 14, 15, and 21, observing that "marriage does not confer irrevocable consent." However, the matter remains unresolved, pending before the Supreme Court. By retaining the exception, the BNS undermines these ongoing constitutional deliberations, signaling legislative resistance to gender-just transformation.

(c) The Hypocrisy of Decolonization

Ironically, the government's narrative of the BNS as a project of "decolonization" collapses most spectacularly in its handling of the MRE. The marital rape exception itself was a colonial imposition, derived from English common law, which even England abolished over three decades ago. Retaining this provision under a supposedly "Indianized" code exposes the selective decolonization that characterizes the BNS: while terminologies were Indianized, the patriarchal colonial logic of women's subordination was preserved intact.

In this sense, the BNS does not decolonize Indian criminal law—it reinscribes colonial patriarchy under a nationalist veneer, perpetuating precisely the kind of cultural conservatism that the Constitution sought to dismantle.

IV. Judicial and Socio-Legal Resistance to Criminalization

The failure of the *Bharatiya Nyaya Sanhita (BNS), 2023* to criminalize marital rape does not occur in isolation; it is a culmination of judicial hesitancy, legislative conservatism, and entrenched sociocultural patriarchy. Despite India's progressive constitutional jurisprudence emphasizing dignity, equality, and personal autonomy, the persistence of the marital rape exception (MRE) exposes a deep disjunction between constitutional morality and social morality. The resistance to reform, sustained by state institutions and cultural narratives, underscores the systemic marginalization of women's sexual agency within marriage.

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[33] The Justice Verma Committee Report (2013)

[34] RIT Foundation v. Union of India, 2022 SCC OnLine Del 1479

4.1. The Supreme Court's Unfinished Business

The Supreme Court of India has, over the decades, evolved into a guardian of gender justice — striking down discriminatory laws and expanding the ambit of fundamental rights. Yet, on the issue of marital rape, its silence is striking. The constitutional challenge to the MRE remains unresolved, highlighting the judiciary's cautious engagement with questions of sexuality, consent, and marital privacy.

(a) Constitutional Evolution and Judicial Recognition of Autonomy

In *Suchita Srivastava v. Chandigarh Administration* (2009)[35], the Supreme Court articulated that a woman's right to make reproductive choices is a dimension of personal liberty under Article 21, emphasizing bodily integrity and autonomy. This principle was later reaffirmed in *K.S. Puttaswamy v. Union of India* (2017)[36], where the Court declared privacy and decisional autonomy to be intrinsic to life and liberty. These judgments establish an unambiguous jurisprudential foundation for recognizing sexual consent as a non-negotiable element of individual freedom.

However, this constitutional clarity has not translated into legislative or judicial recognition of non-consensual sex within marriage as rape. The *Independent Thought v. Union of India* (2017) judgment was a partial victory, where the Court read down Exception 2 to Section 375 of the IPC to criminalize sex with a minor wife under 18. Yet, the same logic — that marriage cannot justify the violation of bodily autonomy — was not extended to adult women, leaving a glaring inconsistency in India's rights-based jurisprudence.

(b) The RIT Foundation Case and the Split Verdict

The Delhi High Court's *RIT Foundation v. Union of India* (2022) case encapsulates the ongoing legal impasse. Justice Rajiv Shakdher, in his progressive opinion, declared that the MRE violates Articles 14, 15, 19, and 21, reasoning that "a woman's right to consent does not vanish upon marriage." Conversely, Justice C. Hari Shankar upheld the exception, viewing sexual relations within marriage as a protected sphere of intimacy beyond the reach of criminal law.

This split verdict exemplifies the ideological divide between constitutional morality, which demands gender-neutral legal protection, and societal morality, which valorizes patriarchal institutions. The matter now lies before the Supreme Court, where it awaits

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[35] Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1

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

definitive adjudication — a momentous opportunity to reconcile India's criminal law with its constitutional vision.

(c) Executive Hesitation and the Doctrine of Separation of Powers

The Union Government, in multiple affidavits, has argued that criminalizing marital rape could "destabilize the institution of marriage" and "open floodgates of false cases." It further asserts that the matter lies within the legislative domain, invoking the doctrine of separation of powers to deter judicial intervention.

However, this argument is constitutionally flawed. The judiciary has repeatedly intervened when legislative inaction perpetuates constitutional violations — from striking down *Triple Talaq* in *Shayara Bano v. Union of India* (2017)[37] to decriminalizing homosexuality in *Navtej Singh Johar v. Union of India* (2018). The failure to criminalize marital rape is a direct affront to fundamental rights under Articles 14 and 21; thus, judicial intervention is not an encroachment but an obligation. The government's invocation of "marital stability" to justify the violation of bodily autonomy reflects a regression to colonial-era patriarchal governance.

4.2. Sociological and Cultural Defenses of the MRE

The endurance of the marital rape exception is deeply intertwined with India's patriarchal cultural fabric and religiously sanctioned gender hierarchies. The legal immunity granted to marital rape mirrors centuries of social conditioning that constructs marriage as a sacred space beyond the reach of law.

(a) The "Sacrament" Argument and the Doctrine of Implied Consent

In traditional Hindu thought, marriage (*vivaha samskara*) is regarded as an indissoluble sacrament, where the wife's duty (*stri dharma*) is to serve and submit to her husband. This religiously inspired ideal has historically influenced legal reasoning — treating sexual submission as inherent to marital duty. The colonial administrators codified this patriarchal understanding into law through the IPC (1860), embedding Lord Hale's doctrine of implied consent into Section 375.

Even in post-independence India, this notion persists. Opponents of reform argue that criminalizing marital rape would "interfere with the sanctity of marriage" and "criminalize marital intimacy." However, such claims fundamentally misconstrue the nature of consent: consent is not perpetual; it must be specific, ongoing, and revocable.

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

The law's failure to acknowledge this principle denies women their agency and perpetuates the archaic notion of the wife as property.

(b) The Myth of "Family Stability"

Another recurring justification is that criminalizing marital rape would threaten family unity and increase divorce rates. This argument prioritizes social harmony over individual dignity, implying that the preservation of the family is more important than a woman's bodily autonomy or psychological well-being. Yet, a marriage sustained by coercion and fear cannot be stable — it is, in essence, a site of subjugation. The Constitution envisions a marriage of equals, not a hierarchy of dominance.

(c) The Fallacy of Alternative Remedies

The government's assertion that the *Protection of Women from Domestic Violence Act, 2005*[38] *(PWDVA)* provides sufficient remedies for marital sexual abuse is fundamentally flawed. The PWDVA is a civil law that offers protection orders, residence rights, and monetary relief — but it does not criminalize the act of sexual assault. A civil remedy cannot substitute the need for a penal deterrent. Rape, whether by a stranger or a spouse, is an offence against the state, not merely a domestic grievance.

Moreover, empirical data and women's rights reports reveal that survivors often face societal stigma, disbelief from law enforcement, and pressure to remain silent to "protect family honor." The absence of a specific criminal provision exacerbates this impunity, reinforcing a culture of silence and victim-blaming.

4.3. The Role of Activism, Feminist Jurisprudence, and Civil Society

The movement for criminalizing marital rape in India is not just a legal campaign — it is part of a broader feminist struggle to reclaim bodily autonomy and redefine citizenship for women. Civil society organizations, scholars, and survivors have persistently challenged the state's patriarchal inertia through litigation, research, and public advocacy.

Groups such as the *RIT Foundation*, *Jagori*, *Centre for Women's Development Studies (CWDS)*, and *National Alliance for Women* have reframed the discourse by emphasizing that consent within marriage is not a private or moral issue but a matter of human rights and constitutional justice. Their sustained efforts have illuminated the

[38] *Protection of Women from Domestic Violence Act, 2005*

structural barriers faced by survivors: fear of retaliation, lack of institutional support, police apathy, and societal ostracization.

These organizations have also argued for comprehensive reform, beyond mere criminalization. They call for:

- Gender-sensitization training for police officers, prosecutors, and judges.
- Confidential reporting mechanisms to protect victims' privacy.
- Psychological and legal support systems for survivors.
- Public awareness campaigns to dismantle myths around marital rights and consent.

Despite such efforts, state resistance remains entrenched. The government's reluctance to even include data on marital rape in the *National Crime Records Bureau (NCRB)* reports reflects a systemic denial of its prevalence. The erasure of these realities perpetuates the myth that marital rape is a "Western concept," alien to Indian culture — an argument historically used to suppress women's rights under the guise of cultural authenticity.

4.4. Comparative Global Perspectives: Lessons from Reform

India's persistence with the MRE places it among a small group of countries — including Afghanistan, Pakistan, and Bangladesh — that continue to legally excuse marital rape. In contrast, many nations with shared colonial histories have reformed their laws.

- United Kingdom: The House of Lords in *R v. R* (1991)[39] categorically held that a husband can be guilty of raping his wife, stating that the fiction of implied consent is "anachronistic and offensive to modern understanding."
- Nepal: In *Forum for Women, Law and Development v. His Majesty's Government* (2002)[40], the Supreme Court criminalized marital rape, recognizing it as a violation of constitutional equality.
- South Africa: The *Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007* abolished the marital rape exemption, asserting that marriage does not imply perpetual consent.

[39] R v. R, [1992] 1 AC 599 (HL)

[40] Forum for Women, Law and Development v. His Majesty's Government, (2002) Nepal SC

- Canada, Australia, and the United States have long repealed such exemptions, aligning domestic law with international human rights standards under the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*[41].

India's continued resistance thus not only undermines its constitutional framework but also erodes its international credibility as a democracy committed to gender justice.

V. Recommendations

5.1. A Missed Opportunity for True Reform

The enactment of the *Bharatiya Nyaya Sanhita (BNS), 2023*, was hailed as a historic moment of decolonization and modernization of India's criminal law framework. It sought to replace the colonial *Indian Penal Code, 1860*, with a statute rooted in Indian constitutional values and contemporary realities. Yet, this legislative milestone remains deeply compromised by its refusal to confront one of the most egregious remnants of colonial patriarchy — the marital rape exception (Section 63, Exception 2).

By retaining this archaic provision, the BNS fails to deliver on its promise of justice and equality. The Exception continues to legitimize coercive sexual relations within marriage, effectively treating married women as lesser bearers of constitutional rights. This legislative omission is not merely a technical oversight; it is a moral and constitutional abdication. It entrenches structural gender inequality and undermines the very ideals that the BNS purportedly seeks to embody — dignity, liberty, and justice for all citizens.

The failure to criminalize marital rape perpetuates a colonial construct Lord Hale's doctrine of implied consent — which posits that a woman, upon marriage, irrevocably surrenders her autonomy over her body. Such reasoning is irreconcilable with post-independence constitutionalism, which affirms individual autonomy and equality before the law as the bedrock of a just society. The Indian Constitution does not recognize the family as a zone of impunity; rather, it demands that all institutions including marriage conform to constitutional morality.

The BNS, 2023, thus represents a profound missed opportunity: an opportunity to align criminal law with the lived realities of Indian women, to honor India's

[41] Convention on the Elimination of All Forms of Discrimination Against Women, arts. 2 & 5 (CEDAW)

international human rights commitments, and to dismantle one of the last strongholds of patriarchal impunity in law. Instead, by deferring to regressive social norms and political expediency, the legislature has prolonged a constitutional injustice, leaving millions of married women without effective legal protection against one of the most intimate and devastating forms of violence.

5.2. Recommendations for Achieving Gender Justice

Rectifying this historic failure requires a multi-pronged approach judicial, legislative, and institutional rooted in constitutional morality, feminist jurisprudence, and global human rights standards. The following recommendations outline the essential steps toward achieving genuine gender justice and legal parity for married women in India.

(1) Immediate Judicial Nullification: Upholding Constitutional Morality

The Supreme Court of India, as the guardian of the Constitution, must exercise its constitutional duty to safeguard the rights of women by striking down Section 63 (Exception 2) of the BNS, 2023, as unconstitutional. The marital rape exception violates:

- Article 14 (Equality Before Law): by arbitrarily classifying women based on marital status and granting immunity to offenders solely because of marriage.
- Article 15(1) (Non-Discrimination): by perpetuating sex-based discrimination and reinforcing stereotypes about women's roles in marriage.
- Article 21 (Right to Life and Dignity): by denying married women control over their own bodies and sexual choices.

The Supreme Court's own jurisprudence *Navtej Singh Johar v. Union of India* (2018)[42], *Joseph Shine v. Union of India* (2018), and *K.S. Puttaswamy v. Union of India* (2017) provides ample precedent for this intervention. Each of these decisions reaffirmed that constitutional morality must prevail over societal morality, and that the right to dignity and sexual autonomy is inalienable, regardless of marital status.

A judicial pronouncement invalidating the exception would not only uphold these constitutional guarantees but also reaffirm the principle that consent is the cornerstone of sexual relations in any context, including marriage. Such a ruling would mark a decisive step toward dismantling patriarchal jurisprudence and realigning criminal law with India's constitutional vision.

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[42] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

(2) Legislative Amendment: Affirming Parliament's Commitment to Gender Equality

While judicial intervention is vital, the responsibility for comprehensive reform ultimately lies with the legislature. The Union Parliament must amend Section 63 of the *Bharatiya Nyaya Sanhita, 2023*, to completely remove Exception 2 and unequivocally criminalize non-consensual sexual intercourse within marriage.

5.3. Toward a Gender-Just Future: From Legal Recognition to Social Transformation

Criminalizing marital rape is not an isolated legal reform; it represents a broader commitment to the constitutional project of gender justice. The BNS, in its current form, remains tethered to colonial legacies and patriarchal anxieties. To fulfill its promise of modernization, it must embrace a jurisprudence that acknowledges women as equal citizens, not subjects of marital control.

True reform lies not only in legislative change but also in transforming the moral imagination of the nation — from viewing marriage as a domain of privilege to recognizing it as a partnership of equals. Only when the law recognizes that consent cannot be presumed and autonomy cannot be surrendered, can India genuinely claim to have decolonized its criminal justice system.

As Justice D.Y. Chandrachud once observed, *"Constitutional morality requires that we renounce patriarchal traditions which deny women their dignity."* The time for that renunciation is now.

Conclusion

The Bharatiya Nyaya Sanhita, 2023, promised a decolonized and progressive legal framework, yet its retention of the Marital Rape Exception (MRE) marks a deep constitutional and moral failure. By exempting husbands from prosecution for non-consensual sex, the law denies married women equality, dignity, and bodily autonomy principles enshrined in Articles 14 and 21 of the Constitution.

This exception upholds the colonial fiction of implied consent and prioritizes marital sanctity over individual rights. Far from representing true reform, it perpetuates patriarchal hierarchies under a modern guise. The BNS, therefore, remains a missed opportunity to align India's criminal law with its constitutional vision and global human rights commitments.

True decolonization demands the recognition that marriage does not extinguish consent. Until the MRE is abolished, gender justice will remain incomplete, and the constitutional promise of equality and dignity for all women unrealized.

CHAPTER-3

DIGITAL ENTERTAINMENT VS FUNDAMENTAL RIGHTS: THE CONSTITUTIONAL BATTLE OVER ONLINE GAMING IN INDIA

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Abstract

The online gaming scene in India has grown exponentially, to become the new face of online entertainment, developing into a multi-billion industry with interest, and controversy at its centre. However, as platforms which provide fantasy sports, rummy, and poker advertise themselves as skill-based businesses, capable of coming within the due process protections of the United States Constitution, state legislatures have frequent sought total prohibitions arguing about addiction, financial exploitation and moral decay among the people. This has resulted in a constitutional clash that is at the boundary of basic rights and regulation.

This paper analyses the online gaming constitutional aspects in India, investigating Articles 14, 19 and 21 of the Indian Constitution and division of powers in the federal system between Union and States. It follows the jurisprudential development of the distinction between skill and chance based on such landmark cases like Chamarbaugwala, Satyanarayana, and Lakshmanan, and it examines the application of similar jurisprudence to online gambling. The research also estimates the effect of the Information Technology Rules 2021 (with changes in 2023), new taxation regulations, and state prohibitions. Using the proportionality test, it contends that although gambling, driven by fortuitous rules, can rightly be subject to prohibition, it is reasonable to control with tailored restraints the field of skill-driven online gaming than through the use of a ban, and therefore, create a happy medium of innovation and constitutional restraint.

Keywords *Online gaming, fundamental rights, Article 19(1)(g), Article 14, Article 21, res extra commercialis, distinction between skills and chance, Online gaming, decree law, online gaming, federalism, proportionality.*

Introduction

The emergence of internet gaming and online entertainment trends have been second to revolution in India over the last decade. As smartphones become more widespread, mobile data is affordable, and more payments systems go digital, online gaming platforms have started to play an important role in the Indian entertainment economy. Since the times of educating one another through social games, fantasy sports, or serious money-making programs like rummy, poker, and internet betting portals, the industry has been expanding in terms of users and revenue. It has been noted that the Indian online gaming business will experience a rank crossing multi-billion-dollar valuations in future, and the growth rate on the compound level has been far higher than other forms of entertainment provision, mainly due to the concerns surrounding gambling dependency, financial subversion, and regulatory vacuum- a legal battle field of innovation versus constitutional protection.[43]

Central in this battle, is this constitutional conflict between the right to do lawful business and the right of the State to control or ban harmful conduct. Although Article 19(1)(g) of the Constitution underlines the right to exercise any profession or do any trade, occupation or business,[44] the right can be subjected to reasonable limitations under Article 19(6) especially where the practice is deemed to be intrinsically harmful. Historically the Supreme Court, in State of Bombay v R.M.D. Chamarbaugwala,[45] has held that gambling occurring in circumstances beyond a case of protection by Article 19(1)(g) as res extra commercium, turned offenders, and that there is indeed a difference between operations which qualify as a game of skill and the activities qualifying as a game of chance and left beyond the equal protection zone of Constitutionally-protected commerce.[46]

Other fundamental rights are also the subject matter of the constitutional debate. Article 14 of the right to equality and Article 19(1)(a) of the right to free speech must also be considered in regards to online games involving restrictions imposed upon online gaming but must not be arbitrary and must rely on intelligible differentia and

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[43] KPMG, *The India Online Gaming Story* (2022) https://home.kpmg/in/en/home/insights/2022/07/the-india-online-gaming-story.html accessed 2 October 2025.

[44] The Constitution of India 1950, art 19(1)(g).

[45] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699.

[46] The Constitution of India 1950, art 14.

then the right to live and availability to enjoy personal liberty against the State's responsibility to avoid harm, as placed in modern jurisprudence.

The research issue the current paper sets to solve is therefore two-fold: (i) does online gaming system and in particular real-money skill-based games have constitutional protection as a legitimate business, (ii) to which extent can State and Central rules and regulations forbidding such platforms withstand the test of fundamental rights. This study aims to critically analyse the jurisprudential evolution of the skill-chance distinction, analyse the constitutional validity of the online gaming regulations and to suggest a framework that frames the individual freedoms and regulatory requirements. This study will be methodologically a doctrinal study, employing the provisions of the constitutions, decision by the Supreme Court, High Courts and the statutory act of Parliament through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules,2021, subject to change by its 2023 amendments. This analysis is complemented by comparative perceptions and scholarly observations, helping to give the final picture regarding this struggle over online gaming in the Indian constitution.

Constitutional & Federal Dimensions

The debate of online gaming in the Indian constitution is dominated by the play of both the internal and fundamental rights and the federal setup of the legislative power in India. First and foremost in this discussion is the Article 19 of the Constitution, which guarantees the freedom of commercial activities, speech and expression, but allows reasonable limitation of freedom in the interests of good order, morality and the public good.[47] The existence of protection of activities inherently pernicious like gambling has remained restricted by the doctrine of res extra commercium.

State of Bombay v RMD Chamarbaugwala formulated the res extra commercium, which stated that gambling failed to receive constitutional protection as a lawful trade or business. The doctrine was still applied to this day within the digital realm. But courts have also drawn the line between skill and chance narrowly, guarding against

[47] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699.

purely chance games like rummy, horse racing games, and fantasy sports, which all fall within the protection of Article 19(1), Clause 19(1)(g).[48]

The right to equality, in conjunction with Article 19, has also been applied to blanket bans on online gaming by Article 14. These cases, which established sweeping prohibitions of online skill-based games, are indicative of any legislation that were overturned by the judiciary in All India Gaming Federation v State of Karnataka, whereby the distinction between a game of chance and one of skill was not taken into consideration, and in Junglee Games India pvt ltd v State of Tamil Nadu[49] the banning of all forms of online gaming was pronounced irrational.

Federalism contributes a different level in this battle in the constitution. Entry 34 of List II (State List) of the Seventh Schedule vests legislation competence over "betting and gambling" whereas the Union Government is granted powers over telecommunication and information technology by Entries 31 of List I (Union List), thus giving rise to the Information Technology Act, 2000 and the IT Rules, 2021.[50]

The rulings by judiciary have aimed at harmonisation of this overlap instead of using a strict exclusivity model. Although the Madras High Court upheld Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 (amended), it emphasised that harms caused by gambling legislations should be supported by states, and the Centre should guarantee platforms to carry through with such laws, relying on the IT Act IT-based due diligence regulatory setup.

In this way, three main peculiarities define the constitutional and federal aspects of regulation of online gambling: (i) the necessity to maintain the doctrine of res extra commercium when playing games of chance, (ii) the failure to break the claims to principled and equitable classification within the parameters of Article 14, and (iii) the fragile balance of the competencies of the States towards the regulation of the game and the consumption of gambling and the competencies of the Union towards the regulation of the digital platform. Combined these aspects put the legal frontier on battling the Digital Entertainment/Constitutional Guarantee divide.

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[48] *State of Andhra Pradesh v K Satyanarayana* AIR 1968 SC 825; *KR Lakshmanan v State of Tamil Nadu* (1996) 2 SCC 226; *Varun Gumber v Union Territory of Chandigarh* 2017 SCC OnLine P&H 5372 (recognising fantasy sports as a game of skill).

[49] *Junglee Games India Pvt Ltd v State of Tamil Nadu* 2021 SCC OnLine Mad 2762.

[50] The Constitution of India 1950, Seventh Schedule, List I, Entry 31; Information Technology Act 2000.

The Skill–Chance Jurisprudence in India

The constitutional validity of online playing in India turns around the age old judicial separation of games of skill and games of chance. Such difference is what defines res extra commercium (outside legitimate trade) and a constitutionally attractive business operations. Nevertheless, even though the principle was inspired by mid-twentieth century jurisprudence, it has re-influenced the basis of contemporary controversies surrounding fantasy sporting games, rummy, poker, and other Internet-based applications.

It was in the same case that the Supreme Court in State of Bombay v RMD Chamarbaugwala held that gambling activities, which were in essence pernicious, could not be safeguarded under Article 19(1)(g).[51], as they were not envisaged in the Constitution as being the means to grant fundamental rights to businesses. But, in the same decision, the Court in effect realised that some games could involve substantial skill and be exempted by this narrow classification.

This difference was specifically found in State of Andhra Pradesh v K Satyanarayana;[52] the Court asserted that the game of rummy could not be a mere game of chance but instead, memory, skill, and judgment played a prominent role that would negate rummy as gambling. Likewise in KR Lakshmanan v State of Tamil Nadu,[53] the Court reiterated that data obtained through horse racing was a quality game, and betting on horse races could not be equated with pure gambling. A game as such would be considered to be a game of skill under these criteria where skill was the principal determinant.

This jurisprudence has been expanded to the online space, which came with the digital era. The Punjab and Haryana High Court in Varun Gumber v Union Territory of Chandigarh[54] affirmed fantasy sports as games of skill and insisted that the destination was not by chance, but due to the knowledge of the player in statistics, cricketing expertise and analytical skill.[55] A few other High Courts, including Bombay, and Rajasthan, utilized the same argument.

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[51] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699.
[52] *State of Andhra Pradesh v K Satyanarayana* AIR 1968 SC 825.
[53] *KR Lakshmanan v State of Tamil Nadu* (1996) 2 SCC 226.
[54] *Varun Gumber v Union Territory of Chandigarh* 2017 SCC OnLine P&H 5372
[55] *Junglee Games India Pvt Ltd v State of Tamil Nadu* 2021 SCC OnLine Mad 2762.

But with the onset of state level bans on online gaming, there was new crop of judicial action. In All India Gaming Federation v State of Karnataka,[56] 1995, the Karnataka High Court held invalid a state-provided amendment placing an absolute ban on online betting of all stakes on the basis that such a ban infringed Articles 14 (and 19(1)(g)). In Junglee Games India Pvt Ltd v State of Tamil Nadu, 1995 the Madras High Court did likewise, immediately after causing a state-made attempt to begin an absolute ban on all forms of internet betting by reference to the need to erad

In that way, the jurisprudence on the distinction between skill and chance has its continuation and developmental elements: the former is inherent to the retention of the preponderance of skill, as demanded by the Supreme Court, and the latter is manifested by the attempts of the High Courts to adjust such a framework to the digital economy. The legal trend is favoring suggesting that gambling can be res extra commercium but real-money skill gaming enterprise should be afforded protection under the Constitution except under reasonable regulation.

Regulatory Landscape and Emerging Challenges

Existence of regulatory framework in Online gaming in India is characterized by fragmentation, uncertainty and conflicting bites to legislative prowess. The online ecosystem brings new complexities unlike in traditional gambling, which was mostly controlled by state based laws like the Public Gambling Act 1867 and state extensions.[57] These complications are as a result of central regulation of digital intermediaries by the Information Technology Act 2000, and the laws established by the state to deal with betting and gambling. The two-tier approach has created a dynamic quilt of regulation, which frequently has created litigation and compliance disputes.[58]

On the Union level, changes to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 were announced in April 2023 notifying amendments adding a comprehensive framework to understanding of an online real money game, such that a deposit is made and a user stand to win money.[59] Online real

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[56] *All India Gaming Federation v State of Tamil Nadu* 2025 SCC OnLine Mad 452.

[57] Ministry of Electronics and Information Technology, 'Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023' (6 April 2023).

[58] Ibid, r 2(qa).

[59] Medianama, 'Concerns Around Online Gaming Rules' (2023) https://www.medianama.com accessed 2 October 2025.

money games Online real money games are also defined in the rules as a game where the expectation is that a user will make a deposit and receive money as a result of winning that game.[60] Self-regulatory organisations are required to impose due diligence obligations on Although these rules have been aimed to bring uniformity, they have been criticised due to their vagueness, lack of effective appellate procedures as well as danger of excessive executive authority.[61]

On the taxation front another matter that has posed some significant economic problems to the industry has been the tax treatment which has not delineated or distinguished between games of skill and games of chance despite the judicial demonstration that the constitutional provision that taxation methods should not discriminate against the online gaming sector. Besides, the constitutional issue regarding the proportionality of Article 19(6) restrictive proposals has been worsened due to the financial charge.

On the state level, there have been back and forth remarks made by legislatures over blanketing or the application of regulation by individualized parameters. Tamil Nadu is a notable example that first tried the prohibition of online gambling with stakes general to all games, banning it under the Tamil Nadu Gaming and Police Laws (Amendment) Act 2021, before being invalidated by the Madras High Court in Junglee Games India Pvt Ltd v State of Tamil Nadu as evident in being manifestly arbitrary.7 The State of Tamil Nadu made a subsequent attempt to permit restricted prohibition under the name of the Kerala Gaming Act, imposing restrictions via notification, which was invalidated by the Madras High Court[62]

These legislative experimental works point to two issues. To begin with, it has led to the phenomenon of regulatory uncertainty because not having a harmonised national framework built in means that platforms have to navigate among disparate state legal regimes at the same time conforming with central IT rules. Second, the sweeping character of the simplistic consideration of all real-money games as harmful overhadges the longstanding constitutionally established skill-chance divide, and thus presents opportunities to direct constitutional express challenge.[63]

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[60] Ibid, rr 4A–4C.

[61] Reuters, 'India's GST on Online Gaming Triggers Industry Exit' (2023) https://www.reuters.com accessed 2 October 2025.

[62] *Junglee Games India Pvt Ltd v State of Tamil Nadu* 2021 SCC OnLine Mad 2762.

[63] *All India Gaming Federation v State of Karnataka* 2022 SCC OnLineKar 1569.

To conclude, the field of regulations can be described as a conflict between the state-level paternalism and central efforts at systemic regulation. The difficulty is to balance these frameworks, and to see to it that any restrictions adhere to constitutionally established limits of proportionality, clarity and due process. Online gaming regulation in India will be stuck in lawsuits and policy unrest unless a collaborative kind of federal model comes down the line.[64]

Fundamental Rights Analysis

The constitutional validity of limits to online gaming in India should be put to the test of the framework of fundamental rights especially Articles 14, 19 and 21. The court practices show a new trend: in as much as gambling is usually considered simply as res extra commercium and thus is not included in the rights immune status, the judges have realised that skill-based gambling is a subset of lawful business, which should be evaluated within the context of fundamental rights. The initial level of which the proportionality test, which has become so much embedded in Indian constitutional law, is the preferred measure of the reasonability of non-arbitrariness of limitations on online gaming.

In Chamarbaugwala, the Supreme Court did not regard gambling as a trade and thus was res extra commercium, granted by article 19(1)(g) to as many citizens as the right to conduct any type of trade or occupation.[65] However later jurisprudence noted that games of ability such as rummy (Satyanarayana), horse racing (Lakshmanan) and fantasy sports (Varun Gumber) cannot be described as gambling and hence are subject to Article 19(1) at 1.3.[66]

Therefore, state governments that terrain out drinking are committing a violation of the Article 19(1)(g) when they cause blanket bans on all forms of online gambling such as game of skill. Such law, according to All India Gaming Federation v State of Karnataka topped in All India by Karnataka High Court stated that supports of skill games cannot be denied constitutional immunity in terms of trade freedom, unless they show they justify the need and are proportional to the greater public benefit.

Anonymity: Article 19(1)(a) acknowledges the right to free speech and expression, and the Supreme Court has utilized this right in relation to commercial speech: Tata

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[64] *Head Digital Works Pvt Ltd v State of Kerala* 2021 SCC OnLine Ker 22044.

[65] *All India Gaming Federation v State of Karnataka* 2022 SCC OnLineKar 1569.

[66] The Constitution of India 1950, art 19(1)(g).

Press Ltd v MTNL[67]Advertisements and promotions of online games, both with skilled component and with or without skills skills, are subject to protection. Under Article 19(2) however, regulation against such deceptive or misleading advertisements can be placing restrictions.

The recent additions to the IT Rules 2021 means that online gaming intermediaries are obliged to place disclaimers on their sites and prohibit surrogate advertisement as well as avoid misrepresenting winning when it is evident that such policies are consistent with consumer protection, still lacking clear standards may excessively curtail freedom of expression. Any regulation cannot thus fail to meet the proportionality test as it was in Modern Dental College v State of Madhya Pradesh where restrictions were supposed to have a good purpose and to do so reasonably and without being too intrusion intensive.

Article 14 obligates the State to proceed based on rational categorization and outlaws manifest arbitrariness.10 With regards to online gaming, laws, which treat skill-based and chance-based games identical with no apprehendible rationale, contravel the requirement. In All India Gaming Federation v State of Karnataka (Karnataka High Court), it was determined that the state gambling law which prohibited all skills gambling to stake money was unconstitutional since it did not make a difference between gaming based on shot and other skills gaming.

The reason behind the Junglee Games is also centered on the principle of non-arbitrariness in that the Madras High Court appeared to invalidate the attempt by the Tamil Nadu government in 2020 to enact an appreciation against online gambling; this was seen as being disproportionate and arbitrary.11 Here, in 2025, that same High Court affirmed the constitutionality of a subsequent, more narrowly targeted state law, banning and restricting online gambling and providing regulatory protections to skill-based games.[68] The shift portrays the constitutional imperative

Article 21 of the Constitution is broadly construed such that retirement in online skill gaming can be considered as a continuation of personal freedom and autonomy in a right framework.[69] Simultaneously, the State has a valid law to manage the activities

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[67] *State of Andhra Pradesh v K Satyanarayana* AIR 1968 SC 825; *KR Lakshmanan v State of Tamil Nadu* (1996) 2 SCC 226; *Varun Gumber v Union Territory of Chandigarh* 2017 SCC OnLine P&H 5372.

[68] *All India Gaming Federation v State of Tamil Nadu* 2025 SCC OnLine Mad 452.

[69] *Justice KS Puttaswamy v Union of India* (2017) 10 SCC 1.

that produce social mischief such as gambling addiction, financial abuse, or affects on minors.

Entering into the world of harm-reduction measures is, therefore, the necessary way of achieving equilibrium instead of total bans. Age-gating, KYC verification, self-exclusion tools, and spending limits represent less intrusive options that would not interfere with the right to personal liberty in the Constitution but would effectively address the risks.14 Blanket bans on the other hand are authoritarian and unfair since it violates the constitutional right to personal liberty without reasonable justification.

Proportionality has been embraced by the Supreme court as the yardstick of determining the extent of limitations on fundamental right assessment. In Puttaswamy v Union of India (Privacy Case) the Court reiterated that the restrictions should be (i) law authorized (ii) serve a legitimate purpose, (iii) be necessary and proportionate, and (iv) contain built-in measures to curb abuse (bans or abusive taxation).[70] These should be applied to the restrictions on the online gaming environment, so that the reasonable alternative to such restrictions has failed.

In reality, though, a number of state laws do not meet this test. By contrast, the targeted ban strategies which require a disclosure, place age restriction and control harmful advertisement over their minors are more proportionality mindful, because they strike a balance between innovation and population interests.

Lastly, the federal division of powers would have to be considered with fundamental rights analysis. Though requests Consistency-based betting and gambling in the state are within the competence of the state under Entry 34 on the State List, the Centre has jurisdiction on digital intermediaries under Entry 31 on theVersion 17 on the Union List. In response to this, courts have embraced the approach of cooperative federalism in which both state regulations on the harms of gambling and federal IT regulations governing platforms co-exist.

In the discussion of the basic rights, it is clear that gambling as pure chance is not subject to protection by the constitution, whereas skill based online gaming is a legal business, which can be safeguarded by Clause 14, 19 and 21. Such limitations should be subject to the proportionality test, which would make them both narrow and specific to evidence, and justified by the concerns of respect to individual freedom.

[70] *Justice KS Puttaswamy v Union of India* (2017) 10 SCC 1.

The way ahead is neither prohibitory paternalism nor caliberated regulation but more constitutionally consistent regulation.

Policy Blueprint and Conclusion

The issue of online gaming in constitutional India shows that it is high time to get a reasonable system of regulation between the innovation and ensuring the protection of the fundamental rights. This state-by-state service without end, alternating blanket bans against on one side and piecemeal regulation on the other has only added legal confusion and litigation. A framework that is future ready needs to incorporate constitutional protection and dealings with the harms that are eminent to people based on online gaming.

To start with, it needs a tiered model of legality. Games of skill ought to be accepted as lawful commercial operations under Article 19(1)(g) and games of mere chance can be placed under gambling bans as separate regulatory authorities recognised under the IT Rules. This would allow constitutional uniformity, and bar ad hoc prohibitions.[71]

Secondly, regulation should be based upon harm-reduction. Such areas should be obligatory Know-Your-Customer (KYC) checks, age verification, daily and monthly spending limits, and self-exclusion functionality among vulnerable users.[72] Dark patterns in game design and responsible advertising should also be banned. These are direct responses to the danger of addiction as well as economic harm rather than throwing out disproportional all-encompassing prohibitions.

Third, the musts in due process have to be instilled in the regulatory form. Any act of blocking, terminating, or suspending a gaming site on the internet should adhere to the principles of natural justice: advance warning, right to hearings, and the availability of appeal protections.3 existing mechanisms of the IT Rules pose risks to executive bullying and their validity is determined by clear guarantees of not abusing their own rules.

Lastly, mutually advantageous federalism should be the guiding principle to the state-central reconciliation of powers. Although states have the competence of respective states with respect to the activities of betting and gambling in accordance with Entry

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[71] *State of Andhra Pradesh v K Satyanarayana* AIR 1968 SC 825; *KR Lakshmanan v State of Tamil Nadu* (1996) 2 SCC 226.

[72] NITI Aayog, 'Guiding Principles for Uniform National-Level Regulation of Online Fantasy Sports Platforms in India' (2020).

34 of the State List, safeguards applicable to online intermediaries and online platforms with respect to the digit is scrutinised by the Centre under a flexible harmonised approach in accordance with Entry 31 of the Union List.[73]

Conclusion

The fight over online gaming in the Indian constitution underscores the exciting convergence of online innovation, federalism and basic rights. The validity of the distinction between skill and chance has continued to be affirmed by the courts with skill-based gaming being acknowledging as bona fide commerce under Articles 14, 19 and 21[74]. Any blanket prohibitions that overlook this same have also been declared to be arbitrary and disproportionate. Concurrently, the interest of the State to safeguard the common good is another reason why certain restrictions which are moderated to curb the possible harms like addiction, financial misuse and safeguarding of minors are essential.

Online gaming regulation in India cannot follow prohibitory and non-proportional dad-type paternalism to its end but adopt proportional, normative and lapsing constitutional safeguards. The rights-consistent policy framework can do the following: (i) separate skill and chance, (ii) instill harm-reduction strategies, (iii) ensure due process and (vi) foster cooperative federalism. This would put the constitutional commitments of India on par with the ground realities of its digital economy to enable online gaming to thrive as a legitimate mode of digital entertainment without jeopardizing the societal interests.

[73] *Shreya Singhal v Union of India* (2015) 5 SCC 1 (emphasising procedural safeguards in intermediary regulation).

[74] The Constitution of India 1950, Seventh Schedule, List II, Entry 34; List I, Entry 31.

CHAPTER-4

EMPOWERING PERSON WITH DISABILITIES: THE INDIAN PERSPECTIVE

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Abstract

The rise of disability rights in India is a striking phenomenon in terms of the shift of a paradigm on welfare-based approach to a paradigm of rights. Having been historically informed by medical and charity models, the only two approaches to disability were rehabilitation and government-funded welfare programs. Nevertheless, the preservation of equality, dignity, and non-discrimination were promised through the ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2007 in India. Such change was consolidated by legislative changes like the Rights of Persons with Disabilities Act, 2016, and judicial interpretations that acknowledged persons with disabilities as persons who enjoyed their rights and not passive beneficiaries. The legal framework was initially based on welfare and rehabilitation, and it only gave minimal recognition of persons with disabilities as equal members of the society. The UNCRPD required a paradigm shift, which incorporated the international human rights standards into domestic laws. This led to the redesign of Indian disability regime as one that aimed at accessibility, equality and full inclusion.

The Indian courts have significantly contributed to the enhancing of disability rights by a wider interpretation of the constitution. In Jeeja Ghosh v. Indeed, the union of India (2016), the Supreme Court defended the self-respect of persons with disability by imposing responsibility on discriminatory treatment. Equally, in Disabled Rights Group v. The Court under Union of India (2017) stressed the importance of successful execution of the RPwD Act. By invoking Articles 14, 19.

The disability rights regime in India has been changing drastically over time on the welfare to rights centric in terms of constitutional principles and international obligations. The social justice and inclusivity of people with disabilities have been a

milestone with the recognition of people living with disabilities as right-holders. However, the efficient application of these rights requires enhanced implementation, infrastructural availability and sensitization to destroy the stigma of the society. The key issue that is still awaited is closing the divide between legal principles and the reality in granting the principles of equality, dignity, and justice to professionally assist persons with disabilities.

Keywords- Disability rights, UNCRPD 2007, RPWD act 2016, Equal opportunities

Introduction

Disability is a complex phenomenon that cuts across the medical, social, legal aspects. Persons with disabilities according to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) adopted in 2006 are individuals with long term physical, mental, intellectual, or sensory impairments that, when combined with many other barriers, can impede on their full and effective engagement with the community as equal partners along with others in the international community, acting under the jurisdiction of the field of international law. This definition is a paradigmatic change of the old model of medical model of disability in which individual impairment was the focal point to the social model which belongs to the removal of the barriers created by a society which ensures the inclusion. In India, the RPwD Act, 2016 (hereinafter) takes into consideration an analogous approach of inclusivity. According to the definition of a person with disability as a person with heavy physical, mental, intellectual or sensory incapability and its interaction with barriers prevents them full and effective participation in society on equal grounds with other people, then the implementation of the human rights perspective by India is under permanent observation.

In the past, disability in India was handled in a welfare or charity model of approaching the issue based on paternalistic traditions and social pity instead of legal claims. The trend after independence was on rehabilitation and social security over empowerment or equality. Historical laws and policies, including the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, were progressive but still had some elements of the welfare-state thinking, since they perceived persons with disabilities as beneficiaries of state-efforts instead of rights-holders. The strategy was actually more medical based where impairment

could be cured or managed as opposed to dealing with the systemic barriers that caused disability. The model unintentionally sustained social exclusion because it did not look at the implicit dignity and autonomy of persons with disabilities.

The change happened radically with the ratification of UNCRPD by India on 1st October 2007 which bound the country legally to promote, protect, and ensure full realization of all human rights of persons with disabilities [75] The Convention has pointed out equality, non-

discrimination, accessibility, and active participation in political, social and cultural life. It has redefined disability as a dynamic between individuals and the environment thus requiring states to eliminate attitudinal, physical and institutional barricades. The ratification of India meant that there had to be a complete change in the legal system to bring it in line with the international requirements. As a result, the Rights of Persons with Disabilities Act, 2016 was adopted, substituting the previous one of 1995 and introducing twenty-one additional types of disability, rather than seven [76] . The Act brought up the rights-based entitlements like accessibility in education, employment and reservation in government employment and protection against prejudice.

In this research paper, the author attempts to critically examine the development and the situation of disability rights in India in terms of legislative advancements, judicial interpretations, and real challenges in achieving inclusive equality. Despite the major reforms that have been made, some barriers such as inaccessibility of the infrastructure to some and social stigma still exist to hinder complete participation. The aim of the paper is to evaluate the progress that India has made in changing the form of disability governance, which has been token welfare recitations, into enforceable rights and the role played by the judiciary in this transformative action plan.

Historical Evolution of Disability Rights in India

According to the research on the history of the disability rights in India, this has led to a gradual yet radical change in the system of charity and welfare to the human rights

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[75] United Nations Treaty Collection, *Convention on the Rights of Persons with Disabilities*, Ratification by India, 2007.

[76] *Rights of Persons with Disabilities Act*, 2016, Sch. I. [3] *Constitution of India*, Art. 41.

and inclusion based system. During the colonialism period no policy or laws were put in place to protect the people with disabilities and the treatment was hence more of a social or a medical problem. British government used most of their focus on custodial care and rehabilitation as compared to the State, which was finding use in charity run institutions led mostly by religious or mission authorities. The attitudes of the social people during the period towards the disabled had been paternalistic meaning that those living with disabilities were seen as dependent personalities and were incapable of themselves. This form of medicalism considered disability as a personal illness that had to be solved but not as a social issue that required reorganizing of the society[77].

The concerns of the poverty, education and the influence of health on people were addressed by the development agenda of India since India got its freedom of independence in 1947, and policy concerning disability was given little attention. The first attempts during the early years were restricted to social welfare programs under the ministry of social welfare whose conceptualizations about disability had the idea of disability as a matter of social security. The approach was more traditionally a welfare orientation and thus oriented more towards rehabilitation facilities, vocational training as well as financial support rather than empowerment or inclusion. The Articles 41 and 46 of the Constitution of India are particularly the provisions of the Constitution that provided the background of the States towards the individuals having disabilities and offered guidelines to be adhered to by the government in a bid to promote the economic interests and education of the weaker entities. They were the however directive rather than being legally obligatory and persons with disabilities were dependent upon the whims of the administration as opposed to a certain right.

The initial persuasive legislative action that led to the awareness of disability was the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Act was established as a response to an Indian pledge of the Asian and Pacific Decade of Disabled Persons (19932002) to give statutory basis of equal opportunities and inclusion of people with disabilities[5]It has designated seven categories of disability such as blindness, low vision, impaired hearing, locomotor disability, mental retardant and mental illness and provided education,

[77] NilikaMehrotra, *Disability, Gender and State Policy: Exploring Margins* (Rawat Publications 2013) 27. [5] Ministry of Law, Justice and Company Affairs, *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act*, 1995. [6] Ibid, ss. 32–39.

employment and affirmative action. The Act mandated 3 percent quota in government employment and learning and sanctioned the establishment of Chief Commissioner of Persons with Disabilities to oversee enforcement[6]. Despite these, the 1995 Act remained a welfare note. It was focusing on prevention and rehabilitation, and not encroaching upon rights, and not offering of access in the private sector, and considering of severe penalties against disobeying. Each of the states did not equally introduce the law and the mechanisms that would have ensured monitoring of the same were very minimal and limited the transformational impacts of the law substantially[78].

The shift in the rights-based discourse grew slowly in the early 2000s and was triggered by the trends in the world and the activism of Indian disability rights movements. With the introduction of United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2006, the international and national history of rights of persons with disabilities got a watershed. The Convention on equality, freedom and involvement shifted the emphasis of the issue of disability to that of a human right that was now not considered as a social welfare problem. The ratification of the Convention by India in 2007 gave a binding occasion to conform its home-based provisions to the international standards of a social model of disability[79] This necessitated the replacement of the ancient Act of 1995 with a more elaborated legislation that was founded on the social model of disability.

During the meantime, the National Policy of Persons with Disabilities, 2006 was created to give India a sense of direction on inclusion and empowerment. The policy recognised that the disabled are the valuable human resources who should be integrated in mainstream social community by training, educating them, and availing opportunities just like other human beings. It required prevention, early knowledge, education, vocation, liberated conditions and empowerment of the women. The policy, similarly to its forerunners in legislation, was, nevertheless, more inspirational and did not provide mechanisms and timelines to be adhered to. The absence of accountability structures meant that the nature of implementation was very bureaucratic.

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[78] ShampaSengupta, "Two Decades of Disability Rights in India: Reviewing the 1995 Act" (2015) 50 *Economic and Political Weekly* 14.

[79] United Nations, *Convention on the Rights of Persons with Disabilities*, 2006, Art. 4.

In addition to the effect of the global engagements in all the actions that led to the development of the policy, which is founded on the principles of empowerment, the alteration to charitable based activities and interventions has also been affected by the changes in the social awareness in India. The disability rights activists and groups such as the National Centre of Promotion of Employment of Disabled People (NCPEDP) and the Disability Rights Group took the centre stage in removing the mass discussion by establishing a phenomenon of disability as a component of equality and dignity and not pity and dependency. Such advocacy took the government in the path of the legislative change which culminated in the Rights of Persons with Disabilities Act, 2016. The modern tradition appreciates the fact that the actual impediment is not impairment in itself and even its absence is not the social exclusion, inaccessibility of infrastructures and discriminative disposition.

Although this has changed, the elements of charity model can still be traced in the Indian society. Tendencies include sympathy and neglect in their turn depending on the perception of the disabled individuals in the media and the policy and the image of disabled individuals in the media and policy still possess the hierarchical and exclusionist motif. Even though there are the policy structures that acknowledge persons with disabilities as a right holder, effective empowerment of the persons is subject to change in both the attitudes and practices practiced by organizations in society. Welfare to rights history is hence a narrative of change as much as it is contradictory since even though the legal framework has been realigned to the inclusive and equal opportunities, the aspect of social and structural integration is yet to be sought.

Legislative and Policy Framework

A historic change in the legislative and policy framework of disability rights in India was a historic act with the granting of Right of persons with disabilities act, 2016 (RPwD Act). This act repealed the Persons with disabilities (Equal Opportunities, Protection of Rights and Full participation) Act 1995, to put into harmony the domestic law of India with the standards of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), or which India was a signatory in 2007. RpwD Act is a paradigm shift as it does not focus on welfare-based rehabilitation but rather promotes the rights-based approach with a strong focus on

equality, dignity, and autonomy. Preservation of inherent dignity and non-discrimination based on disability are clearly identified in its preamble in line with the constitutional guarantees provided in Articles 14, 15, 19, and 21.[80]

One of the characteristic features of the RPwD Act, 2016 is the increase in the number of the recognized categories of disabilities (seven in the 1995 Act) to twenty-one. This extension is an expression of the changing perception of disability as a dynamic and diverse condition. The new Act includes disorders of the brain like cerebral palsy, autism spectrum disorder, multiple sclerosis, thalassemia, hemophilia, sickle cell disease, Parkinson disease as well as some learning disabilities[10]. Most notably, the addition of chronic blood illnesses, and mental illness makes significant emphasis on a holistic change to the acceptance of invisible and psychosocial disability. Section 2(s) on the definition of person with disability gives particular focus on the interplay between impairment and societal hindrance on the individual level- an expression that is a direct elaboration of the expression used in Article 1 of the UNCRPD. This placement puts the RPwD Act in the context of the social model of disability, the elimination of environmental and attitudinal factors that limit the participation.

The Act also institutionalizes important rights in accessibility, education and employment making them enforceable rights and not idealized policy goals. RPwD Act Chapter VIII requires making all the buildings, transport systems and information and communication technology accessible as per set time frame under harmonised guidelines and standards on universal accessibility by the ministry of Housing and Urban Affairs[81]. Section 16 in education establishes that government shall provide inclusive education systems across the levels, reasonable accommodation, and educators should be trained to assist the students with disabilities. The vision of education provided by the Act is one of empowerment and not segregation in line with Article 24 of the UNCRPD.[82]

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[80] *Rights of Persons with Disabilities Act*, 2016, Preamble; *Constitution of India*, Arts. 14, 15, 19, and 21. [10] *Rights of Persons with Disabilities Act*, 2016, Sch. I.

[81] Ministry of Housing and Urban Affairs, *Harmonised Guidelines and Standards for Universal Accessibility in India*, 2021.

[82] United Nations, *Convention on the Rights of Persons with Disabilities*, 2006, Art. 24. [13] *Mental Healthcare Act*, 2017, s. 18.

The other pillar of the RPwD Act is employment and economic activity. Section 34 raises reservation of persons with benchmark disabilities in government establishments to 4 percent (rather than the previous 3 percent) in categories of visual impairments, hearing impairments, locomotor impairments and other specified impairments (under the 1995 Act). The Act also mandates that the private employers should package the equal opportunity policies and submit compliance reports to the relevant authorities, a move that is a big step in taking the responsibility to the outside world of the private sector. The section 37 offers incentives to the private employers who hire individuals with disabilities thus allowing inclusivity in the market economy. Nevertheless, these statutory assurances have little effect in the private sector because of poor checking and monitoring mechanisms as well as no punitive measures in case of noncompliance[13].

The institutional architecture developed by the Act is crucial in implementing the Act. Under Section 71, the Central Advisory Board on Disability (CABD) is in charge of advising the Central Government on the establishment of policy and its review on the implementation and the coordination of ministries. Similar functions are done at the state level by corresponding State Advisory Boards under Section 72. The bodies are the pillars of participatory governance whereby they guarantee the representation of the government departments, NGOs, and the persons with disabilities. Their operation has, however, been criticized to be bureaucratically inefficient and irregular in meetings and hence limits their ability in influencing policy at the grass root level.

In spite of such a progressive legal structure the compliance with the UNCRPD is still mixed in India. The government has achieved significant landmark in recent advancement of forming extensive legislative acts and creation of organizations to control and supervise like the Office of Chief Commissioner of Persons with Disabilities (CCPD). Nevertheless, according to the reports by the Committee on the Rights of Persons with Disabilities (UNCRPD Committee) in 2019, certain gaps continued to persist, such as ineffective data collection, inadequate budgetary allocation, and ignorance at the local governance level up to the present time[83]. Audits of accessibility have found out that fewer than three out of every ten major city buildings are entirely accessible and the transportation is not very accessible to

[83] Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of India*, UN Doc. CRPD/C/IND/CO/1 (2019).

the people with visual or mobility impairments at all, with the exception of a few [84]. Moreover, there is no ardent enforcement of the reservation policies as most government departments do not manage to recruit the required number of quotas[85].

The state and local issue is very acute. Though the national accessibility guidelines and policies have been developed by the central government, their implementation relies on the machines at the state levels that are usually poorly resource-endowed and have a lack of technical capacity. Most people with disabilities are located in rural locations where they find little institutional support and are, therefore, reliant on family units or community rehabilitation programs [86]. Societal stigma and the lack of education about the need to alter the attitude of the people contribute to the even greater policy-practice gap.

Judicial Dimensions and Constitutional Interpretation

The role of the Indian judiciary in changing disability rights towards a model that shifts away being a welfare-driven issue to an equality and dignity-driven, inclusion-based constitutional agenda has been significant in this achievement. The constitutional rights basis to disability rights is found mainly in the Articles 14, 15, 19, and 21 guarantees of equality and liberty set on the Federation Constitution of India, with secondary assistance by the Directive Principles of State Policy, which are Articles 38, 39, and 41. Article 14 guarantees equality before the law and equal protection of the laws whereas Article 15 (1) outlaws discrimination along the different grounds. The list of prohibited grounds does not specifically include disability, but the provisions have been interpreted by the judges in such a way as to include persons with disabilities as a subset of the larger principle of substantive equality[18]. Article 21 affirms the right to life and personal liberty which has been broadly interpreted by the Supreme Court to comprise the right to live with dignity and autonomy, the key tenets of the disability rights discourse. Article 41 also guides the State towards effective provision of right to work, education and public assistance to people, in the instance of disablement[19]. The combination of these provisions

[84] Ministry of Social Justice and Empowerment, *Accessible India Campaign (Sugamya Bharat Abhiyan) Progress Report*, 2022.
[85] Chief Commissioner for Persons with Disabilities, *Annual Report 2022–23*, Government of India.
[86] World Bank, *People with Disabilities in India: From Commitments to Outcomes*, (Washington DC, 2009) 46. [18] *Constitution of India*, Arts. 14 and 15(1). [19] Ibid, Art. 41.

seems to be the constitutional bedrock upon which the judiciary has established the structure on disability justice.

In Jeeja Ghosh v. One of the most progressive conveyed by the Supreme Court of India on disability rights was Union of India (2016). The incident that has led to the case occurred when Ms. Jeeja Ghosh, one of the most distinguished disability rights activists who is a cerebral palsy patient was forcibly deboarded on a SpiceJet flight because of her disability. The Court believed that this kind of treatment was a disgraceful act, which was against her primary rights of Articles 14 and 21, and that dignity is an irreplaceable component of the right to life[87]. The Court ordered the airline to compensate 10 lakhs in rupees and emphasized that individuals with disabilities should not be treated with indignity or discriminated in communal places. It noted that differently-abled individuals are not a charity case but they possess rights and that the society needs to adapt its system to them, instead of excluding them using other sidelining means[88]. This ruling is significant in its ability to operationalize the principle of reasonable accommodation and precedent on accountability of conduct in the private-sector that concerns persons with disabilities.

The judicial system has also come in strong to make sure an implementation of judicial mandates is facilitated under the Rights of Persons with Disabilities Act, 2016 (RPwD Act). In Disabled Rights Group v. Having been filed as a Public Interest Litigation (PIL), Union of

India (2017) monitored the implementation of the RPwD Act after its inception. The Supreme Court urged the Central and State Governments to formulate exhaustive regulations, provide creation of advisory boards and execution of norms of access in line with Section 40 to 46 of the Act[89]. The Court was able to appreciate that legislative rights in a state of ineffective implementing are only illusory and it restated that the constitutional requirement of the State to sign statutory promises to actual results. The ruling supported the judiciary as a reflector of social rights in filling the law-practice gap.

The other case which became landmark was National Federation of the Blind v. The concept of reasonable accommodation was broadened to include the employment context, by Union Public Service Commission (2013). The petition complained of the

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[87] *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761.

[88] Ibid, para 43

[89] *Disabled Rights Group v. Union of India*, (2017) 2 SCC 657.

non-provision of the braille or screen-reading facilities to the visually impaired candidates in the civil services examination by the UPSC. Upon appeal, the Supreme Court based on Articles 14 and 16, declared that the failure to provide accessible formats was a form of discrimination and anti-equality-of opportunity in the employment of the government[90]. The Court ordered the UPSC to offer alternative ways like scribes and assistive technology so as to ensure equal access. Significantly, the Court applied the previous Persons with Disabilities Act, 1995 to the case considering the requirements of the UNCRPD and thereby aligning the domestic law with the international norms[91].

Judicial trend also indicates a growing use of an international law, specifically the UNCRPD as an interpretive source. The international human rights norms have been read into the constitution by invoking the Article 51(c) of the Constitution, which urges the State to respect international law, which subsequently justifies the interpretation of the international human rights standards into the provisions of domestic constitution by the courts. This strategy has transformed disability rights beyond being statutory rights and privileges of human beings.

Overall the work of the judiciary in the development of disability rights in India goes well beyond the resolution of disputes. It has been a dynamic vehicle of social change entering aspiration discourse of equality and dignity into binding law. The joint effect of the articles 1419-21 was that, the courts started treating disability not as a restriction but as a demand of structural adjustment and social transformation. However, the outstanding challenge is how to translate these historic judgments into actualities by maintaining monitoring and institutional accountability. The groundwork has been constitutional and moral, inclusion through courts; now fall upon the executive and society to follow up and make the rights of people with disabilities materialized in their spirit and in practice.

Persistent Challenges and Ground Realities

The reality of people with disabilities (PwDs) in India is still not an inclusive one, despite the progressive legislation and the judicial system. Elements that are infrastructural, administrative, and social are still seen to hold back the successful

[90] *National Federation of the Blind v. Union Public Service Commission*, (2013) 10 SCC 772.
[91] United Nations, *Convention on the Rights of Persons with Disabilities*, 2006, Arts. 5 and 9

implementation of rights entitled on the Rights of Persons with Disabilities Act, 2016 (RPwD Act). Although in the law, accessibility, equality, and participation are contemplated, there is not consistency in implementation across sectors like education, employment, transport, and social welfare as anticipated. The difference between the policy and practice highlights the point that disability in India is not only an issue of law but a highly enrooted social problem defined by the negligence of attitudes and systems.

Infrastructural inaccessibility is one of the most obvious challenges. Although in 2015 the Accessible India Campaign (Sugamya Bharat Abhiyan) was introduced, the focused on creating barrier-free infrastructures, people with disabilities still cannot access the public infrastructure. An audit by the Ministry of Social Justice and Empowerment in 2022 showed that only in big cities the buildings of central government are 100 percent accessible, and the state and rural areas are even worse off[92]. Mass transport, especially buses and sub urban rail network, are not ramped, audible and wheelchair friendly. Rates of improvement are relative in cases of airports and metro networks in metropolitan places like Delhi and Bengaluru but they are rather exceptions and not the norm. There are also considerable hindrances in the educational institutions since most schools and universities are physically unreachable and the lack of inclusive curricula and assistive technologies invalidates the right to education promised in Section 16 of the RPwD Act.[93]. The situation is not any better at the place of work where public and confidential employment is hardly reasonable and the access to employment is a boiled down to mere dreams.

Other than the structural and administrative obstacles, social stigma is also the most persistent barrier. The aspect of disability is still considered in the perspective of pity, dependence, and charity instead of rights and agency. This cultural view alienates the disabled in society and economy. Stigmatization in rural India, where customary beliefs frequently tend to equate disability with karma or godly punishment, becomes exclusion to education and jobs, as well as to marriage opportunity opportunities altogether. These attitudes promote structural discrimination so that the family does not want its disabled members to have a chance to study or socialize. The Indian media

[92] Ministry of Social Justice and Empowerment, *Accessible India Campaign (Sugamya Bharat Abhiyan) Progress Report*, Government of India, 2022.
[93] *Rights of Persons with Disabilities Act*, 2016, s. 16.

and cinema also adapt disability in the two extremes, either as an inspirational element to superscript narrative or a sympathetic element, neither of which normalizes disability as an element of social diversity [94]

The combination of disability with gender and age increases side lining. Women with disabilities have been discriminated against twice, by virtue of their gender and their disability. According to the 2020 report by the National Commission of Women (NCW), women with disabilities are more prone to domestic violence, inaccessibility to healthcare, and their education and employment are more obstructed than male ones. They are also poorly represented in the policy making process and are hardly consulted during local governments. On the same note, children with disabilities are more than proportionately disregarded in education. In 2019, the State of Education Report by UNESCO of India discovered that almost 75 percent of all children with disabilities aged 519 either dropped out of school or never enrolled one at all[95]. The intergenerational poverty and dependence represent the processes of this educational exclusion.

Inequality is also exaggerated by the urban-rural divide. Though the cities enjoy the advantages of minimal infrastructure development and programs operated by the non-governmental agencies, the rural areas are devastatingly underdeveloped. It is also stated by World Bank Report on Disability in India (2009) that almost 70% of the disabled population in India lives in rural regions but most of the disability related initiatives are those that are city focused. Community-based rehabilitation (CBR) programs are usually relied on by rural persons with disabilities and though they have been effective in awareness generation, they lack adequate funds and human resources. The limited number of aids and special teachers as well as trained medical workers in rural areas leads to systematic exclusion of services.

The NGOs and the civil society organizations have played a significant role in filling certain of these gaps. Other organizations like the National Centre of Promotion of Employment of Disabled people (NCPEDP), Disability Rights Group (DRG) and VidyaSagar Foundation have been crucial with regard to advocacy, raising awareness and taking litigation to enforce disability rights. The judicial interventions of the

[94] Shampa Sengupta, "Representation of Disability in Indian Media: Between Sympathy and Stigma" (2018) *Economic and Political Weekly* 53(2) 25.

[95] UNESCO, *State of Education Report for India: Children with Disabilities*, 2019

importance that occurred were as critical as Jeeja Ghosh v. Union of India (2016) and such milestones as policy milestones as the Accessible India Campaign. The NGOs are also the mediators between the State and the so called marginalized groups, where they train people, provide legal assistance and free education. But their capabilities still have a limit because they rely on donor resources and institutional backing of the government agencies.

The other burning problem is poor incorporation of the disabled in the formation of policies as well as the local government. The principle of nothing about us without us is the core of the UNCRPD, which is, however, disregarded most of the time in practice. The disability community rarely participates in the decision-making processes and in such cases, the top down policies do not cater to the local situation. The National Policy of Persons with Disabilities (2006) and later amendments have been faulted as lacking proper consultation with stakeholders. There is no way participatory governance will make the yearning to devise inclusive programs to be mere tokenism as opposed to transformative.

To sum up, the continuation of infrastructural inaccessibility, bureaucratic lassitude, and social bias demonstrate the discrepancy between the legal balances and social facts in India. The RPwD Act, 2016, has established an effective model but the effectiveness of the implementation, awareness, and attitudinal change will determine its success. Closing the gap between the law and life has to be about more enforcement systems and prolonged education of the population, to break the stigma and naturalize the inclusion. The future of disability rights in India therefore depends on the ways to change compliance into culture- that is making accessibility of medical care, equality and dignity to be basic aspects of the daily governance and citizenship.

Conclusion and Recommendations

The development of disability rights in India is a historical process of transformation of the welfare-based charity-centered approach to rights-based and dignity-centered one. In the past, the concept of disability was perceived through the prism of medical and social welfare, where the population with disabilities (PwDs) was treated as an inactive member of the state favour system. This perception has changed greatly over the decades based upon influences by both international trends and local forces like the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and

national campaigns towards equality. In 2016, the new Rights of Persons with Disabilities Act, 2016 (RPwD Act) became the turning point of this course and substituted the old-fashioned 1995 legislation and put Indian law on the same level as the global standards of human rights. The RPwD Act created the legal background in which individuals with disabilities are identified as rights-holders, who must be treated equally, not discriminated upon, and involved in every part of life. This transformation is highly embedded on the ethos under the constitution of justice, liberty and dignity in Articles 14, 15, 19, and 21 of the Constitution of India.

In order to close this gap between legislative ideals and realities that are lived in, some major suggestions are formed. To begin with, the institutional accountability and information surveillance should be reinforced. The disability information is still rare, fragmented and old which has weakened policy planning and resource allocation. The establishment of a centralized National Disability Database, the management of which is active collaboration of both the Ministry of Social Justice and Empowerment with NITI Aayog, would help to increase transparency and coordination of work between the states. There should be periodical audits of accessibility rates, employment quotas and rates of education inclusion with the results published publicly to promote accountability.

Second, there is an urgent necessity to invest in infrastructure of universal design and accessibility. The accessibility should be beyond the physical space, and it is to digital space, communication systems, and emergency assistance. The Harmonised Guidelines and Standards on Universal Accessibility (2021) must be legally binding on all construction works, whether state-owned or privately owned, and lack thereof has to be severely dealt with[96]. Ease of competition in the private sector can also be enhanced with financial incentives by contributing to accessible infrastructure; tax breaks or through collaborating with a partner in the private sector.

Third, community-level capacity-building and building awareness are critical to the long-term inclusion. They should be sensitized on disability in school curricula, civil services training and in local governance programs. The campaigns should focus on disability as a human diversity rather than a disability. The inclusion needs to be

[96] Ministry of Housing and Urban Affairs, *Harmonised Guidelines and Standards for Universal Accessibility in India*, 2021.

extended into the rural and marginalized regions by supporting civil society groups and rehabilitation in communities based on sustainable funding models[97].

Fourth, both judicial activism and policy reform should keep on developing together. The courts have played a significant role in the enforcement of disability rights and these need to be constantly monitored to check on the compliance by the executives. Judicial periodic review of the implementation of the accessibility that applies to the role of the Court of environmental jurisprudence may hasten the system change. At the same time, the government ought to revise and reform the RPwD Act periodically to accommodate the new challenges like digital inclusion, intersectionality, and disability-inclusive disaster management[98].

Conclusively, the disabled rights in India is not just a change in legislation but in society. Inclusiveness is true when individuals with disabilities not just access rights but also as equal citizens contribute to the formulation of the rights. The vision statement expressed in the Constitution and restated in the UNCRPD proposes a vision of a society where equality and dignity are not a dreamy ideal, but rather a reality. The development of India so far, shows what legal reform and judicial intervention are possible, but the future way should demand long-term dedication, institutional discipline, and cultural understanding. It is only when accessibility and inclusion is made inherent to governance and the general public awareness that the constitutional promise of justice, which is social, economic and political will have been realized in its fullness by the persons who are disabled.

[97] National Centre for Promotion of Employment for Disabled People (NCPEDP), *Status of Implementation of the RPwD Act, 2016*, 2021.

[98] Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of India*, UN Doc. CRPD/C/IND/CO/1 (2019).

CHAPTER- 5

ADJUDICATION IN THE DIGITAL AGE: AI, EFFICIENCY, ACCESS, AND THE RISE OF LEGAL TECH

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Abstract

This abstract examines the profound impact of technology on the process of adjudication, analyzing the shift from traditional, paper-intensive court systems to a new digital paradigm. This research evaluates the key technological tools being deployed globally to modernize the judiciary, with the COVID-19 pandemic acting as an unprecedented catalyst for this transformation. The paper argues that while technology is an indispensable tool for improving the justice delivery system, its success is contingent on addressing critical challenges like digital inclusivity and robust data security. The study details various technological interventions, including Electronic Filing (e-Filing), integrated Case Information Systems (CIS), and the use of Video Conferencing (VC) for remote hearings—a practice that became essential for ensuring the continuity of justice during the global pandemic. As its primary case study, the paper explores India's ambitious e-Courts Project, highlighting its most impactful initiatives. This includes the National Judicial Data Grid (NJDG), which brings radical transparency to national case statistics, and specialized Virtual Courts designed for the hyper-efficient handling of high-volume offenses like traffic violations. The analysis reveals that these tools have significantly enhanced the judicial process by improving operational efficiency, dramatically increasing accessibility for all litigants, and fostering a new era of transparency through public-facing data portals. However, this digital transformation is not without its hurdles. The paper concludes by addressing critical challenges such as the digital divide, which risks excluding citizens without technological access, and the persistent threat of cybersecurity breaches to sensitive judicial data. Ultimately, this research posits that while technology is fundamentally reshaping the future of justice, its successful and equitable integration requires a strategic and inclusive approach to ensure that the digital courthouse is secure and open to all.

Introduction[99]

For most of history, the idea of "justice" brought a very specific image to mind: a physical courthouse, towering stacks of paper files, and lawyers arguing in front of a judge. This traditional system is built on centuries of history, but it's also known for

[99] Written by Akansha, LLM Student, IILM University

being slow, incredibly inefficient, and often intimidating or inaccessible for the average person[100]. For decades, technology offered a slow-but-steady path to improvement, but this gradual pace was never enough to fix the deep-rooted problems of case backlogs and unequal access.

Then, 2020 changed everything.

The COVID-19 pandemic didn't just nudge the justice system forward; it shoved it. Almost overnight, the global judiciary had to make a choice: adapt or grind to a complete halt [101]Suddenly, “nice-to-have” pilot programs became critical infrastructure. Virtual hearings, electronic filing, and digital case management became the only way to keep the doors of justice open, forcing a technological leap that would have otherwise taken years.

But this rapid, emergency-driven transformation has created its own set of complex problems. It’s a classic double-edged sword. While technology has the power to make justice faster, cheaper, and more accessible than ever before, what happens to the people left behind? We risk creating a new **digital divide**, where citizens without stable internet or the right tech skills are effectively locked out of the new system. As we digitize our most sensitive legal records, how do we protect them from hackers? And as **Artificial Intelligence (AI)** begins to move from science fiction to a real tool used in legal analysis, how do we ensure it’s fair, unbiased, and transparent?

This paper argues that while technology is the undeniable future of justice, we can't just plug it in and hope for the best. A truly successful digital judiciary must be built intentionally to be inclusive, secure, and fair for everyone. To explore this, we’ll first look at the key technologies changing the game around the world. Then, we’ll dive into a specific case study—India’s ambitious **e-Courts Project**—to see these tools in action. Finally, we’ll tackle the major hurdles head-on and offer concrete recommendations for building a digital courthouse that is, at last, truly open to all.

The Crisis of Inefficiency: Why Legal Tech Became a Necessity

It is a major issue to talk about "access to justice" when millions of people can't even think about justice because the system is so slow, ineffective, and scary. To really comprehend why the emergence of legal technology is not only an optional enhancement but an urgent and significant imperative, one must first recognize the immense human toll of the analog system it is set to replace. It is hard to understand how big this waste is, yet it is well-documented. The National Judicial Data Grid says that as of late 2023, India's court system was dealing with more than half a million cases that had been waiting for more than 20 years and another three million cases that had been waiting for more than 10 years[102]. This isn't simply a "backlog" in the numbers; it's a huge problem for the rule of law that casts a long and terrible shadow over the whole country. This delay has an enormous cost to people. When a case finally goes to court after twenty years, it can be very hard to find witnesses who are

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[100] Susskind, R. (2019). *Online Courts and the Future of Justice*. Oxford University Press.

[101] World Bank. (2021). *The Impact of COVID-19 on the Judiciary: A Global Perspective*. Washington, D.C.: World Bank Group. https://documents1.worldbank.org/curated/en/099120524154539375/pdf/P5006491a7ab2800e18a171d7f313705f8e.pdf

[102] National Judicial Data Grid (NJDG). (2025). "National Data Dashboard." Accessed October 24, 2025. https://njdg.e-courts.gov.in/njdgnew/index.php

still alive, get physical evidence, and even find the original litigants. This makes it almost impossible to reach a fair decision, and the legal process becomes a painful formality instead of a search for the truth. This "mountain of pending cases" is not only a problem for politicians; it is a real disaster that regular people feel the most. More than 85% of this huge burden falls on the district courts, which is where most people go first[103]. To make things even more complicated, the government is the biggest litigant, which means that its own courts are often full of conflicts and appeals between departments[104]. So, the main question is what people are waiting for. Two-thirds of all civil actions are about land and property, which shows how the system affects basic security[105]. This means that for decades, people's houses, inheritances, and even their jobs have been stuck in a legal limbo, causing a level of personal and financial stress that is hard to measure and that makes people lose faith in the entire judicial system.

The system is inherently dysfunctional, which is why it is paralyzed. The problem is not just that there aren't enough judges; the infrastructure is "creaking" and can't handle modern life. This physical degradation shows up in a number of important deficiencies. First of all, there aren't enough places for judges to sit. One estimate says that India is 14.7% short on courtrooms for its sanctioned judges. In a big state like Uttar Pradesh, the gap is a shocking 25%. This means that even if four new judges are hired, one of them won't have a real courthouse to sit in, making their appointment pointless. Chronic and severe underinvestment is what is causing this degradation. India spends only approximately ₹146 (about $2) per person on the courts each year. This is a small amount compared to the ₹1,150 per person spent on police. India's spending on justice is one of the lowest in the world at only 0.1% of its GDP. This means that the courts don't have the contemporary tools and facilities they need to handle a 21st-century caseload. This shortage of money has a quiet but lethal effect on operations: there aren't enough people to do the work. High courts are missing more than 25% of their key support staff, like clerks, registrars, and stenographers[106]. This means that highly trained judges have to spend their valuable time on administrative and managerial tasks. Every time a typist is missing, a new bottleneck forms, which means hundreds more cases don't get their orders typed up, which adds more and more delays to the pile and makes the issue worse.

With this grim and unsustainable situation, where the physical and human infrastructure is falling apart under its own weight, one must wonder where the answer is. This is exactly where the shift to digital becomes so important, changing from a choice to the only way to go forward

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[103] Tata Trusts. (2023). *India Justice Report 2022: Ranking States on Their Capacity to Deliver Justice*. (This single report is the source for the 85% burden, 14.7%/25% courtroom shortages, ₹146/₹1150 spending, and 0.1% GDP figures). https://tatatrusts.org/our-work/governance-and-human-rights/india-justice-report

[104] Law Commission of India. (2009). *Report No. 230: Reforms in the Judiciary - Some Suggestions*. (Chapter 5 discusses government as a litigant). https://lawcommissionofindia.nic.in/reports/report230.pdf

[105] Daksh India. (2016). *State of the Indian Judiciary Report*. (This report identifies the high prevalence of land and property disputes). https://www.dakshindia.org/wp-content/uploads/2023/02/State-of-the-Judiciary.pdf

[106] Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. (2022). *Report No. 131: Judicial Process and Their Reforms*. (Discusses staff vacancies in High Courts).

Digitalization of Indian judicial system the e courts project

It's no secret that India is in the middle of a massive digital revolution. It's not just about smartphones and online shopping; according to McKinsey, India is the second-fastest-growing digital economy on the planet[107]. This national push to "digitize everything" was always going to come to the legal world, but the COVID-19 pandemic in 2020 hit the fast-forward button, forcing a slow-moving legal system to go online almost overnight.

However, this journey didn't just begin with the pandemic. The government began a project for digitalization of judicial system. The **e-Courts Mission Mode Project** stands as the Indian government's principal and comprehensive national strategy designed to address the judiciary's long-standing and deeply entrenched problems, specifically focusing on systemic **inefficiency** and the overwhelming accumulation of case backlogs. This ambitious initiative was officially launched following the guidelines set forth in the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary - 2005[108]."

Its foundational mission is clearly defined with two primary objectives: firstly, to significantly enhance **judicial efficiency** by leveraging technology to automate various court processes, and secondly, to substantially improve **access to justice** for all citizens by creating more user-friendly and citizen-centric judicial services. Recognizing the complexity and scale of this undertaking, the project's implementation has been strategically organized into distinct, progressive phases.

Phase I: Constructing the Digital Foundation (Approx. 2007-2015)

As the first step in the e-Courts project, setting up the basic technology base was important for the next step, which was to go digital. The first step was very important, and it covered a lot of important courts across the country. A big part of the job was to get everything on computers. This meant buying and giving basic computers to thousands of district and lower courts in India so they could do work online. This meant servers, laptops, and desktop computers. Also, a lot of work went into making sure that these new computerized courts could talk to each other. They were connected by a safe Wide Area Network (WAN), which made it possible for the first time for judges and lawyers to talk to each other and share information electronically. At last, the first versions of basic software were used during this time. The most important of these were the first versions of the Case Information System (CIS)[109]. This software was the first step toward digitally registering, managing, and watching court cases, instead of only using paper-based methods for keeping records by hand.

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[107] McKinsey Global Institute. (2019). *Digital India: Technology to Transform a Connected Nation*. https://www.mckinsey.com/~/media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20india%20technology%20to%20transform%20a%20connected%20nation/digital-india-technology-to-transform-a-connected-nation-full-report.pdf

[108] e-Committee, Supreme Court of India. (2005). *National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary*. https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024111250.pdf

[109] Department of Justice, GOI. (2015). *Brief on eCourts Project A. eCourts Integrated Mission Mode Project (Phase-I)*. https://www.wbja.nic.in/wbja_adm/files/Brief%20on%20e-courts%20Project.pdf

Phase II: Developing and Delivering Digital Services (Approx. 2015-2023)

This phase worked on making and launching a wide range of digital services that would directly improve the way courts work and make it easier for people to get justice. These services built on the basic framework that was set up in the first phase. As an important part of this step, the e-Filing site was made bigger and opened. People and lawyers can now start legal actions online, 24 hours a day, seven days a week, from anywhere with internet accessf[110]. This method changed the way legal actions are started. It was much faster and easier to file this way than before, when you had to go to court and hand in your papers in person during set hours. This quickly fixed big problems with geography and cut down on travel time and costs. A big step forward was also made by virtual courts. They were created to help the court system do its job better in certain situations. There were millions of easy cases that judges had to handle, like traffic violations or "e-challans." Because of this, the Virtual Court system provides a fully automated, online-only platform. Digital alerts and electronic proof, like video from a traffic camera, can be seen online. People who break the law can then accept it and pay the fine. This means that from the start of the case to the end, everything is taken care of automatically, without a court being involved. This frees up important court resources that can be used on more difficult cases. The National Judicial Data Grid (NJDG) was created and used by many people during Phase II. This was probably the most important tool for the project to help keep things open and running smoothly. Anyone can use this online dashboard, which shows a list of all the cases that are still being heard in India's computerized district and lower courts in real time. People who make policy, academics, and the public can now use data in a way that has never been done before to keep an eye on the backlog of cases. Lastly, this part set up e-Sewa Kendras (Help Centers) in court buildings to deal with the fact that some people don't have access to computers[111]. People work at these centers to help people who don't have access to or the right technology do things like use the e-filing site or check on the status of their case online. They are an important way for people to connect with the growing digital system.

Phase III: Embracing Artificial Intelligence and Integration (2023-Onwards)

The current and ongoing phase of the e-Courts project is a big step ahead. It aims to go beyond just digitizing things and create a smart, integrated, and mostly paperless court system[112]. This phase puts a lot of focus on using a "online-first" approach for court processes and uses new technologies like Artificial Intelligence (AI) to make things even more efficient and accessible. The Supreme Court Portal for Assistance in Court's Efficiency (SUPACE) is a well-known example of how AI may help the courts work more efficiently. It works as a smart AI-powered research helper that was made just for judges and their legal researchers. Within seconds, SUPACE may quickly look at thousands of pages of complicated case files, legal documents, and historical

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[110] e-Committee, Supreme Court of India. (2023). *e-Courts Project Phase II: A Report on Progress and Services*.

[111] e-Committee, Supreme Court of India. (2020). *e-Sewa Kendra Standard Operating Procedure (SOP)*.

[112] e-Committee, Supreme Court of India. (2023). *Draft Vision Document for e-Courts Project Phase III*. https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2023/02/2023021487.pdf

precedents. Judges can use it to get important facts, shorten long arguments, find relevant case law, and cross-reference evidence. This cuts down on the time and effort needed to prepare a case and write a ruling by a huge amount[113]. At the same time, AI is being used to break down language hurdles using technologies like SUVAS (Supreme Court Vidhik Anuvaad Software). SUVAS is an AI-driven translation tool that has been trained on difficult legal terms. It understands that true access is understanding. It can easily translate Supreme Court decisions from English into nine major Indian languages (with ambitions to add more). This is a huge step toward making things more inclusive. For the first time, millions of people who may not be good at English will be able to read, interpret, and interact with the highest court's decisions in their own language[114].

The e-Courts Mission Mode Project has clearly changed from its original goal of simple computerization into a full-fledged, forward-looking plan. Its goal is to create a contemporary, data-driven court system that is increasingly supported by AI, all in order to make justice more efficient and make sure that all Indians have real access to justice.

Judicial efficiency and enhanced access to justice

The integration of digital technologies is a primary driver for enhancing judicial efficiency and access to justice, a transformation most evident in key advancements that alter how the public interacts with the legal system and how courts manage their processes. These innovations range from remote proceedings in virtual courts to the widespread, on-demand availability of legal information. Virtual courts, for instance, directly attack the traditional barriers of physical geography and cost, which have long hindered both accessibility and efficiency. By functioning as online environments where judicial processes are managed remotely, virtual courts remove the requirement for parties to be physically present in a courtroom. This innovation is a major step forward for access to justice, extending judicial reach to remote, elderly, or disabled populations who were previously underserved. The advantages for efficiency are equally significant, as virtual proceedings "expedite case timelines" by allowing for more flexible scheduling, eliminating travel-related delays, and substantially reducing the time and financial costs for all parties[115]. While technical barriers and security concerns are notable challenges, this move represents a fundamental shift toward a more inclusive and responsive judiciary.

Alongside remote access, digitalization also serves as a cornerstone of judicial transparency. The nationwide computerization of courts empowers litigants by providing them with straightforward online access to case details and judgments. This accessibility allows individuals to efficiently retrieve legal information, understand relevant precedents, and make more informed decisions, thereby demystifying the legal

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[113] Supreme Court of India. (2021, April 6). "SUPACE (Supreme Court Portal for Assistance in Court's Efficiency) Inaugurated by Hon'ble the Chief Justice of India." *Press Release*. https://main.sci.gov.in/pdf/press/2021-04-06_11.45.19.pdf

[114] *The Hindu*. (2019, November 26). "SC introduces AI-powered translation tool SUVAS." https://www.thehindu.com/news/national/sc-introduces-ai-powered-translation-tool-suvas/article30089015.ece

[115] Gupta, N. P., & V. Adharsh. (2021). "Virtual courts: the forced evolution of the Indian justice system." *Bennett Journal Of Legal Studies*, 2(1), 85–103.

process and fostering a more equitable system. This same data access also boosts judicial efficiency for legal professionals, who can now retrieve information instantly rather than searching physical records.

On a larger scale, national strategies such as India's e-Courts Mission Project show a clear, institutional effort to harness these benefits. Originating from a 2005 policy, the project's primary goals are to automate processes, boost judicial productivity, and enhance "citizen-centric" services. With its phased rollout of digital infrastructure and a new Digital India Act to support its accelerated post-pandemic adoption, the project's explicit goal is to create a justice delivery system that is efficient, cost-effective, and universally accessible for all citizens, serving as a clear case study of a government harnessing legal tech to solve the long-standing problems of judicial delays and inaccessibility.

Foundational Case Law

Judicial precedent has been crucial in anchoring this digital transition in firm legal philosophy. Key court decisions have not just permitted the use of technology but have actively championed it as a component of justice.

- **State of Maharashtra v. Sangharaj Damodar Rupawate (2010)[116]:** This Supreme Court case established the legal bedrock for the entire digitalization effort. By definitively addressing the admissibility of electronic records under the Evidence Act, the Court provided the necessary legal clearance for digitalization. It affirmed that authenticated digital evidence, such as computer printouts or electronic files, holds the same legal weight as traditional physical documents. This judgment was philosophically vital; it tore down the barrier between "digital" and "real" evidence, giving the judiciary the confidence to accept e-filings, digital records, and electronic submissions as a valid part of the judicial record.
- **Swapnil Tripathi v. Supreme Court of India (2018)[117]:** While various High Courts experimented with streaming, this landmark judgment from the Supreme Court philosophically established live-streaming as an extension of the constitutional principle of "open justice." The Court held that the public has a right to access court proceedings, and technology is a means to facilitate that right. The subsequent decision by the Karnataka High Court to be the first to operationalize this and permit routine live streaming of its proceedings was a direct implementation of this philosophy. This move leverages technology to promote profound transparency and accountability, demystifying the judicial process and allowing the public to observe the functioning of the judiciary firsthand.

Hurdles in the Digital Transformation of E-Courts

While the e-Courts project has made notable progress in modernizing the judiciary, its full realization is hindered by several significant and deep-rooted challenges. These obstacles are not just technical but also human and structural, and they must be addressed to achieve the project's goals of universal access and efficiency.

1. The Digital Divide

The most significant barrier to inclusive justice is the "digital divide." The effectiveness of e-Court services is entirely dependent on citizens having reliable internet connectivity and the necessary technological infrastructure, such as computers

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[116] *State of Maharashtra v. Sangharaj Damodar Rupawate*, (2010) 7 SCC 398.

[117] *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639.

or smartphones. In many rural and remote areas, this infrastructure is either underdeveloped or completely absent[118]. This disparity risks creating a two-tiered system of justice: a fast, accessible digital path for urban citizens and the old, slow, and burdensome physical path for everyone else, thereby limiting true access to justice for the most vulnerable.

2. Judicial and Administrative Resistance

Beyond technology, a substantial human challenge is the resistance to change from within the legal profession. The judiciary is an institution built on centuries of tradition and paper-based workflows. Many legal professionals, including judges, lawyers, and administrative officials, are hesitant to fully adopt these new digital systems. This reluctance often stems from a simple lack of familiarity or a lack of comprehensive training, which can make the new tools feel inefficient or intimidating[119]. This cultural hesitation slows the pace of adoption and can prevent the new systems from being used to their full potential.

3. Cybersecurity Concerns

As the judicial system digitizes, it centralizes vast amounts of the nation's most sensitive information. Case files, witness testimonies, personal data of litigants, and confidential government documents are all stored online. This creates a high-stakes cybersecurity risk. Protecting this data from sophisticated cyber-attacks, hacking, and unauthorized breaches is a monumental and ongoing challenge. A single major security failure could not only compromise individual cases but also severely damage public trust in the integrity of the entire digital justice system.

4. Inconsistencies in Implementation

The e-Courts project is a national-level initiative, but its implementation is carried out by different states, each with varying levels of resources, infrastructure, and political will. This has led to an uneven and inconsistent adoption of digital services across the country[120]. A court in a major city may have advanced e-filing and virtual hearing capabilities, while a court in a smaller district may still be struggling with basic connectivity. This inconsistency means that a citizen's ability to access digital justice can be unfairly determined simply by their geographic location.

5. Language Barriers

In a nation with as much linguistic diversity as India, language is a critical barrier. The majority of digital platforms and legal databases are developed primarily in English. However, in the subordinate courts—where the vast majority of citizens interact with the justice system—proceedings are often conducted in local, regional languages. This mismatch makes it incredibly difficult to standardize digital platforms across the country[121]. If a litigant cannot read or understand the e-filing portal or a digital order, the system is not truly accessible to them, thus defeating a core purpose of the project.

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[118] Internet and Mobile Association of India (IAMAI) & Kantar. (2024). *Internet in India Report 2023*.

[119] Chandra, A. (2022). "Adoption of Technology in the Indian Judiciary: Challenges and Opportunities." *Economic & Political Weekly*, 57(15).

[120] NIPFP (National Institute of Public Finance and Policy). (2021). *An Empirical Analysis of the e-Courts Project: Achievements and Challenges*.

[121] Alok, A. (2022). "Language, Law, and the Digital Divide in Indian Courts." *Seminar Magazine*, 753.

The Future of E-Courts: A Roadmap for an Efficient and Accessible Judiciary

A systematic and multi-pronged approach is necessary to deal with the big problems that the e-Courts project is confronting. The following steps provide a clear way to construct a court system that is really safe, effective, and open to everyone.

1. Improving the digital infrastructure

The most important thing to do is to close the "digital divide," which is still the biggest obstacle to getting justice. To do this, we need to make a big, focused investment in improving digital infrastructure. This initiative must bring high-speed broadband to rural and distant locations that are "last-mile," so that where a person lives no longer affects their ability to use e-Court services. At the same time, the servers and other hardware that courts already have must be regularly updated to keep up with the high demands of video conferencing, AI technologies, and managing large digital files.[122]

2. Full Capacity Building

People must be able to use technology for it to be useful. A constant capacity building program is needed to get over the pervasive "resistance to change." This can't just be a one-time class; there needs to be continuing, uniform training for everyone involved, including judges, lawyers, and administrative personnel. This training will turn doubt into confidence by teaching people how to utilize the new e-Court services and how to be comfortable with them. This is important for making sure that the tools are used to their maximum potential and that the courts work as efficiently as possible.

3. Putting AI and blockchain technology together

The next big thing is using cutting-edge technology. Adding artificial intelligence to the legal system can make it work much better. AI solutions, such as the Supreme Court's SUPACE platform, can help justices undertake advanced legal research, go through thousands of pages of documents, and automate everyday administrative work. At the same time, blockchain technology is a very effective way to deal with cybersecurity issues. Blockchain can provide data security and integrity by making a decentralized, tamper-proof (unchangeable) record of legal documents and evidence. This is important for building public trust in the digital system.

4. Making strong support for several languages

Everyone who uses a digital system must be able to understand it for it to be really accessible. Because India has so many different languages, this means that multilingual support needs to be a top priority. The answer is to use more AI-based translation tools, including the Supreme Court's SUVAS software. The system can ultimately get rid of the language barrier that has long made it hard to get justice by making platforms that can accurately translate e-filing portals, case information, and even final decisions into India's many regional languages.

5. Working with the private sector in a planned way

The government doesn't have to develop this future all by itself. Working together strategically with the private sector is the best way to speed up innovation. The courts can use the knowledge and flexibility of private companies by working with "Legal

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[122] Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. (2023). *Report No. 133: Functioning of Virtual Courts*.

Tech" firms that specialize in this area. In a world where technology is developing quickly, this form of public-private partnership can help the e-Courts system stay modern and useful by speeding up the creation of more user-friendly apps, more advanced security measures, and other new ideas.

Conclusion

It is a significant challenge to discuss "access to justice" when the concept of justice is stuck in a time warp for millions of individuals, restricted by a system that is inefficient, slow and frequently intimidating. To truly understand why the emergence of legal technology is not merely an optional upgrade, but an urgent and profound necessity, it is necessary to first comprehend the huge human cost of the analog system it is expected to replace. The magnitude of this inefficiency is challenging to understand yet it is carefully documented. As of late 2023, India's court system was burdened with over half a million cases that had been pending for more than two decades, with an additional three million cases that had been pending for over ten years, according to the National Judicial Data Grid. This is not merely a statistical "backlog"; it is an enormous obstacle to the rule of law, casting a lengthy and devastating shadow over the entire country. This delay has an immeasurable human cost. The legal process can be transformed into a painful formality rather than a pursuit of truth when a case finally comes up for a hearing after twenty years, due to the practical difficulties of locating surviving witnesses, retrieving physical evidence, and even finding the original litigants. This can make a just resolution nearly impossible. This "mountain of pending cases" is not an abstract issue for policymakers; it is a grassroots crisis that is most strongly felt by ordinary citizens. The district courts, who serve as the initial point of contact for the majority of individuals, bear the brunt of this overwhelming burden, which exceeds 85%. The government is the single largest litigant, which effectively clogs its own judicial machinery with inter-departmental disputes and appeals, further compounding this complexity. The primary inquiry, therefore, is what individuals are anticipating. The system's impact on fundamental security is clearly shown by the fact that two-thirds of all civil cases involve disputes over land and property. This implies that for decades, individuals' residences, inheritances, and livelihoods are suspended in a state of legal limbo, resulting in an indescribable level of personal and financial anxiety that undermines public confidence in the system. This systemic paralysis is the result of a straightforward, physical reality: the system is inherently flawed. The crisis is not solely a shortage of justices; it is a "creaking infrastructure" that is inadequate in the physical capacity to function in the contemporary era. Several critical shortages are the result of this physical decay. Initially, there is a shortage of courtrooms for the sanctioned justices in India, with an estimated 14.7% shortage. In a significant state such as Uttar Pradesh, the shortfall is a staggering 25%. This means that even if four new judges are appointed, one of them will have no physical courthouse to reside in, rendering their appointment moot. Chronic and severe underinvestment is the driving force behind this decay. Each year, India allocates approximately ₹146 (approximately $2) per person to the judiciary, a sum that is insignificant in comparison to the ₹1,150 per person dedicated to the police. The courts in India are effectively depriving themselves of the modern tools and facilities necessary to manage a 21st-century caseload, as their expenditure on justice is one of the lowest in the world, at a mere 0.1% of its GDP. This absence of funding has a silent but fatal impact on operations: a significant personnel crisis. The absence of over 25% of the essential support staff, including clerks, registrars, and stenographers, in high courts has resulted in the allocation of valuable time to

managerial and administrative responsibilities for highly-trained judges. The crisis becomes worse by the hundreds of cases that remain untyped, which creates a new bottleneck with each missing typist. This adds to the accumulation of delays. In light of this bleak and unsustainable situation, in which the physical and human infrastructure is disintegrating under its own weight, it is imperative to consider the solution. This is the precise moment at which the transition to digital becomes so crucial, transforming it from a mere alternative to the single viable course of action.

CHAPTER - 6

IMPACT OF MEDIA TRIALS AND SOCIAL MEDIA OUTRAGE ON FAIR TRIAL RIGHTS IN INDIA

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Abstract

The rapid expansion of India's 24-hour news cycle and the explosive rise of social media have transformed how criminal cases are portrayed and understood in the public sphere. While Article 19(1)(a) protects freedom of expression and the press, these developments increasingly collide with the right to a fair trial guaranteed under Article 21. This paper investigates how prejudicial reporting, sensationalised debates, leaked investigative material, and digitally driven outrage erode the presumption of innocence and risk influencing investigative agencies, witnesses, and even judicial environments.

The study adopts a doctrinal and analytical methodology, drawing on Supreme Court judgments, Law Commission of India reports, statutory provisions such as the Contempt of Courts Act and the Code of Criminal Procedure, and ethical guidelines issued by the Press Council of India and broadcast regulators. Through an examination of landmark cases—including Best Bakery, Jessica Lal, Sahara India, R.K. Anand, and Rajendra Jawanmal Gandhi—the paper identifies the judiciary's evolving approach to balancing free expression with fair trial guarantees.

The analysis further explores the distinctive impact of digital platforms, where algorithmic amplification, viral hashtags, influencer commentary, and unverified content create a parallel "digital court." This environment intensifies public pressure, endangers witness integrity, and generates narratives that often precede formal evaluation of evidence.

The paper concludes that although India possesses a substantial regulatory and ethical framework, enforcement remains inadequate in the fast-moving digital ecosystem. A

more coherent model—combining stronger journalistic accountability, clearer sub judice norms, responsible platform governance, judicial use of postponement orders, and improved public legal literacy—is necessary to ensure that media freedom and fair trial rights reinforce rather than weaken each other.

Keywords: *Media trials; Fair trial rights; Article 19(1)(a); Article 21; Prejudicial publicity; Social media outrage; Digital justice; Contempt of Court; Presumption of innocence; India.*

Introduction

The expansion of India's media ecosystem—from traditional print and broadcast outlets to real-time digital platforms—has reshaped how criminal proceedings are perceived and discussed in public spaces. The increasing competition among news organisations, combined with the immediacy and reach of social media, has transformed crime reporting from factual dissemination to opinion-driven narratives capable of influencing public sentiment at an early stage of investigation. This shift raises significant constitutional concerns, particularly regarding the equilibrium between the freedom of speech guaranteed under Article 19(1)(a) of the Constitution and the right to a fair trial, a component of Article 21's broader protection of life and personal liberty.[123]

A fair trial presupposes the presumption of innocence, an impartial judicial process, and evidence evaluated strictly within the courtroom framework. Media trials—where journalists, commentators, and online communities publicly evaluate evidence, assign motives, and pronounce guilt or innocence—create an informal parallel adjudicatory sphere[124]. The influence of such narratives can extend beyond public perception, affecting witness behaviour[125], investigative discretion, and, in extreme situations, the neutrality expected within judicial environments. Although Indian courts have

[123] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; Justice G.P. Singh, *Principles of Statutory Interpretation* 45–48 (LexisNexis 2023).
[124] *R.K. Anand v. Delhi High Court*, (2009) 8 SCC 106.
[125] *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

repeatedly acknowledged the importance of a free press in a democratic society,[126] they have also cautioned against reportage that interferes with the administration of justice or creates prejudice against parties involved in criminal proceedings[127].

This section establishes the central problem addressed in the paper: how unregulated and sensationalised reporting, compounded by algorithm-driven social media outrage, can undermine procedural fairness. By situating the discussion within constitutional principles and judicial observations,[128] the paper seeks to demonstrate that media freedom and fair trial rights must be harmonised rather than viewed as competing interests. The subsequent sections analyse the legal framework, leading case law, digital media dynamics, and institutional challenges that shape this complex relationship

Constitutional and Legal Framework

India's constitutional structure attempts to balance two foundational commitments: the protection of free expression and the preservation of fair trial rights. Article 19(1)(a) guarantees freedom of speech and expression, which includes the freedom of the press, while Article 21 secures the right to life and personal liberty, of which a fair, impartial, and unbiased trial is an essential component.[129] These rights often come into friction when media reportage on ongoing criminal matters risks prejudicing judicial processes. The Supreme Court has reiterated that neither right is absolute and that a constitutional balance must be maintained to prevent one from undermining the other.[130]

The presumption of innocence, though not expressly written into the Constitution, forms part of the jurisprudence of Article 21 and is embedded within India's criminal procedure.[131] When media narratives prematurely attribute guilt, this presumption becomes vulnerable. The Court has emphasised that an accused person's right to a fair trial includes not only protection from prejudicial publicity but also the assurance that

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[126] Press Council of India, *Norms of Journalistic Conduct* (2022); Law Comm'n of India, *Report No. 200, Trial by Media: Free Speech vs. Fair Trial Under Criminal Procedure* (2006).

[127] *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

[128] H.M. Seervai, *Constitutional Law of India* vol. 1, 857–861 (Universal Law Publishing 2013).

[129] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

[130] *Sahara India Real Estate Corp. Ltd. V. SEBI*, (2012) 10 SCC 603.

[131] *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

adjudication will occur solely on the basis of admissible evidence presented before the court.[132]

Statutory frameworks also attempt to mitigate prejudicial reporting. The Contempt of Courts Act, 1971 empowers courts to act against publications that interfere with the administration of justice, including media content that creates an atmosphere inimical to a fair trial.[133] The Code of Criminal Procedure restricts publication of certain confessional statements and mandates safeguards to prevent circulation of untested evidence.[134] Likewise, the Indian Evidence Act, 1872 confines the admissibility of evidence to material that satisfies relevance and reliability standards, principles incompatible with the broadcast of speculative or leaked investigative information.

Regulatory bodies supplement statutory protections. The Press Council of India prescribes ethical norms directing journalists to avoid reporting that may prejudice an accused's rights or influence judicial proceedings.[135] The News Broadcasting & Digital Standards Authority (NBDSA) similarly advises against sensationalised coverage of ongoing trials. These norms, while not possessing punitive force, underscore professional obligations intended to harmonise freedom of the press with the sanctity of judicial processes.

Judicial Approach and Landmark Case Law

Indian courts have repeatedly addressed the risk that excessive or sensationalised publicity poses to the fairness of criminal proceedings. The judiciary has recognised the press as an essential pillar of democracy while cautioning that unrestrained reporting during pendency of trials may distort the administration of justice. In several decisions, the Supreme Court has underscored that courts must remain the exclusive forums for determining guilt, and media coverage must not pre-empt or prejudice this process.[136]

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[132] *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.
[133] Contempt of Courts Act, No. 70 of 1971, § 2(ii) (India).
[134] Code of Criminal Procedure, No. 2 of 1974, §§ 162, 164 (India).
[135] Press Council of India, *Norms of Journalistic Conduct* (2022).
[136] *State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386.

In Zahira Habibulla H. Sheikh v. State of Gujarat (Best Bakery Case), the Court observed that public trials must remain insulated from external pressures and highlighted that prejudicial publicity may undermine the rights of the accused as well as the integrity of witness testimony.[137] The case demonstrated how media narratives can influence not only public sentiment but also the environment in which witnesses participate, contributing to intimidation, retractions, or inconsistent statements.

In R.K. Anand v. Delhi High Court, the Court examined the impact of televised sting operations on ongoing proceedings, noting that media interventions may inadvertently interfere with judicial functions.[138] Although the Court acknowledged the utility of investigative journalism, it held that broadcasts intending to influence adjudication could amount to contempt of court. A similar sentiment was echoed earlier in State of Maharashtra v. Rajendra Jawanmal Gandhi, where the Court stated that no trial by media, electronic or otherwise, should ever replace a trial by court.[139]

A key doctrinal development occurred in Sahara India Real Estate Corp. Ltd. v. SEBI, where the Supreme Court recognised that courts possess inherent powers to issue "postponement orders" restricting publication of prejudicial material in exceptional circumstances.[140] This decision attempted to balance free expression with fair trial guarantees by providing a narrowly tailored remedy to prevent irreversible harm to judicial proceedings.

Media influence has also been acknowledged in socially sensitive cases. In Manu Sharma v. State (NCT of Delhi), arising from the Jessica Lal murder, the Court noted that while media attention can expose investigative failures, it must not cross into territory that compromises impartial adjudication.[141] Collectively, these decisions reflect an evolving judicial philosophy that endorses media freedom while insisting on safeguards to protect fair trial rights.

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[137] *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158.
[138] *R.K. Anand v. Delhi High Court*, (2009) 8 SCC 106.
[139] *State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386.
[140] *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.
[141] *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1.

The tension between media freedom and fair trial guarantees has grown sharper in recent years due to the accelerated pace of information transmission and the heightened public appetite for real-time updates on criminal matters. As media organisations compete for visibility, the line between public interest journalism and prejudicial sensationalism becomes increasingly thin. Coverage that once followed established editorial filters has now become entwined with commercial incentives—television rating points, digital engagement metrics, and social media virality—all of which reward dramatic narratives over careful legal analysis. This structural shift has profound implications for the integrity of the justice system.

One of the most pressing concerns is the changing nature of how the "facts" of a case are constructed in the public sphere. Instead of waiting for formally tested evidence, audiences encounter snippets of leaked information, selective testimonies, and visually compelling reconstructions of crime scenes. These portrayals often assign specific motives, highlight particular emotional dimensions, or suggest conclusions that investigative authorities have not yet verified. As a result, public opinion hardens prematurely, creating an atmosphere of presumed guilt that may indirectly shape courtroom environments. Judicial actors, including judges and prosecutors, operate within this broader social climate, and while the judiciary routinely asserts its independence, it is unrealistic to assume that intense and widespread public sentiment leaves no psychological imprint.

The emergence of social media "collectives"—online groups that coordinate campaigns, hashtags, or digital petitions—further complicates this landscape. These collectives often claim to represent the moral conscience of society, asserting pressure on police, prosecutors, and political authorities. While such digital activism can illuminate systemic failures, it can also distort the legal process when it demands retribution rather than accountability. In several high-profile cases, online narratives have not only pushed for arrests but have shaped expectations about the nature and speed of investigative action, thereby risking procedural shortcuts.

Equally problematic is the impact of social media on witness behaviour. Individuals who come forward with testimony may find themselves subjected to scrutiny, trolling, character attacks, or doxxing. Conversely, witnesses exposed to viral content may

subconsciously align their accounts with dominant online narratives, thereby contaminating independent recollection. The justice system relies heavily on witness credibility; when that credibility is influenced by external discourse, the fairness of the trial itself becomes fragile.

Moreover, media trials can disproportionately affect marginalised groups, who may lack the resources to counter negative public narratives. Those without access to influential media networks, legal teams skilled in public communication, or platforms to correct misrepresentations face a distinctive disadvantage. This creates a two-tiered system where wealthy or well-connected accused persons can manage public perception, while the economically vulnerable are consumed by prejudicial publicity long before they enter the courtroom.

The digital environment also raises questions regarding the future scope of judicial remedies. Traditional mechanisms—contempt proceedings, postponement orders, ethical advisories—were conceived for a pre-algorithmic era and are often inadequate when faced with decentralised online participation. Even when courts issue restrictions, content continues to circulate across private channels, reels, reposts, and international servers beyond domestic jurisdiction. This reinforces the need for a more nuanced regulatory vision that recognises not only the importance of preserving free speech but also the need for an information ecosystem that does not jeopardise due process.

Ultimately, the emerging challenges underscore that safeguarding fair trial rights cannot rely solely on legal prohibitions. It requires collaborative responsibility among journalists, digital platforms, law enforcement, and the public. Strengthening media literacy, promoting ethical reporting cultures, and fostering institutional transparency are essential steps toward ensuring that constitutional values are upheld in an increasingly complex media environment.

Media Trials in the Digital Age: Social Media Outrage

The rise of digital communication platforms has fundamentally altered the dynamics of media trials by enabling instantaneous and unfiltered dissemination of opinions, allegations, and purported evidence. Social media platforms such as Twitter (now X), Facebook, Instagram, and YouTube have become parallel arenas of public deliberation

where users, influencers, and digital news entities shape narratives about criminal cases even before formal investigation is complete.[19] Unlike traditional media, which is at least nominally subject to editorial standards and regulatory guidelines, social media operates through decentralised participation, algorithmic amplification, and virality, allowing emotionally charged content to dominate public discourse.[20]

This digital environment frequently fosters online outrage, where mass participation results in collective condemnation or support for individuals involved in high-profile criminal matters. Hashtag campaigns, viral posts, and influencer commentary often construct a presumption of guilt or innocence that circulates widely before courts have examined admissible evidence.[21] Such online mobilisation can exert indirect pressure on investigative agencies, prompting accelerated arrests, public briefings, or premature disclosure of case details intended to satisfy public expectations.[22]

Social media also enables the circulation of leaked materials—CCTV footage, private chats, witness statements, or photographs—without verification or legal clearance. The broadcast of such content not only violates privacy but may compromise the admissibility of evidence or taint witness recollection.[23] Law enforcement agencies have cautioned that speculative or misleading digital content can impede investigations by spreading misinformation, diverting investigative resources, or exposing witnesses to intimidation or harassment.[24]

Emotional intensity of online discourse is magnified during cases involving gender-based offences, narcotics investigations, or celebrity involvement. Public sentiment in such cases frequently converts social media into a "digital court" where verdicts are delivered through likes, shares, and trending hashtags rather than judicial scrutiny.[25] While digital activism can expose institutional failures or mobilise legitimate demand for accountability, it also risks undermining fair trial guarantees when it substitutes legal reasoning with popular emotion.

Regulatory and Institutional Safeguards in India

India's legal system recognises that unrestrained media commentary during criminal proceedings can distort public perception and impair judicial neutrality. To address this, a layered regulatory architecture exists across statutory law, judicial precedent and

administrative oversight. The Contempt of Courts Act, 1971 empowers courts to act against publications that create a "real and substantial risk" of prejudice to the administration of justice, a standard articulated in P.C. Sen, In re.[142] Courts have repeatedly held that press freedom, though constitutionally protected, cannot override an accused person's right to an impartial adjudication.

Ethical obligations for the press are further set out in the Press Council of India's Norms of Journalistic Conduct, which caution against speculative crime reporting, disclosure of confessions, reconstruction of crime scenes, and identifying witnesses or victims.[143] Although the PCI's powers are recommendatory, these norms remain the principal codified ethical framework for print media.

For television and broadcast platforms, the Cable Television Networks (Regulation) Act, 1995 and successive advisories issued by the Ministry of Information & Broadcasting prohibit sensationalized or dramatized crime coverage that predetermines guilt.[144] In recent years, the MIB has called out channels for "media trials," particularly when fictionalized graphics or studio debates appear to influence public sentiment before trial outcomes.[145]

Digital and social media—which now drive the fastest spread of outrage—are regulated under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules mandate grievance redressal mechanisms, removal of unlawful content, and due diligence obligations on intermediaries when posts contain misinformation, defamation, doxxing, or prejudicial statements regarding ongoing trials.[146] However, enforcement remains limited; viral misinformation often reaches millions before takedown processes can be triggered.

Judicial innovation has also supplemented the framework. In Sahara India v. SEBI[147], the Supreme Court held that courts may issue postponement orders to temporarily

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[142] *P.C. Sen, In re*, AIR 1970 SC 1821.

[143] Press Council of India, *Norms of Journalistic Conduct* (2022).

[144] Cable Television Networks (Regulation) Act, No. 7 of 1995, INDIA CODE (1995).

[145] Ministry of Information & Broadcasting, *Advisory on Sensationalized Crime Reporting* (2023).

[146] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Feb. 25, 2021.

[147] *Sahara India Real Estate Corp. Ltd. v. SEBI*, (2012) 10 SCC 603.

restrict reporting when it poses a substantial threat to trial fairness. Yet these orders remain sparingly used, partly due to concerns about their compatibility with press freedom and the practical difficulty of controlling social media ecosystems.

Overall, while India possesses a comprehensive legal and ethical framework to curb prejudicial media conduct, its effectiveness is undermined by weak enforcement, rapidly evolving digital platforms, and the absence of real-time oversight. Strengthening institutional capacity and harmonising regulations across print, broadcast and digital media remain essential to safeguarding fair trial rights in an era dominated by information overload and online outrage.

Conclusion

Media trials and social-media-driven outrage have increasingly shaped public debates around criminal justice in India. While the press plays a vital role in informing citizens and strengthening democratic accountability, excessive speculative coverage, prejudicial commentary, and emotionally charged online campaigns risk undermining the accused's presumption of innocence and impairing judicial impartiality. Supreme Court jurisprudence—from Manu Sharma to Sahara India—consistently emphasizes that fair trial rights must prevail over sensationalism. Statutory protections under the CrPC and the Contempt of Courts Act further impose clear limits on prejudicial reporting, but enforcement remains inconsistent. A balanced approach—robust journalistic ethics, responsible digital reporting, judicial use of postponement orders, and public legal awareness—is essential to ensure that free expression and fair trial rights coexist without compromising the integrity of India's criminal justice system.

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CHAPTER-7

ADR AS AN PART OF JUDICIAL PROCESS: ACCESS TO JUSTICE AND DEMOCRATIZING DISPUTE RESOLUTION

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Abstract

Access to justice is a key principle of the rule of law, enabling citizens to resolve disputes and enforce their legal rights. Mediation, arbitration, and conciliation are important tools for expanding access to justice due to their efficiency, cost-effectiveness, and time-saving benefits. The paper examines how ADR systems correspond with constitutional demands, statutory frameworks, and court precedents, emphasizing fair and timely dispute settlement. The Arbitration and Conciliation Act, 1996 (India), the Mediation Act, 2023, and international treaties like the UNCITRAL Model Law on Arbitration serve as strong legal foundations for ADR activities.

Alternate dispute resolution refers to a mechanism or legal processes which are used to solve the dispute outside the traditional courts' litigation. It helps to solve the case by amicable settlement. Alternate Dispute Resolution is an out-of-court settlement mechanism. Alternative Dispute settlement (ADR) has emerged as a transformational element in the judicial process, providing a practical method to improving access to justice and democratizing dispute settlement. Historically, litigation has been the foundation of legal justice; but its procedural rigidity, high expenses, and time-consuming nature frequently alienate underprivileged populations and overburden courts.

By decentralizing dispute settlement, ADR promotes participatory justice by allowing individuals and communities to directly participate in the resolution process. This participatory strategy not only minimizes case backlogs but also fosters social peace and legal awareness among residents. Furthermore, ADR techniques are especially efficient in settling legal, business, familial, and community disputes in which relationship dynamics and confidentiality are critical.

The article examines judicial interpretations and policy approaches that highlight ADR's effectiveness in reducing court backlogs and promoting consensual dispute resolution. The study examines how pre-litigation mediation and institutionalized ADR might bridge the gap between legal rights and actual enforcement, advancing justice for marginalized and economically disadvantaged groups. The study recommends legal and policy reforms to strengthen ADR frameworks and create a more inclusive and accessible justice system.

Keywords- Alternative Dispute Resolution, Access to Justice, Participatory Justice, Mediation, Conciliation, Arbitration, Democratization.

Introduction

Justice is the foundation and purpose of any civilized society. For many centuries, humans have aspired to the concept of justice. Our Constitution's preamble expresses the desire for "justice-social, economic, and political". Article 39-A of the Constitution guarantees equal access to justice. The administration of justice involves safeguarding the innocent, penalizing the guilty, and settling conflicts. Adversarial litigation is not the sole way to resolve problems. Congestion in courtrooms, a shortage of staff and resources, as well as delays, costs, and procedures, highlight the need for improved options, approaches, and routes. Alternative Dispute Resolution Mechanism is a click on that option. The demand for swift and affordable justice is widespread. Early conflict settlement saves time and money for all parties involved, encourages contract enforcement, and facilitates corporate operations. Alternate conflict resolution refers to means of resolving disagreements other than litigation.

Alternate Dispute Resolution provides a platform in which conflicts can be handled considerably more amicably than in ordinary court action. They are more cooperative, more efficient, less costly, and under the direct control of the persons concerned. ADR methods have been created to reduce court workload, organize the litigation process, and aid disputing parties in resolving their disputes in the most efficient, feasible, and personalized manner for them. The concept underlying ADR is party sovereignty, which implies the parties have the freedom to choose the method and procedures for resolving their dispute. Litigation, a traditional method of conflict settlement, is a time-consuming process that causes unnecessary delays in the delivery of justice while also overburdening the judicial system.

Can We Strive For Better 'Access To Justice'?

A successful court system prioritizes both just and timely outcomes. However, the existing available infrastructure of courts in India is insufficient to settle the increasing litigation within an acceptable time. Litigation can last a lifetime and even affect future generations, despite ongoing efforts to resolve it. In the process, he may exhaust his resources and face harassment. Civil cases can lead to criminal cases, creating a cycle of litigation. Efforts to expedite case resolution and provide quality justice remain a top priority for justice administrators.

Alternative Dispute Resolution (ADR) techniques are essential to supplement the current court infrastructure. To improve the efficiency of the judiciary, many countries are using ADR systems to resolve ongoing conflicts and prevent litigation. Professional mediators and conciliators have successfully augmented the dispute settlement and adjudication process, particularly in the litigious United States.

In 1995 the International Centre for Alternative Dispute Resolution (ICADR) was inaugurated by Shri P.V. Narasimha Rao, the Prime Minister of India, observed:

Although judicial reforms should be carried out rapidly, courts and tribunals may be unable to handle the entire justice system's burden. It is the responsibility of the government to provide as many modalities of dispute resolution as are required to accommodate the wide range of problems that may emerge. Litigants should be

encouraged to use alternative dispute resolution so that the court system is left with fewer critical problems requiring judicial attention.

Problems Of Formal Legal System-

- **Awareness-** Common people's lack of awareness of their legal rights and remedies creates a significant obstacle to accessing the judicial system.
- **Delays and backlogs-** Delays in case settlement are the most significant difficulty facing the legal system today. Civil and criminal subordinate courts have average waiting times of several years. The massive backlog of cases makes justice less accessible. Delays in the legal system undermine public faith in the notion of justice.
- **High cost of litigation-** The most significant challenge that the justice delivery system faces today is the prohibitive expense of litigation. lawyer proceedings sometimes require high lawyer fees, court costs, and other expenses, making justice inaccessible for many people.
- **Expenses and Costs-** Our current cost regime is ineffective, as even successful litigants cannot collect their true litigation costs. Delays in litigation can lead to increased costs and hinder recovery efforts.
- **Corruption and Lack of transparency-** Corruption and inefficiency within the system undermine public faith and impartiality in judicial delivery.

What Is Alternate Dispute Resolution System?

ADR is not a current phenomenon as the notion of parties settling their disputes themselves or with the assistance of third party, is very well-known to ancient India. Disputes were peacefully decided by the participation of Kulas (family assemblies), Srenis (guilds o men of similar occupation), Parishad, etc.

The primary object of ADR movement is prevention of aggression, expense and delay and encouragement of the ideal of “access of justice” for all. ADR system aspires to provide cheap, simple, quick and accessible justice. Alternative dispute resolution is a procedure different from traditional judicial proceedings.

Disputes are resolved with the assistance of a third party in simple and agreed-upon procedures. ADR promotes efficient dispute resolution, saving time, talent, and money while ensuring justice and confidentiality. ADR attempts to provide justice by resolving disputes and harmonizing parties' relationships.

Evolution And Development Of Adr-

ADR has a complex history, originating from numerous traditional and customary dispute settlement processes throughout civilizations. In ancient communities, disagreements were frequently settled by community elders, religious leaders, or tribal councils, which provided an informal but effective form of justice. These systems prioritized reconciliation, conversation, and mutual agreement over punitive measures. Traditional procedures have greatly affected the modern evolution of ADR, which now incorporates their essential concepts into legally recognized frameworks.

ADR was formalized in the 20th century, when countries recognized its potential to reduce the burden on judicial systems. The United States was a pioneer in institutionalizing ADR, particularly through the development of mediation and arbitration programs. International institutions such as the United Nations, World Bank, and human rights groups have emphasized the need of alternative dispute resolution (ADR) in improving access to justice, especially in poor countries with inadequate legal resources. ADR is now widely accepted as an essential part of legal systems worldwide, with many jurisdictions adopting it into their legislative frameworks and judicial procedures.

Mechanisms For Alternative Dispute Resolution And Their Significance In Access To Justice:

ADR comprises a number of distinct procedures, each with its own set of benefits in terms of improving access to justice. The most often utilized ADR methods are:

- **Mediation-** Mediation is a neutral third-party facilitating dialogue between opposing parties to achieve a mutually accepted outcome. Mediation is highly effective in family conflicts, community challenges, and economic difficulties since it fosters cooperation and sustains relationships.
- **Arbitration-** Arbitration is a process where an unbiased arbitrator or panel hears evidence and makes a legally binding decision. This technique is commonly utilized in commercial and international conflicts, offering a confidential and efficient alternative to judicial proceedings. Arbitration provides professional adjudication while avoiding the delays associated with traditional litigation.
- **Conciliation-** Conciliation, like mediation, includes a neutral third person facilitating an agreement between disputants. Unlike mediation, the conciliator may take a more active role in providing solutions. Conciliation is extensively utilized in labour disputes and consumer protection actions to preserve ongoing ties is vital.
- **Negotiation-** Negotiation is a direct communication between parties to resolve conflicts without involving a third party. Negotiation is the most informal ADR strategy, giving participants entire influence over the process and outcome.
- **Lok Adalat-** Lok Adalat (People's Courts) are forums established in India under the Legal Services Authorities Act of 1987 to deliver prompt and cost-effective justice. They use compromise and mutual agreement to settle cases that are still pending in court or in the pre-litigation stage. A Lok Adalat decision (award) is legally binding and has the same status as a civil court order.

ADR allows individuals to access justice in ways that meet their unique needs and circumstances. ADR methods are typically less scary than court proceedings, making them more accessible to laypeople who might otherwise be put off by formal legal procedures.

Benefits Of Adr In Enhancing Access To Justice-

ADR improves access to justice, especially for those who suffer difficulties in the formal legal system. Some of the primary advantages of ADR are:

- **Cost-Effectiveness:** Litigation can be excessively expensive, especially for those with little financial resources. In contrast, ADR processes are often less expensive since they involve fewer procedural formality and legal expenditures.
- **Time Efficiency:** Court proceedings sometimes suffer from enormous delays, with backlogs lasting years. ADR processes provide speedy remedies for conflicts, eliminating the need for lengthy wait times.
- **Flexibility and Informality:** Unlike conventional court procedures, ADR offers a more flexible and informal setting in which parties can actively shape the settlement process. This flexibility increases accessibility, especially for those who are unfamiliar with judicial proceedings.
- **Confidentiality:** ADR approaches, such as mediation and arbitration, prioritize confidentiality and assure private dispute resolution. Confidentiality is especially vital in delicate situations like family conflicts and business disputes.
- **Empowerment and Participation:** ADR promotes a participatory approach, allowing disagreeing parties to directly negotiate and establish settlements. This empowerment increases the credibility and acceptability of the outcomes.

A Study Of The Evolution Of Adr Mechanisms In The Indian Judiciary-

ADR was traditionally viewed as a voluntary activity between parties, but it now has formal significance under the CPC Amendment Procedure, 1999, Arbitration and Conciliation Act, 1996, and Legal Services the Authorities Act of 1997 and the Legal Services Authorities Amendment Act of 2002.

Access to justice and fair trial are both human rights. In some nations, human rights legislation requires that trials be held within a reasonable time frame. However, in our country, it is a constitutional responsibility under Articles 14 and 21. Using ADR to access justice may be considered a human rights issue. In this scenario, the judiciary will play an essential role.

Prior to Section 89 of the Civil Procedure Code (CPC), courts had the authority to submit conflicts to mediation, although this power was rarely used. The Industrial Disputes Act, Hindu Marriage Act, and Family Courts Act have similar requirements, as does Section 80, Order 32 A, and Rule 5 B of Order 27 of the CPC. ONGC vs. Western Co. of Northern America and ONGC vs. Saw Pipes Ltd. demonstrate a similar thought pattern.

- **Industrial Disputes Act, 1947-** The provision allows for both conciliation and arbitration to settle conflicts.
- **Hindu Marriage Act, 1955-** According to Section 23(2) of the Act, the court must first attempt to reconcile the parties before providing relief, if possible, based on the facts of the case.
- **Family Courts Act, 1984-** The Act aims to promote mediation and rapid resolution of conflicts related to marriage, family affairs, and related matters through a

unique method compared to traditional civil proceedings. **[K.A. Abdul Jalees vs. T.A. Sahida, (2003) 4 SCC 166].**

- According to **Section 80(1) of the Code of Civil Procedure**, a suit against a government or public officer must include a notice indicating the cause of action, name, and other relevant information. The purpose of serving a notice under Section 80 of the CPC is to provide the government with enough warning of the upcoming case against it. If desired, the dispute can be settled without litigation or reparation without involving a court of law. **[Ghanshyam Das vs, Domination of India (1984) 3 SCC 46].**
- **Order 23 Rule 3 of the CPC** this clause allows for a decree to be issued based on a legitimate agreement or compromise reached between parties during the course of a lawsuit to satisfy or adjust claims.
- **Order 27 Rule 5B-** The court has a duty to help in settling lawsuits against the government or public officers. When a government or public officer is involved in a litigation, it is the Court's responsibility to help the parties in reaching a settlement as soon as practicable, depending on the circumstances of the case.
- **Order 32A of CPC-** Order 32A of the CPC covers "suits relating to matters concerning the family". It was felt that standard judicial procedure was not well adapted to the sensitive subject of personal relationships.

In these circumstances, family counselling should be viewed as a means of attaining the goal of family preservation. Order 32A emphasizes the importance of taking a different approach when dealing with family concerns, including working towards an amicable settlement.

In 2002, Section 89 of the CPC was amended, leading to a significant shift in the use of ADR. Section 89 of the CPC states that if the court believes there is a possibility of a settlement that is acceptable to both parties, the terms of the settlement must be formulated and presented to them for comment. According to the sub section (2) of section 89 states that when a dispute is referred to arbitration and conciliation, the Arbitration and Conciliation Act apply. When the Court assigns a Lok Adalat matter to an organization or person for settlement only the Legal Services Authorities Act of 1987 shall apply.

- **Rule 4 of the Alternative Dispute Resolution and Mediation Rules, 2003-** The Court must provide direction to parties when using ADR, highlighting essential aspects to consider. Before planning on a specific settlement method, they should consider:

(i) Choosing one of these settlement options over a trial will save time and money for the parties involved in the lawsuit.

(ii) If there is no relevant relationship between the parties, it is preferable to refer the subject to arbitration, as stated in clause (1) of sub-section (1) of sec.89.

(iii) If the parties' connections need to be maintained, they should seek conciliation or mediation, as outlined in clauses (b) or (d) of the sub-section. (1) of Section 89.

The Rule states that disputes related to marriage, maintenance, and child custody must preserve the parties' relationship.

(iv) If parties want to reach a compromise, they should seek judicial resolution, including Lok Adalat, as outlined in clause (c) of sub-section (1) of section 89.

Legal Frameworks And Judicial Perspectives-

An analysis of the legal foundation for ADR, including constitutional principles, statutory frameworks like the Arbitration and Conciliation Act, 1996 (India), the Mediation Act, 2023, and international conventions like the UNCITRAL Model Law on Arbitration. Judicial precedents and policy actions that promote ADR are also examined.

Legal Foundations of ADR-

Alternative Dispute Resolution (ADR) relies on both domestic and international legal frameworks. The acknowledgment of ADR within the legal system protects its legitimacy and enforceability, making it an important vehicle for settling disputes outside of traditional litigation. ADR's legal foundation is based on constitutional legislation, statute laws, and international treaties, enhancing its legitimacy and application.

In India, Article 39A ensures equal access to justice and emphasizes the need of alternative dispute resolution. Legislative enactments that support ADR as a way to reduce court workload and speed up dispute resolution reinforce the constitutional goal of justice for all. Judicial decisions have affirmed the validity and enforceability of ADR methods, strengthening their significance in the Indian legal system.

Statutory Framework of ADR-

India has a strong legal framework for ADR, governed by the Arbitration and Conciliation Act of 1996 and the Mediation Act of 2023. These laws establish the legal framework for arbitration, mediation, and conciliation, ensuring that ADR procedures are organized, accessible, and enforceable by law.

1. The Arbitration and Conciliation Act, 1996- The Arbitration and Conciliation Act of 1996 is the foundation of arbitration law in India, integrating principles from the UNCITRAL Model Law on International Commercial Arbitration. The Act sets a legislative framework for domestic and international arbitration, focusing on minimal judicial interference and party sovereignty. The Act's key elements include:

- Adoption and execution of arbitral awards.
- Judicial interference is limited.
- Arbitrators are appointed and proceedings are conducted in accordance with procedures.
- Conciliation is a form of alternative dispute resolution that is both voluntary and flexible.

2. Mediation Act of 2023- The Mediation Act of 2023 is a crucial step toward formalizing mediation as a dispute resolution strategy. The Act established mediation councils, accreditation standards for mediators, and requires pre-litigation mediation in certain cases. It intends to:

- Strengthen mediation as a favoured method of dispute settlement.

- Encourage professional norms for mediators.
- Mandating mediation before litigation in specific cases can reduce court workload.

International Legal Framework and Conventions-

Arbitration and mediation are widely recognized as successful dispute settlement processes, as evidenced by international legal instruments and conventions. The key international frameworks include:

- **The United Nations Commission on International Trade Law (UNCITRAL) Model Law** on Arbitration establishes a consistent legal foundation for arbitration, which is extensively adopted by many jurisdictions, including India. It standardized arbitration laws and ensured consistency in international business arbitration.
- **New York Convention, 1958-** The New York Convention enables the enforcement of arbitral rulings in signatory countries. India, as a signatory, recognizes and enforces foreign arbitral rulings within this framework, making arbitration a popular choice for cross-border conflict resolution.
- **Singapore Convention for Mediation, 2019- The** Singapore Convention on Mediation establishes a legal basis for the execution of mediated settlement agreements in international disputes. It increases the global credibility of mediation and supports its use in commercial disputes.

Judicial Perspectives on ADR-

The courts have played an important role in promoting and legitimizing alternative dispute resolution systems. ADR has been legalized and promoted in India through key rulings. Notable judicial decisions include:

- **Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc. (2012)** This judgment clarified court intervention in arbitration and supported the notion of limited interference, promoting party autonomy in processes.
- **Afcons Infrastructure Ltd. vs. Cherian Varkey Construction Co. (2010)** The Supreme Court stressed mediation and conciliation as effective methods for resolving economic and legal conflicts.
- **Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd. (2011)** The verdict clarified the distinction between arbitrable and non-arbitrable conflicts, emphasizing arbitration's importance in commercial disputes but retaining court jurisdiction for situations requiring judicial resolution.

Policy Measures Supporting ADR-

Governments and legal organizations have established policies to promote ADR adoption and improve dispute settlement. Notable policy projects are:

- Involvement of ADR in Judicial Reform the Law Commission of India and the Supreme Court have continuously advocated for incorporating ADR into

judicial reforms. This involves establishing mediation centres and promoting online conflict resolution options.

- Commercial Courts Act, 2015. This Act requires pre-institution mediation for commercial disputes, establishing it as a required step before litigation.
- National and State Mediation Centres Mediation has been a popular dispute settlement method in India, thanks to the development of facilities in High and District Courts.

Adr'S Role In Reducing Litigation Burden-

Overburdened judicial systems can cause delays in dispute resolution and undermine public trust. ADR processes help to alleviate this load by offering efficient alternatives to litigation. This section examines how ADR improves the efficiency of the justice system by lowering court backlogs, speeding conflict resolution, and promoting consensual settlements.

- Reducing case backlogs Courts around the world, including India, have an excessive number of cases pending. ADR is an organized approach to diverting cases from courts, allowing judges to focus on complicated legal concerns. Mediation and arbitration provide for faster resolution of disputes, dramatically reducing the number of cases that go to trial.
- Faster Dispute Resolution ADR techniques can resolve disagreements quickly, unlike litigation, which can take years or decades. Arbitration clauses in contracts help resolve commercial issues quickly and prevent lengthy legal battles.
- Cost savings for litigants and courts. Attorney fees, court fees, and procedural costs all contribute to the high cost of litigation. ADR processes are a more cost-effective option, benefiting both litigants and the judiciary.
- Encourage Consensual Settlements. ADR promotes a cooperative approach to dispute resolution, resulting in voluntary and mutually acceptable solutions. This approach fosters long-term dispute resolution and minimizes antagonistic relationships.
- Specialized ADR Tribunals Many jurisdictions have established dedicated ADR tribunals for family law, commercial disputes, and labour problems, reducing the strain on traditional courts.

Courts can provide faster and more efficient services by more effectively integrating ADR into the legal system. All people can attain justice. Developing ADR policy and infrastructure is vital for tackling global concerns such as judicial congestion and access to justice.

Accessibility And Effectiveness For Marginalized Communities

Access to justice is a fundamental right guaranteed by legal frameworks worldwide, notably the Indian Constitution's Article 39A, which ensures equitable justice for all, regardless of economic or social background. However, underprivileged communities, such as the economically disadvantaged, women, minorities, indigenous groups, and

rural populations, frequently suffer major impediments to receiving justice. High litigation expenses, complex legal procedures, court proceedings delays, and a lack of legal rights understanding are some of the impediments.
Alternative Dispute Resolution (ADR) methods, including mediation, arbitration, conciliation, and Lok Adalat, can effectively bridge this divide. ADR empowers underprivileged groups by providing affordable and culturally relevant conflict resolution options. This section critically evaluates the role of ADR in making justice more accessible and effective for marginalized communities.

1.Cost- Effective Justice for the Economically Weaker Sections-

- One of the most serious difficulties confronting underprivileged groups is the high expense of litigation. Traditional litigation is out of reach for economically disadvantaged groups due to high court fees, lawyer charges, and procedural expenses. ADR offers a feasible option that eliminates or greatly reduces these financial responsibilities.
- Attending long court sessions can lead to lost income for daily wage earners and small business owners. ADR, including Lok Adalats and pre-litigation mediation, provides faster settlements and reduces financial burdens for individuals.
- The Legal Services Authorities Act of 1987 mandates free legal aid and promotes alternative dispute resolution (ADR) systems for vulnerable populations, including Lok Adalats. This ensures equitable access to justice for all, regardless of financial status. Legal systems can institutionalize cost-effective ADR approaches ensure that economic restrictions do not deter people from seeking remedy for their complaints.

2. Pre- Litigation Mediation: Preventing Escalation of Disputes-

Pre-litigation mediation effectively resolves problems before they become legal battles. This strategy is especially advantageous for vulnerable communities that frequently face legal challenges owing to lack of written agreements or misconceptions.

- Early Intervention: Trained mediators can help resolve disputes pertaining to land, housing, and employment.
- Avoiding Court Delays: Traditional litigation sometimes results in lengthy delays, often for decades. Pre-litigation mediation is a quick way to resolve disputes and move forward without ambiguity.
- Rural and tribal cultures often favour community-based mediation over formal litigation because it corresponds with their traditional dispute resolution practices. Community leaders and mediators play an important role in settling disputes and providing culturally responsive justice.

3. Established ADR and Legal Service for underprivileged Groups—

The Indian judicial system prioritizes justice for vulnerable populations and has implemented various ADR initiatives. Such as Lok Adalats, Permanent Mediation Centres, and Community Dispute Resolution Forums.

Lok Adalats: The People's Court-

- Lok Adalats, established under the Legal Services Authorities Act of 1987, provide informal dispute resolution. Lok Adalats benefit underprivileged communities by not charging court costs, making them easily accessible to the poor.
- Binding Awards: Lok Adalat verdicts are legally binding and can be enforced, like court judgments.
- Lok Adalats offer simplified procedures for uneducated and unrepresented litigants.

Legal Aid Clinics and ADR Centres-

Legal aid authorities at the national and state levels offer free legal services and often advocate alternative dispute resolution (ADR).

- **Community ADR Centres:** Many non-governmental organizations (NGOs) and legal aid groups operate community-based ADR centres that offer free mediation and conciliation services to vulnerable individuals.
- **Women and Child Welfare Mediation Centres:** specialize in addressing domestic abuse, custody disputes, and maintenance claims to ensure equitable justice for vulnerable populations, including women and children.

4. Empowering Marginalized Communities Through ADR Participation-

ADR empowers individuals by allowing them to directly resolve their disagreements. Unlike adversarial litigation, which is dominated by lawyers and judges, ADR promotes active participation.

- **Self-Representation:** Alternative Dispute Resolution (ADR) provides for direct presentation of concerns without the need for expensive legal representation.
- **Control over outcomes:** Unlike court rulings, ADR outcomes are generally jointly agreed upon, resulting in better satisfaction rates.
- **Psychological benefits:** ADR's non-adversarial approach decreases stress and emotional distress, particularly in family disputes and vulnerable cases.

Recommendations

Alternative Dispute Resolution (ADR) improves access to justice, reduces litigation burdens, and ensures prompt dispute resolution. To improve its effectiveness, ADR requires legislative and policy reforms to increase inclusivity, accessibility, and efficiency. This section provides proposals to strengthen ADR frameworks and emphasizes their importance in creating a fair and efficient legal system.

Recommendations for Strengthening ADR-

1.Strengthening the Legal Framework-

- Expanding Mandatory Pre-Litigation Mediation: The Mediation Act, 2023 compels mediation for specific conflicts, but expanding it to include small commercial disputes, family law matters, and labour disputes can reduce court workload.
- To improve conflict settlement, the Arbitration and Conciliation Act of 1996 should be amended to simplify arbitration procedures, reduce court intrusion, and increase award enforcement.
- Incorporating ADR into Court Proceedings: Courts should be encouraged to refer appropriate cases for ADR at an early stage to promote settlements and reduce delays.

2.Institutional and Policy Reforms-

- Strengthen ADR infrastructure by establishing more mediation centers, arbitration tribunals, and Lok Adalats, especially in rural and neglected areas.
- To build capacity for ADR professionals, training programs should prioritize creating talented mediators and arbitrators who are culturally sensitive and accessible to marginalized communities.
- Law schools should include ADR training in their curriculum to prepare future legal practitioners with relevant abilities.

3.Increase Public Awareness and Accessibility-

- Governments and non-governmental organizations (NGOs) should educate citizens on the benefits of ADR and promote its usage, particularly among rural and economically disadvantaged populations.
- Technology-driven ADR Mechanisms: Increasing Online Dispute Resolution (ODR) technologies might allow quick access to ADR services break down geographical borders and make dispute resolution more convenient.

Conclusion-

ADR plays an important role in making justice more accessible, affordable, and efficient. However, full potential requires legal reforms, institutional improvements, and public awareness activities. Expanding ADR infrastructure, strengthening enforcement, and integrating technology can lead to major improvements.

Contribute to a more efficient legal system. A well-structured ADR framework reduces litigation burdens and ensures justice is provided quickly and fairly to all, especially marginalized populations.

ADR is faster, cheaper, and more user-friendly than courts. It allows individuals to participate in settling problems, which is not possible in the public, formal, and adversarial court system, which is often characterized by complex procedures.

recondite language of law.

Choices include approach, procedure, pricing, representation, and location. Because it is often faster than court proceedings (20).

Reduce the burdens on the courts. Cost-effectiveness can assist reduce legal expenses and aid, benefiting both parties and taxpayers.

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CHAPTER - 8

AI AND PREDICTIVE POLICING: THREATS TO CIVIL LIBERTIES
BIAS, SURVEILLANCE, CRIMINAL JUSTICE IMPLICATIONS."

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Abstract

The accelerating integration of digital technologies into legal systems has triggered a profound paradigmatic shift in the theory, policy, and practice of law. From predictive policing to automated decision-making, algorithmic systems increasingly influence legal outcomes, raising critical questions about legitimacy, due process, and constitutional safeguards. This paper investigates the shift from traditional human-centred legal frameworks toward technologically augmented models of governance, a transition that challenges existing assumptions about legal reasoning, judicial discretion, and accountability.The study explores three interconnected dimensions. First, it examines the theoretical implications of algorithmic governance through jurisprudential debates on authority, fairness, and the rule of law.Second, it evaluates policy-level transformations, including the formal adoption of AI tools in courts, regulatory compliance systems, and administrative decision-making structures. Focus is placed on the risks of opacity, bias, and data dominance, which threaten to reshape power relations between citizens and the State. Third, it investigates practical developments in India and comparative jurisdictions, assessing both successes and systemic vulnerabilities. The analysis highlights the need for multidisciplinary frameworks that ensure transparency, human oversight, and ethical evaluation of technological intervention. The paper argues that the challenge is not merely to regulate technology but to reconstruct the foundational values of justice in a digitally mediated world. It concludes by proposing a rights-centric governance model that

harmonises innovation with constitutional morality, ensuring that technology enhances rather than erodes human dignity and democratic legitimacy.

Keywords: Algorithmic Governance, Legal Theory, AI and Law, Judicial Technology, Constitutionalism, Fairness, Digital Justice.

INTRODUCTION

Legal systems across the globe are undergoing a profound and unprecedented transformation fueled by technological innovation. The integration of artificial intelligence (AI), big data analytics, blockchain, and automated governance mechanisms reflects a decisive move away from purely anthropocentric legal frameworks toward hybrid techno-legal architectures. Judicial institutions, administrative bodies, and regulatory authorities increasingly rely on algorithmic systems for a wide spectrum of functions—ranging from legal research, risk prediction, and evidence evaluation to surveillance, monitoring, and enforcement. Law, traditionally grounded in human judgment and social norms, is now shaped by data-driven logic and computational rationality.The allure of such advancements is undeniable. Technology promises faster resolution of disputes, minimization of human errors, reduction of arbitrariness in decision-making, and enhanced access to justice through digitized platforms. Algorithmic tools claim objectivity, consistency, and predictive accuracy—essential attributes for overburdened legal systems struggling with delays and inefficiencies. However, the systemic introduction of AI into governance also reveals deeper structural concerns. Machine-learning models often operate within opaque "black box" frameworks, making it difficult to decipher the rationale behind automated decisions. This opacity threatens foundational legal principles such as due process, transparency, and reasoned judgment.Moreover, algorithms trained on skewed datasets may reproduce or even amplify societal discrimination particularly against marginalized communities. Digital governance systems collect and process vast quantities of personal data, raising substantial risks of surveillance, profiling, and erosion of informational privacy. Automated decision tools may subtly displace judicial discretion, reducing human involvement in contexts where empathy, contextual reasoning, and moral evaluation are indispensable. The contemporary legal landscape thus stands delicately poised between immense technological promise and the peril of undermining human-centric justice. India serves

as a salient example of this duality. In recent years, courts have embraced e-governance initiatives such as e-filing, virtual hearings, AI-driven translation (SUVAAS), and research support tools like SUPACE. Law enforcement agencies depend increasingly on digital surveillance databases and analytics-driven crime mapping, including the Crime Multi-Agency Centre (Cri-MAC) under the National Crime Records Bureau. Administrative frameworks are increasingly governed by algorithmic verification and automated decision protocols, most notably seen in Aadhaar-linked welfare distribution systems. These rapidly evolving digital transformations demand not just technological adaptation but also legal reimagining.The shift currently underway is not merely operational or procedural it is fundamentally philosophical, institutional, and ethical. As technology begins to influence, shape, and sometimes replace human judgment, the normative foundations of law liberty, fairness, equality, accountability, and human dignity must remain uncompromised. The challenge lies in designing regulatory and adjudicatory systems that embrace technological innovation without surrendering constitutional values or weakening public trust in justice institutions.[148] Therefore, adapting to this new era requires a holistic framework that blends innovation with robust safeguards, ensuring technology functions as an enabler not a substitute of human-centered justice. The future of law will be defined not solely by algorithms and automation, but by how effectively societies retain the primacy of human rights, ethical governance, and democratic accountability in an increasingly digitized world.[149]

Theoretical Foundations Of Techno-Legal Transformation

Algorithmic Governance as a New Form of Authority

Traditional legal systems derive legitimacy from deliberation, interpretive reasoning, and adherence to constitutional norms. Judicial officers rely on human faculties—experience, empathy, contextual judgment to apply legal principles in a fair and equitable manner. In contrast, the rise of algorithmic governance introduces what scholars describe as a new form of "computational authority," where decision-making is increasingly based on statistical inferences, predictive analytics, and data-driven

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[148] Law Commission of India. (1958). *Fourteenth Report on the Reforms of Judicial Administration*. Government of India. https://www.lawcommissionofindia.nic.in/reports/14threport.pdf.

[149] Law Commission of India. (2009). *Two Hundred Thirtieth Report on Case Management and Alternative Dispute Resolution*. Government of India. https://www.lawcommissionofindia.nic.in/reports/230.pdf.

logic rather than normative, value-laden reasoning. This shift represents a profound transformation in how power is exercised and justified within legal systems.[150]

A number of theoretical tensions arise from this transformation:

- Rule of Law vs. Rule by Algorithms:

The foundational ideal of the Rule of Law requires predictability, accessibility, and transparent legal standards. Algorithmic tools, however, often operate as opaque "black boxes," providing outcomes without meaningful explanations. When individuals cannot understand or challenge the basis of an automated decision, legal certainty is eroded, and the legitimacy of governance comes into question.[151]

- Human Discretion vs. Machine Objectivity:

AI is frequently assumed to be neutral and objective. Yet algorithms are trained on data embedded with historical, social, and structural inequalities—such as caste, class, race, and gender biases. This means that technological tools may inadvertently reinforce discrimination while masking it behind a veneer of scientific precision. Machine-generated outcomes thus require vigilant human oversight rather than unquestioned deference.[152]

- Accountability Deficit and the "Responsibility Vacuum":

In traditional governance, responsibility for decisions can be clearly attributed to identifiable public authorities. In automated systems, responsibility may be diffused among data scientists, private technology developers, and government administrators. When harm results from algorithmic errors or discriminatory outputs, identifying who must answer for it becomes highly complex. This responsibility vacuum challenges core notions of democratic accountability and legal remedies.

Algorithmic governance therefore poses a structural challenge: it shifts the locus of authority from publicly accountable institutions to technological systems governed by private expertise and commercial logic.

Constitutional Morality and Digital Systems

At the heart of India's constitutional framework lies a commitment to dignity, liberty, equality, and procedural fairness. Constitutional morality ensures that governance

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[150] Baxi, U. (1982). *The crisis of the Indian legal system*. Vikas Publishing House.

[151] Malimath, V. S. (2003). *Report of the Committee on Reforms of Criminal Justice System*. Government of India. https://lawmin.gov.in/committee/reports/Malimath_report.pdf.

[152] Justice Verma Committee. (2013). *Report of the Committee on Amendments to Criminal Law*. Ministry of Home Affairs, Government of India.

remains anchored in these democratic values, even in times of change. As digital technologies permeate judicial and administrative functions, their design and deployment must be evaluated not merely through lenses of efficiency or convenience, but through strict constitutional scrutiny.

Digital systems can undermine constitutional protections in several ways:

- Erosion of Procedural FairnessAutomated decision engines may deny affected individuals clear notice, reasoned explanation, or meaningful opportunities to contest adverse outcomes directly conflicting with the constitutional mandate of due process.
- Codification of Socio-Economic Prejudices If datasets reflect existing social hierarchies, algorithmic outcomes can disproportionately disadvantage already marginalized communities, perpetuating caste-based exclusion, economic disparity, or minority discrimination.
- Threats to Autonomy and Freedom through Surveillance

The expansion of digital tracking, profiling, and predictive policing risks normalizing a security-centric state with intrusive control over personal lives, violating privacy and chilling free expression.

Thus, technological adoption must align with constitutional morality rather than administrative expediency. AI-enabled governance should strengthen the constitutional promise—never weaken it. Preserving human dignity, transparency, and accountability is essential to ensure that the digital state remains a democratic state.

POLICY LANDSCAPE: GLOBAL AND INDIAN DEVELOPMENTS

International Regulatory Models

Different jurisdictions have adopted distinct approaches:

- European Union:

The AI Act follows a risk-based framework, restricting high-risk systems and banning unacceptable uses such as social scoring.

- United States:

Sectoral and decentralized regulation, with emerging guidelines on fairness in hiring, housing, and criminal sentencing algorithms.

- China:

Emphasis on state control with strong reliance on data-driven governance, often prioritizing efficiency over individual liberty.

Indian Policy Evolution

India has adopted rapid digitalization but without a comprehensive AI regulatory framework.

Key initiatives include:

- Digital India Mission
- National Data Governance Framework Policy (2023–24)
- AI in judiciary (SUPACE, SUVAS)
- Automated welfare delivery systems
- Predictive policing pilot programs

However, India lacks a statutory architecture to regulate:

- algorithmic transparency
- surveillance
- data protection (pending DPDP Act operationalization)
- automated decision-making ethics

The absence of clear safeguards increases the risk of rights violations.

PRACTICAL APPLICATIONS: OPPORTUNITIES AND CHALLENGES

Algorithmic Tools in Courts

AI tools promise to reduce delays, improve access, and support overwhelmed courts.

Advantages:

- automated transcription
- case classification
- document management
- legal research assistance

Concerns:

- AI-generated summaries may shape judicial reasoning
- risks of incorrect classification
- lack of explainability

Courts must ensure that technology remains an assistant not a substitute for judicial discretion.

Predictive Policing and Criminal Justice

Predictive policing tools analyse past crime data to identify potential hotspots or suspects.

Risks:

- discriminatory targeting of marginalized communities
- amplification of historical bias
- erosion of presumption of innocence

Without strong oversight, such tools threaten democratic policing.

Automated Administrative Decision-Making

Governments increasingly use algorithms for welfare distribution, tax compliance, and identity verification.

Issues include:

- wrongful exclusion from benefits
- algorithmic errors with no clear appeal mechanism
- opaque vendor contracts
- lack of data protection

These developments raise concerns about "digital bureaucratic violence."

Intersectional Impact: How Technology Affects Different Communities

Caste and Socio-Economic Bias

One of the most critical concerns in the Indian context is the embeddedness of caste and class hierarchies within data-driven systems. Algorithms used in policing, risk prediction, and welfare targeting are frequently trained on historical datasets generated through decades of discriminatory surveillance and over-policing of marginalized social groups. Communities such as Dalits, Adivasis, and religious minorities have historically faced disproportionate criminal suspicion and excessive police presence. When these biased datasets are fed into algorithmic systems, the resulting models learn and reproduce the same patterns of prejudice, leading to erroneous conclusions that certain socio-economic groups are inherently more "risky" or "crime-prone."[153]Predictive policing tools, for instance, may perpetuate a cycle of over-policing in already marginalized localities, reinforcing structural inequalities rather than preventing crime. The algorithm then becomes a self-validating mechanism: the more policing a community is subjected to, the more "criminal activity" is recorded, and the stronger the justification appears for further targeting. Such systems risk transforming caste hierarchy into computational hierarchy, embedding social injustice into the technological fabric of governance.

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[153] National Crime Records Bureau. (2023). *Prison Statistics India 2022*. Ministry of Home Affairs, Government of India. https://ncrb.gov.in/en/crime-prison-statistics.

Gendered Implications

Gender bias is another structural dimension of algorithmic discrimination. AI tools used in employment screening, credit scoring, insurance determination, or even targeted advertising often draw from data that reflects patriarchal norms and unequal socio-economic articipation of women in society. For example, lower workforce participation or shorter employment histories among women systemic consequences of unpaid domestic labor and care responsibilities may be interpreted by algorithms as indicators of lesser reliability or productivity. Similarly, automated systems may categorize women as higher-risk borrowers based on skewed financial histories, making access to credit more difficult. Digital safety concerns also disproportionately impact women and gender minorities, who face heightened surveillance, data exploitation, and online harassment. As a result, algorithmic governance can unintentionally intensify the gender gap in economic autonomy and personal freedom, unless explicitly designed with an equity-focused approach.

Disability and Digital Exclusion

Persons with disabilities face unique challenges as governance shifts toward automated and digital systems. Welfare benefits, healthcare access, and identity verification increasingly depend on digital authentication platforms, such as biometric scanning and online portals. These systems often assume standardized physical and cognitive abilities, marginalizing individuals whose disabilities make it difficult or impossible to engage with such interfaces.[154] Moreover, interfaces may lack accessibility features like screen readers, audio modes, or simplified navigation for neurodivergent users. The danger lies in replacing welfare rights with technological conditionality, where the inability to interact with digital systems results in wrongful denial of state support. Automation without inclusivity thus erodes the constitutional promise of social justice for persons with disabilities.

Conclusion: Technology is Not Value-Neutral

[154] Singapore Judiciary. (2022). *Technology and Courts: The Singapore Experience*. https://www.judiciary.gov.sg/welcome/singapore-courts/technology-in-courts.

The combined analysis of caste, gender, and disability impacts reveals a central truth: algorithmic governance is neither neutral nor universally beneficial. Technology reflects the values, assumptions, and biases of the systems that create it. Without an explicit focus on equity, algorithmic decision-making risks deepening existing structural inequalities under the guise of objectivity and efficiency.

The future of technological governance must therefore prioritize:

- anti-discrimination safeguards
- inclusive design principles
- transparency and ethical review
- continuous human oversight

Only by embedding equality into technical architecture can algorithmic systems truly advance democratic justice rather than undermine it.[155]

COMPARATIVE ANALYSIS: LESSONS FROM OTHER JURISDICTIONS

Canada's Directive on Automated Decision-Making

Canada has emerged as a global leader in responsible AI regulation within governance. Its Directive on Automated Decision-Making (2019) establishes a comprehensive framework ensuring that automated systems used by public institutions comply with democratic values and legal principles. A central feature of the Directive is the Algorithmic Impact Assessment (AIA), a mandatory evaluative tool that must be completed before deploying any automated decision system. The AIA assesses the potential impact of the technology on rights, fairness, and service delivery, categorizing systems into risk levels that correspond to heightened procedural safeguards.

The Directive also mandates:

- Bias Testing and Validation:
  Algorithms must undergo periodic audits to identify and mitigate discriminatory outcomes, especially related to race, gender, language, and disability.
- Human Oversight and Appeal Mechanisms:
  Automated decisions must always remain subject to human review, ensuring accountability and preventing irreversible harm.

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[155] Ministry of Law and Justice. (2019). *Report of the Committee on Legal Aid and Access to Justice*. Government of India. https://lawmin.gov.in/reports/legal-aid-access-justice-report.

- Documentation and Explainability:
  Government agencies must publicly disclose key information, including how the system functions and what data influences its outputs.

India could significantly benefit from adopting similar ex ante safeguards, ensuring that AI tools are subjected to legal scrutiny *before* they impact citizens' rights.

United Kingdom's Algorithmic Transparency Standard

The United Kingdom has developed an Algorithmic Transparency Standard, the first of its kind in the world. It requires government agencies to proactively publish information about:

- the purpose of each algorithmic tool
- the nature and source of datasets used
- risk assessments and evaluation frameworks
- independent audit results and governance processes

Such forced transparency strengthens democratic legitimacy, enabling public scrutiny and informed debate on algorithmic governance. It ensures that affected communities, civil society, and legal experts can identify and challenge discriminatory or harmful technologies. By contrast, India currently lacks a unified disclosure standard. Many government-deployed algorithms remain opaque, raising fears of "secret automation" where individuals may be judged or denied services by systems whose logic they can neither see nor contest. Learning from the UK's model, India must consider mandatory public transparency requirements to preserve trust in digital governance.[156]

New Zealand's Māori Algorithm Charter

New Zealand's approach offers a culturally grounded perspective on ethical data governance. The Māori Algorithm Charter (2020) was developed to ensure that technological systems respect indigenous rights, identity, and sovereignty over cultural data.

The Charter requires public agencies to:

- consult meaningfully with Māori communities
- prevent discriminatory impacts on indigenous people
- ensure kaitiakitanga (guardianship) in data collection and usage

[156] National Judicial Data Grid. (2022). *Statistics on Judicial Strength in India*. eCourts Services. https://njdg.ecourts.gov.in/statistics.php.

- monitor long-term social consequences of automation

This model demonstrates how algorithmic governance can incorporate plural constitutional values rather than imposing a majoritarian view of fairness or efficiency. India a nation defined by deep cultural and social diversity could adopt a similar rights-based approach to protect vulnerable communities against technologically amplified discrimination.

Lessons for India

These international models collectively show that:

- inclusive design is achievable through public participation
- transparency mechanisms improve accountability
- ethical and cultural values can shape technology, not merely adapt to it
- regulation must scale with risk rather than remain symbolic

For India, the takeaway is clear: as algorithmic systems expand into judicial and governance structures, the nation must craft its own robust regulatory framework grounded in constitutional morality, equality, and democratic oversight.

RECONSTRUCTING LEGAL PRACTICE IN THE DIGITAL AGE

Ethics of AI in Legal Decision-Making

As AI-driven tools increasingly participate in tasks such as case analysis, bail recommendations, and sentencing guidance, the ethical foundations of legal decision-making must be reaffirmed. Laws derive legitimacy not merely from procedural outcomes, but from moral values embedded in constitutional principles. Therefore, AI cannot be allowed to function as a purely technical instrument; it must be governed by an ethical framework that ensures justice remains humane and rights-centric.

Four guiding principles are essential:

- Fairness:

  Algorithms must operate without perpetuating discrimination rooted in caste, gender, class, religion, or ability. This requires proactive bias detection, diverse training data, and safeguards for vulnerable communities.
- Explainability:

  Automated reasoning must be understandable and contestable. If individuals

cannot comprehend the basis of a decision affecting their liberty or entitlements, the notion of due process becomes hollow.

- Accountability:

  Clear lines of responsibility must be established so that when errors occur whether due to flawed datasets or model design affected individuals can seek remedy. Accountability must remain with public authorities, not outsourced to private developers.

- Human-Centred Oversight:

  AI systems should support, not supplant, human judgment. Judges must retain the Final authority; compassion, moral reasoning, and judicial discretion are irreplaceable elements of justice.

Ethical design becomes not a technical add-on but a necessary condition for legal legitimacy in the digital age.

Redesigning Legal Education

The transformation of governance systems demands that legal education evolve accordingly. Tomorrow's lawyers will not only interpret statutes and precedents they will interact with algorithms, assess data governance practices, and protect citizens from emerging rights violations. Thus, legal curricula must expand beyond doctrinal training to include interdisciplinary competencies such as:

- Data governance and information ethics
- Computational logic and AI system fundamentals
- Cyber law, platform regulation, and digital rights
- Privacy law, surveillance studies, and digital constitutionalism
- Law and technology policy analysis

Exposure to technology-law interface coursework, clinical legal informatics programs, and collaborative learning with computer science disciplines will be vital for capacity building. Equipping students with both critical theory and technical literacy ensures that the next generation of legal actors can shape technology responsibly rather than merely react to it.

Strengthening Judicial Training

Judges are central guardians of constitutionalism. In a legal system enhanced by automation, they must possess the ability to critically evaluate algorithmic

recommendations, identify embedded biases, and prevent procedural injustice. Judicial training programs must therefore include:

- interpretation of algorithmic outputs
- understanding AI system risks and limitations
- training on digital evidence and forensic evaluation
- capacity to demand transparency from technological vendors
- principles for human-AI collaboration in adjudication

Additionally, continuous learning frameworks and partnerships with technical institutions can bolster judicial confidence and autonomy in technology-driven environments. Empowering judges ensures AI remains subordinated to judicial conscience, preserving the integrity of adjudicatory authority.

The Way Forward

Building an ethical, inclusive, and rights-centric digital justice system requires:

- evolving professional skills
- institutional strengthening
- public accountability in technology adoption

By reforming education and training alongside ethical governance norms, India can ensure that legal innovation enhances — rather than erodes — the core values of constitutional democracy.

PROPOSED FRAMEWORK: A RIGHTS-CENTRIC MODEL

Mandatory Algorithmic Impact Assessments (AIA)

Before deployment, systems must undergo assessments for:

- bias
- rights violations
- data risks

Explainability Requirements

Individuals must have the right to:

- understand automated decisions
- demand human review
- challenge computational outcomes

Independent Tech-Ethics Oversight Body

A national regulator should monitor:

- algorithmic accountability
- procurement transparency
- compliance with constitutional norms

Citizen Participation and Public Disclosure

Democratizing the design and evaluation of digital governance tools ensures legitimacy**.**

CONCLUSION

Law today stands at a decisive threshold, shaped by the rapid emergence of artificial intelligence, automation, and data-driven governance. These technologies offer transformative potential: they promise to reduce delays in justice delivery, enhance administrative efficiency, and improve access to legal remedies for citizens historically excluded from the system. Courts can rely on digital tools to streamline complex processes, while policymakers can utilize data insights to craft more responsive welfare programs. In theory, algorithmic governance can create a justice system that is faster, more accurate, and less prone to human error.However, technology does not evolve in a vacuum. Without a strong theoretical foundation rooted in constitutional principles, the deployment of automated systems risks legitimizing a new form of authority that lacks transparency and accountability. The risk is not simply operational it is structural. Algorithms, if unchecked, may reinforce societal prejudices, criminalize the marginalized, and concentrate power in private technological entities that operate beyond public scrutiny. Critical values such as fairness, equality, privacy, and autonomy may be compromised under the guise of efficiency and scientific objectivity. The Future must therefore be guided by a principled distinction: the goal is not automated justice, but augmented justice. A justice system transformed by technology must continue to draw its legitimacy from human judgment, ethical reasoning, and public accountability. Technology can support decision-makers with better information and predictive insights, but it must never displace the judicial conscience or the duty to uphold individual rights. Automation should simplify procedures—not silence voices. This paper highlights the need for a rights-centric governance framework, one grounded in constitutional morality. Such a framework must ensure that every digital innovation — whether in policing, welfare, or adjudication — is assessed for its impact on dignity, equality, and due process. Policies enabling algorithmic decision-making must include safeguards like bias audits, algorithmic transparency, effective appeal

mechanisms, and meaningful human oversight. International regulatory examples from Canada, the United Kingdom, and New Zealand show that inclusive, democratic, and culturally respectful technological governance is not only possible but necessary. Furthermore, institutional reform is indispensable. Legal education must evolve to equip future lawyers with digital literacy and technological understanding. Judicial training must empower judges to critically evaluate automated tools rather than rely on them uncritically. Bridging the gap between law and technology is essential to preserving the spirit of justice in a rapidly evolving digital age.Ultimately, as societies transition into algorithmic futures, the central purpose of law must remain unchanged: to protect the vulnerable, promote human dignity, and uphold democratic accountability. The test of technological progress will not lie in how automated governance becomes, but in how it strengthens the foundations of justice. A humane, accountable, and inclusive digital legal order is both an aspiration and a constitutional imperative — one that India must actively shape rather than passively inherit.

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CHAPTER- 9

ADM JABALPUR V. SHIVKANT SHUKLA, AIR 1976 SC 1207: A CONSTITUTIONAL CRISIS IN THE JUDICIAL PROCESS

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Abstract

The Emergency period in India from 1975 to 1977 tested the strength of the Constitution as well as the role of the judiciary. One of the most debated decisions of this time is ADM Jabalpur v. Shivkant Shukla (1976), also known as the Habeas Corpus case. The issue was whether a citizen could challenge unlawful detention by filing a writ petition when the fundamental right to life and personal liberty under Article 21 had been suspended by a Presidential order. The Supreme Court, by a majority of 4:1, ruled that during the Emergency, no person had the right to move the courts for enforcing Article 21.

This judgment gave complete authority to the executive and left individuals without judicial protection. Justice H.R. Khanna delivered a powerful dissent, observing that the right to life is not dependent only on Article 21 but is a basic natural right which cannot be taken away even in times of Emergency. The case is often remembered as a dark chapter in constitutional history because the judiciary failed to stand firmly against executive excess. It exposed a major loophole in the judicial process, where the balance between state power and individual liberty completely broke down. Though later constitutional amendments and judicial interpretations corrected this error, ADM Jabalpur continues to be a reminder of the importance of judicial independence and the need for strong safeguards to protect civil liberties during extraordinary situations.

Even after the Emergency ended, the ADM Jabalpur case continued to have a strong impact on Indian constitutional law. It highlighted the need for reforms, which led to measures like the 44th Constitutional Amendment to make sure such misuse of executive power could not happen again. The case is still important for understanding the limits of government authority and the role of the judiciary in protecting citizens' rights. It shows how essential it is for courts to remain independent in order to

safeguard fundamental rights and maintain the rule of law, especially during times of crisis.

Keywords

Judicial Process; Habeas Corpus; Emergency; Article 21; Fundamental Rights; Judicial Independence, Rule of Law.

Introduction

The Indian Constitution enshrines a vision of democracy rooted in liberty, equality, and justice. Central to this vision is the judiciary, designed to act as a bulwark against executive and legislative excesses. Yet, during the Emergency declared on 25 June 1975 by Prime Minister Indira Gandhi under Article 352, the constitutional equilibrium collapsed. Civil liberties were suspended, political dissent was silenced, and preventive detentions became rampant under the Maintenance of Internal Security Act (MISA), 1971. [1]

In this environment of political authoritarianism, *ADM Jabalpur v. Shivkant Shukla* became the testing ground for the judiciary's commitment to constitutionalism. The decision not only marked the judiciary's moral crisis but also demonstrated how constitutional mechanisms could be weaponized against citizens when institutional checks fail.[2]

Facts Of The Case

During the Emergency, several political leaders and activists were detained under MISA. The detenus, including prominent opposition figures, challenged their detention before various High Courts, arguing that the detentions were *mala fide* and violated procedural safeguards.[3] High Courts across the country delivered divergent rulings — some granting relief to the detenus even during the suspension of fundamental rights.

The Union of India appealed against these decisions, leading to the Supreme Court hearing in *Additional District Magistrate, Jabalpur v. Shivkant Shukla*. The central question before the Court was:

"Whether, during the period of Emergency, the writ of habeas corpus is maintainable before a High Court for enforcing the right to personal liberty under Article 21, when such right stands suspended under a Presidential Order issued under Article 359(1)?"[4]

The Judgment

1 Maintenance of Internal Security Act, 1971 (MISA)

2 Austin, Granville, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, 1999)

3 *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207

4 Ibid.Majority Opinion

By a 4:1 majority (Chief Justice A.N. Ray, Justices M.H. Beg, Y.V. Chandrachud, and P.N. Bhagwati), the Supreme Court held that:

a. During the proclamation of Emergency, when the right to move any court for enforcement of fundamental rights under Articles 14, 21, and 22 is suspended by the President, no person has the right to file a writ of *habeas corpus* challenging the legality of detention.

b. The State's satisfaction under preventive detention laws was not subject to judicial review during the Emergency.

c. Liberty flowed from law, and since the enforcement of law itself was suspended, no claim to liberty could survive independently.

The majority opinion effectively sanctioned the executive's absolute authority, reducing the judiciary to a constitutional bystander.

B. Justice H.R. Khanna's Dissent

Justice H.R. Khanna delivered one of the most courageous dissents in Indian judicial history. He asserted that:

"Even in the absence of Article 21, the State has no power to deprive a person of his life or liberty without the authority of law."[5]

He distinguished between suspension of the right to enforce fundamental rights and the extinguishment of the rights themselves. His view grounded liberty in natural law — a right inherent to human existence, not merely conferred by the Constitution.[6]

Khanna's dissent cost him the Chief Justiceship but immortalized him as a symbol of judicial conscience. His reasoning later influenced post-Emergency jurisprudence affirming that the "right to life" is the foundation of all rights.[7]

5 Justice H.R. Khanna, Dissenting Opinion, *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207

6 Khanna, H.R., *Neither Roses nor Thorns* (Eastern Book Company, 1980)

7 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

The *ADM Jabalpur* verdict marked one of the darkest moments in India's constitutional history — when the judiciary, instead of standing as the guardian of rights, aligned with executive power. By denying citizens the remedy of *habeas corpus* during the Emergency, the Supreme Court effectively endorsed a "Constitution without rights," subordinating individual liberty to state authority. The judgment revealed deep flaws in the judicial process.

a. **Erosion of Judicial Independence:** The fear of confrontation with the executive and the existing political climate of intimidation influenced judicial reasoning[8].

b. **Subversion of Rule of Law:** The idea that law ceases to exist during Emergency contradicted the constitutional promise of a government "under law."[9]

c. **Denial of Natural Rights:** By denying that life and liberty have any existence beyond Article 21, the Court rejected centuries of legal philosophy rooted in natural justice — from Locke's social contract to Dicey's rule of law.[10]

Justice Khanna's lone dissent preserved the moral core of the Constitution, affirming that the right to life and liberty exists beyond the text of Article 21 and cannot be suspended even in an Emergency. His view echoes the international principle under Article 4(2) of the ICCPR, which recognizes the right to life as non-derogable.

The *Habeas Corpus Case* thus became a symbol of judicial surrender. It raised a haunting question: *What happens when the final interpreter of the Constitution legitimizes its own suspension?*

Aftermath: Rectification Through Constitutional And Judicial Reform

The backlash to *ADM Jabalpur* was swift and enduring. The 44th Constitutional Amendment Act (1978) introduced critical reforms:

d. **Safeguards against Suspension of Article 21:** It amended Article 359(1) to explicitly prohibit the suspension of the right to life and personal liberty even during an Emergency.[11]

8 Bhatia, Gautam, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins, 2019)

9 Rajeev Dhavan, "Judicial Role in Times of Political Pressure: Revisiting ADM Jabalpur," *Indian Law Review*, Vol. 8 (2020)

10 Dicey, A.V., *Introduction to the Study of the Law of the Constitution* (Macmillan, 1959)

11 The Constitution (Forty-Fourth Amendment) Act, 1978

e. **Judicial Review Reinforced:** Subsequent cases, notably *Maneka Gandhi v. Union of India* (1978), transformed Article 21 into the fountainhead of all fundamental rights.[12]

f. **Doctrine of Basic Structure:** Though developed earlier in *Kesavananda Bharati v. State of Kerala* (1973), it gained renewed significance post-*Jabalpur*, cementing judicial review and the rule of law as part of the Constitution's inviolable core.[13]

By the late 1980s, the Court consciously sought to redeem itself, expanding the scope of Article 21 to include dignity, livelihood, privacy, and environment — an implicit apology for 1976. [14]

Contemporary Reflections: Judicial Process Under Political Pressure (2014–2025)

The historical significance of *ADM Jabalpur* lies not merely in its past but in its recurring relevance. The tension between state power and judicial autonomy re- emerged prominently during the political dominance of the Bharatiya Janata Party (BJP) post-2014.[15] The period witnessed growing concerns over the judiciary's independence — reminiscent of the Emergency era's institutional subservience.

A. The Gogoi Phase: Echoes of Judicial Deference

During Chief Justice Ranjan Gogoi's tenure (2018–2019), several controversial developments raised alarm about judicial integrity and executive influence:

- **Rafale Deal Case (2018):** The Court appeared to defer heavily to the government's claims without detailed scrutiny[16].
- **Ayodhya Verdict (2019):** Though legally comprehensive, critics observed that its timing and tenor appeared politically convenient[17].
- **Judicial Appointments and Post-Retirement Nomination:** Justice Gogoi's subsequent nomination to the Rajya Sabha within months of retirement deepened

12 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

13 *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461

14 Bhatia, *Transformative Constitution*, supra note 9

15 Dhavan, Rajeev, supra note 10

16 *Yashwant Sinha v. CBI (Rafale Case)*, (2018) 14 SCC 1

17 *M. Siddiq (D) v. Mahant Suresh Das*, (2019) 18 SCC 1 (Ayodhya Verdict)

public skepticism, echoing concerns similar to those following Justice A.N. Ray's elevation in 1973[18].

The pattern suggested an institutional fatigue — a judiciary struggling between confrontation and compromise. As in 1976, the question resurfaced: *Can the judiciary remain truly independent when the executive holds persuasive influence over its leadership?*

B. The Chandrachud Era: Reaffirmation of Judicial Independence

Under Chief Justice D.Y. Chandrachud (2022–present), the judiciary has witnessed a discernible reassertion of constitutional values. Chandrachud, who ironically is the son of Justice Y.V. Chandrachud — one of the majority judges in *ADM Jabalpur* — has symbolically and jurisprudentially corrected that historical wrong[19].

In several pronouncements, including *Justice K.S. Puttaswamy v. Union of India* (2017, Privacy case) and subsequent rulings on same-sex rights, freedom of expression, and accountability, the Court has reclaimed its role as the sentinel of liberty. In public addresses, Chief Justice Chandrachud has explicitly acknowledged *ADM Jabalpur* as a "gross judicial error," reaffirming that the right to life is *non-derogable* and that "the Constitution does not sleep during emergencies".[20]

This generational arc — from Justice Y.V. Chandrachud's majority opinion to his son's repudiation of it — captures the moral evolution of India's judiciary.

The Recurrent Test Of Judicial Conscience

The *ADM Jabalpur* saga and the modern-day experiences under Gogoi and Chandrachud highlight a recurring constitutional pattern: every era of strong executive power tests the judiciary's conscience. The judiciary's legitimacy lies not in its proximity to power but in its fidelity to principle.

From the 1970s' Emergency to the 2020s' hyper-majoritarian democracy, the judiciary's choices define the contours of liberty. When courts compromise for convenience, democracy degenerates into legality without justice. When they stand firm, they

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18 The Hindu, "Justice Gogoi's Rajya Sabha Nomination Sparks Debate," March 2020

19 Chandrachud, D.Y., "Constitutional Morality and the Role of the Supreme Court," Public Lecture, 2023

20 *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

transform legality into legitimacy. The moral courage of judges, therefore, remains the final guarantee of freedom.[21]

Conclusion

ADM Jabalpur v. Shivkant Shukla is not merely a historical case — it is a continuing lesson in constitutional morality. The judgment revealed how fragile the idea of liberty can be when institutional integrity yields to political expediency. Justice Khanna's dissent, once isolated, now defines the soul of Indian constitutionalism: that life and liberty precede law and survive even its suspension.[22]

In contemporary India, the judiciary once again navigates turbulent political currents. The contrasting trajectories of the Gogoi and Chandrachud courts reflect the ongoing struggle between conformity and conscience. If *ADM Jabalpur* was the nadir of judicial failure, the jurisprudence of recent years underlines redemption — a reaffirmation that the judiciary, though tested, can rise again.

The essence of the rule of law lies in the courage to say "No" when power demands silence. The lesson of *ADM Jabalpur* endures: ***the Constitution is only as strong as the judges who defend it.***

[21] Austin, Granville, supra note 2
[22] Khanna, *Neither Roses nor Thorns*, supra note 7

CHAPTER-10

JURISPRUDENTIAL ASPECT OF RAREST OF THE RARE CASE DOCTRINE: ESTABLISHING JUDICIAL AUTONOMY AND CHALLENGING TEXTUALISM

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Abstract

The Judicial Process which ran through the Rarest of Rare Doctrine is roughly trajectory to Article 21 of the Indian Constitution. Whilst the shaping of contours was happening, all aspects and Principles of Justice, Equity, Fairness, Non-Arbitrariness and Proportionality were to be taken into consideration. The Genus of paper runs forward to guarantee Constitutional basic structure of life and liberty added to balance them all with legislative sanction for death penalty which led to emergence of Doctrine of Rarest of Rare case. The Ratio decidendi given here was not to apply the doctrine mechanically rather than to preserve it for weighing factors leading towards guilt and subsequently backed compliance to be seen that of Articles 14 and 21. Later to keep a check on Judicial Discretion, the Aggravating and Mitigating factors were brought. Judicial Activism and Judicial Creativity came into play for harmonizing legislative intent with Constitutional Morality. The Human Rights perspective indulged more with dwelling on International human rights norms. Here it gave emphasis to Mental Health counters with dignity and fairness. Article 21 being infringed day in and day out with custodial torture built with inhumane treatments while being in custody cause of the Prolonged Capital Sentencing row. The nation there happened to gain convict centric paradigm which balances retribution and human dignity. With Comparative Jurisprudential aspect, Indian approach mostly is opposed with U.S and South Africa. The International laws of ICCPR and UNHRC gave it sight of procedural fairness and restricted the Sentencing to most heinous crimes. To administer such capital sentencing laws, we still need more codified and systematic reforms.

Keywords – Judicial Activism, Judicial Creativity, Human Rights, Constitutional Morality, Capital Sentencing.

Introduction

The doctrine of Rarest of Rare is one of the most contested and significant invasions of Indian Judiciary. It plays a significant role in deciding the judicial precedence which gain its roots initiating with the Bachan Singh case, which was watershed movement in which the constitutional bench in 1980 upheld the constitutional validity of the death penalty provided it gave its imposition with base to the Rarest of Rarest doctrine wherein an alternative option is exceptionally unsigned called for. The Doctrine of Basic Structure has to be kept in mind and therefore, the courts appropriate interpretation gave us the approach of Article 21[157] which guaranteed the Right of life and personal liberty having substantive precedence which aligned the sentencing which was based on discretion of the court and also has to be aligned with constitutional morality. This doctrine has underpasses several judicial refinements which has now given us in jurisprudential element which decides the threshold for such State's sanctions execution of the death penalty.

By way of this research work, the aim is to propose a codified sentence and an institutional mechanism which is strict enough to ensure the doctrine functions as a meaningful restraint and also gives then enlisted series of how this doctrine has grown from scratch and what is its impact on the current sentencing form in cases of capital punishments.

The key themes of the paper talks about the doctrinal genesis in which the court has sought to balance out the legislative sanction for the death penalty which is guaranteeing the constitutional right of life and liberty emerging from the doctrinal approach. Then we have the doctrinal refinement which gave the mitigating and aggravating circumstances to decide the team of the offense to limit arbitrariness which was given by the case of Macchi Singh v. State of Punjab 1983 SCC. The cases of Santosh Bariyar v. State of Maharashtra and Shatrughan Chauhan v. Union of India in the 21st century gave us Judicial Self Corrections and Human Rights intervention respectively as his jurisprudence arose from the exposed inconsistencies and the individual safeguard against sentencing whereby this mechanism was applied with the Human rights intervention while post-conviction phase, inordinate delays and mental health as Dignity was seen as a ground for computing such death penalties.

Methodology

The Doctrinal Research adopts a jurisprudential analysis which is based upon the study of statutes, judicial precedence, and constitutional backings made in the texts. The lens to be observed while making an analysis of the series of the journey of capital punishment from scratch till date and its impact on how this theory of punishment is derived and how it is working currently. Imbalances the positive, common natural law and the Constitution Morality.

Research Objectives

1. To analyze evolution of the doctrine of Rarest of Rare from its scratch

2.To understand the impact of capital sentencing in the Criminal Justice System

[157] *India Const. art. 21.*

3. To study the applicability of the doctrine with the intervention of Human Rights under 21.

Literature review

The Law Commission report that is 35th[158] and 262nd[3] reports provide policy-based insights and the empirical study which gave recommendations related to structured guidelines to minimize the arbitrariness.

The Indian authors such as Upendra Bakshi[159] and KC Markandane give the emphasis on arising disputes between the judicial creativity the court's discretion and the safeguards which is provided by the constitution with regards to the capital punishment. The foreign regard given to the perspective can we reviewed from the case of Greg v. Georgia 1976 which spoke of proportionality review, later the case in which the death penalty was abolished to safeguard the Human Dignity in South Africa visual was held in the case of S v.
Markwayne, 1995.

Findings/ Analysis;

Series of Jurisprudential Analysis -

The doctrine of Rarest of Rare can be seen as a Genius whilst the whole theory of capital punishment is the Species in the theories of punishment. The doctrine genesis of the Rarest of Rare case arose from the case of Bachan Singh v State of Punjab, 1980 where in the constitutionality of the death penalty was challenged and the constitutional bench had to apply its judicial mind with respect to the rule of life imprisonment to be the norm and death penalty to be the exception. This was all being talked about in the 5 judges bench constitutional which gave U.S. forces to one majority judgment in which Hon'ble Mr. Justice PN Bhagwati[160] gave its descent judgement who was of the view that such punishment violates the Article 21, Right to life and is inherently arbitrary.

The background of the case runs through the accused who raised an appeal against the order of death sentence which was imposed for him for Commission of a double murder by the petitioner who was already convicted of murder first. The Hon'ble Apex Court Had to decide with respect to section 302 of the Indian Penal Code. The contentions raised by the petitioner comprised of the violation of Articles 14,19 and 21 of the Indian Constitution in which he made arguments that the State cannot violate a person's right to Fair, Just and Reasonable liberty which was enshrined by the case of Maneka Gandhi v. Union of India[161].

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[158] *Law Comm'n of India, 35th Report on Capital Punishment*
(1967) [3] *Law Commission of India, 262nd Report on Death*
Penalty (2015).

[159] *Upendra Baxi, "Constitutional Humanism and the Death Penalty in India," 22(3) Indian Socio-Legal J.*
177 (1985)
[160] *Bachan Singh v. State of Punjab, (1980) 2 SCC 684, 751 (per Bhagwati, I., dissenting) (India).*
[161] *Maneka Gandhi v. Union of India, (1978) 1 SCC 248.*

The Issues raised before the court was that whether the death penalty prescribed section 302 IPC as unconstitutional and whether its violating the right of life and equality under 14 and 21 respectively and the second issue was that whether or not the procedure of imposing the death sentence under section 354 (3) Code of Criminal Procedure[162], satisfies the Fair, just and reasonable standard of Article 21. the latter one is whether the court should abolish the theory of death sentence judicially or should they leave it to the wisdom of legislature to make amendments in the law.
The argument by the eminent counsel on behalf of Bachan Singh contended that the procedure for imposing the death penalty was arbitrary and unguided which has led to unequal application which has violated in turn Article14. The latter one, being, is that penalty has failed the test of reasonableness under 19(1)[163] and it does not justify under reasonable restrictions and shined under 19(2)[164]. Thirdly, it based the arguments that the addressed irreversible and disproportionate nature of such capital punishment violate the element of Justice and reasonableness which is guaranteed by Article 21. Fourthly, it gave the judges to record special reasons for awarding such capital punishment which heroin is lacked biologist relative guidance and therefore encompassing the whole right to the judicial discretion which can be unconstitutionally administered[165].

Arguments raised by the State represented by the attorney general mentioned That the capital punishment is a State approved punishment which is recognized under Entry 1 list 3 that is the concurrent list of the 7th schedule which has to be awarded only when it has to depict legislative wisdom and also to create a deterrence against the serious and heinous crimes: and it is not for judicial activism or showing of judicial creativity. Therefore, the argument of unconstitutional administration elements is made across.[11]
The basis of Article 14 and 21 is not violated because the judicial discretion is always based on rhymes and reasons which is very much within the ambit of the legislation, and this is also backed by mounts of reasons making it fair, just and reasonable. The question of abolishing or attention of such a decision has appeared on duty of the parliament which must be reserved to them and is not within the ambit of judiciary.
The outset of analysis draws the contention from the legislative intent of the parliament through which we can understand that they had very much consciously retained the theory of death penalty in the quote of criminal procedure after having numerous debates and they had introduced section 354 (3) to its limited applicability. It is judicial creativity which must be applied with the judicial mind to respect such legislative policy unless it is very much demonstratively arbitrary[166]. Such reasoning gives us philosophy for restrained judiciary who must uphold the legislative policy and follow its competence whilst simultaneously keeping in mind the morality and values which are backed by the constitution within the statutory framework.

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[162] *Code of Cr. Proc. s.354, cl. 3*

[163] *India Const. art. 19, cl. 1(a)*

[164] *India Const. art. 19, cl. 2*

[165] *Ramaswamy Iyer, Death Penalty: A Constitutional Dilemma, Seminar No. 321 (1986), Anup Surendranath, Death Penalty India Report (Project 39A, NLU Delhi, 2016)*

Rajeev Dhavan, "The Supreme Court Under Strain: The Challenge of Arrears" (1977).

[166] *V. Gauri, "Judicial Discretion and the Death Penalty in India," Indian J. Criminology 45(2), 212–230 (2017), A.G. Noorani, "Death Penalty: The Supreme Court's Moral Failure," Frontline, July 2008*

The procedure established by law and the correlationship between 21 which gives us keywords of right fare and just elements which theft guards recording the judges to hold special reasons before they imposed the death penalty and prevents the arbitrary imposition. Clause of special reasons would hold constitutional safeguards which would ensure an individual while satisfying both rights of the victim as well as that of the criminal. The norm to be life imprisonment with an exception to be capital sentencing is the guiding principle which was adopted proportionately by most of the judgment. This therefore gave us a light through the constitutional balancing showed by the interpretation of the court in which they have recognized the sanctity of life while also adhering to deep States power to impose capital punishment in some extreme adverse circumstances.

Having regards to the Human Dignity and Human rights based by the constitutional morality which became the basis of the dissenting judgment given by the minority bench of honorable Justice PN Bhagwati which was largely relied upon the empirical statistic and data's which reviewed inconsistent sentencing. The lighting example of the same was also quoted by the Hon'ble in which an offender of bailable offence was put across the case and was made convicted offer heinous crime of murder and was sentenced and hanged accordingly, but later which got revealed by few witnesses who turned hostile back then that the convicted person was not even the mastermind of the crime and was not thoroughly involved in the Commission as well. This shook the conscience of Human Right's activism. His judgement for shadowed many future judgments which had the jurisprudential essence which integrated Human Dignity into post-conviction stages as discussed in Santosh Bariyar and Shatrughan Chauhan cases[13].

Judgement by the Hon'ble Mr. Justice PN Bhagwati also invoked India's international commitments under the ICCPR to argue that the constitution must avoid towards the abolition of capital punishment based on the decision of Human Dignity and Human rights.

The Legacy of the Bachchan Singh analysis-

This judgement brought us to an equilibrium which balances both the retributive Justice and the constitutional morality which became the basis of the decision in which it says that the legacy does not lies in the affirmation or confirmation of the capital punishment but in the transformation of the sentence into a constitutional exercise. This is how it was just reiterated what is the utmost norm of the criminal jurisprudence. By this doctrine, commonly the court has tried to emphasize harmony between Justice and compassion in which reconciliation must be seen with morality and that of Human Dignity to be at the core of the judgement.

Underpinning philosophy which creates a balance between retribution and reform; the judgement balances the theory of punishment having the forms of retribution and reformation which works within the framework of Constitutional morality.

[13] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498,

K. Ghosh, "Individualized Sentencing and Judicial Integrity," *Criminal Law Rev.* 19 (2010),

Death Penalty India Report, Prabha Kotiswaran & Surya Deva, "Structural Bias in Capital Punishment," *Econ. & Pol. Weekly* 54(23), 45 (2019).

R. Mehta, "Judicial Cognition and Moral Reasoning in Death Sentencing," *Indian J. Criminology* 46(1), 37–56 (2018).

They were of the view that retribution or deterrence should not be the sole purpose of a punishment being awarded whilst social defense and reformation must also be the keywords to be kept afresh while deciding a case. The court also implicitly drew the philosophy of Kantian which gave us perspective of the accused which spoke that the punishment must also give Justice to Dignity and rationality of the accused while acknowledging theories of utilitarianism given by Jeremy Bentham and while emphasizing deterrence and public order.

Macchi Singh v State of Punjab giving refinement to the doctrine of the Rarest of Rare:

The court has tried to clarify the doctrine of Rarest of Rare by laying down the categories such as manner of Commission of crime, motive behind the crime and the magnitude or d graveness of the Commission of crime. the judicial process Astrid to make a standardization attempt while the court has tried to make activist doctrinal work commendable. In this, the codes have operationalized the doctrine for consistency.

The Issue formulated in the case was firstly how to apply the doctrine in monthly convict cases and latter how to ensure proportionality and uniformity in the capital sentencing we did the judgment comprised of various categories whereby the manner, motive common magnitude of the harm caused and the element of premeditation with that of the victim profile is drawn while deciding the case. It gave a standardization which provided guidelines to judicial discretion with enhanced predictability and fairness which aligned Article 14 and 21 together. It has also served as a benchmark for latest judgements criticizing arbitrariness.

The analysis draws its conclusion the court listed the aggravating factors for justifying the capital punishment as Social abhorrence, multiple murders and crimes were committed simultaneously the exceptional brutality element or depravity element of the crime the motive and premeditation involved which indicated extreme culpability which forms is brace from pre meeting of the minds. It also looked forward to the personality of the victim or the victim's profile. The mitigating factors were recognized as that of the age of health or the mental capacity of the convict with that of the circumstances which reduces the moral blameworthiness. The last aspect is given to the reform or rehabilitation of the criminal to reintegrate them into society.

Hon'ble Mr. Justice Thakkar while deciding the case aim to reduce judicial arbitrariness by providing the guidelines and it also aimed to reconcile collective conscience with that find the determinant of sentencing invited for criticism in respect of subjectivity and susceptibility to populist pressures. This was the aim to structure judicial discretion in which a moral and judicial standard that required the balancing between the gravity of the offence and the potential The case of 1983 took its turn as a significant attempt to codify and structure the discretional framework for awarding of the death penalty reinstatement of the offender into society was looked into. For Rehabilitation, it is also checked that whether the accused or convict would be continued to be a threat to society or not and howsoever,Hon'ble apex court had confronted about the question as to this doctrine would function in such concrete adjudicative term's veracity. This case has more or less tried to translate the abstract moral balancing of the previous case in to a more workable judicial application and this could be done by articulating various categories which is set by the guideline given by the judgement and by classifying the factors such as aggravating and mitigating circumstances to arrive at a decision.

Here, Justice Thakkar writing for a 3 judge's bench had given reference to Bachan Singh case as they had left a vast area of discretion uncharted. Therefore, they had to come up with 5 category classification set as a guideline in which firstly the manner of Commission of the crime is to be looked at in which an act which is committed in extreme brutality common diabolic and revolting manner which arose intense indignation of the community is looked at. The latter one being the motive for the Commission of the crime is where the crime is motivated by total depravity and has a set of reasons whether monetary or to satisfy pleasure. Thirdly, it talks about the social abhorrence of the crime in which the murder or crime against vulnerable individuals is looked at which shakes the societal conscience. Fourthly, the magnitude of the crime is looked for wherein multiple murders or massacres are involved. Lastly, it looked for the victim profile as to if the victim holds a position of public trust or moral authority and the murder or the crime against such social order.

Conscience is institutionalized as it gives knowledge to the collective conscience of the community as a normative measure. The capital sentence is when it seeks the societal conscience and in that perspective life imprisonment is viewed as a travesty of judge's Justice. The community's conscience is also criticized by various schools of thoughts as it is not directly correlated to judicial reasoning or judicial applicability of laws. It is also termed as a guided description of judiciary which works to reduce arbitrariness without eliminating judicial moral reasoning. Terminologies such as collective conscience or shaking the conscience of community or society remains gravity kissed to the moral subjectivity of an individual in which it allows judges personal individual opinions on moral institutions to influence the sentence. With respect to the HLA HART conception of the open texture, it describes the jurisprudential analysis to be a compromise between positive uniformity and natural law moralism.

The legacy of this judgement dwells with its two-sided face as stabilizing influence in judicial reasoning and as persistent reminder of the moral and constitutional dilemmas which has accompanied state-imposed capital punishment. It however continues to embody both the aspiration for Justice and for the unease of Human fallibility.

Judicial self-correction in the post Macchi Singh era which covers a period of 3 decades. The capital sentencing undergoes on the front remarkable self-correction is post Macchi Singh case.

The Journey's Analysis and its Impact on Capital Sentencing-

The first 5 years after Macchi Singh case was a State of complete judicial discomfort that compulsory involved the legislative comparison in the awarding of capital punishment. The Hon'ble Mr. Justice YV Chandrachud had then acknowledged Article 21 towards created extent and they had held Article 14 and 21 to be at a higher stake, meanwhile wear section 303 of IPC was held to be violating of such provisions as the basic right to life is to be guaranteed even to the prisoners and the judicial discretion cannot intervene in non-guaranteeing of the same and if such sentencing is granted it will be considered as unconstitutional. This case was of the view that the nominative foundation to be led for individual sentencing must be reinforced in the principle that the penalty even which is constitutionally permissible mass operate with its narrowest ambit of moral and procedural confines.

The change in era was caused theories of retribution, form of punishment which was described in the case of Dhananjay Chatterjee v State of West Bengal, 1994[167]. This

[167] *Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220*

brought back the concept of retributive theory for creating a deterrence because it shook the conscience or rather the collective conscience of the community or society. Therefore, the courts observe that such retributive response to be adhered to for societies cry looking forward for Justice.[168] In this the sentencing was awarded to impose such retribution which would erode public confidence. The decision however exposed the inherent tension between societal demands for attribution and constitutional fidelity to fairness and proportionality.

There after came the crisis of consistency era which was from 1995 to 2008 in which there was fragmented application of the doctrine as devolved in the case of Ravji v. State of Rajasthan 1996[169] it was upheld that it is the nature of the crime and not the criminal which is relevant. This was complete opposite of what was held in Bachchan Singh case which mandated individual assessment of the offender, but here in the judgment the criminal was subsided and the nature of the crime as a relevancy in deciding the case. There after the case of Sanjana v State of Rajasthan 1996 and Bantu v. State of Madhya Pradesh, 2001 had effectively sublimed the reformative idea embedded under 21. Lastly the case of Santosh Bariyar v State of Maharashtra[170] had amounted to judicial error which was incompatible with the constitutional sentencing principles. The central demand of the era in the mid pathway came in 2008 with the case of Swami Shraddhanand a v State of Karnataka 2008[171], in which the Hon'ble apex court had introduce the concept of special category sentencing in which upon punishment of life imprisonment was innovated which means till the end of the natural life cycle command without remission. In such case be preserved both the sanctity of life of the offender and created a deterrence against the punishment which soft both Justice and Human rights morality. Hon'ble Mr. Justice Markandeya Katju and Justice SB Sinha had recognized that the arbitrariness in the binary between the death penalty and life imprisonment is the courts choice between the said and that has now become a matter of judicial per Incuriam matters. Above case of Swami Shraddhanand versus State of Karnataka[172] was thus a pivotal movement of the doctrinal correction which arouses a marking sign of judicial current. The later phase was that of institutional introspection that is between 2009 and 2013, In which the Santosh Bariyar v. State of Maharashtra[173] judgment was again a reputation of Bachchan Singh's judgement because it had a return of conscience towards the constitutional ethos of Bachan Singh case. The bench which was led by Hon'ble Mr. Justice SB Sinha had held that death sentence has drifted away from the principal proportionality which was envisioned in 1980. It had rented the judgement per incuriam. It overstruck the individual sentencing which was led few years back and the duty of the courts to consider mitigating evidence related to the offender psychology and social background was looked at as not holding much importance. The judgement theory emphasized on the procedural fairness under 21 which required detailed and separate sentencing hearing distinct from the determination of the guilt of the accused. Thereafter the face of deserving mechanical application came in the case of Sangeet versus State of Haryana 2013[174] where a double bench had led to reaffirmation of the concerns raised in Santosh

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[168] *A. Bhattacharya, "Revisiting the Death Penalty Debate," Indian Bar Rev. 44(2), 183–201 (2017).*

[169] *Ravji v. State of Rajasthan, (1996) 2 SCC 175.*

[170] *Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498.*

[171] *Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767.*

[172] *supra, Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767.*

[173] *Santosh Kumar Bariyar v. State of Maharashtra, (2009) 6 SCC 498*

[174] *Sangeet v. State of Haryana, (2013) 2 SCC 452*

Bariyar case. The bench was led by Hon'ble Mr. Justice Madan B Lokur held that Macchi Singh judgement was an unintentionally supplanter judgement. They referred the doctrine of arrest of dear to be just lost in the transaction of a slogan rather than serving the purpose predominantly raising as a standard. They had emphasized on sentencing methodology wherein they called for creation of a uniform sentencing policy with that an emphasis given to the empirical study come at the surveys done which would psychologically evaluate and proportional consistency to be achieved. This reflected a jurisprudential maturation from the conceptual articulation which was done in Bachchan Singh case to that of structural classification In the Macchi Singh case and following why the sangeet to assist State of Haryana which allowed methodological introspection. The 2014 to 2017 phase was that of humanization of the capital sentencing jurisprudence in which firstly the Shatrughan Chauhan v. Union of India[175] case had expanded the jurisdiction of 21 which provided procedural safeguards into post sentencing stages. Where the court had committed several death sentences on the grounds of delay in mercy petitions, mental ailments and solitary confinement. The inordinate delay caused, and disposal of the mercy petitions had constituted to be a form of cruel, in Human and degrading treatment which is thoroughly incompatible with the constitutional values. Such judgment is pivotal in the trajectory of the judicial self-correction: it had moved the focus of sentencing description of the courts to executional fairness and now turning tool reaffirmation of the state's power over life is constrained by the procedural humanity at every stage of judicial sentencing jurisprudence. The Affirmation held in Union of India v. Sriharan 2016[176] case; it upheld the legality of special category life imprisonment as which was turn in the case of swami Shraddhananda v State of Karnataka. This judgement had reiterated judicial creativity and sentencing policy. It had rejected the argument that such punishments violated the separation of powers. Hon'ble Mr. Justice TS Thakur clarified the judicial modification of the is not legislation, but interpretations Is an aim to ensure proportional Justice. This intermediate sentencing model if applied the court can institutionalize a constitutional mechanism to minimize death penalty in position while preserving judicial authority over proportional sentencing and punishments. The jurisprudential analysis of themes emerging from judicial self-correction- From judicial conscience to constitutional conscience there was a paradigmatic shift from Macchi Singh's to sangeet case which was from a source of judicial morality. When their collective conscience of society was investigated in Macchi Singh[177] case the later cases had emphasized on constitutional conscience which had its values gained from the roots of Human Dignity, fairness and the transformation vision of Article 21.

The philosophical transaction signifies that the Indian judiciary had a broader movement from majoritarian and morality to constitutional morality acquiring the visions articulated in Navjeet Singh Johar v. Union of India, 2018. The procedure integrity was reinforced in the post Santosh

Bariyar case which has its jurisprudents emphasized on the procedural rigor as a primary safeguard against arbitrariness. The judicial State capital punishment is now

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[175] *Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.*

[176] *Union of India v. V. Sriharan, (2016) 7 SCC 1.*

[177] *Death Penalty India Report, Centre on the Death Penalty, NLU Delhi (2016).*

treated as a separate trial requiring evidentiary proof of psychological reports and socio-economic context. This marks as a decisive institutional shift towards due process which has been made comfort through resource intensive proceduralizing of sentencing.
The doctrine of Rarest of Rare has gained its majority and traditional responsibility is now matured through understanding of judicial fallibility which has been made possible through judicial selfcorrection trajectory. Here the per incurium presidents demonstrates institutional accountability and the courts willingness. The shift is made from a punitive that is retributive theory to reflective judicial culture in which it's not now a mayor moral necessity but is also a constitutional exception demanding the highest of justification levels.

Conclusion

There have been progressive transformation of the judicial process from restrained to activism starting from the case of Jagmohan Singh v. State of Uttar Pradesh,[178] 1973; Bachan Singh v. State of Punjab, 1980; and of Macchi Singh v. State of Punjab, 1983 followed by Santosh Bariyar v. State of Maharashtra 2009 and Shatrughan Chauhan versus Union of India 2014; we did judicial process and the impact of Jagmohan Singh case was more towards the demonstration of judicial restraint which deferred to the legislative authority. It also established at the discretion exercised by the court at sentencing was constitutionally sufficient, and it laid down the foundation for future challenges to refine procedures and substantive safeguards.
The Bachchan Singh's judgement having the constitution bench to talk about judicial process in the judicial activism element introducing a doctrine which was absent in the statutes. It gave a paradigm shift to judiciary from a passive interpreter to active shaper of the Justice criminal jurisprudence. And, laid down the groundwork for standardized sentencing guidelines. The case of Macchi Singh was more towards enhancing the predictability and fairness aligned with the

articles of 14 and 21 giving standardization to guidelines to operational judicial discretion and giving a benchmark for later judgements critiquing arbitrariness.
The Santosh Bariyar State of Maharashtra case having the judicial impact of judicial self-reflective activism in which the judiciary acknowledged its own shortcomings in prior interpretations and strength procedural safeguards emphasizing on Human Dignity and proportionality. The case of Shatrughan Chauhan v. Union of India gave us the judicial process towards rights expansion in which Human rights aspect was taken into consideration into the framework of criminal Justice system in which the focus shifted from retributive or Punitive theory towards Human Dignity and procedural fairness to be kept in mind. It reinforced the dictionary to be the guardian of fundamental rights post-conviction phase also.
The overall of phase of judicial creativity and activism has been the central safeguard towards reformation of criminal Justice system which has made the concern towards proportionality, fairness common just and dignified judgements under Article 21.

[178] *Jagmohan Singh vs The State of U. P on 3 October, 1973 AIR 947.*

The findings of the paper revolves around the analysis raised from judicial activism to strengthening of the procedural safeguards which was mandated by the courts giving detailed reasoning for imposition of the death penalties and emphasized evolution of the aggravating and mitigating factors virtual ensure compliance of the constitutional basic structure doctrine and to reduce arbitrariness. It also emerged as a finding towards Human Dignity and proportionality to be the core utmost basic norm which has been spoken with the context of constitutional morality which priorities the dignified and proportionality of the judgement to be president over the retributive theories. The implementation of the challenges persists as there are inordinate delays in the mercy petitions and inconsistent applications which is run across through High Courts and the non-appropriate measures of legal aid being provided is one of the highlights of the systems weakness which we have in our criminal Justice system. The ICCPR standards and the UN principles were also reflected in the judicial creativity engaging the global Human rights disclose. The judiciary has overall worked as a collective and normative agent inactively regulating and redefining its application based on fundamental rights which are not compromised without abolishing capital sentencing.

Recommendations

Policy recommendations to be made after judicial jurisprudential analysis of the doctrine of Rarest of Rare:

It is where it seems that there is a need of strengthening of the legal aid and defense which is to ensure that the convict who are on the sentencing role have competent legal representatives especially when they are filing for mercy petitions an applet proceeding. The need is also to provide training and resources management to be done to the public defenders in capital punishment matters. There is an immediate need for codification of the sentencing guidelines in which the parliament must formulate statutory guidelines incorporating this doctrine applying its whole set of norms with standardized aggravating and mitigating factors to reduce inconsistency and arbitrariness.

While we talk about the mercy petitions which are filed by the convicts, there is also a need to streamline the same fixing up maximum wavelength of the period in which the mercy petitions should be disposed of. There must be appointments of independent review boards who must be competent to evaluate petitions which would reduce executive delays and psychological traumas.

Judicial review and training must be given an effective touch critical training and workshops to be conducted for the judges on proportionality mental health and human rights and dignity when faced with capital punishment cases to be sought in lights of Fairness and non-arbitrariness. There must be reform in the judicial activism and its creativity and abolish the debate of abolishing the death penalty, where in the Law Commission and parliament must look forward for the importance of retaining the concept of capital punishment.

CHAPTER-11

ARREST AND UNDERTRIAL PRISONERS IN INDIA: LEGAL FRAMEWORK, JUDICIAL SAFEGUARDS AND REFORM IMPERATIVES

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Abstract

Arrest and pre-trial detention are indispensable elements of the criminal justice system, but in India they raise deep constitutional and human rights concerns. The concept of arrest and the plight of undertrial prisoners occupy a central position in India's criminal justice discourse. The Constitution guarantees fundamental rights, and the Code of Criminal Procedure, 1973 (CrPC), regulates arrests and detention. Despite safeguards, India's prisons remain overcrowded with undertrials, reflecting systemic injustice. The jurisprudential foundation of undertrial rights was laid by the Supreme Court in the landmark Hussainara Khatoon v. State of Bihar (1979), which recognized speedy trial as a fundamental right. To address this, Parliament introduced significant reforms through the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Section 479, replacing Section 436A CrPC, liberalizes release provisions: first-time offenders not facing life imprisonment or death penalty may be released after serving one-third of the maximum sentence, while others qualify at half the term. Importantly, the responsibility to initiate release applications now lies with prison authorities, not prisoners.

This reform, if properly implemented, could substantially reduce undertrial detention and align India's criminal justice system with constitutional guarantees of liberty and dignity. Its success, however, depends on judicial vigilance, administrative efficiency, and political will.

This paper explores the statutory and constitutional framework of arrest, the position of undertrial prisoners, amendments to criminal law and procedural safeguards, and the judicial response to arbitrary arrest and prolonged detention. It argues that meaningful reforms in bail law, arrest procedure, and prison administration are necessary to balance state interests with the rights of the accused in a constitutional democracy.

Keywords: Arrest in India, Undertrial prisoners, Criminal Justice System, Fundamental rights, Judicial response, Human rights in detention.

Introduction

Within the framework of India's criminal justice system, the condition of undertrial prisoners represents one of the most persistent and critical human rights concerns. Despite the constitutional guarantees of liberty and fair trial, a significant proportion of India's prison population continues to consist of individuals awaiting trial. According to the National Crime Records Bureau (NCRB), approximately 75.8% of the total prison population comprises undertrial prisoners[179].

Recently, the union home minister emphasized the need to expedite the release of undertrial prisoners, particularly those who have served over one-third of the maximum sentence for the alleged offence. In furtherance of this objective, the Bharatiya Nagarik Suraksha Sanhita (BNSS) introduces important provisions, notably Section 479[180], which provides conditional release for first-time offenders who have undergone imprisonment extending up to one-third of the maximum prescribed sentence. Additionally, subsection (2) of Section 479[181] stipulates that an undertrial prisoner shall not be granted bail if multiple investigations, inquiries, or trials are simultaneously pending against them. While this provision aims to expedite justice for select categories of undertrials, its limited applicability and conditional framework continue to exclude a large number of detainees, thereby failing to address the larger problem of prolonged pre-trial incarceration.

The systemic marginalization of undertrial prisoners reflects deeply rooted socio-political and institutional inadequacies within India's criminal justice apparatus—many of which can be traced to colonial legacies that prioritized punishment over rehabilitation. Persistent issues such as overcrowded prisons, inhumane living conditions, inadequate access to legal representation, and procedural delays expose the fragility of the justice system in upholding the constitutional presumption of innocence until proven guilty.

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[179] *National Crime Record Bureau Prison Statistics India 2022*

[180] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, s. 479, Acts of Parliament, 2023 (India)

[181] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, s. 479(2), Acts of Parliament, 2023 (India)

Methodolgy And Sources

The Study Uses Doctrinal Analysis Of Constitutional Provisions And Statutory Law, Close Reading Of Landmark Supreme Court Judgments And Policy And Statistical Material Including The National Crime Records Bureau's Recent Prison Statistics. Where Statistics Or Recent Executive Guidance Were Referenced, Official Sources And Reputable Analysis Were Consulted To Ensure Accuracy. Key Judicial Guidelines And Government Advisories Are Used To Ground Policy Recommendations.

Statutory And Constituional Framework

The cardinal doctrine of criminal jurisprudence- "innocent until proven guilty beyond reasonable doubt"- often becomes diluted at the moment of arrest. The experience of arrest tends to alter societal perception, transforming an individual into an accused even before a judicial determination is made. The deprivation of personal liberty at this stage, though sanctioned by law, frequently shapes public opinion in a manner contrary to constitutional values. Simultaneously, investigative authorities often hesitate to register counter complaints or thoroughly examine alternative versions of events, thereby allowing only the seemingly "vulnerable" party's narrative to dominate. In *Binoy Jacob v. CBI*[182] *(1993),* the Delhi High Court emphasized that in a constitutional democracy governed by the rule of law, discretionary powers cannot be exercised arbitrarily or on mere personal whims.

The Bharatiya Nagarik Suraksha Sanhita, 2023 attempt to confine misuse of police authority by mandating that an officer must disclose the reasons for arrest, irrespective of whether a warrant exists. This obligation aligns with the constitutional guarantees enshrined in the fundamental rights chapter of the Indian Constitution. Equally crucial is the requirement that an arrested individual be produced before a magistrate without unnecessary delay[183] and be provided access to legal counsel during questioning[184]. Although confessional statements obtained at the time of arrest hold minimal evidentiary value, many accused persons remain unaware of their protection against coerced self- incrimination. Article 20(3)[185] of the Indian Constitution explicitly states that "no person accused of any offence shall be compelled to be a witness against himself", thereby reinforcing this safeguard.

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[182] 1993 Cri.L.J.1293(Delhi HC)

[183]Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.57, Acts of Parliament, 2023 (India)

[184] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.38, Acts of Parliament, 2023 (India)

[185] India Constituion. Article 20(3)

Judicial scrutiny forms another protective layer, as both the Cr.PC. and the Constitution obligate the investigating agency to present the accused before a magistrate within the twenty- four hours[186]. The Directive Principles of State Policy further highlight the responsibility of the state to ensure accessible and comprehensible justice for all. This imposes a moral and administrative duty upon institutions to safeguard individual rights from procedural excesses. The supreme court's decision in *Selvi v. State of Karnataka*[187] significantly strengthened these protections by holding that involuntary administration of Narco analysis, polygraphs tests or similar techniques violates the constitutional shield against self-incrimination.

The Bharatiya Nagarik Suraksha Sanhita, 2023

The concept of arrest forms a cornerstone of the criminal justice system, balancing two competing imperatives- the maintenance of public order and the protection of individual liberty. In India, the process of arrest was historically governed by the Code of Criminal Procedure, 1973. However, with the introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023, the legal architecture has undergone a significant transformation, modernizing the arrest and bail procedure to ensure transparency, accountability and technological integration.

- Section 35 BNSS[188] - delineates the statutory parameters within which a police officer may effect an arrest without a warrant. The provision marks a significant procedural advancement in India's criminal justice architecture by introducing the mechanism of a "notice of appearance" as an alternative to immediate arrest in appropriate cases. It further mandates that where a person has duly complied with such notice, any subsequent arrest must be justified with recorded reasons, a requirement underscored by the Bombay High Court[189]. Collectively, the section reflects a legislative shift towards calibrated, accountability-oriented policing, ensuring that the power of arrest is exercised judiciously, transparently, and only when demonstrably necessary.
- Section 47 BNSS[190]- codifies the procedural safeguards attendant to arrests effected without a warrant. The provision obligates the arresting officer to apprise the

[186]Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.58, Acts of Parliament, 2023 (India)
[187] 2010 7 S.C.C. 263
[188] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.35, Acts of Parliament, 2023 (India).
[189] Vicky @ vikky vilas kamble v. state of Maharashtra AIR 2025
[190]Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.47, Acts of Parliament, 2023 (India).

individual, immediately and with specificity, of the precise grounds and the statutory offence forming the basis of the arrest. In cases involving bailable offences, the arrestee must further be informed of their entitlement to bail and their right to secure sureties. The section also imposes a duty to notify a relative, friend, or any person identified by the arrestee regarding the fact of arrest, coupled with a mandatory entry of these details in the official police records. Judicial interpretations have underscored that non-compliance with these procedural mandates—particularly those under Section 47(1)—may vitiate the legality of the ensuing detention.

- Section 58 BNSS[191]- embodies a fundamental procedural safeguard by stipulating that an individual arrested without a warrant cannot be detained by the police for a period exceeding twenty-four hours, save pursuant to a special order of a Magistrate. The prescribed twenty-four-hour limitation expressly excludes the time reasonably required for transporting the arrestee from the place of apprehension to the Magistrate's court. The provision reinforces the constitutional imperative against arbitrary detention by ensuring prompt judicial oversight, thereby mandating that the duration of police custody remain reasonable and proportionate to the exigencies of the case. Ultimately, Section 58 functions as a critical check on executive power, guaranteeing that any extended deprivation of liberty occurs only under judicial authorization.
- Section 187 BNSS[192]- superseding the erstwhile Section 167 of the Code of Criminal Procedure—prescribes the statutory framework governing situations in which the police are unable to complete an investigation within the constitutional 24-hour limit. The provision mandates that every arrested person be produced before the nearest Magistrate within twenty-four hours of apprehension, excluding the time reasonably required for transit. Where further investigation is necessary, the Magistrate is empowered to authorize detention—whether in police or judicial custody—for a period not exceeding fifteen days in the aggregate. This custodial period must be availed within the initial 40- or 60-day window, contingent upon the gravity of the alleged offence. The Magistrate may, upon adequate justification, sanction continued detention beyond the initial fifteen days and is further permitted to exercise this authority through remote means, such as video conferencing, when physical production is impracticable. Collectively, the provision reinforces rigorous judicial oversight over

[191] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.58, Acts of Parliament, 2023 (India).
[192]Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.187, Acts of Parliament, 2023 (India)..

pre-trial detention, ensuring that any curtailment of personal liberty beyond the 24-hour threshold is strictly conditioned upon judicial sanction and procedural compliance.

- Section 479 BNSS[193] - The issue of undertrial prisoners is addressed in Section 479. This section is applicable during the investigation, inquiry, or trial for offenses under any law, excluding those punishable by both death and life imprisonment. Sec 479(1) : Release on bail for individuals who have undergone detention for up to one-half of the maximum imprisonment period specified for the offense. The court exercises discretion, considering factors presented by the Public Prosecutor, to either prolong the detention beyond one-half of the specified duration or release the individual on bail. The total detention period during legal proceedings and exclude delays caused by the accused when calculating the period for granting bail. New provision for first-time offenders: Allowing release on bond if the detention period is up to one-third of the maximum imprisonment period. Furthermore, sec 479 explicitly states that individuals facing multiple offenses will not be released on bail {Sec 479(2)}. New Role of the Superintendent of Jail {Sec 479 (3)}: The Superintendent of the jail, upon completion of one-half or one-third of the specified detention period, shall promptly submit a written application to the Court to proceed under section 479(1) for the release of the person on bail

The supreme court in the case of *Joginder Kumar v. State of Uttar Pradesh*[194]*,* emphasized that the authority to arrest cannot be treated as a routine or mechanical exercise. The court clarified that an arrest should not be carried out without a preliminary inquiry into the bona fides of the allegation, a reasonable assessment of the person's involvement, and an evaluation of whether the arrest is genuinely required.

The directions laid down in Joginder Kumar's case later obtained statutory force through the Cr.P.C. (Amendment) Act, 2008. By this amendment, section 41 of the Cr.P.C[195] was revised to restrict the power of arrest in cases involving offences punishable with seven years' imprisonment or less. The amended provision mandates that the police officer must record in writing the specific reasons for either making an arrest or choosing not to arrest an accused person without a warrant.

The legality of the arrest must be supported by probable cause, which is to be determined on the basis of the factual matrix and circumstances available to the officer

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[193] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 45, S.479, Acts of Parliament, 2023 (India).

[194] AIR 1994

[195] Code Crim. Proc. § 41.

at the time. The information relied upon should be both reasonable and credible, ensuring that the decision to arrest is neither arbitrary nor unjustified.

The Indian Constitution

Indian Constitution under Chapter III confers various fundamental rights to its citizens. Most of these rights are also extended to prison and hence must be conferred even to a prison inmate to the maximum extent possible. A prisoner doesn't cease to be a human being to be deprived of his right to life[196].

- Every person is vested with right to equality before law and equal protection of law. A prisoner hence is also empowered with right to equality, equal treatment and equal protection by law. Hence discrimination without legal justification is unconstitutional[197].
- Article 19 guarantees six freedoms to the citizen of India. Among these certain freedom like “freedom of speech and expression”, “freedom to become member of an association” etc., can be enjoyed by the prisoner even behind the bar. But these will be subjected to the limitations of prison laws[198].
- The protection of life and personal liberty; it is the central constitutional safeguard engaged by arrest and detention. The right includes procedural guarantees the right to a fair and speedy trial. The supreme court has repeatedly held that prolonged pre-trial detention engages Article 21[199].
- no person arrested shall be detained beyond 24hrs without being produced before a magistrate (subject to certain exceptions), and that detainees must be informed of grounds of arrest and the right to consult legal counsel[200].
- Article 39A[201] - Article 39A of the Indian Constitution is a pivotal provision that mandates the State to provide free legal aid to ensure that no citizen, including prisoners, is denied access to justice merely due to economic or other disabilities. The state government cannot avoid their constitutional obligation to provide free legal service to the poor accused by pleading financial or administrative inability.

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[196] India CONST. art. 21
[197] India CONST. art. 14
[198] India CONST. art. 19
[199] India CONST. art. 21
[200] India CONST. art. 22
[201] India CONST. art. 39A

Landmark Judicial Safeguards And Their Impact

The judiciary acts as a constitutional safeguard to ensure that the power of arrest is not exercised arbitrarily and that individuals awaiting trial are treated in accordance with principles of fairness, due process and human dignity. This oversight derives primarily from Articles 21,22 and 32 of the Indian constitution which enshrine the right to life, personal liberty and legal remedies. Over the years, Indian courts have delivered several landmark judgments that reinforce due process, humane treatment, and the right to a speedy trial.

Taking note of the prevailing situation in India where jails are flooded with undertrial prisoners, the Supreme Court recently issued guidelines to curb unnecessary arrest and remand in the case of *Satendar Kumar Antil vs. Central Bureau of Investigation*[202]. The Court observed how majority of the prison inmates are undertrial prisoners and how majority of them may not even be required to be arrested despite registration of a cognizable offense, being charged with offenses punishable for seven years or less. What's concerning is that most of the undertrial prisoners include not only poor and illiterate but also include women.

D.K. Basu V. State Of West Bengal (1997)[203]

A landmark judgment of the Supreme Court that laid down mandatory guidelines to prevent custodial torture, deaths and arbitrary arrests. the court issued 11 guidelines to be followed during arrest and detention until proper legislation is enacted. Some major ones include

i. Clear identification of police officers with name tags
ii. Arrest memo must be prepared, signed by the arrested person and a witness.
iii. Relative or friend must be informed of the arrest immediately.
iv. Time, place, and reason of arrest must be recorded.
v. Medical examination every 48hours during detention.
vi. Inspection memo noting injuries at the time of arrest.
vii. Right to meet lawyer during interrogation (not throughout).
viii. Diaries and registers must be properly maintained.
ix. Copies of documents to be sent to the magistrate promptly.

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[202] Satendar Kumar Antil vs. Central Bureau of Investigation (2022) 10 SCC 51

[203] D.K. Basu v. State of West Bengal, (1997) 1 SCC 416

The judgement marked a major step in human rights protection in criminal justice. It recognised custodial torture as a crime against the rule of law and laid down the foundation for later CRPC amendments (2008) incorporating many guidelines furthermore it strengthened judicial oversight on police procedures.

Arnesh Kumar V. State Of Bihar (2014)[204]

i. All State Governments must instruct their police officers not to automatically arrest the accused when an offence is punishable with imprisonment up to seven years. Arrest should be made only when the conditions under Section 41 CrPC are satisfied.
ii. Police officers must be provided with a checklist containing the specific conditions mentioned in Section 41(1)(b)(ii) CrPC. They must mark and record compliance with these conditions during every arrest.
iii. While forwarding the accused to the Magistrate, the police officer must also send the filled-in checklist and the reasons and materials that justified the arrest.
iv. The Magistrate, while authorizing detention, must examine the report produced by the police. The Magistrate must be satisfied that the police officer has complied with Section 41 CrPC and must record his/her satisfaction in writing.
v. If the police decide not to arrest an accused, they must forward the reasons and materials for such non-arrest to the Magistrate within two weeks from the date of the institution of the case. This period may be extended by the Superintendent of Police of the District with proper written reasons.
vi. A Notice of Appearance under Section 41A CrPC must be served on the accused within two weeks from the date of the institution of the case. This period may also be extended by the Superintendent of Police with written reasons.
vii. Failure to comply with these guidelines will make the police officers concerned liable for departmental action. They shall also be liable for contempt of court, which can be initiated before the jurisdictional High Court.
viii. If the Magistrate authorizes detention without recording his/her satisfaction regarding compliance with Section 41 CrPC, they too will be liable for departmental action

Hussainara Khatoon V. State Of Bihar[205]

The case highlights the crises faced by numerous individuals in Bihar's prisons, whose trials had not commenced for years. Many of these undertrial prisoners were detained

[204] Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273.
[205] Hussainara Khatoon v. State of Bihar (1979) SC 1360

for petty or minor offences that typically warranted only a few months of imprisonment, yet they ended up spending several years behind bars. This situation led to a habeas corpus petition that brought before the court the deplorable conditions of undertrial prisoners and the broader issues of prison administration.

In the landmark judgment, the supreme court affirmed that the right to a speedy trial is an essential part of the right to life and personal liberty under Article 21 of the Indian Constitution. The court further clarified that Articles 14,19 and 21 collectively guarantee fair, just and reasonable procedures. It emphasised that the rights to a speedy trial, free legal aid and humane prisons conditions fall within the scope of Articles 21.

The court recognised that the bail system was deeply flawed, particularly affecting poor and unrepresented prisoners. Procedural lapses in police and prison administration were acknowledged and guidelines were issued to safeguard the rights of undertrial prisoners. This marked a significant expansion of Article 21 in terms of ensuring dignified treatment and justice for undertrial detainees.

Supreme Court Legal Aid Committee V. Union Of India (1994)[206]

In the 1994 case of *Supreme Court Legal Aid Committee v. Union of India*, the Supreme Court issued a landmark ruling emphasizing the right to a speedy trial for undertrial prisoners and directed states to release prisoners who had been in jail for extended periods, particularly those in NDPS cases. Key directions included releasing undertrials who had served five years if the offense carried a minimum 10-year sentence, and those who had served half the maximum sentence if it was five years or less. The ruling aimed to alleviate the burden on the judicial system and ensure that personal liberty and speedy trial rights under Article 21 of the Constitution were protected, even for those accused of serious offenses.

In Re: Inhuman Condition In 1382[207]

In this case supreme court registered letter as P.I.L and held that prisoners like all human beings deserved to be treated with dignity and issued the directives as follows:

i. The Under Trial Review Committee in every district must meet quarterly, with the District Legal Services Authority Secretary participating. The Committee

[206] AIR 1989 SC 1278

[207] Writ Petition (Civil) No. 406 of 2013.

should review cases of undertrial prisoners and convicts eligible for release due to remission, sentence undergone, or inability to furnish bail.

ii. The committee must examine cases under Sections 436 and 436A CrPC, ensuring that indigent prisoners who cannot furnish bail are released promptly. It should also review those eligible under the Probation of Offenders Act and those who deserves early release.

iii. The District Legal Services Authority should ensure that adequate legal-aid lawyers regularly visit jails. They must assist indigent undertrial prisoners and convicts and take timely action for bail, release, and disposal of cases.

iv. The Director General/ Inspector General of Prisons must ensure proper utilization of funds for prisoner's welfare. This includes improving living conditions, health, hygiene, food, clothing and other essentials ensuring human dignity.

v. The Ministry of Home Affairs should develop a Management Information System for all prisons and district jails. This database will track details of prisoners, helping in quick identification of those eligible for release or requiring legal aid.

vi. The Ministry of Home Affairs will conduct yearly reviews of prison conditions and prisoner status nationwide. This aims to improve administration, ensure humane treatment, and facilitate better coordination between authorities.

vii. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual, 2016. The annual review will also take into consideration the need, if any, of making changes therein.

Rights Of Undertrial Prisoners

1. Right To Speedy Trial[208]

Undertrials have a constitutional right to be tried without unnecessary delay. This prevents prolonged detention without conviction. The Supreme Court has held that speedy justice is part of Article 21. Excessive delay can be grounds for bail or release.

2. Right To Legal Aid[209]

Every undertrial is entitled to free and competent legal representation if they cannot afford a lawyer. This ensures equal access to justice and prevents wrongful detention. Legal aid is a constitutional obligation under Articles 21 and 39A.

3. Right Against Arbitrary Detention

[208] Hussainara Khatoon (I) v. state of Bihar (1979)

[209] IBID

Police cannot arrest or detain a person without lawful justification. Undertrials must be informed of the grounds of arrest and produced before a magistrate within 24 hours. This protects them from wrongful incarceration and abuse of authority.

4. Right To Bail[210]

Undertrials accused of bailable offences can claim bail as a matter of right. Even for non-bailable offences, courts must consider personal liberty and circumstances of the accused. The aim is to avoid unnecessary pre-trial imprisonment.

5. Right To Humane Treatment In Jail[211]

Undertrials cannot be treated as convicts since they are presumed innocent until proven guilty. They must be provided with adequate food, hygiene, healthcare, and safe living conditions. Any cruel, inhuman or degrading treatment violates Article 21.

6. Right To Communication & Family Visits[212]

Undertrials have the right to maintain contact with family, friends, and lawyers. Regular visits and correspondence help ensure mental well-being and proper legal defense. Restrictions must be reasonable and not arbitrary.

7. Right To Medical Care[213]

Every undertrial has the right to timely and adequate medical treatment. Jail authorities must provide emergency and routine healthcare. Denial of medical care is considered a violation of Article 21.

8. Right To Presumption Of Innocence[214]

Undertrials are accused, not convicted. They must not be subjected to punishments, forced labor, or discrimination inside prison. Jail manuals must treat them separately from convicted prisoners.

9. Right To Protection From Custodial Violence

They must be safeguarded from torture, harassment, or ill-treatment by police or jail staff. The DK Basu[215] guidelines mandate procedures for arrest, interrogation, and custody. Any violation can attract disciplinary and criminal liability.

10. Right To Legal Information & Court Production[216]

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[210] Gudikanti Narasimhulu v. Public Prosecutor (1978)

[211] Sunil Batra v. Delhi Administration (1978)

[212] Francis Coralie Mullin v. Administrator, Union Territory of Delhi(1981)

[213] Ramamuthy v. State of Karnataka (1997)

[214] Narendra Singh & Anr. V. State of M.P. (2004)

[215] DK Basu v. State of West Bengal (1997)

[216] State of Punjab v. Ajaib Singh (1953)

Undertrials have the right to be informed about case progress and court dates. They must be produced before the court at every hearing unless officially exempted. This ensures transparency and fair participation in their own tri

Reform Imperatives

Reforms relating to undertrial prisoners must focus on protecting constitutional rights, ensuring the efficiency of the criminal justice process and strengthening rehabilitative rather than punitive mechanisms.

Legal And Judicial Reforms

i. Liberalised bail framework

The principle of "bail over jail" should be uniformly enforced, especially for non-violent or minor offences. Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, mandates the release of undertrials who have undergone half of the maximum possible sentence or one- third for first time offenders not accused of capital offences. The Supreme Court in *Hussainara Khatoon v. State of Bihar*[217] *and Moti Ram v. State of MP*[218]condemned prolonged incarceration due to unaffordable bail. Digital bail-management systems and periodic monitoring can ensure uniform compliance.

ii. Expedited and time bound trials

A speedy trial is a facet of Article 21, requiring courts to reduce delays, limit adjournments, and adopt case-flow management systems. Establishing fast track courts for petty offences significantly reduces undertrial incarceration. The Supreme Court in *Hussainara Khatoon*[219] *and A.R.Antulay v. R.S.Nayak*[220] emphasised institutional mechanisms to prevent delays.

iii. Effective and accessible legal aid

Strengthening NALSA and SLSAs is vital for accessible legal representation to socio-economically marginalised undertrials. The Supreme Court in *Khatri v. State of Bihar*[221] directed that legal aid must be made available at every stage, including pre-trial.

iv. Mandatory periodic judicial review

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[217] Hussainara Khatoon (I) AIR 1979 SC 1360

[218] Moti Lal vs. State of MP ((1978) 4 SCC 47)

[219] Hussainara Khatoon (I) AIR 1979 SC 1360

[220] A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602; AIR 1988 SC 1531

[221] Khatri v. State of Bihar, AIR 1981 SC 928 (India)

Regular judicial scrutiny of cases ensures identification of undertrials eligible for bail or release and prevents violations of statutory detention limits. Implementation of prison review boards, quarterly reviews and digital dashboards strengthens accountability.

v. Standalone bail legislation

The law commission (268th report)[222] *and Supreme Court in Satender Kumar Antil v. CBI (2022)*[223] strongly recommended a uniform bail statute. A dedicated bail act can standardise bail criteria, minimise judicial inconsistency and reduce reliance on financial sureties.

Administrative And Systemic Reforms

i. Addressing prison overcrowding

Reducing the proportion of undertrial prisoners is essential for tackling overcrowding. Alternatives such as probation, community service and diversion programmes for minor offences must be encouraged. In *Bhagwan Das v. State (NCT of Delhi)*[224] the Supreme Court stressed the need for non-custodial measures.

ii. Improving prison living conditions

Compliance with Model Prison Manual (2016) and Nelson Mandela rules is crucial to maintain basic dignity- sanitation, food, hygiene, healthcare and mental health services. Regular medical audits, mental health counselling and third-party inspections enhance prison conditions.

iii. Segregation of prisoners

Undertrials should be kept separate from convicts, and first-time offenders to prevent criminogenic exposure. Classification based on risk assessment is recommended by international standards.

iv. Human resource and staff training reforms

Prison official must undergo training on human rights, gender sensitivity and rehabilitative correctional practices to shift from punitive to reformative prison management. Modules on crises handling, mental- health awareness and legal compliance strengthen professional standards.

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[222] LAW COMM'N OF INDIA, REPORT NO. 268, AMENDMENTS TO CRIMINAL PROCEDURE CODE, 1973 – PROVISIONS RELATING TO BAIL (2017).

[223] Satender Kumar Antil v. CBI, (2022) 10 SCC 51 (India)

[224] *Bhagwan Das v. State (NCT of Delhi)*, (2011) 6 SCC 396 (India)

v. Integration of technology in prison management

Digitisation through e-prisons, e -mulakat, virtual court hearings, and biometric systems improves transparency, reduces delays and secures prisoner movement. AI-enabled risk assessment and automated bail- eligibility alerts improve decision making.

vi. Rehabilitation and reintegration support

Vocational skill training, education through IGNOU/NIOS and phycological counselling support re-entry after acquittal or release. Partnerships with corporate skill councils and NGOs can reduce recidivism and ensure employment pathways.

vii. Transparency and accountability mechanisms

Independent inspection by human rights bodies, civil society and judicial committees ensure accountability and prevent rights violations. Implementation of CCTV with audit trails, grievance redress portals and annual public reports promotes systemic transparency.

Conclusion

The constitutional promise of liberty and the right to fair trial cannot coexist sustainably with a criminal justice system that relies heavily on prolonged pre-trial detention. India's law already contains many of the tools needed- judicially articulated safeguards, statutory provisions like Section 41A and Section 436A and institutional actors committed to reform. The core challenge is implementation: converting principles into routine practice through statutory clarity, administrative redesign, investments in capacity, transparent data and an ethos of minimal incarceration compatible with public safety.

Practical change is neither instantaneous nor costless, but targeted measures- regular jail-based judicial reviews, electronic arrest logs, duty counsel and prioritized case management- can, within few years, substantially reduce the undertrial population, improve prison conditions and strengthen the rule of law. The courts have provided an enabling jurisprudence; now the executive and legislature must act in concert to operationalise those protections so that liberty is not the exception but the norm.

CHAPTER-12

RIGHT TO HEALTH AND STATE RESPONSIBILITY: A LEGAL AND ETHICAL ANALYSIS

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Abstract

The right to health in India has gradually evolved into a core component of the right to life under Article 21 of the Constitution. Though not explicitly mentioned as a fundamental right, judicial interpretation, directive principles of state policy (DPSPs), and policy frameworks have expanded its scope, recognizing health as indispensable for a dignified life. This paper critically examines the constitutional and legal foundations of the right to health, emphasizing the state's responsibility in ensuring equitable healthcare access. It explores governmental schemes, missions, and expert recommendations on Universal Health Coverage, alongside initiatives in healthcare financing, human resource development, and biomedical research that collectively strengthen India's health system. The study highlights the interplay between fundamental rights, fundamental duties, and health, underlining how public interest litigations have advanced access to medical assistance and addressed violations of health rights. Through case studies, it investigates instances of rights denial and the legal remedies provided, demonstrating the judiciary's proactive role in the normative expansion of health rights. The proliferation of human rights discourse, alongside international human rights frameworks, has further shaped India's approach to healthcare. Yet, challenges persist in reconciling the aspirations of universal health rights with resource constraints and the arguments of health-right rejectionists. Finally, the paper reflects on contemporary issues such as inequities in access, financing gaps, and ethical dilemmas in biomedical research, while evaluating judicial responses and policy innovations. By situating the right to health within both domestic constitutionalism and international commitments, the research underscores its growing normative significance and the urgent need for stronger legal, institutional, and policy mechanisms to make healthcare a truly enforceable and accessible right for all.

Keywords: Right to Health, Article 21, Judicial Interpretation, Universal Health Coverage, Human Rights

Research Questions

1. How has the Indian judiciary interpreted and expanded Article 21 to include the Right to Health?
2. What are the constitutional, legal, and policy frameworks that support the Right to Health in India?
3. Why is there a need for a separate Public Health Law in India, and how can it improve health justice and accountability?

Research Objectives

1. To examine the role of the judiciary in interpreting the Right to Health as part of the Right to Life under Article 21, through landmark judgments and Public Interest Litigations.
2. To analyse the constitutional and legal provisions, that collectively support the Right to Health in India.
3. To identify the gaps in existing health governance and explore the need for a dedicated Public Health Law that ensures accountability, accessibility, and enforceability of health rights for all citizens.

Research Methodology

This paper is based on doctrinal research. It includes analysis of constitutional provisions, landmark Supreme Court judgements, reports and academic articles. Both primary sources like case laws and secondary sources like commentaries and journal articles have been used.

Chapter-1

Right to health in India

The right to health in India emerges as a cornerstone of the nation's constitutional and welfare philosophy, reflecting the state's enduring obligation to ensure equitable access to quality healthcare for all citizens. Rooted in the ideals of a welfare state, this right derives its moral and legal foundation from the Directive Principles of State Policy enshrined in Part IV of the Constitution. Articles 38, 39(e) and (f), 41, 42, and 47 collectively impose positive duties upon the state to promote social justice, humane working conditions, public assistance in sickness, and the improvement of public health. Although non-justiciable, these principles serve as guiding values for legislative and executive action, forming the constitutional conscience behind India's public health initiatives. The right to health has further evolved through judicial interpretation, with the Supreme Court recognizing it as an integral aspect of the fundamental right to life under Article 21. Landmark decisions such as Parmanand Katara v. Union of India (1989)[225], Consumer Education and Research Centre v. Union of India (1995), and Paschim Banga Khet Mazdoor Samiti v. State of West Bengal (1996) have affirmed that access to timely and adequate medical care is essential to the protection of life and human dignity. Complementing judicial activism, legislative frameworks like the National Health Mission, the Clinical Establishments (Registration and Regulation) Act, 2010,

[225] Supreme court of India. Parmanand Katara v. Union of India, (1989) 4 SCC 286.

[9] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

the Mental Healthcare Act, 2017, and the National Food Security Act, 2013, operationalize this right in practice. India's international commitments under the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966) further strengthen its obligation to uphold health as a basic human right. Despite these developments, significant challenges persist in translating constitutional ideals into tangible outcomes, particularly for marginalized and economically weaker sections. The realization of the right to health, therefore, remains central to India's pursuit of social justice and human development. In the contemporary era, the right to health also encompasses public health preparedness, disease prevention, and environmental health concerns. The Supreme Court in cases such as Subhash Kumar v. State of Bihar (1991) and Vellore Citizens Welfare Forum v. Union of India (1996) recognized the right to a healthy environment as intrinsic to the right to life. The Court has also expanded the right to include access to clean drinking water, basic sanitation, and maternity benefits, as seen in Laxmi Mandal v. Deen Dayal Hari Nagar Hospital (2010).

Hence, the right to health in India is not merely a derivative of Article 21 but a multidimensional right supported by Directive Principles, judicial activism, legislative action, and international commitments. The challenge lies in ensuring that this right is not only recognized in principle but also realized in practice, especially for marginalized and economically weaker sections of society.[226]

Chapter-2

Schemes And Missions

In India, both the Central and the State governments have formulated various plans and strategies for the protecting public health. Ministry of Health and Family Welfare regulates most of the health policy decisions at the national level. The Ministry consists of two departments viz. Department of Health & Family Welfare and Department of Health Research each of which is headed by a Secretary to the Government of India. The Department of Health and Family Welfare plays a crucial role by organising and delivering all national health programs whereas the Department of Health Research has the duty to promote health and clinical research, development of health research and ethics guidelines, outbreak investigations, and provision of advanced research training, etc. The Directorates of Health Services and the Departments of Health and Family Welfare at the state level and Panchayati Raj institutions at the district level are responsible for providing and ensuring quality healthcare services to the people. Some of the major policies and programmes formulated by the government are discussed below: In 1977, the 30th World Health

[226] https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf

[9] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

Assembly resolved that the main social target for Governments in coming decade for the WHO, should be 'the attainment, 2023 by all citizens of the world by the year 2000 A.D. of a level of health that will permit them to lead a socially and economically productive life'. In 1978, the Alma Ata World Conference pointed out that Primary Health Care would be the key to achieve Health for All by 2000. WHA endorsed the Declaration of Alma Ata and invited member states to devise their own national policies and strategies to achieve this goal. Each member state was also required to have a National Health Policy. The Ministry of Health and Family Welfare formulated a National Health Policy in 1983 considering India's commitment to attain the goal of Health for All by 2000 through the universal provision of comprehensive primary health care services. Later, other National Health Policies were adopted in

the years 2002 and 2017. Various other specific health policies such as National AIDS Prevention and Control Policy,[227] National Policy for Persons with Disabilities in 2006, National Vaccine Policy in 2011, etc., were also formulated by the government. Despite all the progress made in economic development, health inequalities prevail and the poor have to carry the burden of disease disproportionately. Economic liberalization and globalization have widened the health divide aggravating the inequities. The Government has tried to address the issue through National Health Mission which aims at the achieving universal access to equitable, affordable and quality health care services that are accountable and responsive to people's needs. There are two sub-missions under NHM which are the National Rural Health Mission and the National Urban Health Mission. The main programmatic components of NHM include Health System Strengthening, Reproductive-Maternal-Neonatal-Child and Adolescent Health and Communicable and Non-Communicable Diseases. [228]The National Rural Health Mission was launched in 2005 and it aims to provide accessible, affordable and quality health care to the rural population, especially the vulnerable groups. The National Urban Health Mission mainly focuses on urban poor by making available to them essential primary health care services and reducing their out-of-pocket expenses for treatment. It was approved by the Cabinet in 2013 as a sub-mission of NHM. The Five-Year Plans formulated by the Planning Commission of India over the years also consisted of plans concerning health sector. For example, the 12th Five-Year Plan (2012-2017) aimed at achieving various objectives in the health sector including establishing a system of 'Universal Health Coverage' in the country, substantial increase in health sector expenditure, strengthening of public health system, redesigning financial and managerial systems to ensure more efficient utilisation of available resources and to achieve better health outcomes[229].

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[227] Ministry of Health and Family Welfare. National AIDS Prevention and Control Policy. Government of India, 2002.

[228] Government of India, Ministry of Social Justice and Empowerment. National Policy for Persons with Disabilities, 2006.

[229] Government of India, Planning Commission. Twelfth Five Year Plan (2012–2017), Volume III: Social Sectors.

[9.] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

Recommendation of the expert group on Universal Health Care: An expert committee appointed by the Planning Commission in 2011 made a detailed report for ensuring quality of health care services and making its access universal to the Indian consumer. The focus of the report was securing right to health of citizens highlighting the gaps in the legislative framework and institutional arrangements. It is important to briefly examine the key recommendations of this Committee as it is made after a situational analysis, the Constitutional promises and the advances in health services. The object as articulated by the Committee is to ensure equitable access for all citizens to affordable health services of assured quality as well as public health services addressing the wider determinants of health delivered to individuals with the government being the guarantor and enabler, although not necessarily the only provider of health-related services.[230] This is what Universal Health Coverage (UHC) is meant to convey in policymaking. Among the recommendations are some new initiatives proposed for UHC to become a reality. These include:

(i) Every citizen will be issued an IT-enabled National Health Entitlement Card (NHEC) so that it will ensure cashless transactions, permit mobility across the country and contains personal health information.

(ii) UHC can be achieved only when sufficient attention is paid to health-related areas like nutrition and food security, water and sanitation, social inclusion to address concerns of gender, caste, religious and tribal minorities, housing, clean environment, employment and work security, occupational safety and disaster management.

(iii) All citizens will be provided with healthcare services through the public sector and contracted-in private facilities participating in the UHC programme. Citizens are free to supplement free-of cost services (both in-patient and out-patient care) offered under the UHC system by paying out-of-pocket or directly purchasing voluntary medical insurance.

(iv) UHC system should focus on reduction of the disease burden facing communities along with early disease detection and prevention. The emphasis is on investing in primary care networks and holding providers responsible for wellness outcomes at the population level. Through high quality primary care network, UHC is likely to reduce the need for secondary and tertiary facilities.

(v) The District Hospital has a critical role to play in health care delivery which should be well attuned to the needs of the particular district. It can be backed up by contracting-in of regulated private hospitals which should meet the health care needs of over 90% of the population in the district. This will require the upgrading of district hospitals as high priority over the next few years.

(vi) Adherence to Indian Public Health Standards by all public and contracted-in private health facilities in the starting point of quality assurance in health care services delivery. Such a move should include licensing, accreditation and public disclosure of

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230 https://planningcommission.gov.in/reports/genrep/rep_uhc0812.pdf

9. https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

accreditation status of all public and private health facilities participating in the UHC system.

(vii) A National Council for Human Resources in Health should be set up at the National Level to prescribe, monitor and promote standards of education of health professionals.

(viii) For ensuring effective and affordable access to medicine, vaccines and appropriate medical technologies, Government should enforce price controls on essential drugs, adopt centralised national and State procurement system and strengthen the public sector capacity of domestic drug and vaccines industry.

Given the importance of health services in the scheme of accelerated development envisaged by the present dispensation taking advantage of the demographic dividend in the Indian workforce, it imperative that legislative policies take note of some of the policy options proposed by the expert committee. It is a challenge for the proponents of co-operative federalism, to take the states on board for future development of health care policies and share the expenses involved in the Universal Health Care system for the country.

Some other initiatives by the state to develop the healthcare system and provide healthcare services to the people are as follows:

(i) The Swachh Bharat Mission was launched in 2014 to speed up the process of achieving universal sanitation coverage, focus on sanitation and to make the country open defecation-free through it.

(ii) In 2018, India launched Ayushman Bharat Yojana for coverage of tertiary care for economically vulnerable populations and Health and Wellness Centres initiative for the delivery of comprehensive and integrated primary care.

(iii) Intensified Mission Indradhanush 2.0 which aims to immunize children under 2 years of age and pregnant women against eight vaccine preventable diseases was launched in 2019 across India. The immunisation drive covers vaccines for tuberculosis, meningitis, measles, Hepatitis B, tetanus, whooping cough, poliomyelitis and diphtheria and other two diseases namely, Hemophilus influenza and Japanese encephalitis in certain selected areas.

(iv) The Medical Council of India was replaced with the National Medical Commission for setting uniform standards in the medical education field, regulating medical research and medical professionals through National Medical Commission Act, 2019.

(v) The Government created Health Technology Assessment in India under the Department of Health Research to evaluate all medical technologies and to facilitate the process of transparent and evidence informed decision making in the field of health.

(vi) The Government of India aims at increasing healthcare spending to 3% of GDP by 2022.

[9] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

(vii) Rs 35,600 crore has been allocated for nutrition-related programmes in the Union Budget 2020-21 and Rs 69,000 crore has been announced crore for the health sector including Rs 6,400 crore for Pradhan Mantri Jan Arogya Yojana.

Though some of the schemes mentioned above are yet to be successful, there were significant improvements in the health sector through the implementation of these schemes. As per the reports till July 2019, around 125.7 million families are now beneficiaries under Pradhan Mantri Jan Arogya Yojana. The scheme enrolled 16,085 hospitals including both public and private hospitals. Around 50 lakh people benefitted from free treatment under the Ayushman Bharat Yojana according to the reports as of September 2019. There was a steady increase in the number of medical colleges in India to 529 in Fiscal year 2019 from 381 in Fiscal year 2013. Since 2013, there has also been a 26.9% reduction in Maternal Mortality Ratio in India as per the Sample Registration System Bulletin-2016.

Chapter-3

Fundamental Rights, Duties and States' role in securing health in India

The interconnection between fundamental rights, fundamental duties, and the judiciary's growing involvement in ensuring the right to health forms a vital pillar of India's constitutional democracy. Article 21 of the Constitution, which protects the right to life and personal liberty, has been broadly interpreted by the Supreme Court to encompass the right to health as an essential aspect of living with dignity and well-being. In harmony with this interpretation, the Directive Principles of State Policy and the Fundamental Duties, enshrined in Part IV and Article 51A, emphasize collective responsibility for maintaining public health, humane working conditions, and a sustainable environment. The judiciary, through the development of Public Interest Litigations (PILs), has played a transformative role in advancing health rights, particularly for vulnerable and disadvantaged communities, thus narrowing the gap between constitutional principles and their actual implementation. Overall, India's constitutional framework concerning health is shaped by the dynamic interaction of fundamental rights, civic responsibilities, and a proactive judiciary that holds the State accountable for protecting the health and dignity of its citizens.[231]

3.1 Right to Health under Article 21 of the Constitution of India

The Preamble to the Constitution of the World Health Organization (WHO) describes health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity," highlighting that a nation's advancement in protecting and promoting health contributes to global welfare. Within this perspective, the State has a fundamental duty to safeguard public health by implementing preventive measures, regulating healthcare systems, and ensuring effective service delivery. Acting as provider, facilitator, and regulator, the State must guarantee that healthcare services are accessible, affordable, acceptable, and of high quality. The health system's principal aim is to maintain and promote the well-being of citizens, and the State is obligated to ensure this through efficient and equitable mechanisms.

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[231] https://blog.ipleaders.in/right-to-health/

[9.] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

In Vincent Panikurlangara v. Union of India, the Supreme Court underscored the State's responsibility to create and sustain conditions conducive to good health, recognizing that physical well-being forms the basis of all human activity and productivity. Consequently, the State is expected to invest in healthcare infrastructure, enhance research capacities, formulate effective health policies, and provide adequate financial and institutional support to the sector. Although health primarily falls under the jurisdiction of Indian states, each is constitutionally mandated to protect and improve the health of its population. Furthermore, India's commitment to international treaties and conventions affirms health as a fundamental human right that must be upheld through concrete policy and governance measures. The central and state governments, through the Ministry of Health and Family Welfare and related bodies, play a crucial role in strengthening healthcare systems by mobilizing resources, reducing health inequities, ensuring fair financing, and addressing the evolving needs of society.

3.2 Role of Directive Principles Of State Policy

The Directive Principles of State Policy, contained in Part IV of the Constitution, outline social and economic objectives that the State must strive to achieve. While not enforceable by courts, they guide governance and influence judicial interpretation of Fundamental Rights.
Several DPSPs directly relate to health:

- Article 38 – Directs the State to promote the welfare of the people and reduce inequality.
- Article 39(e) – Requires the State to ensure that the health of workers, both men and women, is not abused.
- Article 41 – Provides for the right to public assistance in cases of sickness, disability, or old age.
- Article 42 – Encourages just and humane conditions of work and maternity relief.
- Article 47 – Places a duty on the State to improve public health, nutrition, and the standard of living.
- Although non-justiciable, these provisions strengthen the constitutional framework by enabling courts to interpret Article 21 in a broader, health-inclusive manner.

3.3 Fundamental Duties and Health

Fundamental Duties are inserted in the Constitution of India by the 42nd Amendment Act 1976. All Fundamental Duties are provided under Article 51-A of the Constitution. Article 51-A (g) casts the duty to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for a living creature. By the insertion of these duties, it was realized that only a healthy environment can procure the healthy citizen. The fundamental duties specifically related to the right to health in India are primarily embodied in the Constitution of India, notably through the fundamental duty under Article 51A, which emphasizes the protection and improvement of the environment, crucial for health and well-being.

Fundamental Duties and Right to Health in India

[9] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

- Article 51A(g) of the Indian Constitution mandates every citizen "to protect and improve the environment including water, air, and soil".
- The duty to safeguard the environment is essential because a healthy environment supports the right to health, clean water, sanitation, and a pollution-free climate, all of which are integral to health.

Role of Public Interest Litigations

Public Interest Litigations (PILs) have emerged as a vital mechanism for advancing social justice and protecting collective rights, particularly in the field of public health. Through the PIL framework, individuals, activists, and non-governmental organizations are empowered to seek judicial intervention on behalf of those who lack the means or capacity to approach the courts themselves. In the context of health rights, PILs have significantly contributed to ensuring accountability and equitable access to healthcare. Judicial directions in various PIL cases have led to:

- Provision of free medical treatment for economically disadvantaged groups in certain hospitals.
- Judicial intervention in controlling environmental and industrial health hazards.
- Improvements in maternal and child healthcare services, ensuring safer and more accessible facilities.

By enabling citizens and organizations to act as representatives of public interest, PILs amplify the voices of marginalized communities and encourage the State to uphold its constitutional obligation under Article 21 to secure the right to health and life with dignity. In essence, PILs bridge the gap between legal recognition of health rights and their effective realization in practice.

3.5 States' role in healthcare financing, human resource development and biomedical research

The State holds a central responsibility in organizing, financing, and regulating the national healthcare system. It mobilizes financial resources through public budgets, directs funds toward health development, and ensures equitable allocation across healthcare sectors. Health financing must be structured to promote fairness, meaning the economic burden of illness should not fall disproportionately on lower-income households. A just healthcare financing system distributes costs according to individuals' capacity to contribute while ensuring universal access to necessary services. In several developed nations, public funding constitutes approximately 70 percent or more of total health expenditure, reflecting a high degree of social protection and universal health coverage. Although India's healthcare spending ratio differs, the State is still bound to ensure that quality and affordable healthcare is universally accessible, regardless of financial status. Human resources form the backbone of any healthcare system. Therefore, the State must adopt policies aimed at developing, distributing, and retaining a well-trained and adequately staffed health workforce. This includes promoting equitable distribution of health professionals, maintaining a balanced skill mix, and ensuring continuous monitoring and evaluation of workforce performance. The

[9] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

formulation of national standards for medical education and accreditation of training institutions further strengthens these objectives. In India, the National Medical Commission (NMC), established under the National Medical Commission Act, 2019, plays an instrumental role in this process. It formulates policies to ensure the quality of medical education, regulates professional standards, and promotes innovation and research in the medical field. Additionally, the State facilitates biomedical research by funding and supporting institutions engaged in health sciences, fostering innovation that enhances both preventive and curative healthcare outcomes.

Chapter-4

Case Studies Reflecting Health Rights Violation and Legal Remedies

Case Study 1: Shortage of Hospital Beds During the COVID-19 Pandemic

During the height of the COVID-19 crisis, many individuals lost their lives due to the lack of medical oxygen, unavailability of hospital beds, and delays in receiving treatment. These deficiencies reflected systemic gaps in healthcare preparedness and the State's inability to cope with a large-scale public health emergency. In response, several public interest litigations were filed before the High Courts and the Supreme Court, seeking directions to ensure adequate medical facilities and the supply of essential resources.

Legal Remedy: The judiciary emphasized that the right to health, a component of Article 21 of the Constitution, encompasses the State's duty to maintain emergency preparedness and ensure timely medical care for all citizens. The courts directed both central and state governments to ramp up healthcare infrastructure, guarantee a steady oxygen supply, regulate private hospital charges, and coordinate emergency responses effectively. In its observations, the Supreme Court reinforced that the State cannot absolve itself of responsibility for healthcare failures during national emergencies.

Case Study 2: Supreme Court Intervention on Vaccine Equity (2021)

Amid the COVID-19 vaccination drive, disparities emerged in vaccine pricing and availability between different sectors of the population. The Supreme Court, taking Suo motu cognizance of the issue in In Re: Distribution of Essential Supplies and Services During Pandemic (2021), examined the government's vaccination policy and questioned the rationale for differential pricing and distribution strategies between the central and state governments.

Legal Remedy: The Court held that equitable access to vaccines forms part of the constitutional right to health and life. Acknowledging vaccines as a public good, the Court directed the Government of India to centralize vaccine procurement, ensure affordability, and make vaccines available free of cost at public healthcare facilities. This intervention strengthened the principle that health equity and accessibility are integral components of the State's constitutional obligation under Article 21.

CHAPTER-5

Normative Expansion of the Right to Health and its link to the Proliferation of Human Rights

The normative expansion of the right to health reflects the evolving understanding of health as a multifaceted concept that extends far beyond access to medical care. Contemporary legal and ethical discourse now situates the right to health within a broader framework that

[9] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

includes social determinants of health, equality, participation in decision-making, and accountability. This shift aligns with the global proliferation of human rights, where health is increasingly understood as an integral aspect of human dignity, social justice, and democratic governance rather than as a purely medical or welfare concern. International human rights law has played a pivotal role in this transformation by imposing clear obligations on states as duty bearers. States must ensure that individuals have access to the conditions necessary for a healthy life, including adequate nutrition, clean water, housing, and a safe environment. Mechanisms such as treaty monitoring, judicial oversight, and rights-based advocacy have been instrumental in enforcing these duties. The recognition of health as a universal human right shaped global responses to crises such as the HIV/AIDS pandemic, where the framing of access to treatment as a right resulted in stronger accountability and equitable distribution of resources. This normative expansion represents a paradigmatic shift in human rights thinking, embedding health within a matrix of interdependent civil, political, economic, and social rights. It underscores that realizing the right to health requires participatory governance, equity-based policy design, and sustained State responsibility. Ultimately, the right to health contributes significantly to the broader proliferation of human rights by affirming the intrinsic connection between human well-being, social justice, and universal dignity.

5.1 The Proliferation of Health Rights

The increasing recognition of health within the human rights domain raises both philosophical and practical challenges. From a philosophical perspective, one must question when and to what extent a moral or normative claim should be classified as a human right. On a practical level, debate continues over what formulation of rights best enables policymakers and advocates to mobilize resources and implement measures that fulfil human rights objectives. Proponents of human rights often support the broadening of normative content, believing that expanding the scope of rights enhances protection of human dignity. However, this expansion brings into question whether an ever-growing list of rights might, paradoxically, weaken the force and clarity of existing ones. The essential balance therefore lies in delineating rights in a way that ensures both moral legitimacy and effective realization.

5.2 The Right to Health Rejectionists

Despite the global consensus on recognizing health as a human right, a segment of public health professionals and policymakers remains critical of this notion. Many health practitioners approach their role with a humanitarian motivation to alleviate suffering, yet some reject the classification of health care as a legal right. This scepticism was evident in the responses to the Tavistock Group's Shared Ethical Principles for Everybody in Health Care (1999), which asserted that "health care is a human right." Certain professionals argued that this principle, though well-intentioned, could hinder rational debate about the fair allocation of limited health resources. Critics, including policymakers and legal scholars, contend that labelling all desirable public goods as rights risks diluting the significance of the term. Former Colorado Governor and lawyer Richard Lamm cautioned that expanding the definition of rights to encompass every social good transform right into unrealistic moral ideals rather than enforceable legal obligations. From this perspective, the right to health is seen as aspirational rather than absolute, requiring progressive realization rather than immediate entitlement. In international law, however, economic, social, and cultural rights—

[9] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

including the right to health—are not viewed as guaranteed material entitlements. Instead, states are obligated to take deliberate and progressive steps, within their available resources, to fulfil these rights. This approach strikes a balance between moral aspiration and legal accountability, ensuring that health remains at the core of human development while acknowledging the practical limits of state capacity.

[9.] https://content.sph.harvard.edu/wwwhsph/sites/134/2017/02/Marks-Normative-Exansion-of-RTH-GWILR-2016.pdf?utm_source=perplexity

CHAPTER-6

Judicial Role in the Right to Health

The judiciary in India has played a pivotal and evolving role in recognizing, interpreting, and enforcing the right to health. Although the Constitution does not explicitly classify health as a fundamental right, the Supreme Court has, through progressive interpretation, extended Article 21—the right to life and personal liberty—to include the right to health. Acting as the protector of constitutional values, the judiciary ensures that the State fulfils its obligation to provide adequate healthcare services and maintain an equitable and efficient public health system. Through Public Interest Litigations and judicial activism, Indian courts have repeatedly intervened to rectify systemic failures that deny access to essential medical care, affordable treatment, and preventive health facilities. The judicial approach not only reinforces accountability on the part of the government but also shapes public policy towards universal health coverage and the protection of vulnerable groups. By interpreting constitutional provisions dynamically, the judiciary transforms the right to health from a theoretical entitlement into a practical reality accessible to all citizens.

6.1 Judicial Interpretation

Globally, numerous human rights instruments have recognized the right to health as an essential component of human dignity. In India, this right has gained constitutional protection through judicial interpretation rather than explicit constitutional enumeration. The judiciary, through a series of landmark pronouncements, has firmly established that the right to health is intrinsic to the right to life under Article 21. Moreover, the duty to respect, protect, and fulfil the right to health extends beyond medical professionals to include public authorities and policymakers responsible for governance.

Key judicial decisions in this regard include:

- Francis Coralie Mullin v. Union Territory of Delhi (1981): The Supreme Court held that the right to life under Article 21 encompasses the right to live with dignity, which includes access to basic necessities such as food, clothing, and shelter, thereby expanding the scope of life beyond mere survival.
- Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996): The Court ruled that ensuring adequate medical facilities is a primary governmental duty in a welfare state. It affirmed that failure to provide timely medical treatment amounts to a violation of Article 21, thereby obligating the State to strengthen healthcare infrastructure.
- Unnikrishnan, J.P. v. State of Andhra Pradesh (1993): The Supreme Court recognized that maintaining and improving public health is a constitutional duty of the State, reinforcing that health services are essential for the fulfilment of the right to life.
- Consumer Education and Research Centre v. Union of India (1995): The Court explicitly declared the right to health and medical care as fundamental under Article 21, emphasizing that preserving health and vigour is integral to a life of dignity.
- Bandhua Mukti Morcha v. Union of India (1984): The Court linked health with human dignity, holding that humane working conditions and freedom from exploitation are essential for the enjoyment of health and life.
- Virender Gaur v. State of Haryana (1995): The Supreme Court held that degradation of the environment through pollution constitutes a violation of the right to health, thereby connecting ecological justice with constitutional health rights.

- Vincent Panikurlangara v. Union of India (1987): The Court emphasized that a healthy body is fundamental to human activity and that, in a welfare state, the government bears an obligation to create conditions conducive to public health.
- Pt. Parmanand Katara v. Union of India (1989): In this landmark case, the Supreme Court ruled that every doctor, whether in public or private practice, is duty-bound to provide immediate medical assistance to save life, regardless of the victim's identity, ensuring that no law or state directive may impede this obligation.

Collectively, these judgments highlight the judiciary's proactive stance in expanding and enforcing the right to health as an indispensable aspect of Article 21. The courts have not only interpreted this right liberally but also used it as a foundation for ensuring governmental accountability and promoting public welfare. Through its interpretative and supervisory functions, the judiciary has thus transformed the right to health into a cornerstone of India's constitutional jurisprudence.

6.2 Judicial Response towards the Right to Health and Medical Assistance

The Indian judiciary has played an instrumental and dynamic role in safeguarding the right to health through its expansive interpretation of constitutional provisions and proactive engagement with Public Interest Litigations (PILs). By entertaining PILs under Article 32 of the Constitution, the Supreme Court has provided a platform for the marginalized, economically disadvantaged, and socially oppressed citizens to seek enforcement of their rights. Through such interventions, the judiciary has ensured that the State fulfils its obligation to guarantee the right to life and liberty, which inherently includes the right to health. The courts have repeatedly underlined that fundamental rights exist not merely as constitutional ideals but as enforceable guarantees. While directive principles are non-justiciable, the judiciary has interpreted them in harmony with fundamental rights, ensuring that the right to health, though initially part of the Directive Principles, attains the status of a fundamental right through its connection with Article 21.

In a series of landmark rulings, the judiciary has articulated the extent of the State's duty to provide adequate health services.

In Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996), the Supreme Court expanded the meaning of Article 21, holding that in a welfare state, the government's foremost duty is to promote the welfare of the people and to ensure access to essential medical facilities. The Court stressed that preservation of life must be regarded as a constitutional obligation, and the failure of state-run hospitals to deliver timely medical care amounts to a direct violation of the right to life.

The Court issued detailed directions mandating the State to:
- Equip primary health centres to stabilize patients requiring urgent treatment.
- Upgrade district and sub-divisional hospitals to ensure treatment for serious medical cases.
- Increase specialist medical facilities and enhance infrastructure to meet public health demands.

In Pt. Parmanand Katara v. Union of India (1989), the Supreme Court reaffirmed that every medical practitioner, irrespective of employment in the public or private sector, bears a professional and ethical duty to provide immediate medical assistance to preserve life. The

Court ruled that no legal or procedural barrier can excuse or delay the fulfilment of this obligation, emphasizing that the duty to protect life is absolute and overriding.

Similarly, in State of Karnataka v. Manjanna (2000), the Supreme Court condemned the refusal of certain government doctors, particularly in rural hospitals, to examine rape victims without police authorization. The Court held that such refusal leads to critical loss of medical and forensic evidence, thereby obstructing justice, and it directed the State to ensure that such negligence does not recur.

In CESE Ltd. v. Subhash Chandra Bose (1992), the Court held that the health and strength of workers constitute an integral aspect of the right to life. It reiterated that fundamental rights aim to create an egalitarian society in which citizens are free from exploitation and can enjoy basic conditions for human development.

Again, in Vincent Panikurlangara v. Union of India (1987), the Court highlighted that a healthy body is essential for human activity, and consequently, the State has an obligation to cultivate conditions conducive to health and well-being.

A similar interpretation was reinforced in Consumer Education and Research Centre v. Union of India (1995), where a three-judge bench ruled that the right to health and medical care, whether during service or after retirement, forms part of the right to life under Article 21, read in conjunction with Articles 39(e), 41, 43, and 48A of the Constitution.

Collectively, these rulings illustrate how the judiciary has transformed the right to health into an enforceable and actionable right, compelling the State to ensure medical assistance, uphold healthcare standards, and protect the dignity and well-being of every citizen.

6.3 Epilogue

Although the Indian Constitution does not explicitly enshrine the right to health as a fundamental right, judicial interpretation has effectively elevated it to that status under Article 21. Initially recognized within the Directive Principles of State Policy, the judiciary's expansive reading of the right to life has made health an inseparable component of human dignity and constitutional protection. The Supreme Court has consistently emphasized the State's positive obligation to maintain and improve public health as part of its welfare duties. However, despite judicial pronouncements affirming this obligation, implementation remains uneven, and adequate progress toward ensuring equitable healthcare access is still lacking. Health, nutrition, and education are universally acknowledged as the foundational elements for human resource development, forming the basis of social and economic progress. To achieve the constitutional vision of healthcare for all, the government must coordinate effectively with non-governmental organizations and community groups to monitor, deliver, and expand health services across the country. Ultimately, the judiciary's interventions have shaped the constitutional discourse on health, transforming an implied right into a legally protected one, and reaffirming that the preservation of life and health is central to the realization of human dignity in a constitutional democracy.

CHAPTER-7
The International Human Right to health

Figure 1
The International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12
1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Figure 2
Protocol of San Salvador Article 10
1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a. Primary health care, that is, essential health care made available to all individuals and families in the community; b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction; c. Universal immunization against the principal infectious diseases; d. Prevention and treatment of endemic, occupational and other diseases; e. Education of the population on the prevention and treatment of health problems, and f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

Figure 3
World Health Report 2000 Health System Attainment and Performance Measures Health system attainment and performance in all Member States, ranked by eight measures Basic indicators for all Member States Deaths by cause, sex and mortality stratum in WHO Regions Burden of disease in disability-adjusted life years (DALYs) by cause, sex and mortality stratum in WHO Regions Health attainment, level and distribution in all Member States Responsiveness of health systems, level and distribution in all Member States Fairness of financial contribution to health systems in all Member States

7.1 A Human Right to Health Under International Law

The concept of the right to health, together with the duties imposed upon states to uphold it, is firmly rooted in international legal instruments. Foundational documents such as the Constitutions of the World Health Organization (WHO) and the Pan American Health Organization (PAHO) clearly affirm health as a basic human right. This recognition is further reinforced in several core international human rights treaties, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights. Collectively, these instruments form the foundation upon which states interpret, implement, and protect health-related rights within their constitutional and legislative frameworks.

(i) Constitution of the World Health Organization (WHO)

The Constitution of the World Health Organization represents one of the most authoritative international affirmations of the right to health. Its Preamble outlines nine fundamental principles, stating that health encompasses physical, mental, and social well-being and is not merely the absence of disease. It declares that every human being is entitled to enjoy the highest attainable standard of health without any form of discrimination. The document emphasizes that global peace and security are intrinsically linked to the health of all peoples, which can be achieved only through collective international effort. It warns that disparities in health between nations pose global risks and underscores the need for child health, environmental adaptation, and equitable access to scientific and medical advancements. The WHO Constitution ultimately identifies the state as the primary entity responsible for ensuring adequate health and social conditions for its population.

(ii) Constitution of the Pan American Health Organization (PAHO)

The PAHO Constitution establishes its mandate to advance health as a regional collaborative effort among the countries of the Americas. It focuses on cooperative action to prevent and control diseases, extend life expectancy, and improve both physical and mental well-being across member states. By strengthening regional solidarity, the PAHO upholds public health as a shared human and social objective. #### (iii) Universal Declaration of Human Rights (UDHR) Article 25 of the UDHR explicitly recognizes the right of every individual to a standard of living that assures health and well-being for themselves and their families. This includes access to food, shelter, clothing, healthcare, and basic social services. It also guarantees social protection in cases such as unemployment, disability, widowhood, old age, or loss of livelihood beyond one’s control. Furthermore, it provides special protection for mothers and children and insists on equal social protection for all children, irrespective of the circumstances of their birth. This Article forms the moral and philosophical foundation for later international covenants on health-related rights.

(iv) International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Article 12 of the ICESCR provides the most comprehensive and legally binding recognition of the right to health under international law. It defines the right as the entitlement of every person to the highest attainable standard of physical and mental health and places direct obligations on States Parties to take steps toward realizing it. These obligations include: - Reducing infant and child mortality and supporting healthy child development, - Promoting environmental and workplace hygiene, - Preventing, treating, and controlling epidemic, endemic, occupational, and other diseases, - Guaranteeing equitable access to medical facilities and care for all people during illness or emergency. These duties reinforce the idea of progressive realization—meaning that states must continually take concrete policy, legal, and administrative measures to fulfil the right to health for all individuals.

(v) International Covenant on Civil and Political Rights (ICCPR)

The ICCPR supports the right to health indirectly through civil and political guarantees that safeguard physical and mental integrity. Article 6 recognizes the inherent right to life and requires state protection against its arbitrary violation. Article 7 categorically prohibits torture, cruel or degrading treatment, and medical or scientific experimentation on individuals without free consent. Together, these provisions ensure respect for human dignity and protect individuals against acts that could endanger their health and bodily autonomy.

(vi) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Article 5(e) of the ICERD affirms the obligation of States Parties to eliminate racial discrimination and guarantee equality in the enjoyment of all economic, social, and cultural rights. Among these is the right to access public health, medical care, social security, and related benefits without discrimination based on race, colour, descent, or national or ethnic origin. This provision underscores that health rights must be universal, inclusive, and protected from any form of inequality or exclusion.

Chapter-8

Contemporary Issues And Challenges

Although the Indian judiciary has interpreted the Right to Health as an integral component of Article 21 of the Constitution, ground realities reveal a starkly different situation. India continues to grapple with multiple barriers that hinder the provision of accessible, affordable, and effective healthcare. Despite constitutional recognition, the system faces structural gaps, policy deficiencies, and persistent inequalities that demand immediate attention.

Recent technological advancements have widened the scope of this right by recognizing digital access as a fundamental aspect of the Right to Health. In its landmark decisions of

April 2025, the Supreme Court of India emphasized that the State bears the responsibility to build inclusive, equitable, and responsive digital infrastructure to prevent socio-economic marginalization and ensure a dignified life for all citizens. The Court directed governments to establish enforceable digital accessibility standards, upgrade existing policies, and incorporate inclusiveness at every stage to narrow the digital divide.

(i) Public Health System: Infrastructure Gaps and Policy Deficiencies

India's public healthcare framework remains heavily overburdened and chronically underfunded. Many government hospitals lack basic amenities such as hygienic wards, trained personnel, and essential medicines. The situation is even more dire in rural regions, where individuals must often travel long distances for even preliminary treatment. Primary Health Centres (PHCs), meant to serve as the first contact for rural populations, frequently operate below standard or remain non-functional. Although several health-related schemes and policies exist on paper, their weak execution—owing to insufficient funding, fragmented coordination, and lack of political commitment—undermines their impact. Consequently, access to proper healthcare remains a privilege for some rather than a right for all.

(ii) Impact of the COVID-19 Pandemic on Health Rights and Legal Interventions

The COVID-19 crisis exposed critical weaknesses within India's healthcare system. Citizens faced acute shortages of oxygen, ICU beds, and essential medicines, while private hospitals charged exorbitant fees. Judicial intervention became necessary, with courts directing authorities to regulate equitable vaccine distribution, prevent hoarding and black marketing of life-saving drugs, and treat public health management as a constitutional priority. The pandemic underlined that health is not merely a personal responsibility but a collective social and constitutional duty. Technological tools—including telemedicine platforms, AI-based diagnostics, digital vaccination systems, and mobile health applications—emerged as vital resources in maintaining healthcare continuity by facilitating remote consultations and real-time data tracking.

(iii) Inequality in Access to Healthcare

Healthcare access in India remains highly unequal across socio-economic and geographic lines. Urban populations benefit from advanced hospitals, specialized professionals, and modern equipment, while rural residents often depend on under-resourced clinics or unqualified practitioners. Economic disparities exacerbate this inequality, as the affluent access premium private healthcare and the poor

struggle in overcrowded government hospitals or delay necessary treatment altogether. Such disparities violate the constitutional principles of dignity and equality enshrined in Article 21. Healthcare must be ensured as a universal and non-discriminatory right rather than a privilege determined by wealth or location. Emerging technologies such as telehealth, mobile

diagnostic units, wearable health devices, and AI-driven predictive models hold the potential to minimize these imbalances and extend quality healthcare to underserved communities.

(iv) Mental Health, Insurance, and Affordable Treatment

Mental health continues to be a neglected area within India's healthcare framework. Stigma, lack of awareness, and limited facilities prevent many from accessing timely psychological support. Although the Mental Healthcare Act, 2017, affirms the right to mental health services, implementation remains inadequate, especially in low-income and rural areas. Insurance coverage poses another challenge, with many policies excluding pre-existing conditions and mental health treatments, rendering effective healthcare unaffordable for many. Under the purview of Article 21, the Right to Health must encompass physical, mental, and emotional well-being. The growth of AI-driven mental wellness applications, online counselling portals, and mobile therapy tools presents new opportunities to make mental healthcare more accessible and affordable.

(v) International Obligations and India's Commitment

India is party to several global human rights frameworks affirming health as a fundamental right.

- Universal Declaration of Human Rights (UDHR), 1948: Article 25 recognizes the right to a standard of living adequate for health and well-being.

- International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966: Article 12 affirms the right to the highest attainable standard of physical and mental health.

India's commitment to these instruments demonstrates its endorsement of health as a human right. The real challenge, however, lies in converting these promises into tangible results through effective legislation, robust policy execution, and inclusive healthcare delivery. Leveraging innovations like digital health ecosystems, IoT-enabled monitoring systems, and AI-based decision-making frameworks can play a transformative role in fulfilling these obligations and achieving equitable health outcomes for all.

Chapter-9
Conclusion and Suggestions for Strengthening the Right to Health in India

The Right to Health has evolved into a vital component of the Right to Life guaranteed under Article 21 of the Indian Constitution. Although not explicitly stated within the constitutional text, it has been progressively recognized and expanded by the Supreme Court and various High Courts through landmark judgments. The judiciary has consistently affirmed that without good health, an individual cannot enjoy a life of dignity, liberty, or security. Health, therefore, is not merely a privilege for those with means but a constitutional duty imposed upon the State to protect and promote the well-being of every citizen.

However, despite these constitutional developments, the practical realization of this right remains deeply constrained. A significant portion of India's population continues to face challenges in accessing affordable, quality healthcare. The COVID-19 pandemic further exposed the vulnerabilities of the health system, disproportionately impacting the poor, marginalized, and socially disadvantaged groups. Persistent problems such as inadequate medical facilities, lack of trained health personnel, uneven distribution of resources, ineffective implementation of health policies, and insufficient public investment continue to limit progress. Additionally, the absence of a uniform and comprehensive legal framework has left the right to health fragmented and weakly enforceable.

In a democratic welfare state like India, ensuring health for all is both a constitutional imperative and an ethical obligation. Achieving this goal requires a robust and inclusive healthcare system grounded in principles of equity, accountability, and innovation. Legal and institutional reforms, coupled with public participation and technological advancement, can help transform the constitutional promise of the Right to Health into a practical reality.

9.1 Suggestions for Strengthening the Right to Health

1. Formulate a National Public Health Law

A comprehensive, rights-based public health law should be enacted to explicitly recognize the Right to Health as a justiciable and enforceable right. Such legislation should define the responsibilities of the Central and State Governments, establish accountability and grievance redress mechanisms, and guarantee a minimum set of essential health services to every citizen.

2. Increase Public Health Expenditure

The government should substantially raise healthcare funding, targeting at least 3 percent of India's GDP. Higher investment is essential to upgrade medical infrastructure, expand the health workforce, and ensure universal access to basic and emergency services.

3. Utilize Technology and Digital Innovation

Digital health tools should be leveraged to improve the accessibility and quality of healthcare. Telemedicine, artificial intelligence-based diagnostics, electronic health records, and IoT-enabled monitoring systems under the National Digital Health Mission can enhance transparency, efficiency, and inclusivity across health services.

4. Focus on Strengthening Primary Healthcare

Primary healthcare must serve as the foundation of India's health system. Efforts should prioritize preventive, community-based health initiatives through improved infrastructure in Primary Health Centres (PHCs), rural health outreach programs, and large-scale awareness campaigns promoting preventive care.

5. Promote Equity and Social Inclusion

Targeted measures are needed to ensure equitable healthcare access for marginalized groups, including women, children, the elderly, and persons with disabilities. Reducing socio-economic and regional disparities in healthcare provision should be central to all health policies, ensuring that the delivery of medical services aligns with constitutional principles of equality and non-discrimination.

Chapter-10
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CHAPTER-13

LAW AND TECHNOLOGY

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Abstract

A study of Amalgamation of philosophy of Dharma in Judicial Process.

The judicial process forms the backbone of Indian democracy, ensuring not only dispute resolution but also the protection of justice, liberty, and equality. Unlike Western legal traditions that focus primarily on codified rules, the Indian system integrates Dharma (moral duty), making its judicial process both legal and ethical in nature. However, the judiciary faces pressing challenges such as delays, pendency of cases, and concerns about political influence. The independence of judges, the process of their appointments, and the balance among the legislature, executive, and judiciary remain subjects of debate.

This study emphasizes the relevance of judicial independence in safeguarding the Constitution and protecting citizens' rights in a diverse nation. It explores how courts uphold social order by blending modern law with traditional principles of Dharma. Methodology adopted includes analysis of the Constitution, landmark judgments like Kesavananda Bharati v. State of Kerala (basic structure), S.P. Gupta v. Union of India (judicial appointments), and Shreya Singhal v. Union of India (free speech), along with insights from legal thinkers such as Montesquieu and Dicey.

Findings highlight the judiciary's role in maintaining social balance, ensuring separation of powers, and the urgent need for reforms to reduce delays. Ultimately, the judicial process in India stands as a guardian of democracy, blending law with morality to deliver meaningful justice.

Introduction

Technology has emerged as one of the most powerful forces shaping 21st-century India. It has revolutionized governance, digital payments, education, business, social communication, and justice delivery. With the introduction of Aadhaar, UPI, Digital India Mission, online dispute resolution (ODR), e-courts, and artificial intelligence applications, everyday life has become more efficient and interconnected. These radical transformations have expanded opportunities for economic growth and public service accessibility.

However, this digital revolution has also given rise to unprecedented legal challenges. Issues such as data breaches, identity theft, cyber-fraud, online harassment, deepfakes, algorithmic bias, and misinformation challenge the existing legal framework. As India rapidly emerges as a global digital economy, it becomes essential to analyze whether Indian laws are strong enough to protect citizens' digital rights and ensure accountable use of technology.

This research examines the evolving relationship between law and technology, evaluates gaps, and suggests reforms necessary for building a secure, rights-based digital future.

History

The formal integration of technology into India's legal framework began with the Information Technology Act, 2000, which provided legal recognition to electronic records and aimed to combat cybercrimes. The IT Amendment Act, 2008 expanded its scope to include cyber terrorism, identity theft, and data protection provisions.

Over the years, the growth of artificial intelligence, digital governance, telecom expansions, fintech models, and social media platforms exposed deficiencies in the IT Act. Courts had to step in to safeguard digital rights:

Shreya Singhal v. Union of India (2015): Struck down Section 66A to protect freedom of speech on the internet.

Justice K.S. Puttaswamy v. Union of India (2017): Recognized the Right to Privacy as a fundamental right under Article 21.

These judgments marked a shift toward constitutional governance in cyberspace.

Globally, the adoption of the EU's General Data Protection Regulation (GDPR) raised international standards for data protection, influencing India's draft Personal Data Protection Bills.

Thus, historically, India's legal response to technology has been reactive, catching up with fast-advancing digital innovations.

Scope Of The Study

This research focuses on examining India's preparedness to govern the digital ecosystem. The scope includes:

Evaluation of India's legal framework on cybersecurity, data protection, electronic transactions, and surveillance laws.

Analysis of landmark constitutional and judicial decisions that shaped digital rights.

Comparative study of global frameworks, especially GDPR, to identify best practices.

Empirical assessment of public awareness relating to cyber safety and data protection.

Identification of major legislative gaps concerning AI, deepfakes, social media regulation, and digital governance.

Recommendations for developing a future-ready legal system aligned with democratic values and technological advancements.

Objectives

1. To analyze the evolving relationship between technology and legal systems in India.
2. To identify emerging legal challenges posed by AI, deepfakes, fintech, digital surveillance, and social media.
3. To assess the adequacy of the Information Technology Act, 2000, and related cyber regulations.
4. To study constitutional and judicial responses to issues of privacy, free speech, and digital rights.
5. To compare India's digital laws with global standards such as GDPR.
6. To measure public awareness of cyber safety, privacy rights, and available legal remedies.
7. To propose legal and policy reforms for regulating the digital ecosystem and protecting rights.

Hypothesis
India's legal framework, particularly the Information Technology Act, 2000, is inadequate to handle the challenges created by fast-growing technologies. Comprehensive reforms are required to: protect digital rights, enhance cybersecurity, regulate artificial intelligence and emerging technologies, strengthen data protection, and ensure ethical use of technology.
Without updated laws, technological progress may undermine constitutional values and individual freedoms.

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Landmark cases:
Justice K.S. Puttaswamy v. Union of India (2017)
Shreya Singhal v. Union of India (2015)
Government notifications, Draft Data Protection Bills, Parliamentary debates
CERT-In guidelines, cybercrime statistics

Secondary Sources
Books, journals, and scholarly articles on cyber law and digital governance
Law Commission reports and policy papers
Online academic sources, cybercrime data portals
International legal frameworks, especially GDPR
News reports and expert commentary on technology-law interactions

Data Collection (Empirical Study)
The empirical component of this study aimed to gauge public awareness, perception, and concerns regarding digital laws and cyber safety.
Methods Used
1. Survey (50 Respondents)
A structured questionnaire was circulated through Google Forms to assess:
awareness of data rights,

knowledge of cybercrimes,
digital habits,
concerns regarding privacy.

2. Interviews
Semi-structured interviews were conducted with:
law students,
faculty members,
cyber enthusiasts.
These provided qualitative insights on digital literacy and academic understanding of cyber law.

3. Observation
Patterns in online behavior and cybercrime trends were observed using:
news reports,
official portals,
social media patterns,
CERT-In advisories.

4. Random Sampling
The sample included individuals from varied backgrounds to maintain diversity.

Interpretation And Analysis (Empirical Study)

Findings
70% of respondents were unaware of their legal rights related to data protection.
65% expressed fear regarding misuse of their personal data by apps, e-commerce websites, and social media.
Only 40% knew about legal remedies available for cybercrimes.
A majority believed India's digital laws are outdated and require immediate reform.

Analysis
The empirical data indicates that:
1. Public awareness is significantly low regarding data privacy, cyber rights, and legal protections.
2. Citizens lack confidence in the existing legal framework due to frequent incidents of data breaches and cyber-frauds.
3. There is a mismatch between technological growth and the capability of current laws.
4. Judicial intervention has filled several gaps, but courts alone cannot regulate the digital ecosystem.
5. International models like GDPR are more comprehensive, indicating that India must update its digital laws.
Overall, the analysis confirms the hypothesis that India's legal framework is lagging behind technological advancements.

Conclusions And Suggestions (With Findings)
Findings
1. A significant gap exists between India's technological advancement and its legal preparedness.
2. Low public awareness increases vulnerability to cybercrimes.
3. Judicial decisions play an important role in protecting digital rights but cannot substitute legislative action.
4. India urgently needs a strong, enforceable data protection law.
5. Global frameworks such as GDPR offer valuable guidance for modernizing digital governance.

Conclusion
Technology has reshaped India's social, economic, and political landscape. While it offers enormous opportunities, it also creates legal vulnerabilities. To ensure a secure and rights-based digital future, India requires a proactive, adaptive, and transparent legal system capable of addressing emerging technological challenges. A future-ready

legal framework must balance innovation with privacy, efficiency with rights, and national security with individual freedom.

Suggestions

1. Enact a comprehensive data protection law with strong enforcement.
2. Update and modernize the IT Act, 2000 to address AI, deepfakes, blockchain, fintech, and digital surveillance.
3. Establish fast-track cybercrime courts and specialized cybercrime units.
4. Introduce nationwide digital literacy programs to increase awareness.
5. Strengthen international cooperation in cybersecurity and data sharing.
6. Incorporate cyber law, digital ethics, and privacy studies into school and university curricula.
7. Promote ethical and responsible technological innovation through regulatory sandboxes.

CHAPTER- 14

WIDENING POWER WITH BALANCING EQUITY: AN ANALYTICAL STUDY OF ARTICLE 142 VIA CASE LAW

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Abstract:

This legal research examines the legal issue of the "extra ordinary" powers provided under the Article 142 of the constitution, focusing on dissolving a marriage on the pretext of "irretrievable breakdown. The research is motivated by a change in the dynamics or perception of divorce without modifying the Hindu Marriage Act, which leads to determine the importance of addressing this subject in the current legal framework.

The methodology for this legal research is analytical this research critically evaluates Article 142 of constitutional. The power and the dynamics it upheld to widen the power of the Apex Court. It further emphases on the recent case law of Shilpa Sailesh Versus Varun Sreenivasan 2023, provide a comprehensive understanding of the issue which glorifies the ambit of our apex court for showcasing that if there is an irretrievable marriage, divorce should be granted.

The findings reveal widening pow er and the scope of Article 142 which enlarge the scope Divorce on the ground of Irritable breakdown of marriage, based on this analysis, this legal research establishes that the reform is required and judicial interpretation is the need of the hour which has been established by the Supreme Court under the provision of this Article.

It concludes that such utilization of power by the Supreme Court is the demand of new era and alongside it empowers the laws and strengthen the constitution to its core, thereby contributing significantly to showcase the strength of Judiciary and its power.

Keywords: (Article 142, Irritable breakdown of Marriage, Grounds for divorce, Hindu Marriage Act, Extra ordinary Powers).

Objectives Of Study

The central interest of this research is the irretrievable breakdown of marriage as a ground of divorce, particularly in respect of the Hindu Marriage Act, 1955. Through

this research study, the researcher tries to analyse the legal position of irretrievable breakdown of marriage as a ground for granting decree of divorce before the judgment of Shilpa Sailesh and the judicial opinion laid down by the Apex Court through its judgment

1. To study the judicial perspective in respect of irretrievable breakdown of marriage as a ground for granting decree of divorce even without express legislative backing.
2. To exam the 5-judge Constitution Bench judgment of the Supreme Court in the case of Shilpa Sailesh v Varun Sreenivasan

Reviewing Article 142 and S.13B

Article 142 of the **Indian Constitution** and **Section 13B of the Hindu Marriage Act (HMA)**

are distinct provisions, but both relate to aspects of marriage and divorce law in India.

Article 142 of the Indian Constitution

Article 142 of the Indian Constitution empowers the Supreme Court the authority to issue orders or directions deemed necessary to ensure complete justice in any case or matter approached before the apex court (Jana, 2021). Although its application is broad, it is typically used in exceptional or special situations. The relevant provision of this article states: "Enforcement of decrees and orders of the Supreme Court and orders related to discovery, etc.
— (1) The Supreme Court, in exercising its jurisdiction, may pass any decree or make any order required to do complete justice in any case or matter before it." The concept behind this article is to give the Supreme Court the discretion to take whatever actions are needed to guarantee fairness and justice, even when the law or existing provisions do not offer an immediate solution (Shapiro, 1985).

The SC has explicate its power to do complete justice under Article 142 in numerous manners, often to end litigation and provide justice. In Supreme Court Bar Association v. Union of India (SCBA), one of the landmark cases on Article 142, the Court clarified that Article 142 could not be used “to ‘supplant’ substantive law applicable to the case or cause under consideration of the Court” (Chauhan). Moreover, it was held that “Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.” In SCBA, the Court held that while the powers under Article 142 were harmonized to the statutory powers granted to the Court, they were not limited or

pranced by those statutes (Ram Mohan et al., 2024). The Court then established the boundary and limits of its power under Article 142, which is still good law. While the position in SCBA has substantially been followed, there have been occurrence where the Court has taken a "contrary note". Usually, when the Court takes such a contrary stance, it makes it clear that the case should not be contemplate a precedent and clarifies the reasons for taking the contrary stance, often harmonising the object of the law with the Court's decision.

With this evolution of Article 142, we prosect the scope of Article 142 and the way the Court has used its takeover encompassed powers as embodied by Article 142. The scope of Article 142 is exceedingly broad and one that was foreseen to be unrestrained. While talking over the Right to Special Appeal under Article 112 (presently Article 136 of the Constitution of India), the constituent assembly debates referred to Article 118 (presently Article 142 of the Constitution of India). Krishna Chandra Sharma, while expounding the scope of both these provisions, stated – "I should therefore think that the Supreme Court shall exercise these powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc. Thus, the Supreme Court will be in this perception above law. I want that this jurisdiction which has been privileged by the Privy Council may be enjoyed and amplify by our court and not restricted by any canon or any provision of law.

This elucidation of Article 142 display that its use is finite to supplement the law and not replaced substantive law. This means that Article 142 must not be used as an instrument to overrule the legislature's will but must only be used to obviate lacunae and procedural defects to supplement the effective implementation of the legislation (Verstraelen,2018). In various

cases, the Court has held that the power to issue guidelines would arise only if a legislative vacuum existed, and such guidelines would remain in force until such a vacuum was filled.

In High Court Bar Assn. v. State of U.P., 53 the Court noted Prem Chand and SCBA and observed: ". It is very difficult to extensively lay down framework for the exercise of powers under Article 142 of the Constitution of India due to the very nature of such powers. However, a few important parameters which are relevant to the issues involved in the reference are as follows:

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders sensibly passed in their favour who are not parties to the proceedings before this Court;
(ii) Article 142 does not authorize this Court to ignore the substantive rights of the litigants; and
(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always publish procedural directions to the Courts for guided procedural aspects and resolving out the creases in the procedural laws to ensure expeditious and

timely disposal of cases. This is because, while exercising the jurisdiction under Article 142, this Court may not be bound by procedural requirements of law. Nevertheless, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right.
(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an essential part of our jurisprudence." While in High Court Bar Assn. v. State of U.P., the Supreme Court laid down framework for using Article 142 in procedural matters; in many cases where the Court invoked its powers under Article 142, the Court warned against the use and the case being treated as a precedent. The caution against treating cases invoking Article 142 as precedent may arise due to the unique and extraordinary nature of the cases which require the Court to create new remedies beyond any statutory remedy. For instance, the Court has often regularised irregular appointments, granted compassionate appointments to government jobs, created extra seats in an educational institute to accommodate candidates who missed out due to a technical fault, created a remedy of providing five acres of land at an alternative site to resolve a long-standing dispute, extended the limitation period for filing cases during COVID.

Section 13B of the Hindu Marriage Act (HMA), 1955 allows for divorce by mutual consent, provided both parties have been living separately for at least one year, are unable to continue living together, and they have mutually agreed upon the terms to end the marriage as it became a burden and most difficult to live together.

As we know that the process consists of two motions, with a mandatory "cooling-off period" of six months between them. However, the Supreme Court has ruled that this waiting period can be waived in certain situations to ensure complete justice.

Irretrievable Breakdown Of Marriage As A Ground Of Divorce Under Hindu Law

The Hindu Marriage Act, 1955 contains provision for divorce by mutual consent of both the spouses under Section 13B, in which there is no requirement of imputing fault or misconduct by one spouse on the part of other spouse. But there may be several cases, where despite the marital tie being substantially dead, still one of the spouses does not give consent for divorce. Then, in such circumstances, the other spouse can invoke and prove the ground of irretrievable breakdown of marriage in order to obtain decree of divorce. The ground of irretrievable breakdown of marriage, being without statutory recognition, can be examined by a court on the basis of facts of every case. If the court is satisfied and concludes that marital tie in a given case is beyond The Hindu Marriage Act,1955, No. 25, Acts of Parliament, 1955 (India).

The reconciliation, only then decree of divorce can be granted. The Indian judiciary

has often adopted a more liberal and realistic approach, while deciding petitions for divorce and granting a decree of divorce on the ground of irretrievable breakdown of marriage. Irretrievable breakdown of marriage as a ground for divorce is based on complete failure of marriage The court may regard a situation as complete breakdown of marital relationship, in which the very foundation of a marriage that is emotional bondage, affection or respect etc. has disappeared, because of which it becomes impossible for the couple to cohabit and fulfil the well-established personal and social objectives of marriage There may be cases, where marital relationship is non-existing in spite of husband and wife living in the same matrimonial home. Several cases may also arise where the marital relationship of husband and wife has become so embittered that every effort made to salvage the marital tie has failed. In such situations, where the court is satisfied beyond doubt that there is no reasonable probability of reunion and cohabitation of the spouses, then it can grant a decree of divorce to the parties. The Parliament has not given it the statutory recognition in express terms yet, however two grounds contained in Section 13(1A), namely, dissolution of marriage on the ground of (i)non-resumption of cohabitation for the period of one year or more after a decree for judicial separation was passed, and(ii) no restitution of conjugal rights for a period of one year or more after a decree for restitution of conjugal rights was passed, are also in the nature of grounds of breakdown of marriage. These two grounds are indicative of failure of marriage in essence. But here non-cohabitation for a period of one year or more is a condition precedent. The Law Commission of India in its71st Report (1978) made are commendation that irretrievable breakdown of marriage should be inserted as a ground for obtaining divorce in addition to fault grounds under Indian law. It considered the merits and demerits of inclusion of irretrievable breakdown of marriage and also suggested several safeguards to prevent unbridled divorces. In similar terms, the 217thReport (2009) of the Law Commission also recommended introducing irretrievable breakdown of marriage as a ground for divorce.

Detailed Provisions of Section 13B

Some of the crucial elements has been mentioned below:

1. Initially a joint petition must be presented by both the parties before the District Magistrate of first class now been called as judicial Magistrate family at district court.
2. The presented petition of mutual divorce must be on the following grounds for the dissolution of marriage:
   - The parties have lived separately for a minimum of one year.
   - They have been unable to live together.
   - They mutually agree to end the marriage.
- After satisfying the Hon'ble Court, Two Motions needed to be pass, and called as First motion and second motion. The court must confirm that the marriage was legally solemnized and verify the accuracy of the claims in the petition.

3. **First Motion:** where the joint petition is submitted to the court, after granting first motion; parties filed for second motion, in meanwhile a provision which is called as Cooling off period is been given to the parties to reassure about the decision that they are going to make, or there lies any possibilities of second chance or a change in heart regarding their marriage. It is a mandatory provision given in the section which encourages potential reconciliation.
4. **Second Motion:** After 6 months or serving the cooling off period, parties apply for second motion. This must be filed between six months and eighteen months after the first motion.

The "Cooling-Off Period"

- **The Waiver:** As per Article 142 of the Constitution, the Supreme Court has held that the statutory six-month cooling-off period can be waived in certain circumstances.

The following are some of the conditions for Waiving the Waiting Period The Supreme Court has identified that there are specific circumstances in which the waiting period may be waived, that includes:

- The one-year separation requirement under Section 13B (1) has already been met.
- Mediation and reconciliation efforts have been exhausted between the parties and there lies no possibility of reconciliation.
- The parties have reached a comprehensive agreement, settling issues such as alimony and child custody.

To understand the idea behind the waiving the waiting period through judicial lens, below state a recent case law which explains the need and power of the courts to act upon the same by evaluating the circumstances.

Shilpa Sailesh v. Varun Sreenivasan (2023) decided 01 May 2023; reported as 2023 SCC

OnLine SC 5

Brief of the case

Various petitions before the Supreme Court of India invoking the Court's power under Article 142 of the Constitution and seeking relief in matrimonial matters (primarily waiver of the statutory six-month cooling period in mutual consent divorce and/or relief on the ground of irretrievable breakdown of marriage).

- Facts of the case

In the present case, the husband was a businessman living in Pune, while the wife was living and working in Muscat. During hearing of the petitions in 2015, both the parties involved in the case arrived at a settlement as earlier directed by the court and filed a

petition for order of dissolution of marriage under Article 142 of the Constitution. The Supreme Court through its order dated May 6,2015 granted them divorce through invocation of its powers under Article 142 of the Constitution, considering that applying for divorce before a Family Court would be a lengthy and burdensomeprocedure.33The Court kept the said petition pending for decision upon several important issues framed by it and also appointed amicus curiae for its assistance. The petitions were earlier heard by different benches of two judges of the Supreme Court. Later, on June 29, 2016, these were transferred to a constitution-bench for the consideration of the broader questions of law. The 5-judge Constitution Bench was comprised of Sanjay Kishan Kaul, J. Sanjiv Khanna, J. Vikram Nath, J., Abhay S. Oka, J. and J.K. Maheshwari, J. The hearings before the Constitution-bench concluded on Sept. 29, 2022 and the judgment was reserved. The judgment was pronounced on May 1, 2023bySanjiv Khanna, J. on the behalf of all the judges of the Constitution bench.

- The case involved both parties seeking the dissolution of their marriage, and it raised important legal questions regarding the scope of the Supreme Court's powers under Article 142 of the Constitution of India. Specifically, the petitions brought before the Court questioned whether it has the authority to:
- (a) grant a decree of divorce by mutual consent even when the mandatory six-month waiting period which is been stipulated under Section 13B of the Hindu Marriage Act, 1955 has not yet lapsed.
- (b) allow divorce on the ground of irretrievable breakdown of the marriage, despite the fact that such a ground is not explicitly recognized under the provisions of the Hindu Marriage Act.
- In essence, the matter called upon the Court to consider whether, in the heed of complete justice between the parties, could it invoke the extraordinary constitutional powers to bypass procedural or statutory limitations under the personal law governing marriage and divorce.
- The petitions asked the Court either to waive/shorten the statutory cooling period or to recognize and grant divorce on the doctrine of "irretrievable breakdown" in appropriate cases.

Issues presented by this case:

1. Whether the Supreme Court can, under Article 142, grant a divorce on the ground of irretrievable breakdown of marriage even though that ground is not explicitly provided for in the statutory code (Hindu Marriage Act and allied statutes).
2. Whether the Court may waive or shorten the six-month cooling/waiting period prescribed under Section 13B (2) for divorce by mutual consent and in what circumstances such waiver is permissible.
3. What are the safeguards that should guide the Court when exercising such powers under the ambit of Article 142 for matrimonial relief (so as to protect substantive statutory laws and avoid arbitrary departures.

- In the lieu of this the Supreme Court accepted that Article 142 confers wide powers to do "complete justice" and that in exceptional and rare cases it can be invoked to grant relief that the statute does not expressly provide, including relief in matrimonial matters, but only subject to rigorous safeguards and strict tests.
- The Court indicated that relief on the basis of irretrievable breakdown of marriage may be granted in truly exceptional cases where the breakdown is established on the materials and attempts at reconciliation have failed.
- As to the six-month cooling period in Section 13B (2) (mutual consent divorces), the Court recognised that the legislature intended a cooling period but held that the Court may exercise discretion to waive or shorten it in exceptional circumstances — again subject to safeguards — but stressed that routine or indiscriminate waiver would not be appropriate.

Reasoning / Ratio (key points)

- Article 142: The power to grant "complete justice" is wide, but it is not unfettered: it must be used sparingly in matters touching substantive statutory schemes and relevant policy choices of the legislature.
- Legislative intent: The statutory framework for marriage and divorce (Hindu Marriage Act) prescribes specific grounds and procedures; judicially supplied grounds (like irretrievable breakdown) risk circumventing legislative policy unless applied with care.
- Tests for irretrievable breakdown: The Court outlined (or endorsed) a careful fact-sensitive enquiry, including: prolonged separation, impossibility of reconciliation despite best efforts, conduct of parties, absence of coercion or fraud, and cogent evidence to establish that marital relationship has truly and finally broken down.
- Safeguards for Article 142 use: Where Article 142 is used to grant matrimonial relief not explicitly provided by statute, courts must: (a) ensure the case is extraordinary, (b) record detailed reasons, (c) ensure parties' consent is free and informed, and (d) consider the public interest and statutory scheme.

Disposition (practical outcome)

- The Court granted appropriate relief in the petition (s) before it consistent with the above principles (waiver/grant in the narrow facts of the case). The orders emphasized that such exercise of power is exceptional and should not be treated as creating a new general ground of divorce routinely available outside statutory amendment.

Concurring / Dissenting observations (if any)

- The reported treatment treats the judgment as carefully circumscribed rather than a wholesale expansion of grounds for divorce. (If you want verbatim concurring/dissent passages, I can fetch and quote them from the judgment.)

Significance / Impact

- Landmark effect: The decision clarified the limited circumstances in which the Supreme Court may grant divorce outside the express statutory grounds by invoking

Article 142. It signaled judicial willingness to provide relief in exceptional matrimonial cases while cautioning against replacing the legislature's role.

- Practical consequence: Litigants may apply to the Supreme Court for extraordinary relief in rare cases of proven irretrievable breakdown, or for waiver of the statutory cooling period in mutual consent divorces — but lower courts will likely remain bound to statutory grounds unless and until Parliament amends the law.

Policy debate: The judgment has prompted discussion among family-law scholars and practitioners about whether irretrievable breakdown should be statutorily recognized, and about the balance between judicial equity (Article 142) and l

gislative design.

Conclusion

The analytical study of Article 142 of the Constitution of India reveals the profound yet delicate balance between the Supreme Court's extraordinary powers and the need to uphold legislative intent and equity in justice. The research underscores how Article 142, intended as a constitutional tool to ensure complete justice, has evolved into a dynamic instrument empowering the Apex Court to address legal gaps, especially in sensitive domains such as matrimonial law. The exploration of Shilpa Sailesh v. Varun Sreenivasan (2023) marks a pivotal moment in this evolution, as the Supreme Court invoked Article 142 to recognize irretrievable breakdown of marriage as a valid ground for divorce- regardless of its absence in statutory law—thus reaffirming the judiciary's proactive role in ensuring substantive justice where legislative inertia persists.

This judgment demonstrates the Court's pragmatic approach in harmonizing justice with equity, ensuring that procedural formalities do not eclipse the human realities of matrimonial breakdown. While the decision broadens the extent of judicial intervention under Article 142, it simultaneously emphasizes restraint and accountability, reminding that such powers must be exercised sparingly and with rigorous safeguards. The recognition of the irretrievable breakdown doctrine under Article 142 bridges the gap between social reality and legislative rigidity, ensuring that the law remains a living instrument of justice rather than a static code.

The study concludes that the exercise of powers under Article 142 represents not judicial overreach but judicial responsiveness—an adaptive mechanism to uphold justice in exceptional cases where statutory remedies fall short. However, it also calls attention to the pressing need for legislative reform to officially incorporate irretrievable breakdown of marriage as a statutory ground for divorce, thus aligning judicial practice with codified law. In essence, the evolution of Article 142 reflects the judiciary's dual commitment to widening its constitutional powers while maintaining

the equilibrium of equity, fairness, and respect for legislative supremacy. This interplay between power and restraint exemplifies the strength of India's constitutional democracy, where justice—tempered with compassion—remains the ultimate goal.

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CHAPTER-15

D.K. BASU V. STATE OF WEST BENGAL (1997): A CONSTITUTIONAL SAFEGUARDING OF CUSTODIAL RIGHTS AND THE JUDICIAL RESPONSE TO STATE VIOLENCE IN INDIA

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Abstract

The landmark judgment of the Supreme Court of India in D.K. Basu v. State of West Bengal (1997) stands as a cornerstone in the development of human rights jurisprudence in India. This case arose from a letter addressed to the Court highlighting incidents of custodial violence and deaths, which the Court treated as a public interest litigation. Recognising the growing concerns of abuse of power by law enforcement agencies, the Court laid down detailed guidelines to be followed during arrest and detention. These guidelines aimed to strike a balance between the authority of the police to maintain law and order and the fundamental rights of individuals guaranteed under Articles 21 and 22 of the Constitution.

The judgment emphasized that custodial torture and deaths are not only violations of constitutional rights but also threats to the rule of law in a democratic society. To safeguard human dignity, the Court introduced mandatory requirements such as preparation of arrest memos, information to relatives, medical examinations, and production before a magistrate within twenty-four hours. These procedural safeguards significantly strengthened the protection against arbitrary arrest and custodial abuse, creating a framework that still guides law enforcement practices today.

This research paper critically analyses the D.K. Basu case by exploring its background, legal reasoning, and far-reaching impact on criminal jurisprudence in India. It examines the effectiveness of the guidelines in practice, their incorporation into statutory law, and the continuing challenges in their enforcement. By situating the case within the broader discourse on human rights and state accountability, the study

underscores its relevance in contemporary debates on custodial rights, police reforms, and constitutional governance.

Keywords:
D.K. Basu v. State of West Bengal, custodial rights, arrest and detention guidelines, human rights, Article 21, Article 22, police accountability, custodial violence, constitutional safeguards, criminal jurisprudence.

Introduction And Context

The landmark judgment in D.K. Basu v. State of West Bengal occupies a defining place in India's constitutional landscape, particularly in how it re-shaped the legal boundaries of State power during arrest, custody, and interrogation[232]. Long before the decision was delivered, custodial violence had already become a matter of national alarm. Reports by journalists, civil rights organizations, judicial commissions, and parliamentary committees consistently revealed a disturbing pattern: suspects detained in police stations or prisons were routinely subjected to torture, illegal confinement, forced confessions, and even death. These incidents were not isolated or accidental; they reflected a deeply embedded policing culture inherited from colonial rule a system that viewed the use of force not as an exception, but as a method of investigation and control. Although the Indian Constitution, through Articles 21 and 22, and the Code of Criminal Procedure formally recognized the rights of arrested persons, those rights remained largely symbolic in the absence of enforceable safeguards[233]. It was in this climate of institutional neglect that a seemingly ordinary letter written by D.K. Basu, the Executive Chairman of Legal Aid Services, West Bengal, eventually triggered one of the most important judicial interventions in India's custodial jurisprudence.

What transformed this personal letter into a constitutional watershed was the Supreme Court's decision to treat it as a Public Interest Litigation[234]. That judicial choice signaled that the Court no longer viewed custodial torture as sporadic misconduct by

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[232] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).
[233] INDIA CONST. arts. 21, 22; Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[234] *D.K. Basu*, (1997) 1 S.C.C. at 417–18.

individual policemen, but as a systemic breakdown of legality and accountability that required constitutional attention. The Court recognized that torture inside a police station is not merely an abuse of power it is a direct assault on the rule of law and on the human dignity that forms the core of Article 21[235]. Instead of waiting to react to violations after they occurred, the Court assumed a preventive role: it sought to build structural safeguards that would make such violations harder to commit in the first place. This shift—from retrospective punishment to prospective protection marked a new phase in the Court's role as the guardian of fundamental rights under Article 32[236].

The importance of the D.K. Basu judgment does not lie only in its condemnation of torture; judgments condemning torture already existed[237]. Its real contribution was the way it converted constitutional values into operational procedures. The Court recognized that human rights are most vulnerable not in open courtrooms but in closed cells and interrogation rooms places shielded from oversight, documentation, and public scrutiny. By insisting that every arrest must leave a trail of recordable, reviewable, and legally verifiable steps, the Court attempted to break the historical invisibility that allowed custodial abuse to flourish. It also sent a deeper constitutional message: the power of the State to arrest does not grant it a license to violate the dignity of the arrested. If the State expects obedience to law, it must first demonstrate obedience to the Constitution.

In this sense, D.K. Basu was more than a judgment on police procedure it was a reaffirmation of what it means to live under a constitution. It reminded the country that the test of constitutional democracy is not how it treats the free and the powerful, but how it treats the accused, the detained, and the voiceless[238]. The judgment drew a clear boundary: the State may enforce law, but it may not do so lawlessly.

Procedural History And Facts

The journey of D.K. Basu v. State of West Bengal did not begin as a traditional lawsuit. It did not arise from a formal petition, a criminal appeal, or a constitutional challenge

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[235] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608, 618 (India).
[236] INDIA CONST. art. 32.
[237] *State of M.P. v. Shyamsunder Trivedi*, (1995) 4 S.C.C. 262 (India).
[238] *Joginder Kumar v. State of U.P.*, (1994) 4 S.C.C. 260, 268 (India).

filed through lawyers. Instead, the case originated from a letter dated 26 August 1986, written by D.K. Basu, Executive Chairman of Legal Aid Services, West Bengal, and addressed directly to the Chief Justice of India[239]. In this letter, Basu drew attention to a series of custodial deaths that had been reported in newspapers from different parts of the country, describing them as a "disturbing trend" and a "rising public menace." The letter was not written in legal jargon or supported by annexures or affidavits. Yet, the Supreme Court saw in it a serious constitutional concern one that could not be ignored simply because it arrived outside the formal litigation process.

Exercising its expanding jurisdiction under Article 32, the Court treated the letter as a Public Interest Litigation (PIL), converting what would otherwise have been a personal appeal into a matter of national adjudication[240]. This decision was not an act of procedural generosity but a strategic recognition: victims of custodial torture rarely survive to litigate, and their families seldom possess the resources, access, or security to approach the courts. By converting the letter into a PIL, the Court signaled that when the victims of State violence cannot knock on the doors of justice, the Court has a duty to open those doors itself.

Once the PIL was registered, notices were issued to the Union of India, all States and Union Territories, and multiple human rights bodies, including the National Police Commission[241]. The affidavits filed in response were revealing. Some States outright denied the existence of widespread custodial deaths; others admitted individual incidents but attributed them to suicide, illness, or "natural causes," often without independent medical verification. These responses reflected a deep institutional reluctance to acknowledge torture as a structural reality. Meanwhile, the Court received reports from civil rights organizations, journalists, and NGOs, all of which painted a far bleaker picture: arrest and detention had become spaces where power was exercised without accountability, especially against the socially and economically vulnerable.

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[239] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416, 417 (India).
[240] INDIA CONST. art. 32.
[241] National Police Commission, *Second Report* (Aug. 1979).

As hearings progressed, the Court realized that while Indian law technically offered remedies criminal prosecution, departmental inquiries, civil lawsuits they were ineffective in practice. Victims or their families rarely had the economic means, legal knowledge, or political backing to pursue justice. Criminal cases dragged on for years, departmental inquiries became ritualistic, and civil suits were inaccessible to those who needed them most. Even the procedural safeguards written into the Code of Criminal Procedure, such as production before a magistrate within 24 hours, existed largely on paper because there was no mechanism to ensure compliance[242].

This revealed a deeper constitutional vacuum: India lacked a preventive legal structure to stop torture before it happened. The law could punish torture after the fact but only if the victim survived, if the family fought, if the police documented the arrest, and if the courts believed them. In reality, none of those conditions reliably existed. The Court therefore recognized that what was missing was not law in theory, but law in action. That realization transformed the case from a judicial proceeding into a structural inquiry into State power.

The hearings in D.K. Basu were unlike ordinary court cases. Rather than functioning as an adversarial battle between petitioner and respondent, they evolved into a constitutional dialogue. The Court invited suggestions not only from State authorities, but also from legal scholars, senior advocates, and rights-based organizations. The courtroom became a space where the meaning of lawful custody and constitutional policing was debated at a national level. The judgment that eventually emerged was not designed to resolve the situation of a single detainee; it was designed to regulate the conduct of every arresting authority in India[243].

Thus, the procedural story of D.K. Basu is not simply a legal timeline it is an illustration of how a constitutional court can transform a moment of outrage into a framework of systemic reform. The case was not built on evidence of a single incident but on the recognition that the absence of enforceable safeguards is itself a violation of fundamental rights. By treating custodial violence not as a scattered set of tragedies but

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[242] Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, 57 (India).
[243] *D.K. Basu*, (1997) 1 S.C.C. at 438–39.

as a constitutional emergency, the Court redefined both the role of judicial review and the meaning of personal liberty under the Indian Constitution[244].

Issues Before The Court

When the Supreme Court took up *D.K. Basu v. State of West Bengal*, it was not dealing with a routine legal dispute or an isolated instance of police misconduct[245]. The case confronted the Court with a much larger constitutional question: could a democratic State continue to claim legitimacy while allowing violence, intimidation, and coercion to be practiced in its police stations? The problem before the Court was not merely whether individual officers had acted unlawfully, but whether the **legal system itself had failed to protect the most basic human rights of persons in custody**. The case therefore required the Court to examine the unresolved tension between the State's authority to enforce law and the individual's right to be free from inhuman treatment.

One of the foremost issues before the Court was the interpretation of **Article 21**, which guarantees that no person shall be deprived of life or personal liberty except according to "procedure established by law."[246] The question was whether this guarantee merely prohibited unlawful deprivation of life, or whether it imposed a **positive constitutional duty** on the State to ensure that the process of arrest and detention itself must not degrade, torture, or dehumanize the individual. In simpler terms, the Court had to decide whether Article 21 protects only life as a biological fact, or life as a dignified human existence.

The Court also had to grapple with whether **custodial violence could be considered a direct violation of fundamental rights even in the absence of explicit statutory prohibition**. The Indian Penal Code criminalized "hurt," "grievous hurt," and homicide, but it did not treat torture by State officials as a separate or aggravated offense[247]. The issue, therefore, was not whether torture was illegal it already was but whether torture in custody represented a **constitutional wrong** that demanded a constitutional remedy, not just a criminal one.

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[244] Id.
[245] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416.
[246] INDIA CONST. art. 21.
[247] Indian Penal Code, No. 45 of 1860, 319–320.

Another central issue concerned **public law compensation**. The Court was asked to determine whether monetary compensation could be awarded directly under Articles 32 or 226, not as civil damages claim, but as a constitutional response to the violation of a fundamental right[248]. If so, it would mean that the Constitution itself, and not merely statutory law, recognized the right of a victim (or their family) to be compensated by the State when the State violates their dignity or life. This question also had deeper implications: could the judiciary impose financial accountability on the State even when no criminal conviction had yet occurred?

The Court also had to determine whether **failure to comply with judicially created custodial safeguards could be treated as contempt of court[249]**. This was more than a procedural inquiry it raised profound concerns about judicial law-making and the separation of powers. If the Court did issue guidelines, could it enforce them through contempt jurisdiction, effectively binding the police and the executive to follow rules that Parliament had not yet legislated? The answer would determine whether the Court could act not only as interpreter of rights, but as creator of enforceable rights-protection mechanisms.

Beyond technical questions lay an unavoidable moral and constitutional dilemma: **Can the State defend the rule of law while violating it in its own detention centers?** If the Constitution is silent inside the lock-up, does it still remain a constitution? The Court was being asked not only what the law said, but what the law should require in order to maintain the integrity of a democratic legal order[250].

Thus, the issues in *D.K. Basu* were not narrow procedural questions. They went to the heart of constitutionalism itself:

– What are the limits of State power?
– Does dignity survive arrest?
– Can rights be meaningful without mechanisms to enforce them?
– And most critically: **Is the rule of law compatible with unregulated coercion?**

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[248] *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746.
[249] *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226.
[250] Upendra Baxi, *The Supreme Court and the Politics of Human Rights in India* 149 (1980).

In answering these questions, the Court was not merely resolving a case; it was shaping the constitutional character of the Indian State.

Holdings And Ratio

The Supreme Court's decision in D.K. Basu v. State of West Bengal is remembered not only for its moral clarity, but for the precision with which it articulated the constitutional foundations of its ruling[251]. The Court held, unequivocally, that custodial torture whether physical or psychological is a direct violation of the right to life and personal liberty guaranteed under Article 21[252]. The Court rejected the notion that investigative pressure, public interest, or administrative convenience could ever justify brutality in custody. It emphasized that constitutional protections do not disappear at the moment of arrest; rather, they become most essential when a person is placed under the exclusive control of the State.

The Court also asserted that the judiciary has both the authority and the duty to frame enforceable procedural safeguards when fundamental rights are threatened by institutional failure[253]. It clarified that Article 32 is not merely a remedy for rights already violated, but a constitutional mechanism that allows the Court to prevent future violations by creating binding guidelines in areas where legislation is absent or ineffective. This approach was consistent with earlier precedents such as Vishaka v. State of Rajasthan and Lakshmi Kant Pandey v. Union of India, where the Court filled legislative gaps to protect rights until Parliament acted[254]. The ratio here was unmistakable: constitutional rights are not self-executing procedural safeguards are necessary to make them real.

One of the most transformative parts of the judgment was the Court's recognition of public law compensation as a legitimate and independent constitutional remedy. The Court held that when State agents violate fundamental rights, the victim (or their family) is entitled to monetary compensation directly under Articles 32 or 226 not as

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[251] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416.
[252] INDIA CONST. art. 21.
[253] *People's Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters*, (1989) 4 S.C.C. 730.
[254] *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241; *Lakshmi Kant Pandey v. Union of India*, (1984) 2 S.C.C. 244.

civil damages claim, and not as an act of State charity, but as a judicially enforceable constitutional right. In doing so, the Court strengthened the earlier legal foundation laid in Rudul Sah and Nilabati Behera, and elevated compensation from an exceptional relief to a cornerstone of constitutional accountability[255].

Equally significant was the Court's declaration that failure to comply with the guidelines it issued would amount to contempt of court. This was a deliberate departure from earlier judgments where courts merely "recommended" reforms. By linking non-compliance to contempt, the Court made it clear that the guidelines were not suggestions, not policy advice, not administrative directions but binding constitutional obligations[256]. This elevated custodial safeguards from police manual instructions to judicially enforceable law.

At its core, the ratio of the judgment rests on three foundational constitutional principles:

1. Article 21 protects not only life in the physical sense, but life with dignity and torture destroys dignity at its root.

2. The judiciary has constitutional authority to create procedural mechanisms when the existing legal framework fails to safeguard fundamental rights.

3. A violation of fundamental rights by the State must trigger public law consequences, including compensation and contempt.

Thus, D.K. Basu was not merely a ruling against torture; it was an affirmation of constitutional democracy itself. It made clear that the rule of law must regulate the power of the State, even in the most coercive spaces, and that the Constitution follows every arrested person — into the police station, into the interrogation room, and into the lockup.

The D.K. Basu Guidelines: Detailed Constitutional Safeguards Against Custodial Violence

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[255] *Rudul Sah v. State of Bihar*, (1983) 4 S.C.C. 141; *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746.

[256] *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226.

The most enduring legacy of D.K. Basu v. State of West Bengal lies in the set of mandatory procedural guidelines the Supreme Court issued to regulate how arrests and detentions are carried out in India[257]. These guidelines were not introduced as mere administrative instructions, but as constitutional safeguards, intended to give real world force to the guarantees of life and liberty under Article 21[258]. The Court understood that human rights violations do not occur in the open they flourish inside closed rooms, unrecorded, unseen, and unaccounted for. The purpose of the guidelines was therefore simple yet revolutionary: to make every arrest visible, documentable, and legally traceable, so that the machinery of law could finally enter the same space where rights were routinely being violated.

Among the most crucial safeguards introduced was the requirement that every arrest must be accompanied by a written arrest memo, signed by the arresting officer, the arrested person, and an independent witness preferably a family member or a local resident[259]. This was designed to dismantle the widely practiced method of "unofficial" or undocumented arrests, where individuals were picked up, beaten, interrogated, or even killed in custody without any formal record of their detention. By insisting on a written memo with exact date, time, and place of arrest, the Court ensured that the moment of arrest would now create a paper trail capable of judicial scrutiny.

Equally transformative was the directive that a relative, friend, or any person known to the arrested individual must be informed of the arrest at the earliest possible moment[260]. This safeguard was built on a simple but powerful truth: torture thrives when the outside world does not know where a detainee is being held. The Court's rule was not just legal it was psychological. Once the police knew that someone outside the station was aware of the arrest, the chances of physical abuse, intimidation, or disappearance were dramatically reduced.

The Court also required that entries regarding the arrest be made in the station diary and that the information be communicated to district level control rooms, creating

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[257] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416.
[258] INDIA CONST. art. 21.
[259] *Id.* at 430.
[260] *Id.* at 431.

institutional documentation at multiple levels[261]. This prevented the police from manipulating custody records and ensured that no individual could simply "vanish" between the point of arrest and the point of court production.

To safeguard against physical abuse, the Court mandated that every arrested person must undergo a medical examination every 48 hours, conducted by a government approved doctor[262]. The creation of an Inspection Memo to be signed by both the detainee and the officer further ensured that any injuries present at the time of arrest were officially recorded. This measure was intended not only to expose violence but also to prevent police from later claiming that injuries were "self-inflicted" or "pre-existing."

Another important safeguard addressed the constitutional right under Article 22(1): the arrested person must be allowed to meet a lawyer during interrogation, though not necessarily throughout its duration[263]. Even with this limitation, the Court's reasoning was clear: the presence of legal counsel, even briefly, can disrupt the absolute psychological dominance that custodial interrogation often relies upon.

Perhaps the most powerful feature of the guidelines was not their content but their enforceability. The Court declared that any violation of these safeguards would be treated as contempt of court[264]. For the first time, the judiciary converted procedural violations during arrest into constitutional violations, carrying legal consequences not only for the police officer, but for the institution itself. This elevated the guidelines from administrative formality to enforceable law.

In essence, the D.K. Basu safeguards were not designed to make policing difficult they were designed to make policing constitutional. They attempted to civilize the most coercive function of the State by introducing transparency into a domain historically protected by secrecy and unchecked authority. Through these guidelines, the Court effectively declared that an arrest is not an act of State power it is an act under constitutional supervision.

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[261] *Id.* at 432.
[262] *Id.* at 433.
[263] INDIA CONST. art. 22(1).
[264] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416, 434.

Doctrinal Foundations: Constitutional, Statutory, And International Basis

The constitutional foundation of D.K. Basu v. State of West Bengal rests primarily on a refined and evolving interpretation of Article 21 of the Constitution, which guarantees that no person shall be deprived of life or personal liberty except according to "procedure established by law[265]." The judgment reaffirmed the post-Maneka Gandhi principle that this "procedure" must be just, fair, and reasonable, and cannot be arbitrary, oppressive, or dehumanizing in either design or implementation. Maneka Gandhi v. Union of India had already transformed Article 21 from a narrow procedural clause into a rich constitutional source of substantive rights[266]. D.K. Basu built upon this foundation by declaring that torture in custody is not just unlawful it is a direct constitutional violation because the right to life under Article 21 includes the right to live with dignity, not merely to exist as a living body[267].

The judgment also drew strength from Article 22(1), which guarantees that every arrested person has the right to be informed of the grounds of arrest and to consult and be defended by a lawyer of their choice[268]. Although Article 22 does not explicitly mention protection from torture, the Court interpreted the right to legal consultation and timely notification as structural safeguards against abuse of power. In doing so, the Court demonstrated that constitutional protections do not vanish upon arrest; instead, they become most necessary where the imbalance of power between citizen and State is at its highest.

On the statutory front, the Court acknowledged that the Code of Criminal Procedure (CrPC) already contained procedural safeguards: Section 50 required police to inform the accused of the grounds of arrest, Section 56 mandated production before a magistrate within 24 hours, and Section 176 provided for inquiry into custodial deaths. Yet, the Court found that these provisions were largely ineffective in practice because they lacked enforceable mechanisms, independent monitoring, and legal consequences for non-compliance[269]. In other words, the problem was not the absence of law, but the

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[265] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416.
[266] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.
[267] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416, 430.
[268] INDIA CONST. art. 22(1).
[269] Code of Criminal Procedure, 1973, §§ 50, 56, 176 (India).

absence of operational accountability. The guidelines were therefore issued not to replace the CrPC, but to make its protections functional.

The doctrinal foundation of the judgment also rested on a developing jurisprudence of public law compensation, first articulated in Rudul Sah v. State of Bihar and later crystallized in Nilabati Behera v. State of Orissa[270]. These cases established that when the State violates fundamental rights, compensation is not a matter of government benevolence but a constitutional obligation. D.K. Basu extended that logic from wrongful detention and custodial death to the broader field of custodial violence, implicitly stating that dignity, like liberty, has economic value when violated by the State.

The Court also embraced international human rights standards as interpretive tools. Although India had not yet ratified the UN Convention Against Torture (UNCAT), it had already ratified the International Covenant on Civil and Political Rights (ICCPR), which condemns torture and arbitrary detention[271]. The Court relied on these instruments not as binding law, but as persuasive sources that strengthen the constitutional reading of Articles 21 and 22. This approach reflected a broader judicial philosophy visible in cases such as Vishaka v. State of Rajasthan: when domestic law is silent or insufficient, international norms may be used to expand the meaning of fundamental rights[272].

Thus, the doctrinal foundation of D.K. Basu is multi-layered:

Article 21 provides the substantive right to dignity and humane treatment.

Article 22 provides procedural safeguards against coercive abuse.

The CrPC provides statutory structure, though weakened by enforcement gaps.

Public law compensation supplies a constitutional remedy against State wrongdoing.

International conventions offer normative support for human rights interpretation.

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[270] *Rudul Sah v. State of Bihar*, (1983) 4 S.C.C. 141; *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746.

[271] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

[272] *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241.

In effect, the judgment did not merely interpret the Constitution it activated it inside police custody. Where statutory law had failed to prevent abuse, the Court placed the Constitution itself as the first line of protection.

Legislative Aftermath: Incorporation Of The Basu Guidelines Into The Code Of Criminal Procedure

The influence of D.K. Basu v. State of West Bengal did not end with the judicial pronouncement; its real test lay in whether the constitutional safeguards it introduced would be translated into statutory law[273]. That transformation occurred more than a decade later through the Criminal Procedure (Amendment) Act, 2008, which came into force in 2010[274]. Through this amendment, Parliament inserted new provisions Sections 41A, 41B, 41C, and 41D directly inspired by the guidelines issued in D.K. Basu[275]. This development reflects a rare moment of institutional dialogue between the judiciary and the legislature: the Court created constitutional norms, and Parliament eventually gave them statutory permanence.

Section 41A CrPC introduced a formal "notice of appearance," allowing police to call a person for questioning without immediately resorting to arrest. This provision embodied a principle at the heart of D.K. Basu: arrest is not an automatic step in investigation, but a measure that must be justified[276]. Section 41B codified the requirement that the police must wear visible identification badges and must prepare a signed arrest memo in the presence of a witness. This directly implemented one of the core Basu safeguards: visibility and documentation as deterrents against abuse.

Section 41C obliged the State to set up district and State level police control rooms, requiring every arrest to be recorded and publicly accessible[277]. This introduced a layer of external oversight, making it harder for custody to be concealed or manipulated. Section 41D reinforced the constitutional right to legal consultation by expressly granting an arrested person the right to meet an advocate during interrogation[278].

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[273] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416.
[274] Code of Criminal Procedure (Amendment) Act, No. 5 of 2009 (India).
[275] Id. §§ 41A–41D.
[276] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416, 435.
[277] Code of Criminal Procedure, 1973, § 41C (India).
[278] Id. § 41D.

Although this right was not absolute, even its limited statutory recognition marked a significant shift toward rights-based policing.

What makes these amendments notable is not simply that they repeated what the Court had already declared, but that they elevated those safeguards from judge-made directions to binding statutory law. Once codified, non-compliance would no longer merely offend constitutional principles it could also trigger statutory liability, evidentiary consequences, and disciplinary action. In doing so, the amendment partially bridged the gap between constitutional ideals and policing practice.

Yet, the legislative aftermath also exposed the limits of partial reform. While Parliament codified the procedural guidelines, it did not address the underlying institutional ethos that produces custodial violence. The Police Act of 1861 designed by the British to enforce imperial control remains largely unreformed[279]. The amendments did not create independent oversight bodies, did not mandate audio-video recording of interrogations, and did not establish automatic criminal proceedings for every custodial death. The reforms strengthened the law on paper, but did not structurally transform the culture of policing.

As a result, compliance with the D.K. Basu safeguards today often exist in a formal but not functional sense. Arrest memos may be filled out after the fact, medical examinations may be superficial, and relatives may be notified only after illegal interrogation is complete. The procedural framework exists, but the institutional mechanisms needed to enforce it remain weak.

Even so, the legislative incorporation of the D.K. Basu guidelines marked an important constitutional milestone. It demonstrated that the judgment was not destined to remain judicial rhetoric it reshaped the text of criminal law itself. Parliament may not have absorbed the entire spirit of the judgment, but it did absorb its procedural framework, embedding the idea that an arrest is subject not only to police discretion, but to constitutional discipline.

[279] Police Act, 1861 (Act No. 5 of 1861) (India).

In that sense, the legislative aftermath of D.K. Basu reflects both progress and unfinished business: the Court created the roadmap, Parliament built part of the road, but the journey toward torture-free custody remains incomplete.

Impact Assessment (1997–2025): The Legacy And Limits Of The D.K. Basu Judgment

The legacy of D.K. Basu v. State of West Bengal must be evaluated not only through the lens of its doctrinal brilliance, but through its long-term influence on policing, judicial practice, and the lived experience of arrested persons in India. In the years immediately following the judgment, one of the most visible impacts was the proceduralizing of arrest. Before 1997, an arrest was often an undocumented exercise of State authority: a person could be taken into custody without paperwork, without witnesses, and without any record accessible to family or courts. After D.K. Basu, the legal expectation changed. Arrest became a recorded and reviewable event, requiring documentation, medical inspection, and communication with relatives. Even when these safeguards were not fully followed, they created a new standard of legality against which police conduct could be measured[280].

The judgment also shifted the judicial vocabulary surrounding custodial abuse. Prior to D.K. Basu, courts often adjudicated torture cases through factual disputes whether the police or the detainee was telling the truth. After the judgment, the focus moved toward procedural accountability. If the arrest memo was missing, if the diary entry was incomplete, if medical checks were skipped, or if family notification was delayed, the burden shifted to the State, not the victim. This prevented the common outcome where custodial violence went unpunished simply because there were "no witnesses" inside the police station[281].

Perhaps the most significant legal ripple effect was the expansion of public law compensation as a constitutional tool. Since 1997, higher courts across India have repeatedly awarded compensation not just for custodial death, but also for torture, illegal detention, and disappearance. What changed after D.K. Basu was not merely the

[280] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).
[281] *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746 (India).

frequency of compensation, but the principle behind it: the State was no longer seen as a benevolent compensator, but as a constitutionally liable wrongdoer[282].

However, the deeper test of the judgment lies in whether it reduced custodial violence in India. Here, the results are sobering. Reports by the National Human Rights Commission, Asian Centre for Human Rights, and Human Rights Watch indicate that custodial deaths have continued, often in similar numbers, and frequently through methods well-documented for decades. Many deaths still occur in informal detention, off-record questioning, or "interrogation rooms" never acknowledged in police diaries. In other words, while D.K. Basu changed the law of custody, it did not fully change the reality of custody[283].

The reasons for this gap are structural. The judgment did not and could not reform the colonial Police Act of 1861, which continues to shape India's law enforcement model. It did not create independent oversight bodies with binding power. It did not restructure recruitment, training, promotion, or accountability systems within the police. In short, D.K. Basu constitutionalized the arrest process, but did not democratize the police institution that controls it[284].

Yet it would be a mistake to conclude that the judgment failed. Its greatest success lies in the fact that custodial violence is no longer invisible in law. Before 1997, most torture and custodial deaths disappeared into silence. Today, families file writ petitions, courts demand arrest memos, judges look for medical reports, and compensation is recognized as a constitutional right. The judgment did not end torture but it changed the conditions under which torture is judged, recorded, challenged, and punished[285].

Thus, the impact of D.K. Basu is best described as transformative in legal consciousness, but uneven in institutional practice. Its legacy will ultimately depend not on the text of the judgment, but on whether future reforms carry its spirit forward into the structure of Indian policing.

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[282] *Mehmood Nayyar Azam v. State of Chhattisgarh*, (2012) 8 S.C.C. 1 (India).

[283] National Human Rights Commission, *Annual Report 2022–23* (2023) (India); Asian Centre for Human Rights, *Torture Update India 2023* (2023).

[284] Police Act, No. 5 of 1861, INDIA CODE (1861).

[285] *Re: Death of 25 Prison Inmates in Dist. Jail, Bhagalpur*, (2014) 13 S.C.C. 88 (India).

Critiques And Structural Limitations Of The D.K. Basu Framework

Despite its landmark status, D.K. Basu has been the subject of thoughtful criticism from scholars, jurists, and human rights advocates who argue that while the judgment was doctrinally powerful, it was structurally incomplete. One of the central critiques is that the Court treated torture primarily as a problem of procedure, not as a problem of policing culture and institutional hierarchy. The assumption behind the guidelines was that proper documentation, medical certification, and transparency would reduce violence. But this approach did not address the larger truth: custodial torture in India is not an administrative accident it is an entrenched investigative method sustained by political pressure, institutional protection, caste and class bias, and the absence of consequences[286].

A second critique focuses on the self-reporting nature of the safeguards. Nearly every Basu guideline arrest memo, diary entry, medical inspection depends on police compliance. But when the violator controls the paperwork, documentation can become a tool of cover-up rather than accountability. In many cases, arrest memos are created after the fact, inspection memos are signed under coercion, and medical checks are reduced to a "no external injury" rubber stamp. This creates a paradox: the very procedures designed to expose torture can, in the hands of an unaccountable police force, be used to legally sanitize torture[287].

Another limitation is the absence of independent oversight. The judgment did not require civilian monitoring boards, judicial custody audits, body-camera evidence, or mandatory CCTV in interrogation rooms. Later decisions such as Prakash Singh v. Union of India attempted to reform police institutions, but D.K. Basu itself stopped short of proposing structural reform[288]. As a result, enforcement of the guidelines depends entirely on litigation placing the burden on victims and their families, who are often among the least resourced members of society.

Critics also argue that the judgment failed to address the socio-economic and caste dimensions of custodial violence. Those most likely to be arrested, tortured, or killed in

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[286] *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).
[287] Amnesty Int'l, *India: Torture in 2023—A Continuing Shame* (2024).
[288] *Prakash Singh v. Union of India*, (2006) 8 S.C.C. 1 (India).

custody are not middle-class citizens with lawyers, but Dalits, Adivasis, Muslims, the poor, migrants, and those without political or economic power[289]. By treating torture as a procedural wrong rather than a social injustice, the Court did not address how policing itself is used as a tool of stratified power.

A deeper critique concerns the ineffective deterrent mechanism. While the Court declared that violations of the guidelines would constitute contempt of court, in practice, contempt proceedings against police officers are almost never initiated. Without credible punishment, even the strongest safeguard loses force[290]. Torture does not persist because the law is unclear; it persists because the system does not fear the law.

Finally, the judgment did not push for a comprehensive anti-torture statute. India still has no standalone law criminalizing torture by public officials, despite being a signatory to UNCAT[291]. Torture cases are still prosecuted under general IPC provisions like "hurt" or "grievous hurt," which fail to reflect the gravity of State-inflicted violence.

Thus, the core critique of D.K. Basu is not that it was flawed, but that it was not enough. It created a constitutional framework but not an institutional revolution. It gave India safeguards, but not enforcement machinery. It exposed the problem, but did not dismantle its causes. In that sense, D.K. Basu stands as both a landmark and a reminder: legal reform without structural reform can illuminate injustice, but cannot eliminate it.

Relevance And Reality Of Custodial Rights In 2025

Nearly three decades after the *D.K. Basu v. State of West Bengal* judgment, the reality in 2025 exposes a troubling continuity between past and present. While the guidelines transformed India's constitutional landscape and shaped police accountability, their practical enforcement still falls short of the ideals they represent. NCRB data from

[289] Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police* (2009).
[290] *In Re: Death of 25 Prison Inmates in Dist. Jail, Bhagalpur*, (2014) 13 S.C.C. 88 (India).
[291] U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 (not ratified by India).

recent years shows that custodial deaths and torture remain alarmingly frequent, yet convictions of responsible officers are rare. This persistent gap reflects not merely administrative negligence but an entrenched culture of impunity and silence within the law enforcement system.

Despite advancements such as CCTV installation, digital arrest records, and human rights training, these measures often serve symbolic compliance rather than genuine reform. Political interference, institutional bias, and socio-economic vulnerabilities continue to determine whose rights are protected and whose are ignored. Behind every case lies a story of human suffering — of individuals stripped not only of liberty but of dignity and justice.

In 2025, *D.K. Basu* stands both as a landmark and a mirror: a reminder of how far the legal framework has evolved and how far the State has yet to go. Real change demands more than procedural adherence; it requires moral conviction, institutional accountability, and an unwavering commitment to the constitutional promise that even those in custody are not beyond the protection of law.

Conclusion

The judgment in D.K. Basu v. State of West Bengal remains one of the most influential constitutional decisions in India, not because it eradicated custodial violence, but because it fundamentally altered the way the law understands and regulates State power inside police custody. Before this judgment, the space of arrest and detention was largely invisible in legal terms an administrative domain beyond meaningful constitutional scrutiny. After D.K. Basu, that space was brought under the supervision of the Constitution. The judgment did not simply condemn torture; it changed the legal grammar of custody by making arrest a documentable, reviewable, and rights-based process.

At its core, the case reaffirmed a critical constitutional truth: the State does not cease to be bound by the Constitution when it suspects, detains, or interrogates a person. In a legal system that often treats the accused as disposable or guilty by default, the Court reminded the nation that dignity does not belong only to the innocent or the free, but also to those in handcuffs, in lock-ups, and in the custody of the very system meant to

protect them. The judgment insisted that constitutional rights are not suspended at the moment of arrest they are most urgently needed at that moment.

Yet, the legacy of D.K. Basu is also marked by contradiction. While it successfully transformed the legal framework of arrest, it could not fully transform the institutional structure in which arrest takes place. The safeguards exist; the culture of policing often does not reflect them. Procedural compliance frequently remains symbolic, and the widespread continuation of custodial torture reveals that legal reform without structural change is not enough. The judgment built the architecture of accountability, but the machinery to enforce it is still incomplete.

However, to measure D.K. Basu only by the persistence of torture is to misunderstand its constitutional importance. Its true achievement lies in the fact that it ended the legal invisibility of torture in India. It created language, tools, and procedures through which the powerless can challenge the most coercive acts of the State. It did not close the struggle it shifted the struggle onto constitutional ground, where future reforms, activism, and jurisprudence can build.

The judgment also embodies the highest promise of judicial constitutionalism: that when the political branches fail to protect basic human dignity, the judiciary can step in not as a superior authority, but as a guardian of the values on which the Republic rests. In that sense, D.K. Basu is as much a statement about the meaning of liberty as it is about the limits of State power. It reminds us that the rule of law is not measured by how the State treats the law-abiding, but by how it treats the accused, the detained, the voiceless.

Thus, the enduring message of D.K. Basu is both simple and profound: a constitutional democracy cannot fight crime by committing constitutional crimes. If the State demands obedience to law, it must first model obedience to the Constitution.

The judgment may not have ended custodial violence—but it ensured that the Constitution now walks into the police station and stands beside every arrested individual. In a democracy built on the idea of human dignity, that itself is a monumental shift.

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CHAPTER-16

MARRIAGE EQUALITY & CONSTITUTIONAL MORALITY: A CRITICAL STUDY OF SUPRIYO VS UNION OF INDIA (2023)

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Abstract

The case Supriyo Chakraborty and Another v. Union of India (2023) marks an important moment in India's constitutional understanding of equality, dignity, and personal freedom. The petitioners, a same - sex couple asked the court to recognise their marriage under the Special Marriage Act, 1954. They argued that refusing such recognition violated their basic rights under Articles, 14, 15, 19 and 21 of the Indian Constitution. The government opposed this, saying that marriage is something the legislature should decide, not the court, and that society does not support same sex-unions as part of the traditional definition of marriage.

In October 2023, a five- judge panel of the Supreme Court, led by Chief Justice D.Y. Chandrachud, gave a split decision. All judges agreed that LGBTQ+ people have equal rights, but the majority said there is no fundamental right to marry as per the Constitution. They stressed that recognising same-sex marriage needs laws passed by the legislature, not court rulings. However, the court also said the state must protect LGBTQ+ people from discrimination and called for a high-level committee to look into ways to ensure their rights and social well-being. Even though the verdict didn't make same - sex marriage legal, the case is important because it reaffirms the constitutional promise of equality, dignity, and non-discrimination for queer individuals. It shows the ongoing debate in India between constitutional values and societal norms, and it is a key step in the fight for LGBTQ + rights and recognition in a democratic society. This paper looks at the background facts, legal issues, international comparisons, arguments from both sides, the court's reasoning (majority, and dissenting opinions), and the impact on LGBTQ+ rights, family law, and legislative changes in India.

Keywords: *fundamental rights,morality,discrimination, same-sex marriage*

Introduction

In October 2023 the Supreme Court of India delivered a multi-opinion judgment in Supriyo @ Supriyo Chakraborty & Another v. Union of India, a consolidated set of petitions seeking recognition of same-sex marriage under Indian law. Petitioners asked the Court to read same-sex couples within central marriage statutes (principally the Special Marriage Act, 1954) or to otherwise declare a constitutional right to marry regardless of sexual orientation. The Court's ruling reaffirmed the constitutional protection of dignity, privacy and equality for sexual and gender minorities but — by and large — declined to judicially create marriage equality, placing the primary responsibility on Parliament and the executive. The Court also accepted the Union's proposal to set up a high-powered committee to study administrative/limited entitlements for queer couples. The decision marks an important constitutional and policy inflection point: it confirms that queer persons are constitutionally protected while simultaneously shifting decisive action to democratic institutions.

Aim And Scope Of The Paper

This paper aims to:

a. Analyze the facts, legal issues and arguments in Supriyo v. Union of India.
b. Examine the decision of the Court: majority and dissenting opinions, reasoning and orders.
c. Situate the judgment in the jurisprudential landscape of fundamental rights, personal laws and marriage/union institutions in India.
d. Evaluate the implications (legal, social, legislative) and identify gaps or future directions.

Factual And Procedural Matrix

Several petitions were filed in different High Courts and later moved and combined before the Supreme Court. The petitioners included same-sex couples who asked for a declaration that the Special Marriage Act and related laws should be interpreted to recognize same-sex marriages. They also sought additional benefits like adoption rights, guardianship, inheritance, pension, and other rights that are typically given to

spouses. The Supreme Court formed a five-judge Constitution Bench, consisting of Chief Justice D.Y. Chandrachud and Justices S.K. Kaul, Ravindra Bhat, Hima Kohli, and P.S. Narasimha. The court listened to detailed arguments before delivering its judgment on 17 October 2023.The judgment includes various sections written by different judges, such as the majority opinion, a concurring opinion, and a partially dissenting opinion.

Scope Of The Judgment

- The petitions dealt with issues like same-sex marriage, adoption rights, and the recognition of queer relationships.
- However, the court focused its decision on a specific legal question: whether the Constitution requires the recognition of same-sex marriage or civil unions, and what kind of relief the court could provide.
- The court did not address broader legislative changes or policy decisions, leaving those to the legislature.

Arguments By The Petitioners

1. Learned counsels for the Petitioners contend:
2. That the exclusion of same sex marriage under the Special Marriage Act, 1954(SMA) violates the fundamental rights enshrined in Part lll of the constitution, including Articles 14, 15, 19 AND 21, and is contrary to the principles of equality, dignity, and personal liberty.
3. That the denial of legal recognition to same-sex marriages perpetuates discrimination based on sexual orientation and gender identity, thereby violating Article 15, which prohibits discrimination on the grounds of sex.
4. That the right to marry a person of one's choice is an essential facet of personal autonomy and dignity, protected under Article 21 of the Constitution, and that the non-recognition of same-sex marriages denies LGBTQIA + individuals full participation in civil life and access to spousal rights such as succession, adoption, taxation, and medical decision- making.
5. That the Supreme Court has previously recognised LGBTQIA+ rights in NALSA v. Union of India (2014) and Navtej Singh Johar v. Union of India (2018) ,and that

the logical extension of these rulings necessitates the legal recognition of same-sex marriages to ensure full equality before the law.

6. That the Hon'ble Court may issue a writ of Mandamus directing the Union of India to ensure equal access to the institution of marriage for same- sex couples, either by reading down gender specific provisions in the SMA or by directing appropriate legislative measures.

Arguments By The Respondent

1. Learned counsels for the Respondent contend:

2. That the exclusion of same- sex couples from marriage is not violative of the fundamental rights under under Part lll of the constitution, as marriage is not expressly recognised as a fundamental right, and any such recognition must come through legislative action rather than judicial intervention.

3. That the institution of marriage in India has historically been a socio- legal construct deeply embedded in cultural and traditional values, and any modification of it's legal definition requires extensive deliberation by Parliament, rather than judicial interpretation of existing laws.

4. That the Special Marriage Act, 1954, was never intended to include same-sex marriages, and reading gender- neutral terms into the Act would amount to judicial legislation, which is beyond the scope of constitutional interpretation.

5. That the recognition of same-sex marriages could have wide- ranging implications on other family laws, including those governing adoption, succession, maintenance, and inheritance, and that such changes should be undertaken through legislative processes rather than judicial pronouncement.

Issues Framed To The Constitution Bench

The petitions distilled several central legal and constitutional questions:

1. Whether the Constitution guarantees a fundamental right to marry a person of one's choice regardless of sexual orientation and gender identity (i.e., whether marriage equality is constitutionally required);
2. Whether existing statutes (notably the Special Marriage Act, personal laws, and allied statutes) that presuppose heterosexual unions violate Articles 14 (equality), 15 (non-discrimination) and 21 (life and liberty) when applied to same-sex couples;

3. Whether courts can employ interpretive tools (reading-in/reading-down) to make statutes inclusive of same-sex couples without overstepping judicial bounds; and

if the Court declines to declare a right to same-sex marriage, whether it must nonetheless fashion interim or administrative directions to protect same-sex couples from immediate hardship (hospital visitation, joint bank accounts, next-of-kin recognition, succession, etc.)[1]

1. https://api.sci.gov.in/supremecourt/2022/36593/36593_2022_1_1501_47792_Judgement_17-Oct-2023

Does Constitutional Provisions and Judicial Interpretations a Fundamental Right to Marry?

The Chief Justice Chandrachud has opined that the Constitution of India doesn't explicitly provide the fundamental right to marriage. The Chief Justice's statement underscores a fundamental aspect of Indian jurisprudence: the function of legislation in defining the institution of marriage. Nevertheless, he noted that such regulation of marriage is the jurisdiction of the Parliament, and states have the capacity to alter the existing laws as they deem fit according to contemporary situations.[2]

On the contrary the petitioners in this case had made their arguments relying on precedents like the Shafin Jahan v. Asokan K.M. (2018)[3] and the Shakti Vahini v. Union of India[4] cases in order to assert their marriage as a fundamental right. These cases, which involved inter- faith and Inter-cast marriages, highlighted the idea of individual freedom and the right to choose fundamental right. These cases, which involved inter-faith and Inter-cast marriages, highlighted the idea of individual freedom and the right to choose a life partner on one's own without the interference of the state. Yet, Chief Justice Chandrachud observed that these precedents were not applicable to the current situation. His rationale was that they specifically addressed scenarios where both state and non-state and entities obstructed a couple, who were otherwise eligible to marry, from doing so.

2. Advay Vora & Gauri Kashyap, Plea for Marriage Equality: Judgment Summary, Supreme Court Observer (Oct.18,2023),available at https://www.scobserver.in/reports/

3. AIRONLINE 2018 SC 1136
4. (2018) 7SCC 19

In essence, The legal right to marry can only be enforced in relationships that are officially recognized by the Union government. This distinction shows how complex the legal system is when it comes to fighting for marriage equality in India. Even though the Constitution doesn't directly say everyone has the right to marry, how existing laws are interpreted and applied is key in deciding who can access this basic institution. Justice Chandrachud's ruling suggests that the legal right to marry can only be claimed through a relationship officially recognized by the government, which brings up issues about human rights and how much power the government has in personal matters. The case for marriage as a fundamental right also depends on broader societal views towards LGBTQ+ rights and the principle of non-discrimination. The Chief Justice's decision calls for careful discussions about how law, rights, and social change interact, especially when it comes to communities that are often overlooked.

Justice Bhat concurred with Chief Justice Chandrachud's view that the Constitution does not clearly state a right to marry.He pointed out that marriage is not something the state has created, but rather a practice that comes from society itself. Justice Bhat explained that while the state has the authority to regulate marriage, this authority may not fully support the idea of marriage being a fundamental right. He also said that if marriage were recognized as a right, the state would have to take on specific responsibilities, potentially under Articles 15 and 16 of the Constitution. However, he stressed that the court cannot force the state to create social or legal status, and therefore, the right to marry is more of a personal choice than a right that can be enforced.

He further discussed the state's role in making conditions that help achieve broader goals, referencing Articles 17, 23, and 24, which have positive obligations on the state. Yet, he clarified that in this particular case, the court could not require the state to create the social or legal status of marriage. He explained that the demand in this case was about accessing the "publicly created and administered institution" of marriage, not about creating a legally recognized institution. According to Justice Bhat, the right

to marry is a "personal preference" that gives "social status" but is not an "enforceable right" that courts can make the state or government institutions provide.

On the other hand, Justice Narasimha had a different opinion, seeing marriage as a fundamental freedom rather than a right.
His view questions the traditional understanding of marriage as something legally enforceable, instead suggesting that it involves a wider range of personal freedoms and choices. These judicial insights prompt critical reflections on the intersection of law, rights and social norms in shaping the institution of marriage, as well as the evolving understanding of equality and human rights in Indian society.

International Human Rights Perspective

The Supreme Court's ruling in Supriyo v. Union of India was also criticized for disregarding the principles of international human rights law, which unambiguously recognize the right to marry as a fundamental human right. Article 16(1) of the Universal Declaration of Human Rights (UDHR)[5] and Article 23(2) of the International Covenant on Civil and Political Rights (ICCPR)[6] affirm that *"the right of men and women of marriageable age to marry and to found a family shall be recognized."* The court's position that the right to marry is not a fundamental right runs contrary to this accepted position under international human rights law.

Universal Declaration of Human Rights art. 16(1), Dec. 10, 1948, 217 A (III) ("Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.").
International Covenant on Civil and Political Rights art. 23(2), Dec. 16, 1966, 999 U.N.T.S. 171 ("The right of men and women of marriageable age to marry and to found a family shall be recognized.").
Paradoxically, while the Chief Justice did not engage with the UDHR and ICCPR in deciding the nature of the right to marry, he selectively relied on these very international covenants later in his opinion to prohibit "conversion therapies" aimed at altering sexual orientation, deeming them "cruel, inhuman and degrading punishment" under Article 5[7] of the UDHR and Article 7[8] of the ICCPR.

This selective use of international norms was inconsistent with the Supreme Court's own principles, as established in the landmark case of Vishaka vs State of Rajasthan (1997), where the court held that "*Any international convention not inconsistent with*

the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee."[9]

Towards a More Just Society: Addressing Systematic Inequalities

The Supriyo v. Union of India judgment shows that the courts need to interpret fundamental rights in a more consistent and forward-thinking way, in line with the principles of equality, non-discrimination, and human rights found in the Indian Constitution and international agreements.

The court's choice to apply some international standards but not others, as seen in this case, weakens its role as a protector of basic freedoms.

If the court took a more comprehensive approach, using international human rights standards as part of its constitutional interpretation, it would better protect vulnerable groups and help promote social justice.

Universal Declaration of Human Rights art. 5, Dec. 10, 1948, 217 A (III) ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").

International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.").

Vishaka and Ors. vs. State of Rajasthan and Ors. (13.08.1997 - SC) : MANU/SC/0786/1997

From a policy angle, this decision could affect how the law recognizes and regulates different kinds of family arrangements and relationships outside the traditional idea of heterosexual marriage.

It might also lead to wider conversations about how society's values are changing, the freedom individuals have in their personal lives, and what role the government should play in personal relationships.

The Judgment: Holdings and Core Reasoning

Principal holdings

The key outcomes of the judgment can be summarised:

- **No judicially enforceable constitutional right to same-sex marriage:** The Bench, by a majority, held that recognition of same-sex marriage is a matter of policy and legislative competence rather than an automatic constitutional imperative to be supplied by the courts. The Court concluded that the statutory institution of marriage — with its many ancillary rules — requires a considered legislative response if it is to be extended to same-sex couples.[10]
- **Affirmation of constitutional protections for LGBTQIA+ persons:** The Court reaffirmed the doctrinal foundations established in earlier cases: sexual orientation and gender identity fall under the protective umbrella of constitutional dignity, privacy and equality. The judgment reiterated that discrimination against sexual and gender minorities is constitutionally prohibited.[11]

- **Declination to direct creation of civil unions or mandate adoption access:**

The Court chose not to directly order the creation of civil unions or require access to adoption for same-sex couples.On specific issues like whether to tell the government to create civil unions or allow same-sex adoption, the Court split 3-2 and decided not to give broad judicial instructions. They argued that it is better for the government and legislature to handle such matters, as they are more suited to make these decisions.

- **Direction to set up a high-powered committee:**

The Court agreed to set up a powerful committee led by the Cabinet Secretary.

This committee would look into the discrimination faced by people who identify as sexual or gender minorities. It would also suggest administrative or legal steps to provide certain rights and benefits, such as being recognized as next-of-kin, making medical decisions in hospitals, opening joint bank accounts, visiting prisoners, getting insurance coverage, and handling inheritance in non-marriage situations. The Court saw the committee as a practical way to slowly move toward reform.

7. https://api.sci.gov.in/supremecourt/2022/36593/36593_2022_1_1501_47792_Judgement_17-Oct-2023.
8. https://en.wikipedia.org/wiki/Navtej_Singh_Johar_v._Union_of_India

Core reasons cited by the majority

The majority's reasoning was based on concerns about the separation of powers, the complicated structure of laws related to personal and family matters, and the idea that fully recognizing marriage needs public discussion and careful planning by lawmakers. The Court pointed out that if judges interpreted same-sex marriage into existing laws, it would be like making policy, which goes beyond what the judiciary is meant to do and undermines its legitimacy in a democracy. The majority also concerned about the wide-ranging effects this could have on areas like inheritance, adoption, taxes, social benefits, and other personal laws, which require a thorough and coordinated legislative approach.

Dissenting/rights-affirming voices

Some judges, although they shared the view that the Constitution offers protection to queer individuals, contended that when the application of laws leads to the violation of essential constitutional rights, the courts should not avoid creating solutions. These opinions referred to past cases where courts have taken strong actions to defend rights, such as interpreting laws more broadly or adding new meanings to existing provisions. They also warned that if the judiciary fails to act against ongoing discrimination, the rights of minorities might not be truly respected. The opposing viewpoints stressed the court's responsibility to uphold basic rights, even when the legislature does not take appropriate action.

Doctrinal Analysis — Interpreting the constitution: Principles and Practices

From privacy to marriage: logical and doctrinal trajectories

The petitioners' argument followed a doctrinal trajectory that began with Puttaswamy (right to privacy), flowed through Navtej Johar (decriminalisation of consensual same-sex conduct) and NALSA (recognition and protection of gender identity), and culminated in the claim that marriage — as an intimate, autonomous life-choice — should be constitutionally protected. Puttaswamy situates intimate relationships within the ambit of privacy and autonomy; Navtej Johar recognises sexual orientation as a protected identity, and together these cases supply doctrinal ammunition for marriage equality claims.[12]

Articles 14 and 21: equality, dignity and proportionality

Petitioners claimed that using traditional, heterosexual ideas about marriage to judge queer people is unfair and not reasonable, which goes against Article 14, and that not allowing marriage rights hurts their sense of dignity and control as stated in Article 21. The majority agreed that queer individuals should be treated with fairness and respect, but they said that just because the Constitution says so doesn't mean the courts can automatically give them the right to marry without laws supporting it. The difference is between recognizing that queer people deserve respect and actually creating a legal system that gives them the right to marry through legislation

Separation of Powers: Restraint, Institutional Competence and Judicial Duty

The Supriyo judgment is based heavily on the principle of separation of powers. The majority opinion emphasized that the judiciary should not step into areas where policies require the legislature to balance different private, social, religious, and cultural values. The Court viewed marriage as deeply connected to a broad network of laws and social structures; therefore, judicially redefining it could lead to unpredictable outcomes and potentially interfere with religious personal laws and other delicate domains.

Critics of this approach argue that the separation of powers does not justify allowing minority rights to remain unprotected when existing laws or administrative actions clearly violate the constitution.

In practice, different courts take different approaches: some constitutional courts interpret rights broadly when there is no legislative action, while others prefer to defer to the legislature. India's Supriyo judgment reflects a cautious institutional approach, emphasizing democratic law-making while supporting gradual administrative solutions through executive review. This delicate balance raises important questions about the judiciary's role in safeguarding vulnerable minorities against political delay.

9. https://en.wikipedia.org/wiki/Puttaswamy_v._Union_of_India
https://globalfreedomofexpression.columbia.edu/cases/ Navtej-Singh-Johar-v—union-India

Comparative Perspective: How Other Democracies Approached Marriage Equality

Comparative experience is instructive: courts and legislatures around the world have taken different paths to marriage equality.

1. **Judicial recognition first**: In several jurisdictions, courts have required recognition of same-sex marriage by interpreting equality guarantees (e.g., the Netherlands and some constitutional courts), thereby compelling legislatures and executive agencies to adjust.
2. **Legislative route:** Other countries achieved change primarily through legislature-led reform (e.g., civil unions or marriage amendments passed by parliaments).
3. **Incremental administrative fixes:** Some states used administrative measures to grant certain entitlements before full marriage equality (hospital visitation, partner recognition) as interim relief.[14]

India's decision to defer aligns more closely with the legislative model while still urging administrative stopgap measures. The comparative lesson is that while legislatures may be the ideal forum for comprehensive reform, judicial action has often been pivotal where political will was lacking — a tension India's judgment explicitly wrestled with. (For cross-jurisdictional detail, see works surveying European, North American and Latin American constitutional jurisprudence on marriage equality.)[15]

Socio-legal and Cultural Perspectives: Stigma, Social Change and Law in India

Law both shows and influences the standards people follow in society. The Supriyo judgment's partial reliance on Parliament could slow down the clarity and acceptance of rights for same-sex couples. Social stigma, pressure from families, and discrimination in places like healthcare, jobs, housing, and law enforcement cause everyday harm to people who are sexually or gender diverse, and this doesn't depend on when new laws are passed.

The Court's acknowledgment of dignity and equality is important because it helps show that queer rights are a part of public discussions.

But real change needs more than just recognition. Practical support comes from laws and government actions.Efforts by civil society, the media, and education are also needed to reduce stigma. The high-powered committee's suggestions, if put into action

quickly and thoughtfully, can help, but they can't take the place of full legal recognition that gives equal, enforceable rights everywhere and in all areas.

Feminist and Intersectional Perspectives: Gender, Caste, Class and Sexuality

A thorough analysis needs to take into account intersectionality, which means that sexual orientation and gender identity intersect with factors like caste, class, religion, disability, region, and economic situation. The experiences of queer individuals vary significantly; for instance, a wealthy, urban gay couple may face very different challenges compared to a trans person living in a rural area with limited resources. Feminist perspectives often point out that the institution of marriage has historically reinforced patriarchal structures; some feminists support alternatives to marriage, such as civil partnerships or legal frameworks for parenthood, which aim to shift focus away from marriage as the primary institution while still safeguarding dependency and care relationships. Intersectional analysis emphasizes the importance of reforms that do not favor those who are already in privileged positions or create rights that are only accessible to urban, affluent couples. Policies and laws should ensure that everyone, regardless of caste, class, religion, or region, is included through targeted outreach, accessible procedures, and protections against discrimination based on multiple factors.

Conclusion

The interpretation of the Special Marriage Act, 1954, in the context of marriage equality represents a critical juncture in India's legal landscape. While the court's decision underscores the challenges inherent in altering existing legislation, it also highlights the imperative to address systemic discrimination and promote inclusivity. By navigating the complexities of legal interpretation and engaging in meaningful dialogue, India can move towards a future where all individuals, regardless of sexual orientation or gender identity, have equal rights and opportunities within the institution of marriage.

14. https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india/

15. https://www.scobserver.in/cases/plea-for-marriage-equality/

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CHAPTER-17

BABRI MASJID CASE: ESTABLUTING THE BASIC STRUCTURE DOCTRINE

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Abstract

The dispute surrounding the Babri Masjid in Ayodhya occupies a unique and complex position in the legal, political, and cultural landscape of India. What began as a localized contestation over a small piece of land eventually evolved into one of the most polarizing legal disputes in modern Indian history. Over several decades, the issue transformed from an administrative concern to a national political phenomenon that mobilized millions, reshaped electoral politics, and compelled the judiciary to carefully navigate the tension between religious belief and constitutional principles. The Supreme Court's 2019 decision, which allocated the disputed land for the construction of a Ram temple while providing an alternative site for a mosque, sparked intense academic, political, and public debate. It presented a challenging question: did the verdict uphold the principles of secularism and rule of law, which form part of India's basic structure, or did it indicate an implicit tilt toward majoritarian sentiment?

This research paper attempts to critically examine the Babri Masjid case across its historical evolution, political trajectory, judicial milestones, archaeological controversies, and constitutional implications. The paper adopts a multidisciplinary approach, integrating legal analysis with historical context, public policy considerations, and comparative international perspectives. The aim is to assess how far the Supreme Court judgment aligns with the constitutional ethos of secularism and whether the outcome strengthens or dilutes the core principles safeguarded under the basic structure doctrine. By exploring these dimensions, the

paper seeks to highlight the delicate balance courts must maintain when adjudicating disputes deeply intertwined with collective faith, identity, and national politics.

Introduction

The Babri Masjid dispute is one of the most defining legal conflicts in India's post-independence history. Although outwardly framed as a property dispute, the case touches upon far deeper dimensions of Indian society. It is situated at the intersection of history, mythology, politics, communal identity, and constitutional law. The dispute concerns a 2.77-acre plot in Ayodhya, long associated with the religious imagination of millions of Hindus as the birthplace of Lord Ram and simultaneously claimed by Muslims as the site of the Babri Masjid, constructed in the 16th century. Over time, the site became a symbol of competing narratives of history and collective memory, each shaped by centuries of cultural evolution and identity formation.

From a constitutional perspective, the dispute represents a crucial test of the Indian state's commitment to secularism, equality before law, minority rights, and judicial independence.

The Supreme Court's final adjudication in 2019 attempted to bring legal closure to a conflict that had periodically erupted into communal violence, political mobilization, and societal unrest. Yet the judgment continues to provoke questions about the role of the judiciary in safeguarding secularism and whether legal reasoning can effectively respond to disputes shaped by religious beliefs and political mobilization.

This introduction outlines the broad scope of the research paper. It describes the dispute's multi-layered nature, identifies its constitutional relevance, and explains why the Babri Masjid case must be examined not only as a title suit but also as a landmark decision with profound implications for India's basic structure doctrine. The case presents an opportunity to evaluate how courts interpret historical evidence, assess archaeological findings, and mediate between faith-based claims and constitutional values. Ultimately, the Babri Masjid dispute compels legal scholars to reflect upon the challenges of administering justice in a society as diverse, vibrant, and complex as India.

Historical Background Of Ayodhya And The Dispute

The Construction of the Babri Masjid - Ayodhya, one of the oldest continuously inhabited cities in India, holds immense religious significance for Hindus due to its association with Lord Ram, revered as the seventh incarnation of Vishnu. When Mir Baqi, a general in the Mughal army under Emperor Babur, constructed a mosque on this site in 1528, the event was recorded in administrative chronicles but did not attract major controversy at the time. The structure later known as the Babri Masjid served local Muslim communities for centuries. Although the mosque was not considered an architectural marvel comparable to other

Mughal structures, it assumed extraordinary symbolic significance due to its contested location. Over time, narratives emerged claiming that the mosque was erected after demolishing a Hindu temple that supposedly marked the birthplace of Lord Ram. These claims gained traction in later centuries and became central to political mobilization in the modern period.

Hindu Belief and Early Claims to the Site - Long before the contemporary conflict, Hindu belief and worship practices in Ayodhya centred around the idea that the city represented the sacred birthplace of Lord Ram. This belief is rooted in the Ramayana and centuries of devotional literature, oral traditions, and pilgrimage practices. Although historical evidence regarding the existence of a pre Babri Masjid temple remains inconclusive, the enduring belief in the sanctity of the site generated devotional practices that often continued under changing political regimes. It is essential to note that until the 19th century, Hindu worship in Ayodhya typically occurred at shrines and platforms outside the mosque structure, reflecting a negotiated coexistence rather than outright conflict. However, this arrangement eventually became strained as communal consciousness sharpened during the colonial period.

Nineteenth-Century Developments and Rising Tensions - By the mid-19th century, communal tensions between Hindu and Muslim communities in Ayodhya began to intensify. The British colonial administration, which prided itself on maintaining religious neutrality, attempted to manage the growing conflict by physically demarcating spaces: Muslims

continued offering prayers inside the mosque, while Hindus worshipped at the Ram chabutra in the outer courtyard. British gazetteers documented the coexistence of both communities, yet the administrative division inadvertently institutionalized separate claims to the site. The first major recorded clash occurred in 1855, prompting the colonial government to construct protective railings to prevent direct confrontation. Such measures provided temporary stability but failed to address the underlying contestation, allowing the dispute to simmer beneath the surface for decades.

Colonial-Era Developments And The First Lawsuit

The British Administrative Approach to Religious Disputes - The British colonial administration adopted a deliberate policy of non-interference in matters of faith, preferring to maintain public order rather than adjudicate on theological truth or historical legitimacy. Their approach involved regulating religious practices to prevent communal riots rather than ruling on ownership rights. This strategy reflected broader colonial governance patterns, where legal ambiguities were often maintained to avoid alienating either community.
Although the British claimed neutrality, their administrative decisions such as physically separating Hindu and Muslim areas of worship at the site created structural precedents that shaped future legal disputes.

The 1885 Suit Filed by Mahant Raghubar Das - The first significant legal claim regarding the site was filed in 1885 by Mahant Raghubar Das, who sought permission to construct a temple over the Ram chabutra. The court dismissed the plea, reasoning that granting such permission might disturb communal harmony. Although the suit was rejected, the judgment noted that Hindus regarded the location as the birthplace of Lord Ram while also acknowledging Muslim possession of the inner courtyard. These remarks, though not legally decisive, had lasting symbolic significance and influenced later arguments concerning historical worship patterns. The case represents a key moment when religious belief and administrative records intersected with formal judicial scrutiny.

Colonial Gazetteers and the Preservation of Ambiguity - Throughout the late 19th and early 20th centuries, British officials continued documenting both Hindu and Muslim claims without altering the status quo. This administrative reluctance to directly address ownership inadvertently allowed the dispute to persist. The lack of clear resolution during the colonial era meant that post-independence India inherited a contentious site burdened with unresolved historical claims, incomplete evidence, and conflicting narratives. These ambiguities later played a central role in shaping the complexity of post-independence litigation POST-INDEPENDENCE PHASE AND ESCALATION

The Incident of 1949 and Its Aftermath - India’s independence in 1947 ushered in a new constitutional order based on secularism, equality, and the rule of law. Yet the unresolved tension surrounding the Ayodhya site remained a challenge. On the night of 22–23 December 1949, idols of Ram Lalla were surreptitiously placed inside the mosque. The event triggered administrative paralysis and sparked communal tension. The district authorities responded by locking the mosque premises and allowing limited Hindu worship from outside while barring Muslim access altogether. This administrative decision, though intended to restore order, fundamentally altered possession patterns and set the stage for prolonged litigation.

Legal Proceedings Initiated After 1949 - Following the installation of the idols, multiple legal

suits were filed by both communities. Hindu parties sought injunctions to retain the idols and expand control over the site, while Muslim plaintiffs demanded restoration of the mosque and unhindered access for worship. The Nirmohi Akhara filed a suit claiming management rights, and in 1989, the deity Ram Lalla was allowed to become a party to the case as a juristic person. This development marked a critical shift, enabling the deity to assert property rights independently. Over the next several decades, the dispute expanded into a complex web of overlapping legal claims that required careful consolidation for meaningful adjudication.

The Rise Of The Ram Janmabhoomi Movement

Political Awakening in the Late 20th Century - Between the 1950s and 1980s, the Ayodhya dispute remained largely confined to courtrooms and local religious groups.
However, the political landscape of India underwent significant transformations during the late 20th century. Identity-based mobilization, declining dominance of the Congress party, rising communal polarization, and increasing involvement of religious organizations created fertile ground for the dispute to assume national prominence. The Vishwa Hindu Parishad launched an aggressive campaign in 1984 to construct a Ram temple at the site, marking a turning point in the dispute's political trajectory. The movement successfully transformed a localized issue into a national cause that galvanized mass support.

The 1986 Unlocking Order - A major milestone occurred in 1986 when a district court ordered that the locks of the disputed structure be opened to allow unrestricted Hindu worship. Although portrayed as an administrative decision, the order had enormous political repercussions. Hindu groups celebrated it as a significant victory, while Muslims perceived it as a sign of state bias. The event accelerated communal polarization and intensified political mobilization across India.

The Shilanyas Ceremony of 1989 - In 1989, the government permitted the VHP to conduct a foundation stone-laying ceremony near the disputed structure. This event symbolized the consolidation of religious sentiment with political strategy. The ceremony was projected as a peaceful religious act, but in reality, it functioned as a political message

that temple construction was imminent. The event played a pivotal role in the 1989 general elections and solidified the dispute's place in national political discourse.

The Rath Yatra of 1990 - Perhaps the most consequential political mobilization occurred in 1990 when L.K. Advani embarked on the Rath Yatra across several states. The Yatra combined religious symbolism with political messaging, attracting massive crowds and igniting communal tensions. The campaign sought to generate public pressure for constructing a Ram temple and ultimately succeeded in turning Ayodhya into a central political symbol. The Yatra's wide geographic reach enabled the movement to influence electoral outcomes and reshape national political alignments.

The Pre-Demolition Climate (1990–1992) - The early 1990s were marked by intense mobilization, administrative uncertainty, and escalating communal sentiments. Despite assurances to the Supreme Court that the mosque would not be harmed, militant voices within the movement openly demanded its demolition. Kar sevaks assembled in large

numbers, and the political environment became increasingly volatile. The stage was set for a catastrophic event that would alter India's constitutional and social landscape.

The Demolition Of 6 December 1992

Circumstances Leading Up to the Demolition - For weeks preceding the demolition, Ayodhya witnessed the gathering of thousands of kar sevaks. Intelligence reports suggested a high likelihood of violence, but the state government failed to take decisive action. Security arrangements were inadequate, and political leaders appeared to underestimate the intensity of the mobilization. The Supreme Court's directions to permit only symbolic kar seva were effectively ignored, and administrative agencies stood by as tensions escalated.

The Demolition Event - On 6 December 1992, kar sevaks breached security cordons, climbed the mosque's domes, and began demolishing the structure using handheld tools. The demolition unfolded over several hours amidst slogans calling for the construction of a Ram temple. Despite the presence of prominent political leaders, no intervention occurred to stop the mob. By evening, the Babri Masjid standing for more than four centuries was reduced to rubble.

Immediate National Impact - The demolition triggered nationwide riots, resulting in over 2,000 deaths. Violent clashes erupted in several states, leading to massive property destruction, fear, and displacement. The Union Government dismissed several state administrations and took control of the disputed site. International condemnation poured in, and India faced scrutiny for failing to protect cultural and religious heritage. The demolition also resulted in numerous criminal cases against political leaders and activists, although legal accountability remained limited in the long run.

The Liberhan Commission - The Liberhan Commission, constituted soon after the demolition, took 17 years to submit its report. The Commission concluded that the demolition was premeditated and systematically executed with the support of several political leaders and organizations. Although the report provided significant factual findings, its legal impact remained modest. Nonetheless, the Commission highlighted the failure of the state machinery and the organized nature of the demolition, underscoring the gravity of the constitutional violation involved.

Constitutional Implications of the Demolition - The demolition represented a severe blow to secularism, rule of law, and minority rights. It illustrated the vulnerability of constitutional institutions in the face of majoritarian mobilization. The incident violated Articles 14, 25, and 26 of the Constitution and shook the very foundations of India's commitment to religious neutrality. The demolition symbolized not just the destruction of a physical structure but also a profound disruption of constitutional morality.

Litigation History Before The Supreme Court Verdict

Consolidation of Cases - Between 1950 and 1990, several suits were filed regarding the rights to worship, possession, and management of the site. In 1989, all pending cases were transferred to the Allahabad High Court for a comprehensive trial. This consolidation allowed for a unified judicial evaluation of the complex legal issues at stake.

The Allahabad High Court Judgment (2010) - In 2010, the Allahabad High Court delivered a landmark judgment dividing the disputed land into three equal parts among Hindu parties, the Nirmohi Akhara, and the Sunni Waqf Board. The reasoning emphasized historical possession patterns, archaeological findings, and the significance of religious belief. While the judgment attempted to balance competing claims, it was criticized for lacking a clear legal basis and for introducing theological considerations into a property dispute. All parties appealed the decision, leading the Supreme Court to take up the case.

The Supreme Court Judgment Of 2019

The Supreme Court's judgment delivered on 9 November 2019 in the Ayodhya dispute is widely regarded as one of the most consequential decisions in the history of the Indian judiciary. Spanning over 1,045 pages, delivered unanimously by a five-judge Constitution Bench, and concluding nearly seven decades of litigation, the verdict marked a defining moment in India's constitutional, political, and socio-religious landscape. While the judgment formally resolved the title dispute over the 2.77-acre site, its reasoning, methodology, and implications continue to attract intense scholarly debate. The following expanded discussion aims to unpack the judgment in greater depth, interpretive choices, evidentiary standards, constitutional implications, and the contradictions it embodies. One of the most important features of the judgment is the Court's insistence that the dispute must be treated strictly as a civil suit relating to title, and not as a theological or political question. The bench repeatedly emphasized that courts of law cannot adjudicate on matters of religious truth, faith-based claims, or historical grievances unless they have legal relevance. This framing was crucial because it attempted to detach the case from the emotionally charged religious environment that had surrounded it for decades.

Even though the Court claimed neutrality, certain aspects of the judgment such as reliance on continuous Hindu belief in the birthplace of Ram and on patterns of worship indicate that faith based claims inevitably entered the legal reasoning. This tension between principle and practice forms one of the central puzzles of the judgment. The Court employed the civil law standard which allows judges to decide in favour of the party whose claim appears more probable when weighed as a whole. Under this standard, the Court examined:

- patterns of Hindu worship in the outer courtyard,
- limited and interrupted Muslim possession after 1857,
- archaeological findings,
- British administrative records,
- travelogues and gazetteers.

Hindus had a stronger case of long-standing possession, especially in the outer courtyard. While Muslims historically used the inner courtyard, the Court concluded that exclusive Muslim possession was not established in the decades prior to 1949. Some legal scholars argue that this reasoning was not entirely consistent because Muslim worship was interrupted due to administrative orders, communal tensions, and the locked gates after 1949 conditions that were not created by the Muslim community itself.

The Archaeological Survey of India's 2003 report played a significant role in the Court's

final reasoning. The ASI concluded that:

- a non-Islamic structure existed beneath the mosque,
- remains such as pillar bases suggested a large pre-existing structure,
- the earlier structure was not Islamic in nature.

The Court accepted these findings, stating that the mosque was not built on vacant land.

Important Judicial Clarification - The Court explicitly stated that the ASI did not prove demolition of a temple to build the mosque. Yet, this clarification did not prevent the Court from using the ASI report to strengthen the Hindu claim of historical worship.

Criticism of ASI reliance - Historians argue that archaeological evidence is inherently interpretive and cannot conclusively settle ownership claims. The Court nevertheless treated the ASI report as an important probabilistic indicator a nuanced but controversial methodological choice. The Court rebuked the illegal acts morally but did not impose a legal remedy that restored the mosque or compensated the Muslim community for the loss of the structure.

Indian law has long recognized deities as legal persons, but allowing the birthplace itself to assume legal personality was more unique. This strengthened the Hindu claim considerably because it allowed the deity to claim the entire disputed land.

The Court ordered:

- the entire disputed land to be handed to Ram Lalla,
- the construction of a Ram temple under a central government-appointed trust,
- and 5 acres of alternative land to the Sunni Waqf Board.

Counter arguments - Scholars argue that alternate land does not replace the historical and religious significance of the original site, nor does it amount to restitution for the unlawful demolition.

The judgment attempted to:

- affirm constitutional secularism,
- distance itself from religious doctrine,
- uphold civil law standards,
- maintain public peace in a polarized climate,
- provide an institutional resolution.

The Court’s insistence that the verdict was not based on faith is difficult to reconcile with its significant reliance on historical belief, devotional practices, and the legal personhood of the deity.

Core Legal Principles Applied by the Court - The Supreme Court’s 2019 judgment is regarded as one of the most consequential decisions in India’s judicial history. The Court emphasized that its decision rested on civil law principles rather than theological claims. It highlighted that unlawful acts such as the 1992 demolition and the 1949 idol placement were

violations of the rule of law. Yet the Court also observed that title disputes must be resolved on the basis of evidence and established legal standards. The judgment underscored the role of long-standing possession, historical worship patterns, and the standard of preponderance of probabilities applied in civil cases.

Recognition of Ram Lalla as a Juristic Person - One of the most significant legal aspects was the Court's affirmation that Ram Lalla was a juristic person capable of owning property. Indian legal tradition has long recognized Hindu deities as legal entities, and the Court held that the deity and even the birthplace Janmasthan could claim legal rights. This recognition strengthened the Hindu side's claim to the land by allowing direct assertion of ownership on behalf of the deity.

Interpretation of the ASI Report - The Archaeological Survey of India's excavation played a crucial role in shaping the Court's analysis. The ASI report indicated the presence of a non-Islamic structure beneath the mosque, suggesting the existence of an earlier temple-like building. While critics argued that the report lacked conclusiveness, the Court applied the civil law standard of probability to accept the report as supporting the Hindu claim. The Court acknowledged that there was no definitive proof of demolition but held that the underlying structure's presence was relevant to assessing historical claims.

Assessment of Worship and Possession Patterns - The Court carefully examined evidence regarding worship practices. It concluded that Hindus had a long-standing tradition of worshipping at the site, while Muslim possession of the inner courtyard had weakened over time due to limited use after the mid-19th century. The Court noted that the 1949 incident disrupted Muslim access but reasoned that possession prior to 1949 did not demonstrate exclusivity.

The Paradox of Condemning Illegal Acts Without Reversing Them - Although the Court condemned the 1949 and 1992 incidents as violations of the rule of law, it did not order restoration of the mosque. Critics argue that this created a legal paradox illegal acts were censured but their consequences were not reversed. This point remains central to critiques concerning constitutional morality and secularism.

Allocation Of Land And Orders Issued By The Court

Land Awarded to the Hindu Side - The Supreme Court awarded the entire 2.77-acre disputed land to Ram Lalla Virajman, directing the central government to form a trust for the construction and administration of the Ram temple. This decision marked the realization of the long-standing demand for temple construction at the exact disputed location.

Five Acres Granted to the Sunni Waqf Board - To ensure fairness and maintain public order, the Court directed the state government to provide the Sunni Waqf Board with an alternative five-acre plot in Ayodhya for constructing a mosque. While the gesture aimed to achieve balance, critics argue that alternate land cannot compensate for the original site's historical and religious significance.

The Court's Attempt to Balance Interests - The Court portrayed the judgment as a balanced

compromise. It recognized the grievances of both communities, condemned unlawful acts, and attempted to maintain social harmony. However, the practical outcome of the decision favoured the Hindu side entirely.

Property Law Dimensions Of The Verdict

Application of Civil Law Principles - Civil suits concerning title hinge upon possession, documentary evidence, and witness testimony. The Court held that Hindu parties established a stronger case based on historical worship patterns and possession of the outer courtyard. This reasoning followed established principles of property law, even though the dispute was deeply entwined with religious identity.

The Rejection of Adverse Possession Claims - The Muslim parties argued adverse possession over the site, but the Court rejected this claim. The Court reasoned that adverse possession requires exclusive, continuous, and hostile occupation, which the evidence did not support, especially after the 19th century administrative arrangements.

The Balance Between Faith and Evidence - While the Court insisted that belief cannot determine title, it used evidence of long-standing Hindu belief and worship to support its reasoning. Critics argue this created a subtle but significant overlap between faith and evidence, raising concerns about the judgment's secular foundation.

The Impossibility of Partitioning the Site - The Court rejected the High Court's three- way division, holding that such partitioning lacked statutory basis and was not sought by any party. The Court concluded that the nature of the dispute required a singular, decisive allocation.

Role Of Archaeology And Historical Evidence

The ASI Excavation Process - In 2003 the ASI conducted a detailed excavation that involved digging multiple trenches, carbon dating artefacts, and documenting structural remains. The report concluded that a large non Islamic structure predated the mosque. The findings became significant in shaping legal arguments and public narratives.

Judicial Interpretation of Archaeological Findings - The Supreme Court interpreted the ASI report as supporting the claim that the mosque was built over an earlier temple-like structure. Although the Court did not hold that the mosque was built after demolishing a temple, it treated the report as corroborating historical worship by Hindus.

Scholarly Critiques of the ASI Report - Historians and archaeologists criticized the report's methodology, arguing that archaeological evidence cannot conclusively prove demolition. Critics emphasized that temple-to-mosque transitions were historically common and did not necessarily reflect destruction. Yet the Court prioritized "overall probability" over definitive proof.

Historical Narratives and Travel Accounts - The Court also considered colonial gazetteers, travel writings, and administrative reports. While these sources reflected long- standing Hindu belief, they lacked legal weight. Nevertheless, they were used to contextualize

historical worship patterns.

Selective Use of History - Some scholars argue that the Court selectively used historical evidence, privileging Hindu narratives. Others contend that centuries old devotional practices cannot be overlooked simply due to lack of formal documentation. This debate highlights the complexity of integrating history into legal reasoning.

Secularism As A Basic Structure Of The Constitution

The Basic Structure Doctrine - The landmark Kesavananda Bharati judgment established that Parliament cannot amend the basic structure of the Constitution. Elements of the basic structure include secularism, rule of law, equality, judicial review, and democratic governance. This doctrine ensures that constitutional identity remains intact despite political changes.

Indian Concept of Secularism -Indian secularism emphasizes equal respect for all religions rather than strict separation of church and state. The Constitution requires the state to maintain neutrality and protect religious freedom. Secularism is therefore both a legal principle and a guiding force for governance.

Assessing Secularism in the Ayodhya Judgment - The Ayodhya judgment is often evaluated through the lens of secularism. Key questions include whether the Court maintained neutrality, whether it protected minority rights, and whether the judgment allowed faith to influence legal outcomes. These concerns form the foundation of constitutional critiques.

Arguments Supporting Secularism - Supporters argue that the judgment upheld secularism by condemning unlawful acts, recognizing Muslim claims, and providing alternate land. They contend that the Court sought to prevent violence and maintain social harmony.

Arguments Suggesting Dilution of Secularism - Critics argue that the judgment favoured the majority community. They note that the site was awarded to the party that benefited from illegal acts and that the reasoning subtly incorporated faith based considerations. This perspective suggests that secularism may have been compromised.

Minority Rights And Constitutional Morality

Protection of Minorities Under the Constitution - Articles 14, 15, 25, 26, 29, and 30 safeguard equality, non discrimination, and religious freedom. These provisions aim to protect minority communities from majoritarian pressures and uphold India’s pluralistic ethos.

Impact of the Judgment on Minority Rights - Muslim communities expressed disappointment with the judgment, arguing that the loss of the original mosque location constituted a significant cultural and religious setback. Many felt that alternate land did not remedy the historical loss of worship rights at the original site.

Constitutional Morality and Ayodhya - Constitutional morality requires adherence to values such as equality, dignity, and justice. Critics argue that the judgment prioritized stability over

constitutional morality by failing to hold perpetrators accountable or restore the mosque.

The Role Of Politics In Shaping The Dispute

Political Indifference Immediately After Independence - Initially, political parties treated the dispute as a local issue. Over time, however, identity politics gained momentum, allowing the dispute to evolve into a national concern.

Congress Party's Political Calculations - Several decisions by Congress governments including the Shah Bano reversal, the unlocking of the mosque in 1986, and permission for the Shilanyas contributed to escalating communal tensions.

Rise of the BJP - The BJP's growth was closely linked to the Ayodhya movement. The party used the issue to mobilize voters, reconfigure national politics, and secure electoral gains. It is also believed that BJP's role is Ayodhya movement was very impactful among the citizens , which eventually involved mass movement. Hence making it one of the most important case in Indian history.

Political Complicity in the 1992 Demolition - The Liberhan Commission highlighted political failures that enabled the demolition. These findings underscore the complex intersection between religious mobilization and political strategy.

Aftermath Of The Supreme Court Judgment

Formation of the Temple Trust - As directed by the Court, the government formed the Shri Ram Janmabhoomi Teerth Kshetra Trust to oversee temple construction and administration.

Construction of the Ram Temple - Temple construction began in 2020 and involved sophisticated architectural planning and national participation. The inauguration of the first phase in 2024 marked the culmination of a decades-long movement.

Allocation of Land for the Mosque - The state allotted land in Dhannipur village for a new mosque. Plans include a cultural centre, hospital, and educational facilities, although the location sparked some debate.

Public Reaction - Reactions varied widely: Hindus celebrated the verdict, Muslims expressed disappointment, and scholars debated its constitutional implications.

Impact on Social Harmony - While the judgement prevented immediate violence, concerns remain regarding long term consequences for minority confidence and inter religious harmony. The judgement also increases the chances of mass clashes between Hindu and Muslim.

Critical Evaluation Of The Judgement

Legal Evaluation - Strengths of the judgment include providing closure and applying civil law principles. Limitations include reliance on probabilities and failure to reverse the effects of illegal acts. Constitutional evaluation critics argue that the verdict diluted secularism by validating the consequences of unconstitutional actions.

Ethical Considerations - The judgment raises questions about balancing constitutional morality with practical concerns of public order.

Judicial Neutrality - The case prompts reflection on whether courts can remain entirely free from societal pressures in highly polarized disputes.

Comparative International Perspectives

A - Turkey's Hagia Sophia

Both Ayodhya and Hagia Sophia illustrate the role of political authority in religious site disputes. However, in Turkey, the decision was administrative, whereas in India, it was judicial.

B - Temple Mount in Israel–Palestine

Both disputes involve competing historical claims and religious symbolism. Unlike Ayodhya, Temple Mount remains unresolved.

C - Sri Lanka's Temple Disputes7

Similar tensions exist in Sri Lanka, where historical layers of worship complicate religious-site claims.

D - Lessons for India

International comparisons highlight that religious site disputes rarely yield entirely legal solutions. Courts must navigate cultural, historical, and political pressures.

Deeper Analysis Of Secularism In The Judgment

Evaluating Judicial Neutrality - While the Court used neutral language, critics argue that the outcome disproportionately favours the majority community.

The Role of Faith in Judicial Reasoning - Although the Court insisted that belief cannot determine title, its reliance on worship patterns and historical faith indicates subtle influence.

Arguments Claiming Secular Strengthening -Supporters argue that the judgment avoided violence and preserved institutional stability.

Arguments Claiming Secular Dilution - Critics argue that majoritarian sentiment influenced the outcome and that unlawful acts were indirectly rewarded.

Basic Structure Doctrine And Ayodhya

The Doctrine's Key Features - The doctrine safeguards essential constitutional principles, including secularism, from amendment or dilution.

Did the Judgment Uphold or Weaken the Basic Structure?

- In my point of view opinions are divided - some argue the Court acted pragmatically to maintain order, while others believe the ruling compromised constitutional neutrality.

Rule of Law Versus Public Order - The Court appeared to prioritize public order over strict adherence to the rule of law, raising concerns about the long-term impact on the basic structure.

Impact On India'S Democracy

Judicial Credibility - The judgment strengthened the judiciary's role as a stabilizing institution but raised concerns about majoritarian influence.

Majority–Minority Relations - The verdict significantly affected minority confidence and influenced broader cultural and political narratives.

Political Consolidation - The judgment reinforced political forces that supported the Ayodhya movement.

Cultural Transformation - The temple's construction symbolizes a shift in national cultural identity and public discourse.

Limitations Of Courts In Religious Disputes

Law Versus Faith - Courts face inherent constraints when adjudicating disputes rooted in belief and emotion.

Politicization of the Judiciary - Judicial reasoning may be scrutinized for perceived political influence, especially in high-stakes cases.

Restorative Justice Challenges - Courts often struggle to provide fair remedies in cases involving historical injustices and public sentiment.

Majoritarian Democracy Dilemmas - Courts must protect minority rights even when public sentiment favours the majority.

Lessons For The Future

Strengthening Constitutional Morality - Institutions must consistently uphold secularism, equality, and fairness.

Establishing a Clear Legal Framework - India needs stronger guidelines for handling religious-site disputes.

Preventing Future Conflicts - The Places of Worship Act must be strictly enforced to avoid similar disputes.

Rebuilding Minority Confidence - The state must actively reassure minorities and promote interfaith harmony.

Conclusion

The Babri Masjid dispute, in all its dimensions, stands as one of the most complex and emotionally charged legal struggles in the history of modern India. Stretching across centuries of cultural memory and decades of judicial scrutiny, the conflict represents far more than a contest over a plot of land. It symbolizes the collision of divergent historical narratives, the persistence of devotional traditions, the fragility of communal harmony, and the evolving meaning of secularism in a pluralistic society. The Supreme Court's 2019 judgment brought a definitive legal closure, yet the broader implications of the decision continue to shape national discourse, academic inquiry, and constitutional interpretation.

The verdict undoubtedly provided a sense of finality to a dispute that had periodically destabilized public order and strained the social fabric of the nation. By resolving the matter through a unanimous judgment after exhaustive hearings, the Court sought to reaffirm the authority of law over public emotion and political agitation. The allocation of land for a mosque, while symbolic in its restorative intent, was also an acknowledgment of the need to maintain communal balance in a deeply diverse society. In this sense, the judgment can be viewed as a pragmatic attempt to prevent further conflict, reduce uncertainty, and enable the state to shift its energies toward reconciliation and development.

However, the conclusion is incomplete without acknowledging the substantive constitutional questions that the case raises. At its core, the verdict invites a re-examination of India's secular commitment and the role of the judiciary in safeguarding the basic structure of the Constitution. While the Court was careful to frame the dispute as a civil title matter, the decision undeniably intersected with religious beliefs and deeply held emotional convictions. Critics argue that the judgment, despite its legal reasoning, indirectly validated the consequences of acts that the Court itself described as violations of the rule of law namely, the 1949 installation of idols and the 1992 demolition. The perception that unlawful actions ultimately benefited one party complicates the narrative of constitutional neutrality and invites debate about whether the rule of law prevailed in both spirit and substance.

The case also leaves behind important lessons about the limitations of judicial institutions

when confronted with conflicts rooted in faith, identity, and collective memory. Courts can interpret evidence, assess probabilities, and apply legal doctrines, but they cannot erase centuries of contested history or reconcile communities divided by ideology. The Babri Masjid judgment underscores that legal solutions may sometimes serve as closure mechanisms rather than comprehensive reconciliatory frameworks. The judiciary's role, though central, must be accompanied by sustained efforts from political institutions, civil society, and educational frameworks to nurture mutual respect, interfaith understanding, and constitutional morality.

Another important conclusion concerns the evolving nature of Indian democracy. The dispute revealed how religious identity can be mobilized to shape electoral politics, influence public sentiment, and transform national narratives. The verdict, therefore, not only resolved a legal conflict but also marked the culmination of a socio-political movement that played a decisive role in redefining India's political landscape over the last three decades. Future governments and institutions must remain vigilant to ensure that religious sentiment does not override constitutional values, legal rationality, or the rights of minority communities—principles essential for preserving democratic integrity.

From a constitutional lens, the Babri Masjid case serves as an enduring reminder of the crucial importance of the basic structure doctrine. Secularism, equality, judicial review, and rule of law are not abstract principles; they form the bedrock of India's pluralistic democracy. The dispute highlights that these values must be actively protected, especially in moments when emotional or majoritarian pressures threaten to overshadow reasoned constitutional decision-making. The case thus becomes a reference point for future disputes, urging policymakers and jurists to uphold constitutional morality with vigilance and courage.

In a broader social context, the case teaches India the value of coexistence, historical humility, and the need to acknowledge the plurality inherent in its cultural landscape. The dispute's long legacy shows that unresolved grievances—whether historical, religious, or political have the potential to fracture societies unless addressed with sensitivity and fairness. Even after the judgment, the responsibility lies with Indian society to rebuild trust, foster dialogue, and move beyond the polarizing narratives that defined the dispute for decades.

Finally, the Babri Masjid case serves as an essential scholarly landmark for students of constitutional law, political science, sociology, and history. It reflects how deeply intertwined law and society can become, and how legal decisions reverberate far beyond courtrooms into the cultural and emotional psyche of the nation. The case reminds future generations that justice is not merely the mechanical application of statutes but a dynamic process that must reconcile principles, evidence, morality, and social realities.

In conclusion, while the Supreme Court's verdict closed a legal chapter, it opened a broader intellectual and constitutional discourse that will continue for years to come. The dispute compels India to reaffirm its commitment to secularism, constitutional morality, and the rule of law. It challenges the nation to ensure that its democratic institutions remain resilient, impartial, and protective of minority rights. And most importantly, it calls upon Indian society to embrace the values of mutual respect, understanding, and peaceful coexistence—values that form the true spirit of the Constitution. The Babri Masjid case, therefore, stands not just as a legal milestone but as a profound reflection of India's constitutional journey,

reminding the nation of both its vulnerabilities and its enduring strengths.

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CHAPTER-18

THEORIES AND PHILOSOPHY OF JUDICIAL PROCESS

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Abstract

This abstract explores the multifaceted philosophy of the judicial process, examining the foundational theories and guiding philosophy that shape judicial decisions, with a special focus on the unique synthesis developed in India. The paper begins by outlining major glob[292]al theories of adjudication—including Legal Positivism, Natural Law, and Sociological Jurisprudence—which provide the essential frameworks for the judicial function. It then delves into the core philosophy of the judicial role itself, analyzing the critical tension between judicial restraint and judicial activism. A distinct Indian perspective is introduced through the ancient concept of Dharma, which frames the judicial role not merely as a legal function but as a profound duty to uphold righteousness and substantive justice.

The paper argues that the Indian judiciary has forged its own distinct path by putting its unique philosophy into action through pioneering legal doctrines. It demonstrates how a philosophy of access to justice led to the creation of Public Interest Litigation (PIL), a tool that democratized justice by dismantling procedural barriers for the marginalized. It further explores how a philosophy of constitutional guardianship gave rise to the landmark 'Basic Structure' doctrine, a judicial bulwark against legislative overreach. Finally, it examines how a philosophy of a living constitution is embodied in the expansive interpretation of fundamental rights, transforming the very meaning of a dignified life.

This paper concludes that the Indian judicial process is a compelling case study of a judiciary that has consciously evolved from a passive arbiter into an active agent of social transformation. By synthesizing the ancient duty of Dharma with a modern, activist commitment to the Constitution, it has crafted a distinct and powerful judicial philosophy, making it a significant example of the law's power to engineer social change.

Keywords:- Judicial Process, Jurisprudence, Indian Judiciary, Judicial Activism and Dharma

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Introduction[293]

A judge's ruling can alter an individual's life, a community, or the trajectory of a nation. There is always a guiding philosophy behind a court decision. This is a collection of ideas about what the law is, what justice is, and what the judge's job should be[294]. This basic principle, whether it's said or not, is probably just as potent as the law itself. It affects how a judge understands the language of a law or a constitution, and in the end, it decides what kind of justice the people get.

Judiciaries have always had a basic conflict over the world. Are they just neutral referees who have to enforce the law exactly as the legislature wrote it? Or are they protectors of more important ideas, with the job of making sure that the law leads to real justice? This question leads to a range of judicial methods, from stringent constraint on one end to active action on the other.

Many legal systems struggle with this problem, but the Indian judiciary is a particularly interesting and unusual case study. This study contends that the Indian judicial procedure is founded on a unique philosophical framework that precedes contemporary world conceptions. The indigenous idea of Dharma is the basis for this. It sees law not simply as a series of regulations, but as a moral duty to accomplish real fairness (Nyaya). This Dharmic imperative, when integrated with world jurisprudence, has deliberately steered the Indian court to establish its own trajectory—one that embodies an activist and transformational function within society.

This study will first look at the relationship between law, justice, and Dharma to build the basic Indian philosophy that will help us understand this argument. Second, it will put this in a bigger picture by talking about the main global theories of adjudication. Third, it will look at how the Indian courts dealt with the conflict between activism and judicial restraint. Lastly, it will show how this unique worldview was put into action through groundbreaking legal ideas like Public Interest Litigation and the "Basic Structure" doctrine, which have changed Indian society.

The Indian Philosophical Core: Law, Justice, and Dharma

The basis of Indian judicial philosophy is not rooted in Western jurisprudence, but in its own ancient and enduring legal-moral heritage. In this tradition, Dharma is the most important idea that holds everything together. To comprehend the Indian judicial system, it is essential to grasp the intricate connection among Dharma, law, and justice. The word Dharma comes from the Sanskrit word "dhri," which means "to hold together, to keep, or to maintain[295]."

This is not just a passive state; it is an active, binding force that holds the moral and social fabric together. The all-encompassing principle of morality, moral responsibility, and cosmic order is what keeps society and the universe going. In the Indian tradition, Dharma means both law and morality. It says that no polity can be without either. It is the concept of "right action," and as Dr. S. Radhakrishnan, India's first Vice-President, said, it is the "sovereignty of the law" itself—a law that governs both the people and the rulers[296].

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In ancient Indian civilization, law and Dharma were not separate ideas. In the Dharma Sastras and other works, law (Vidhi), justice (Nyaya), and religion were closely related. Dharma and justice were sometimes seen to be the same thing. The purpose of law was not only to resolve conflicts but also to maintain Dharma. This led to a strong philosophical belief that the law's goal is to bring about substantive justice (Nyaya), not merely procedural fairness. Because of this conceptual agreement, the Indian tradition sees a law that is procedurally correct but leads to substantive injustice as a failure of Dharma.

This is a very important difference from Western positivist law. The old writings claimed that "Justice must be done according to Dharma, or else it could not be said that Justice is delivered." This makes justice a moral state, not merely a legal one. This theory is similar to Mahatma Gandhi's idea of a "just society," which he called Ram Rajya. This idea comes from the idea of a perfect society ruled by Dharma, equality, and non-violence. It links the ancient idea of Dharma to the modern search for justice[297].

This worldview sees the judicial position as a very important Dharmic obligation. In ancient politics, the king or sovereign had to follow Rajadharma (the Dharma of the ruler), which was his most important duty. The king could not change this Rajadharma on a whim; he was only revered if he followed Dharma to create a Dharma Rajya, or the Rule of Law. If he broke this obligation, he was not qualified to rule. This ancient limitation on sovereign power is the intellectual basis for the present Supreme Court's ability to examine arbitrary actions by the legislature or administration. This idea that the monarch is subject to the law and not above it is the basis of Indian constitutionalism. The contemporary Indian judiciary, as the successor to this sovereign role, perceives itself not only as the executor of statutes enacted by Parliament but also as the paramount custodian of the "constitutional Dharma."

The Srimad Bhagavad Gita and other books help to explain this philosophical basis even more. The Gita depicts the primary conflict as a crisis of Dharma[298]. The conversation between Arjuna and Lord Krishna is a deep discussion about this idea. Arjuna doesn't want to fight because he cares about the people he loves and is afraid of what would happen if he does. Krishna's answer is a summons to follow his Dharma, which is his sacred duty as a warrior, no matter what it costs him. This is a classic argument based on obligation, or deontology. The philosopher Amartya Sen has said that Krishna is the perfect example of a deontologist since he puts duty (Dharma) above the results[299]. This historical story offers a strong conceptual connection to the present court system: the judge's sacred duty is to preserve the Dharma of the Constitution, even if it means going against other parts of the government. The Gita also sees Moksha, or ultimate freedom, as the highest kind of justice. This can be reached by following one's Dharma. This emphasizes the idea that doing your moral and proper responsibility is an important part of true justice. The Gita says that this obligation is unbreakable and a key aspect of the cosmic order. To struggle for what is right is to be in line with this order, which is the best way to get justice.

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Global Perspectives: Foundational Theories of Adjudication

Before you can fully understand the unique philosophy that the Indian court has created, you need to know what other intellectual currents it was navigating around the world. When it started, India's legal system was based on British law. This meant that the new Supreme Court had to make a fundamental decision between Legal Positivism and Natural Law, which are two of the most different legal philosophies in the world.

John Austin is most often linked to the theory of legal positivism, which says that law and morality should be kept very separate. This way of thinking says that law is just the "command of the sovereign," which means the state. A law is only acceptable if it came from a legitimate source, like a parliament, and not because of what it says about right and wrong. It is the job of the positivist judge to follow the law "as it is" written and not to question whether it is "as it should be." This way of thinking, which supported parliamentary dominance, was built into the legal system India inherited from its colonial past.

The Indian Supreme Court's early interpretations were based on this positivist theory. The most important example is A.K. Gopalan v. State of Madras[300], which was a key case in 1950. The court looked at Article 21 of the Constitution, which says that person's life or freedom can only be taken away in "procedure established by law[301]." The court took a very literal and positivist view, and said that "procedure established by law" meant any procedure that the Parliament legally passed, even if it was unfair or arbitrary. "Due process of law" is an American idea that the court flatly refused. This would have let the court look into how fair the law was. At this point, the courts were more of a scientific, positivist interpreter than a moral watchdog.

Natural Law is philosophically the exact opposite of what you believe. This way of thinking says that law and morals go hand in hand. Natural Law says that there is a "higher law" that exists beyond all laws made by people. This "higher law" is made up of general rules about what is fair, just, and reasonable. "Unjust law is no law at all[302]" from this point of view. This way of thinking gives judges the power to be guardians of justice by letting them throw out laws that, even though they are legal, go against these basic moral principles. This global theory is most like India's own idea of Dharma, which, as we've already talked about, is a greater moral law that even the king or queen must follow.

The positivist decision in Gopalan was the rule for many years. But the Indian courts were going toward a different way of thinking. The important case that changed everything was Maneka Gandhi v. Union of India[303] in 1978. This decision was a big step away from Legal Positivism and toward a legal system based on natural law. It was overturned by the Supreme Court, which said that Article 21's "procedure established by law" could not be any method. The way things were done had to be "just, fair, and reasonable." By using these three words, the court brought the ideas of natural justice into the Constitution. It also didn't agree with the positivist view that rights should be read separately. Instead, it came up with the "golden triangle" theory, which says that Articles 14 (Equality), 19 (Freedom), and 21 (Life) are connected and should be read together[304].

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[300] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

[301] *Constitution of India*, Article 21

[302] https://lawtutor.co.uk/lex-iniusta-non-est-lex

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

[304] https://www.dhyeyalaw.in/the-golden-traingle-under-the-constitution-of-india

This was not just a small matter of law; it completely changed India's approach to the law. The change from Gopalan to Maneka showed that the court was rejecting the rigid positivism that had been passed down through generations and formally accepting a Natural Law philosophy. This was in line with the Dharmic duty to provide substantive justice, not just procedural justice.

This change in Gopalan's philosophy to Maneka's is very important. It was the time when the Indian courts made a conscious choice to stop being passive, technical positivist interpreters. The Court used the "just, fair, and reasonable" test to conduct a substantive analysis of parliamentary statutes, not only a procedural one. This gave it the instruments of Natural Law. This move was the first step toward the judicial activism that would come next. It meant that the Court would no longer be a neutral referee who just enforced the rules as they were written. It was instead claiming its duty as a protector of constitutional morals, with the right to examine the law's fairness and wisdom. This change also fit with the ideas of Sociological Jurisprudence, which sees the law not as a set of unchanging rules but as a tool for bringing about social justice. This new way of thinking, which combines Natural Law with a local grasp of Dharma, is what made the Court have to deal with the problem of activism against restraint directly. This would shape its character for many years to come.

Reconciling Philosophies: The Activism vs. Restraint Dilemma

The judiciary's significant transition from A.K. Gopalan's positivism to Maneka Gandhi's natural law principles was not merely a legal alteration; it stemmed from a profound philosophical conflict between two contrasting views of the judicial role: restraint and activism. The problem of whether a judge serves as a passive interpreter or an active enforcer of justice constitutes the core conflict in contemporary judicial philosophy.

The doctrine of judicial restraint is grounded in the traditional interpretation of the separation of powers. This viewpoint, derived from British jurisprudence and advocated by positivists, asserts that the judiciary's function is to interpret the law as it is articulated, rather than to formulate new laws or critique its prudence. Advocates of restraint contend that judges are not elected, and in a democracy, the authority to create laws is solely vested in the legislature, which is elected by and accountable to the populace. This perspective regards the judge as an impartial arbiter who must yield to the legislature's intent, even in instances of personal disagreement with the law. This theory is in complete accord with Legal Positivism, which asserts that the law's validity is derived from its source (Parliament), rather than its moral substance. Failing to act otherwise, it is contended, would unleash a "floodgate" of litigation and permit individual judicial subjectivity to supplant the democratic mandate. A judge's act of "making" law from the bench is perceived as an undemocratic instance of "judicial overreach" and a breach of their constitutionally established authority. This concept reached its zenith in the A.K. Gopalan case, wherein the court adhered strictly to a literal, textual interpretation and declined to incorporate its own notions of fairness into the law.

Conversely, the concept of judicial activism, as expressed by intellectuals such as Dr. S.P. Sathe, perceives the judicial function in a markedly different manner. This perspective, along with Natural Law and Sociological Jurisprudence[305], contends that a judge cannot assume the role of an impartial, passive observer, particularly in a nation

[305] Pound, Roscoe (1912). "The Scope and Purpose of Sociological Jurisprudence". *Harvard Law Review*, 25(6), pp. 489-516

characterized by pervasive social injustice. This concept posits that the law serves as a tool for facilitating social transformation. The court, as the protector of the Constitution, has an affirmative obligation to safeguard the fundamental rights of the marginalized and to "address the deficiencies" resulting from legislative or executive inaction. This is especially relevant when the other branches neglect to uphold constitutional ideals for the marginalized segments of society. Scholar Upendra Baxi notably redefined this discourse as a moral issue, positing that in a society characterized by significant inequities, a judge's reluctance to engage in activism constitutes a moral shortcoming. [306]From this viewpoint, judicial activism is not "overreach" but rather an execution of the judicial oath—a needed measure to align the "law in the books" with the "law in action." This attitude enabled the court in Maneka Gandhi to transcend textual interpretation and uphold the essence of the law, so guaranteeing substantive justice.

The Indian judiciary addressed this challenge in a distinctive manner that characterizes its contemporary worldview. It did not select activism for its intrinsic value; it determined that activism was a constitutional and ethical imperative. The "Indian Resolution" was created by integrating two significant concepts: the ancient Dharmic obligation for substantive justice and the contemporary constitutional requirement. Historian Granville Austin observed that the Indian Constitution is not a neutral, positivist text; rather, it is a "social revolutionary" instrument[307]. The Preamble and Fundamental Rights include not merely a collection of regulations but a commitment—a proactive directive—to provide "Justice, social, economic, and political" for all individuals[308]. The judiciary, as the protector and interpreter of the Constitution, thereby possesses a constitutional mandate. This mission cannot be accomplished through passive interpretation. Confronted with legislative shortcomings and pervasive unfairness, the Indian judiciary determined that the positivist doctrine of judicial restraint would be a dereliction of its constitutional obligation. It addressed the difficulty by defining its position in Dharmic terms: its paramount duty (Dharma) was to preserve the Constitution's revolutionary promise (a contemporary Dharma Rajya). Consequently, judicial activism was not a "choice" but the one philosophical avenue accessible to a court charged with guaranteeing substantive justice for all citizens, thus establishing a distinctly Indian judicial philosoph

Judicial Philosophy in Action: Key Indian Doctrines

The Indian judiciary didn't let its activist philosophy stay just an academic idea after it became well known. It started to make new legal tools, or doctrines, that would carry out this theory. The courts came up with these rules because they were dedicated to their Dharmic and constitutional job to provide real justice. The Court's activist method, which was based on Natural Law and Sociological Jurisprudence, led to the creation of two of the most important and unique legal ideas in the world: Public Interest Litigation and the "Basic Structure" doctrine.

A. The Philosophy of Access to Justice: Public Interest Litigation

Public Interest Litigation (PIL) was the first and most direct way that this new activist mindset showed itself. When the courts read Maneka Gandhi and changed the "right to

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[306] Baxi, Upendra (1980). "Taking Suffering Seriously: The 'New' Supreme Court". *The Review (International Commission of Jurists)*

[307] Austin, Granville (1966). *The Indian Constitution: Cornerstone of a Nation*. Oxford: Oxford University Press.

[308] *Constitution of India*, Preamble.

life" to include the "right to a dignified life,"[309]they were immediately faced with a philosophical and practical problem. This new, broad right came with a big promise, but it was made to millions of people who were too poor, disadvantaged, or powerless to ever hire a lawyer and go to court. The traditional positivist rule of locus standi says that only someone who has been directly and personally hurt can file a case. This rule created a huge hurdle in the legal process, keeping people who needed justice from getting it.

The Supreme Court, led by judges like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer, saw that the old way of doing justice didn't work in India. It came to the conclusion that Article 39A[310], which says that the government must provide free legal aid and social justice, gave it a "constitutional obligation" to "forge new remedies and fashion new strategies" to protect the poor's basic rights[311]. This new plan was called PIL.

It was a whole new philosophical way of thinking about the job of the judge. In a big break from positivist practice, the Court made the rule of locus standi less strict. A "public-spirited citizen" or social action group could now file a petition for people who couldn't, like criminals, bonded workers, or people who have been hurt by pollution. It went so far as to make "epistolary jurisdiction," which meant that the Court started to treat simple letters and postcards from people as official writ petitions[312].

This was how Maneka Gandhi's ideas were put into action. When it comes to what the "right to life" really means, Maneka was the substantive revolution; PIL, on the other hand, was the procedural revolution. It was the movement's strategic arm. It was a sociological law tool meant to give people who don't have a voice a voice. It basically changed from a body that just decided individual cases to one that actively looked out for the public good, which is directly in line with the Dharmic idea of lok kalyan.

In short, the Court broke down the formal walls of the legal system. A poor person no longer needed an expensive lawyer to be heard. Even a simple letter or postcard could start a case to protect basic human rights. This was justice in action, bringing the Constitution's promise of a dignified life directly to the people.

The Philosophy of Constitutional Guardianship: The 'Basic Structure' Doctrine

The 'Basic Structure' theory was the judiciary's best defense against the power of Parliament. PIL was its way of enforcing its philosophy on behalf of the people. The most important philosophical fight in India's legal history led to the creation of this doctrine: the fight over parliamentary power. At the heart of the matter was whether Article 368[313] gave Parliament complete and unrestricted power to "amend" the Constitution. The positivist answer was "yes"—the legislature's will is the most important thing, and it can change any part of the Constitution.

The most important case in this battle was Kesavananda Bharati v. State of Kerala[314], which happened in 1973. A huge bench of 13 judges was put together to decide on the most important parts of the Constitution. The Supreme Court's decision was very close: Parliament does not have endless power to change laws. The Court said that Parliament

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[309] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746

[310] *Constitution of India*, Article 39A.

[311] Bhagwati, P.N. (1985). "Judicial Activism and Public Interest Litigation". *Journal of the Indian Law Institute*, 27(4), pp. 561-577.

[312] *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

[313] C*onstitution of India*, Article 368.

[314] *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

can change any part of the Constitution, but it can't "destroy or emasculate" the Constitution's "basic structure" or main ideas.
This "basic structure" wasn't a specific phrase; it was the Dharma, which is the Constitution's main idea. The Supreme Court said that these traits include ideas like democracy, secularism, the rule of law, the separation of powers, and the authority of the Constitution[315]. In the end, the Indian judiciary rejected Legal Positivism with this theory. It said that the moral, logical, and unwritten spirit of the Constitution (a Natural Law idea) was stronger than Parliament's written power. For the courts, it was a defense against possible authoritarianism and made them the sole guardians of "constitutional morality[316]."
In Dharmic terms, the Court said that the Constitution was the "king of kings" and that no one, not even the ruler, could break its basic Dharma (structure). This theory made it clear that the judiciary is the only group that can actively and finally protect the basic values of the Indian republic.
In simple terms, this doctrine became the judiciary's ultimate shield. It meant that even if Parliament had a huge majority, it couldn't change the fundamental ideas that make India a democracy. The Court was no longer just an interpreter of the law; it became its guardian. It marked the ground very clearly. Parliament could change the Constitution, but it couldn't change what it stands for. This idea of a "basic structure" preserved the Constitution's heart, which includes freedom, equality, and the rule of law, for all time. This was the Court's way of saying that the Constitution's main promise to the people will always be true. This promise cannot be taken away by anyone, not even by a government with a massive vote.

Conclusion

The journey of the Indian judicial process, from its post-colonial inception to its present-day role, is a compelling narrative of philosophical self-discovery and innovation. This paper has argued that the philosophy guiding the Indian judiciary is not a mere adoption of global theories but a unique and deliberate synthesis. It is a philosophy that finds its roots in the ancient indigenous concept of Dharma, which frames law not as a mere set of rules, but as a moral duty to uphold righteousness and deliver substantive justice (Nyaya). This foundational imperative, woven into the fabric of Indian civilization, set the judiciary on a path that would inevitably diverge from the rigid, amoral framework of Legal Positivism that it inherited from the British colonial system.
While the judiciary engaged with global perspectives, it found that the sterile, procedural nature of positivism was inadequate for the needs of a new republic. It was a philosophy of "law as it is" in a nation that was constitutionally mandated to create a "law as it ought to be." Instead, the Indian judiciary found a powerful resonance between its own Dharmic duty and the global theories of Natural Law and Sociological Jurisprudence. These philosophies, which placed morality at the heart of law and saw law as a tool for social engineering, provided the modern language and legal justification for the judiciary to fulfill its ancient cultural role. This led to a conscious philosophical choice, resolving the central dilemma of the judicial role. The judiciary rejected the passive, deferential stance of judicial restraint in favor of an active, interventionist philosophy of judicial activism.

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[315] https://www.commonlii.org/in/journals/INJlConLaw/2009/13.pdf Ramachandran, Raju (2000). "The Supreme Court and the Basic Structure Doctrine"
[316] *Manoj Narula v. Union of India*, (2014) 9 SCC 1.

This philosophy was not left as an abstract ideal; it was forged into powerful, practical tools of justice. This paper has demonstrated how this philosophy was put directly into action through two of India's most significant contributions to global jurisprudence. First, the development of Public Interest Litigation (PIL), spurred by the Maneka Gandhi case, was a procedural revolution. By dismantling the positivist barrier of locus standi, the Court gave a voice to the voiceless and transformed itself into a guardian of the public welfare (lok kalyan), ensuring that the promise of a "dignified life" was accessible to all. Second, the 'Basic Structure' doctrine, established in the landmark Kesavananda Bharati case, was the judiciary's ultimate philosophical declaration. It was a bulwark against legislative overreach, establishing that the Constitution's fundamental Dharma—its moral soul, including democracy, secularism, and fundamental rights—was inviolable, even by a sovereign Parliament.[317]

In conclusion, the Indian judiciary provides a powerful case study of a judiciary that has consciously evolved from a passive arbiter into an active agent of social transformation. It chose not to remain a neutral umpire in a nation marked by deep-seated inequalities, but instead embraced its role as a key instrument in the constitutional mission of social revolution. By synthesizing the ancient moral duty of Dharma with a modern, activist commitment to its Constitution, it has crafted a distinct and powerful judicial philosophy. This "third path" of jurisprudence, which is neither purely positivist nor traditionally naturalist, offers a vital model for other post-colonial nations. It stands as a significant and distinct example of the law's profound power to not just reflect or regulate society, but to actively engineer social change. The Indian experience demonstrates that a judiciary, when armed with a strong indigenous philosophy and a commitment to substantive justice, can indeed become the "king of kings" and the ultimate protector of the people's rights.

[317] *Manoj Narula v. Union of India*, (2014) 9 SCC 1.

CHAPTER- 19

THE 130TH CONSTITUTIONAL (AMENDMENT) BILL, 2025: REFORM OR ARBITRARY MOVE IN DISGUISE

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ABSTRACT

"Constitutional morality is not a natural sentiment. It has to be cultivated[318]" as said by Dr. B.R. Ambedkar in reference to disregard of the Indian Constitution. So has been done by 130th Constitutional (Amendment) Bill, 2025 which was introduced in Lok Sabha on 20 August 2025. It seeks for removal of Prime Minister, Chief Minister of a state or any state or other minister who has been detained or arrested in custody of 30 days on account of being accused of any offence punishable by imprisonment which may extend up to five years or more. It also mentions no bar on subsequent re-appointment of so removed minister on being released from custody. The bill only state detention but not trial or conviction before a judicial officer and removal from office on ground of such detention. The said removal violates the very principle 'presumption of innocence' till proven guilty that Indian criminal jurisprudence follows and may cast a 'stigma of a criminal' upon such removed minister thereby, denying them justice which has been conferred on every citizen by Indian Constitution. The bill also mentions specific few ministers, not whole legislature thus, proving itself to be bias, prejudice, unequal and targeting few individuals. Such reliance of ministerial removal in the bill can also lead to political manipulation and so said 'reappointment of minister' may cause upheaval in the government. Therefore, although the bill represents a significant step towards political reformation and fight against corruption, it also lacking ethically, without democratic safeguards and without complete compliance of Constitutional laws.

Key words: detention, re-appointment, presumption of innocence, justice, bias, ministerial removal.

Introduction

Ministerial sanctity is an essential component for democracy and stability of government. A Prime Minister or Chief Minister of any state are not just head of the whole country or state respectively; they represent the voice of people giving them peace and solace at all times. It is therefore crucial for such authorities to remain impervious from any external or internal influence. Although Indian legal system follows rule of law, the Constitution of India also provides for exemptions, ministerial privileges being one such exemption. In addition, presumption of innocence is a core

[318] https://forumias.com/blog/b-r-ambedkars-view-on-constitutional-morality/

fundamental right availed to every citizen of India irrespective of who they are and what they do.

The 130th amendment bill, 2025 challenges all. It calls for removal of Prime Minister, Chief Minister of a state, or any other minister who has been detained or arrested in custody of 30 days on account of being accused of any offence punishable by imprisonment which may extend up to five years or more with no bar to further reappointment. Such removal is only on account of detention not trial or conviction before any judicial authority. In this research we will discuss the impact of 130th amendment bill,2025 on society and its violation of constitution safeguards.

130Th Constitutional Amendment Bill,2025

The 130th constitutional amendment bill, 2025 was proposed in Lok Sabha on 20th august 2025 by Home Minister, Mr. Amit Shah. The bill mandates for resignation and removal of any Minister, Chief Minister of a state\UT, Prime Minister having been detained or kept in custody for 30 consecutive days.

Amendment of provisions[319]

The bill proposes amendment to following articles of the constitution of India-

- Article- 75 to insert clauses 5(A)
- Article- 164 to add clause 4(A)
- Article- 239AA incorporate clause 5(A)

Nature of offense

offences that are punishable with imprisonment of five years or more years.

Amendment's aim

- **Removal-** The President (for Union) or Governor (for States) shall remove the minister on the advice tendered by the Prime Minister or Chief Minister, respectively upon incarceration of 30 consecutive days. If the advice if not tendered by 31st day, then the minister cease to be so from the day thereafter.
- **Resignation-** The Prime Minister or Chief Minister upon detention of 30 days shall resign by the 31st day and if he fails to resign, he shall cease to be Prime Minister from the day thereafter.
- **Re-appointment-** The bill does not forbid reappointment of the said above ministers on release, provided they are not barred under other laws for the time being in force.

[319]The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025, Bill No. 111 Of 2025

Reasons/ need for the amendment

- **Corruption**- Corruption is an extreme severe problem in India in all sectors. It may be due to bureaucracy, extreme rules and regulations which can lead to people avoiding them and just follow the whims of officials, lack of strict rules that can be heeded in times of needs, thus evading needless wandering, discretionary authority in the hands of officials which can be used by them for personal gains, lack of transparency during the procedures to avoid any oversight, social acceptance is an significant factor of corruption, of its persistence and increase.

Public accepts it as a social norm not questioning or defying it but taking it as a matter of fact. As per the Transparency International's 2024[320] Corruption Perception Index which scored 180 countries on scale from 0 (high corrupt) to 100 (very clean), India scored 38 ranking 96th. While in 2023[321], India's overall score was 39 ranking 93 and 40 in 2022[322] marking glaring increase in corruption. According to the Transparency International, Corruption hinders climate action by misusing funds meant for mitigation and adaptation and obstructing policies.

- **Political Reformation-** The amendment bill came in response to urgent need for political reformations. In recent years there have instances, where political leaders have been confined repeatedly but still served in the government as ministers with no sanction or suspension from their official duties. This raises a pivotal question as to whether our leaders who are supposed to lead us to path of advancement are appropriate and eligible to govern us? or can a person who is in jail truly innocent? Therefore, the legislature in reaction to these proposed an amendment.

- **Public interest-** Government are those few who are elected by the masses through direct and indirect means for the development of the country. At state level, they represent the people who are residing there not their own issues or vendetta and at national level, they represent the dignity of our country to the world at large. Holding such positions preordain more restrictions, not just in official duties but in personal life as well. Thus, the Ministers should be unblemished in all sense.

- **Character and Conduct of Ministers-** The legislature states in the bill this to be a necessary ground for proposal the bill. The characters and conduct of Ministers should undoubtedly be faultless and impeccable. Public cannot trust a person who is not upright and tainted. The government is formed by the Indian Constitution in conform with the concept of democracy not tyranny and they are elected by the masses thereby making it critical for them to be stainless.

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[320] https://www.transparency.org/en/cpi/2024
[321] https://www.transparency.org/en/cpi/2023
[322] https://www.transparency.org/en/cpi/2022

- **Lack of accountability-** There is no special tribunal which addresses allegations made against political leaders as well as no special acts that holds them accountable in case of violation. There should be some mechanism which regulates that no person having a criminal background or against whom a criminal case/civil case of grave importance is pending in the court of law or who has been convicted by any judicial authority.

The Association for Democratic Reforms (ADR), in collaboration with the National Election Watch (NEW), regularly conducts studies in regards to electoral candidates and elected representatives to emphasize the incessant plight of criminalization in politics in India. As per the September report[323] - **1861 MLAs** across India, nearly **45%** have declared criminal cases against them. Of these, **1,205** face serious charges, including murder, attempted murder, kidnapping, and crimes against women. States like **Andhra Pradesh (56%), Telangana (50%), and Bihar (49%)** leading the number of MLAs with serious criminal backgrounds, with regional parties accounting for a larger share of such candidates than national parties.

At the parliamentary level, the scenario is equally disturbing. Report shows that **36% of newly elected Rajya Sabha** members have criminal cases pending, with **17% accused of grave offences**. A 2023 petition highlighted a **44% increase in MPs with criminal records** since 2009.

In the 2024 Lok Sabha elections, **16% of 1,618 candidates declared criminal cases, and 10% faced serious charges**—cutting across party lines. These figures expose a disturbing paradox.

Therefore, it is of grave importance that a law should be made to keep our executive and legislative branch untainted and to remove the tumour that exist.

Impact/ Implications

- **Political upheaval-** A Prime Minister, Chief Minister is the head of the country and state respectively, removal of whom without any prior notice and preparations can create turmoil in the government and in the heart of public. They are the face of the state of which they are head of, representing their dignity and honour. They are also responsible for various official duties, (being the holder of that seat) which will be shelved and postponed until further candidate is selected to hold that position, though that work might of grave significance.
- **Bias-** The very provisions of the bills that are proposed are bias, unequal and prejudice. Indian legal system follows the two principles of Dicey[324] i.e., Equality before law and Absence of arbitrary power. It violates both promoting executive action over judicial decisions. For a law to be effective and accepted by the public must be applicable equally to all equals and vice versa. This bill targets specific few individuals and not the whole legislative and executive branch, though the study conducted by ADR along with NEW presents with clear precision that it is compelling need of time that some law should be made to address and tackle it.

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323 https://adrindia.org/content/criminalization-of-politics-in-india-undermining-spirit-of-democracy

324 A. V. Dicey, The Law of the Constitution, Macmillian, 1885

- **Violation of constitutional right-** The Supreme Court of India has been unvarying that the principle of **presumption of innocence until proven guilty** is a core legal and human right principle and has asserted it in various decisions in conformity. It is implicit under Articles 21(Right to Life and Personal Liberty) and 14 (Right to Equality) of the Constitution of India. It does not matter whether the person alleged is poorest of the poor, or the richest man in the country or some influential person of status in society, the constitution mandates that everyone has a right to be heard, to seek legal counsel in times of need and under no circumstances shall such person be declared guilty without being heard in the court of law or be deprived of this right. The bill does so, removing Minister, Prime Minister, Chief Minister from their post on basis of mere detention of 30 days not conviction making them look guilty even though they might not be.

- **No restriction on re-appointment-** The bill does not prohibit subsequent re-appointment of the person removed from the post. Upon release from detention the Minister who has been removed from office can be re-appointed with no blockage on his path. This raise the question that was removal necessary? And if it was then why is re-appointment possible? Why isn't there anything to disallow it? This removal then subsequent re-appointment creates doubt in heart of public and could very be subject to the whims of majority of reigning government and can lead to political manipulation.

- **Removal only basis of detention-** The bill mandates for removal from office upon detention of 30 consecutive days. This detention is not specified of what type and could be any kind, for example in jail, in your own home, or any other place but it is not conviction before any Judicial Authority in the court of law. The Ministers being removed could possibly be an aggrieved of misjudgement by the officials but he will always carry the stigma for the doubt due to his dismissal.

Criticism

- **Creating deplorable image of political leaders-** Majority of public in society are laymen to laws and its concepts, they follow the voice of masses. Nobody will follow the reason for removal is due to detention of mere 30 days but believe the controversial topics and creates their own reasons which will ultimately put the burden as well as stigma of a 'criminal' on the head of dismissed Minister. It is ultimate truth since time immemorial and through repeated lessons in history that a rumour/ hearsay can destroy a person, his reputation and his life. So, no dignified member of society be subject to it.

- **No ethics or morality-** It is the duty of Parliament to uphold the constitutional morality incorporated by the constitution maker in the Indian Constitution.

The Constitution does not prescribe any separate qualifications or disqualifications for ministers, only the reason that disqualification prescribed for a

member of the House, also applies to a minister. Quite simply, one cannot be a minister without being a member of the House.

Constitutional disqualification[325] has been provided for under Articles 102 (in case of Parliament) and 191 (in case of State Assembly) which includes that a member should not hold any office of profit, that he is not of unsound mind or that he had not become an undischarged insolvent or that he was not a citizen of India. It is prescribed that under Articles 102(e) and 191(e), the Parliament can prescribe, by law, any other disqualification. This is strange because, by prescription of a law, what was not originally intended by the Constitution could also be made to be a ground for disqualification.

- **No constitutional safeguards-** Ministers are part of society and also the citizens of India. They should not be deprived of their Fundamental Rights by mere virtue of holding influential positions transgressing the basic structure of the Indian Constitution. There should be a proper and legitimate mechanism to verify the crimes proclaimed, giving both parties (aggrieved and accused) a fair chance to be heard and not a decision based on benefit rather than facts.

- **Lack of conviction-** Disqualification under the bill is based solely on detention which could be any kind, be it in jail or any other premise. It only presupposes the punishment of claimed crime but does not mandate such detention to be conviction. As any person with basic knowledge of law knows that detention and conviction are two entirely different concepts prima facie, one is a simple confinement which hold no legal value but the other is proven fact of guilt in the court of law by any Judicial Authority. If the bill mentioned conviction instead of detention, then it would be in obeyance of law[326].

- **Against rule of law-** Everyone despite his /her status is Equal Before Law and shall be Equally Protected (Art. 14) and they have the basic right to do anything with dignity (Art. 19) even if they being accused of a petty crime or a grave offence. Directly disqualifying the Ministers and divesting them of the right to defend themselves is against the legal principle of rule of law which is the foundation of Indian Legal System causing confusion and instability.
- **Depriving presumption of innocence-** The presumption of innocence is a legal principle which states that a person will remain innocent until proven guilty. Prosecutor is bound by law to prove (with facts, materials, witnesses) beyond a reasonable doubt that the defendant has perpetrated the offense if he wants to convict that person, but until such has been proven the accused is innocent by and is merely ‘an accused’.

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[325] Constitution of India

[326] Representation of People Act, 1951

Bharatiya Sakshya Adhiniyam (BSA), 2023, does not explicitly imply this principle, but under Sections 104–106, the act places the burden of proof on the party who asserts a fact.

The Supreme Court of India has persistently strengthened this principle through numerous judgments, declaring that presumption of innocence until proven guilty is a core legal and human right, protected implicitly under Articles 21 and 14 of the Constitution (Right to Life and Personal Liberty and Right to Equality) and Article 20(3) (Right against Self- incrimination).

Supreme Court in Dataram Singh [327] case reaffirmed noting – "*A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty.*"

- **No protection against false allegations-** In the past decade, with increasing development and access to knowledge, there has been sharp spike of false cases. The people alleging have their own agenda fuelling that cause other than the ones approved by the court of law.

According to the report published by Crime Record Department (NCRB), in India, around 74%[328] of rape cases end up being fake and falsely admitted by the victim. This statistical report tells us such cases at National level with each state having its record. Focusing on the arguments made by the DGP of Rajasthan Police department Umesh Mishra dated back to January 2023 states that about 41% of the rape cases registered in the concerned state are false. This further depict the rising trends in the misuse of the provision and it becoming a tool to harm other.

In year 2022, there was a total increase of around 68% in the proceedings against those who were falsely charged of an offence in comparison to year 2021.

So, how can the law makers guarantee that charges alleged against the Ministers are 100% true? denying the benefit of the doubt.

- **Lead to political manipulations**- The procedure of disqualification than further re-appointment has no legal or constitutional basis; they are based wholly on the whims of majority in government and could very likely become a tool for political manipulation. This process can make those in power subservient to other which is not beneficial for a democratic country.

Critical analysis of the 130th constitutional amendment bill, 2025

The Constitutional (130th Amendment Bill), 2025 is an admirable step though vague, unjustified and unsupported. Legislature has taken a step to add further ground for disqualifications in the Indian Constitution but they failed to justify it. Representation

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[327] Dataram Singh V. State of U.P. (2018), https://indiankanoon.org/doc/122663958/

[328] https://www.legalserviceindia.com/legal/article-18918-a-rising-trend-of-false-rape-cases-in-india-a-case-study.html

of People's Act, 1951 has already laid a base/ground for disqualification in its provisions, legislature should refer to it.

This bill fails to deal with corruption for there no mention of any action in the provisions tackling it and thereby reducing corruption.

This bill defies Rule of law by replacing Executive branch power over Judicial authority and denying the dismissed Ministers equal treatment under law.

This bill creates stigma of 'criminal' on the head of Ministers, making public question the character and conduct of the people elected by them. It forms doubt in the mind of society as to whether the crime alleged really done by that Political leader? If not, then why was he removed? People don't question the logic but notes the action.

The bill lacked enforcement of accountability. It does not create a mechanism that specifically help and give priority to those accusations which are against those in Government. Neither does it help in clarity for disqualifications and targets specific few not whole Executive and Legislative organ.

Proposed Modifications

- **Barring criminal candidates-** The step to create an unblemished start at the beginning. Electoral candidates who have criminal background, against whom criminal cases/civil cases (grave importance e.g. money laundering) are pending in the Court of law, who are convicted by the Court of Law.

- **Creating a tribunal for adjudicating charges alleged against Executives and Legislature-** So far, all the accusation/ cases against the Executives and Legislatures are tried before the Courts created by the Indian Constitution, there is no special tribunal adjudicate this problem. There should be a special tribunal or any Quasi-Judicial Authority that deal with this issue, to circumvent the sphere of crime, to investigate it, then on affirmation refer such to the Judicial Authority under the Indian Constitution. Doing this can minimize external interference and reduce the burden on courts.

- **Interim suspension-** On being accused of a crime, suspension rather than dismissal can be done of those in question. Doing so maintain the Ministerial sanctity as well as assures the heart of society.

- **Removal on framing of charges-** Ministers should be disqualified only after the Court frames charges following Judicial Review, not merely on detention of 30 days.

- **Defining offense scope-** Legislature should define as well as clarify the scope of crime which is ground of disqualification before the election and while holding office. A simple crime (e.g. no helmet or traffic light violation) should not be taken into

consideration; emphasis should be more grave offences (e.g. crime against body, women, fraud, money laundering, violation of their power for personal gains).

- **Relief in case of false allegations-** The constant spike in false allegations, especially against men by women is a cause for grave concern. Law becomes a tool in hand of such people to harm others and for this purpose there should be some relief provided to those who are falsely accused, may it be clarification of innocence by appropriate authority to the public or defamation charges automatically filed perse against those falsely accusing them.

Conclusions

The 130th Amendment Bill,2025 is a significant initiative towards stainless government but only with addition of Constitutional safeguards plus keeping in mind ethics and morality that our Constitution makers had incorporated in the Constitution while making it. A special legislation should be made or changes should be made in the amendment to make it clearer and more specific while being in conformity with the constitution.

The Amendment, despite aiming to reform politics, poses threat to democratic foundation of the country where administrative decisions override legal safeguards. Associating detention with guilt, it sabotages presumption of innocence and weakens Judicial Authority. True reform lies not in bypassing/evading the Judiciary but in strengthening and supporting it. The integrity of a democracy depends not on how swiftly it punishes but on how justly it does so. Without careful recalibration by the Joint Parliamentary Committee, it risks becoming a tool for political exclusion.

CHAPTER- 20

THE EVOLUTION OF CYBERCRIME: A LOOK AT KARNATAKA'S CYBER CRIME DIVISION AND ITS ROLE IN CYBER SECURITY

Authored by :- Author: Ankitha Puttaswamy, Ramaiah College of Law, Bengaluru

ABSTRACT

India, particularly Karnataka, being a burgeoning IT hub with Bengaluru at its centre, has become a prime target for cybercrime. The state has witnessed a sharp surge in cybercrime cases and financial losses in recent years, prompting the government to take proactive measures to tackle this growing concern.

Cybercrime has plagued since the 1980s, when Karnataka's IT industry began to emerge, evolving from data theft and hacking to sophisticated forms, causing significant financial losses and harming not only IT sectors but also children and youth, who are increasingly vulnerable due to widespread technology access.

Karnataka was a pioneer in recognizing the escalating threat of cybercrime and the necessity for a dedicated unit to tackle IT-related crimes. Karnataka took a proactive step to combat cybercrime by declaring the country's first Cybercrime Police Station in 2001. This dedicated unit handles offenses under various laws, including the Information Technology Act, 2000, the Indian Penal Code (IPC), 1860, now replaced by the Bharatiya Nyaya Sanhita (BNS), 2023, and other relevant legislation. The Cybercrime Police Station was later upgraded to the Cyber Crime Division (CCD) in 2013, as part of the reorganization of the Criminal Investigation Department (CID) by the Government of Karnataka. The Cybercrime Division plays important role in investigating high-profile cases, including loan app scams, cryptocurrency fraud, investment scams, and hacking, and is geared towards strengthening cyber security.

This research explores the evolution of cybercrime in Karnataka, leading to the establishment of the Cyber Crime Division. It highlights the division's crucial role in preventing cybercrime and protecting youth and children from cybercrime.

Key Words: Cyber Crime Division, Cyber Training and Research Division, Cyber Security Policy, Cyber Crime Incident Report, Cyber Crime Volunteer, Child Protection

Introduction

The Bharatiya Nyaya Sanhita defines a child as an individual below 18 years of age[329]. With the proliferation of digital media, children, especially Gen Z, are exposed to extensive screen time, averaging around 9 hours daily. [330] The internet's benefits are counterbalanced by security concerns, notably cybercrime. Cybercrime, defined as criminal activity using computers or networks, has seen a significant rise. National Crime Reporting Bureau (NCRB) data indicates a 32% increase in cybercrimes targeting children, with Child Rights and You (CRY) identifying specific offenses such as cyber pornography, stalking, and bullying.[331]

The increasing digitalization has created a dual-edged scenario where youth are both perpetrators and victims of cybercrime. The youth are vulnerable to cybercrime, with factors like easy access to digital tools, the dark web, and script kiddie culture contributing to their involvement as both victims and perpetrators[332]

Srikrishna Ramesh, the prime accused in the Karnataka Bitcoin scam, claims to have been involved in several high-profile hacking incidents, including breaching the Bitfinex platform and the Karnataka government's eProcurement site. According to Ramesh, his interest in web exploitation began at a young age, and he developed his skills through training as a script kiddie, eventually becoming a skilled hacker.[333]

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[329] **Section 2(3) of the Bharatiya Nyaya Sanhita, 2023**

[330] Duarte**, Alarming Average Screen Time Statistics**, Exploding topics (2025) https://explodingtopics.com/blog/screen-time-stats

[331] Mohua Das, **Child cybercrime surges 32% reveals NCRB data, underlining vulnerability to online risks: India News,** TNN (2024) **https://timesofindia.indiatimes.com/india/child-cyber-crime-surges-32-reveals-ncrb-data-underlining-vulnerability-to-online-risks/articleshow/107168056.cms**

[332] Satyart, ***Entagled in the web: Cybercrime against Children in India***, ICPF (2023)

[333] Nagarjun Dawarakanath, **1st person to crack Bitfinex, multiple hacking scams: Karnataka hackers tell-all statement to police: Exclusive,** India Today (2021) **https://www.indiatoday.in/india/story/karnataka-bitcoin-scam-srikrishna-ramesh-police-statement-bitfinex-1876034-2021-11-12**

Aims and Objectives

This paper aims to investigate cybercrime among youth, its evolution, and the emergence of cybercrime divisions, particularly the Karnataka Cyber Crime Division. It analyses the division's functions and role in preventing cybercrime, and offers recommendations for enhancing existing laws.

Statement of Problem

The digital era has increased cybercrime accessibility, affecting both younger and older generations as perpetrators and victims. Despite Karnataka's cybercrime division, its impact remains limited due to the rising number of cybercrimes, particularly in Bengaluru's growing IT sector.

This paper examines the cybercrime division's efforts to expand its jurisdiction and addresses the need for reforming laws regarding minor cybercriminals and for broadening ambit of existing legislations.

Hypothesis

The Cyber Crime Division is stepping up its efforts, but more needs to be done to tackle rising cybercrime.

Research Methodology

This study employs an analytical and descriptive research methodology, drawing insights from primary and secondary sources.

Key Findings

1. The **Karnataka Cyber Threat Report 2025** highlights a concerning rise in cybercrime among youth. Bengaluru, being a major tech hub, has seen a surge in cases related to **phishing, identity theft, online harassment, and financial fraud**.[334]
    - Key findings from the report include:

[334]Sangamesh S and Jaswinder Singh, **Karnataka Cyber Threat Report,** Seqrite **2025** https://www.seqrite.com/documents/en/threat-reports/karnataka-cyber-threat-report-2025.pdf

- Karnataka recorded **11.46 million malware detections** in 2024, with Bengaluru experiencing **four times higher malware detection rates** than the state average.
- Youth-targeted cybercrimes, such as **fraudulent job postings, fake admission portals, and social media scams**, increased significantly during **festive seasons and academic cycles**.
- The Karnataka Cyber Crime Division has been actively working on **awareness campaigns, digital literacy programs, and stricter monitoring** to curb these threats.

2. In India, children as young as 13 are increasingly exposed to pornography. Despite attempts to block access, consumption continues to rise, with bans potentially fuelling curiosity[335]

3. Increase in cyber- crime as per Karnataka Police[336]

2020	10,959 cases
2021	8,363 cases
2022	12,885 cases
2023	22,224 cases
2024	22,415 cases
2025 (as of February 20)	2251 cases

[335] **Indian kids are seeing porn as early as 13 years of age, experts warn severe consequences,** etonline (2023)
https://economictimes.indiatimes.com/news/india/indian-kids-are-seeing-porn-as-early-as-13-years-of-age-experts-warn-severe-consequences/articleshow/102720072.cms?from=mdr

[336] Darshan Devaiah B.P, **Karnataka reports 12 deepfake-related cybercrime cases in two years,** The Hindu (2025)
https://www.thehindu.com/news/national/karnataka/karnataka-reports-12-deepfake-related-cybercrime-cases-in-two-years/article69333474.ece

4. The Karnataka government is stepping up its efforts to combat rising cybercrimes through several initiatives:
    - **Enhanced Funding**: Allocating ₹5 crore to strengthen cybercrime protection under the fund allocation of Karnataka Home Ministry.[337]
    - **Cyber Command Unit:** Establishing a dedicated unit to coordinate digital investigations, which empowers 45 cyber police stations under restructuring of CEN, enforcing key cybersecurity laws across the state.[338]
    - **Cyber Security Policy:** Launching a comprehensive cybersecurity policy to promote awareness, skill-building, and public-private partnerships in tackling cyberthreats.[339]

5. Evolution of CID HQ from 1999 to present cybercrime division with command unit and 45 cyber police station. [340]

Cyber Crime in Karnataka

The evolution of cybercrime in Karnataka reflects the state's journey from addressing basic online fraud to tackling sophisticated digital threats. Here's a snapshot of its progression:

➢ **Early Days:**

- Cybercrime in Karnataka began with simple cases like email scams and hacking attempts targeting individuals and small businesses.

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[337] DH Web desk, **Karnataka Budget 2025: Key takeaways,** Deccan Herald (2025) **https://www.deccanherald.com/india/karnataka/karnataka-budget-2025-key-takeaways-3436976**

[338] **Cybercrime crackdown: Karnataka restructures CEN stations under new Cyber Command | Udayavani – Latest Kannada News,** Udayavani Newspaper (2025) **https://www.udayavani.com/english-news/cybercrime-crackdown-karnataka-restructures-cen-stations-under-new-cyber-command**

[339] Yamini C.S, **Karnataka govt launches new cyber security policy amid frequent scams,** Hindustan times (2024) **https://www.hindustantimes.com/cities/bengaluru-news/karnataka-govt-launches-new-cyber-security-policy-amid-frequent-scams-101722598078117.html**

[340] **Criminal Investigation Department - Cyber-crime-division,** Karnataka Govt **https://cid.karnataka.gov.in/15/cyber-crime-division/en**

- The establishment of the **Cyber Crime Police Station in Bengaluru in 2001** marked the state's initial efforts to combat these crimes.

➢ **Growth and Complexity**

- As technology advanced, cybercriminals adopted more sophisticated methods, leading to cases of **phishing, identity theft, and financial fraud**.
- The rise of social media and digital platforms introduced new challenges, such as **cyberbullying, online harassment, and sextortion**.

➢ **Recent Developments**

- Karnataka has seen a surge in **ransomware attacks, deepfake scams,** and crimes targeting critical infrastructure. For example, disruption of Property transactions by the DDoS attack on the Kaveri 2.0 portal.[341]
- The state responded by launching **India's first Cyber Command Centre in 2025**, which centralizes efforts to combat cybercrime and enhance cybersecurity.[342]

➢ **Focus on Vulnerable Groups**

- Cybercrime targeting children and women has become a significant concern. Karnataka's Cyber Crime Division actively investigates cases under Section 67B of the IT Act, addressing online exploitation.

➢ **Future Directions**

- Karnataka continues to innovate by fostering cybersecurity startups and promoting digital literacy to stay ahead of evolving threats.

This evolution highlights the state's commitment to adapting to the changing landscape of cybercrime.

Cyber Crime Division

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[341] Sridhar Vivan**, Cybercrime surge in Karnataka: Cases rise, convictions stall,** Banglore mirror (2025)
https://bangaloremirror.indiatimes.com/bangalore/crime/cybercrime-surge-in-karnataka-cases-rise-convictions-stall/articleshow/117361692.cms

[342] Karishma Jain & Rohini Swamy, **Over 60,000 Cybercrime Cases In 3 Years: Karnataka's Answer Is India's First Cyber Command Centre,** News 18 **(**2025)
https://www.news18.com/india/over-60000-cybercrime-cases-in-3-years-karnatakas-answer-is-indias-first-cyber-command-centre-ws-l-9294400.html

- **The Beginning:**

Karnataka was one of the earliest states to recognize the growing threat of cybercrime and took proactive steps to combat it. To address this issue, Karnataka established:[343]

- **Cyber Crime Cell (1999):** The state set up its first cybercrime unit at the Criminal Investigation Department (CID) Headquarters in Bangalore to tackle growing cyber threats with strength of one Deputy Superintendent of Police and four Police Inspectors, along with other supporting staff.[344]
- **Cyber Crime Police Station (2001)**: This cell was declared India's first cybercrime police station on September 13, 2001, handling offenses under the Information Technology Act, 2000, and other laws.
- **Upgrade to Cyber Crime Division (2013):** The unit was upgraded to the Cyber Crime Division during the CID's reorganization, further strengthening Karnataka's cybercrime-fighting capabilities

Superintendent of Police, Deputy Inspector General of Police (Cyber and Narcotics), and Additional Director General of Police (Cyber and Narcotics) oversee the operation of the Cybercrime Division. The Director General of Police, Criminal Investigation Department, Special Units and Economic Offences, Bengaluru, provides overall supervision and direction.

Cybercrime Division includes the following units:

- **Investigation Unit**
- **Cyber Forensics Unit (CFU)**
- **Technical Cell**
- **Centre for Cybercrime Investigation Training and Research (CCITR)**

Investigation Unit: The Cybercrime Division's Investigation Unit looks into significant cybercrime cases. Supervisory officers either register these instances at the Criminal Investigation Department or refer them from nearby police stations. Serious

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[343] **Criminal Investigation Department - Cyber-crime-division,** Karnataka Government **https://cid.karnataka.gov.in/15/cyber-crime-division/en**

[344] **The Cyber Crime Investigation Cell (CCIC) of the CBI,** Karnataka Government **http://www.lealte.com/BARE-ACTS/Cyber Crime Investigation Cell _CCIC_ of the CBI.pdf**

cybercrimes, including lending apps, cryptocurrency frauds, investment frauds, courier frauds, SIM swap cases, hacking cases, and others involving interstate crime syndicates, have been successfully probed by the Cybercrime Division.

Cyber Forensics Unit (CFU): We have cutting-edge digital forensic instruments in our state-of-the-art Cyber Forensics Lab. In addition to supporting CID detectives, CFU also manages, directs, and aids the Karnataka State Police local police units in the processing, retrieval, and evaluation of digital evidence.

Technical Cell: All of the investigators in the Criminal Investigation Department receive technical support from the Cybercrime Division's Technical Cell while they are looking into cases involving technology.

Centre for Cybercrime Investigation Training and Research (CCITR)

A unique project founded under the PPP (Public-Private-Partnership) paradigm, the Centre for Cybercrime Investigation Training and Research (CCITR) brings together the Data Security Council of India (DSCI), the Infosys Foundation, and the Criminal Investigation Department.

CID, DSCI, and the Infosys Foundation signed the MoU for CCITR on October 3, 2018, in the presence of the Hon. Karnataka Home Minister. By establishing the "Centre for Cybercrime Investigation Training & Research (CCITR)," the goal was to improve the investigation and prosecution of cybercrimes in Karnataka state by bringing together innovators, big businesses, academia, and the government on a single platform. This was accomplished through capacity building and policy research.

Major Role of CCITR includes:

Major role of CCITR, varies from examining to operation different portals such as:

- Examining instances that have been moved or referred.
- Interaction with the Indian Cybercrime Coordination Centre (I4C) and oversight of the following portals' operations:
    a) NCRP Portal
    b) The JMIS Portal
    c) NCMEC, or the Cyber Tip line
    d) Joint Cyber Coordination Teams (JCCT)
    e) Nodal Officer who blocks SIM cards and freezing accounts.
- **The execution of the CCPWC Plan**.

- Social media observation.
- Perform the duties assigned by higher-ranking authorities, including serving as the Cyber Safe Nodal Officer. [345]

Major activities of CCITR includes:

- Training of police officers, judicial officers and prosecutors
- Research and development activities on cybercrime investigation and digital forensics
- Publishing of advisories, guidelines and SOPs on handling digital evidence and cybercrime investigation
- Creating cybercrime awareness
- Internship opportunities for students
- Collaboration with industry, academia and other agencies.

Highlights of the trainings imparted by CCITR:

Training Activity	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
Long Course (In-Person/Virtual)	1137	308	490	958	1396
Short Course (In-Person/Virtual)	316	2496	1346	736	649
Sub-Total (A)	1453	2804	1836	1694	2045
Guest Lectures (B)	1089	2713	6345	2815	3600

[345] **Criminal Investigation Department - Cyber-training-&-research ...,** Karnataka Government (2019)
https://cid.karnataka.gov.in/19/cyber-training-&-research-division/en

Virtual Training Series (C)					6380
District/City wise Virtual Training Module (D)					2754
Grand Total (A + B+ C+D)	2542	5517	8181	4509	14779

CCITR has achieved significant milestones from 2019 to 2024:

1. In the year 2023, a three-volume book "Cybercrime Investigation Manual" was released.
2. A research report titled "Dark & Deep Web: Advanced Forensic Analysis of Tor Browser and Implications for Law Enforcement Agencies" was published in 2022.
3. A research paper "Unveiling the Shadows: Advancements in Anti-forensics Detection for Law Enforcement Agencies" was released in 2023[346], which focuses on utilising anti- forensic tools.
4. A national level 'Cybercrime Investigation Summit-2024' was organized in Bengaluru on 6th March, 2024.
5. A two-day hackathon 'CIDECODE-2024' was organized in collaboration with PES University.
6. A Book "Concise Handbook on Cybercrime Investigation" was published in 2024.
7. A research paper on Drone Forensics, "Aerial Insights: The Role of Drone Forensics in Modern Investigations" was published in March, 2024.
8. Special trainings were conducted for Indian Air Force, Military Police, Kerala Police, Commercial Tax Department, Forensic Science Laboratory, etc.

[346] Shashidar T.K and Manjesh Shetty, **Unveiling the Shadows: Advancements in Anti-forensics Detection for Law Enforcement Agencies,** Data Security Council of India (DSCI) (2023) **https://www.dsci.in/files/content/knowledge-centre/2023/Unveiling%20the%20Shadows,%20CCITR.pdf**

In 2025, the Centre for CCITR in Karnataka organized several impactful events aimed at enhancing cybersecurity awareness and skills. Here are some highlights:

1. **CIDECODE 2025, Fourth edition of Cybercrime Investigation Summit**:
    - A flagship event held on **March 15, 2025**, exclusively for law enforcement agencies and invitees.
        - Featured expert sessions on topics like **deepfake detection**, **malware campaigns**, and **virtual asset seizure**.
        - Included a **hackathon**, a **cybercrime investigation manual launch**, and a **tabletop exercise on cybercrimes**.
        - Focused on bridging the gap between government and industry to combat cyber threats.
        - Hosted masterclasses on legal aspects of cybercrime and advanced technical talks.
2. **Workshops and Training Programs**:
    - Conducted hands-on training for law enforcement officers on **vehicle forensics**, **AI in cybersecurity**, and **malware analysis**.
    - Aimed at equipping participants with cutting-edge tools and techniques.

These events underscore CCITR's commitment to fostering collaboration and innovation in cybersecurity.

"Cybercrime has no boundaries. The Cyber Crime Investigation Training and Research Centre (CCITR) was established with the objective of raising awareness about cyber - crimes occurring worldwide. So far, more than 46,000 officers and personnel have been trained," Hon'ble Minister of Home Affairs of Karnataka, Dr. G Parameshwara, said while inaugurating CIDECODE. [347]

Preventive Measures taken by State Government

1. **New Cyber Security Policy 2024**

The Karnataka Cybersecurity Policy 2024 was introduced to create a secure and resilient digital ecosystem in the state. It focuses on safeguarding critical infrastructure,

[347] **Karnataka government committed to tackling cybercrime: Home Minister Dr G Parameshwara,** New Indian Express (2025) **https://www.newindianexpress.com/cities/bengaluru/2025/Mar/16/karnataka-government-committed-to-tackling-cybercrime-home-minister-dr-g-parameshwara**

promoting cybersecurity awareness, and fostering innovation in security technologies[348].

Key Features:

- **Awareness and Education**: Raising public and organizational awareness about cyber threats and security practices. It also takes assistance of **CCITR, Information Security Education and Awareness (ISEA)** and other private organisations in aiding more awareness drives. **New education policy** adopted by Karnataka government also aims at educating students in schools about threat of cyber-crime.
- **Skill Development**: CCITR aids in training individuals, including women and children, in cybersecurity skills to address the talent gap.
- Promotion of **Startups**: Encouraging cybersecurity startups through incentives and collaboration with academic institutions. To guarantee effective use of public funds with definite deliverables, cyber security research will be supported for Karnataka-based startups and MSMEs, K-tech Innovation Hubs, centres of excellence, and institutions with high National Institutional Ranking Framework (NIRF) and National Assessment and Accreditation Council (NAAC) ratings.
- **Public-Private Partnerships**: Enhancing capacity building through partnerships between government, industry, and academia.
- Strengthening IT Assets: Implementing robust cybersecurity measures for the state's IT infrastructure.
- Enhanced provision to utilise **Cyber Incident Report** by promoting awareness and popularise the use of Dial 112 and Dial 1930 to report incidents of cyber-crime.[349]
- Implantation of Volunteers, in the form of **NCRP Student volunteers** and etc. [350]

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[348] **Karnataka Cyber Security Policy 2024**
https://eitbt.karnataka.gov.in/uploads/media_to_upload1728735887.pdf

[349] **Cybercrime Incident Report.**
https://bcp.karnataka.gov.in/uploads/media_to_upload1652083404.pdf

- The **Karnataka Cyber Security Architecture (CSAF-KA)** will be implemented by DPAR (e-Government). The following are the main parts of the CSAF-KA: Frameworks for (a) law and regulation, (b) compliance and enforcement, (c) capacity building and cyber security culture, and (d) collaboration

Budget and Implementation:

- A budget of ₹103.87 crores was allocated for the policy's implementation, with ₹23.74 crores dedicated to incentives and concessions.[351]
- The policy aligns with national and international cybersecurity initiatives such as Group of Governmental Experts on advancing responsible state behaviour in cyberspace (GGE, **Microsoft driven Cybersecurity Tech Accord, ISO27001**, showcasing Karnataka's proactive approach.

Collaborations:

- The policy was developed with input from stakeholders, including the Indian Institute of Science and network giant **CISCO**, which launched a skilling program to train 40,000 individuals.[352]
- In order to improve government information and information systems, models for cooperation and interaction with all pertinent stakeholders, including The National Critical Information Infrastructure Protection Cnetre (NCIIPC), CERT-in, Cyber Swatchta Kendra, The National Cyber Coordination Centre (NCCC), C&IS Division of MHA, IIIT-B, IISc, and Cyber Security OEMs, should be developed.

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[350] **Police in search of cyber volunteers to beat increasing cybercrimes,** The Hindu (2024) **https://www.thehindu.com/news/cities/kozhikode/police-in-search-of-cyber-volunteers-to-beat-increasing-cyber-crimes/article67716017.ece**

[351] Titiksha Srivastav, **Karnataka Cyber Security Policy 2024 Released: Rs 103 Crores Allocated for Policy Implementation**, FCRR (2024) **https://the420.in/karnataka-cyber-security-policy-rs-103-crore-allocated-for-policy-implementation/**

[352] **Karnataka government launches new cyber security policy 2024**, New Karnataka (2024) **https://newskarnataka.com/karnataka/bengaluru/karnataka-government-launches-new-cyber-security-policy-2024/01082024/**

Hon'ble Minister for Rural Development and Panchayat Raj, and Minister of Information and Biotechnology, Priyanka Kharge sir, stated "The Government of Karnataka, recognising the rising importance of cyber security, has meticulously crafted this policy to establish a resilient and secure cyberspace for our citizens and enterprise"

Expansion of Cyber Crime Division

Karnataka has significantly expanded its cybercrime division to address the rising number of digital offenses[353]. Here are some key developments:

Cyber Command Unit

- In **April 2025**, Karnataka launched the **Cyber Command Unit**, consolidating efforts to combat cybercrime. This unit operates under the **Director General of Police (DGP)** for Cybercrime and Narcotics.
- The unit integrates **45 police stations**, including **43 CEN (Cyber, Economic, and Narcotics) police stations**, under a unified structure.
- It focuses on tackling crimes like **ransomware, identity theft, sextortion, and online harassment**.

Centralized Operations

- The Cyber Command Unit ensures streamlined investigations and faster response times by consolidating resources and expertise.
- It also addresses **disinformation and digital misinformation**, with a dedicated **Multi-Departmental Coordinating Committee (MDCC)**.
- The Karnataka home department will receive the cyber command unit's reports directly rather than through the state police chief, nor through to CEN

Leadership and Innovation

- The unit is led by a **DGP**, who also serves as the **Chief Information Security Officer (CISO)** for the state.[354]

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[353] **Karnataka orders formation of cyber command unit within state police to tackle rising cybercrimes | Bangalore News,** The Indian Express (2025) https://indianexpress.com/article/cities/bangalore/karnataka-cyber-command-unit-police-tackle-rising-cybercrimes-9936351/

[354] **State launches Cyber Command to combat rising E-crimes,** Bangalore Mirror (2025) https://bangaloremirror.indiatimes.com/bangalore/crime/state-launches-cyber-command-to-combat-rising-e-crimes/articleshow/120172677.cms

Case Laws

1. **State of Tamil Nadu vs. Suhas Katti (2004)[355]:**
    - This was one of the first cases under the Information Technology Act, 2000. Although it primarily dealt with online harassment, it set a precedent for addressing cybercrimes targeting vulnerable groups, including children. The accused was convicted under Section 67 of the IT Act, which deals with publishing obscene material in electronic form.
2. **Avnish Bajaj vs. State (NCT of Delhi) (2008)[356]:**
    - This case involved the sale of obscene material depicting minors on an online platform. The court emphasized the responsibility of intermediaries in preventing the dissemination of such content, leading to stricter regulations under the IT Act.
3. **Shreya Singhal vs. Union of India (2015)**[357]:
    - While this case focused on the constitutionality of Section 66A of the IT Act, it highlighted the need for clear and specific laws to address cybercrimes, including those targeting children.
4. **CBI vs. Arif Azim (Sony Sambandh Case):**
    - This case involved the misuse of credit card information obtained through phishing, which indirectly impacted minors. It underscored the importance of cybersecurity measures to protect sensitive data.

The legal framework for dealing with cybercrimes has been influenced by these seminal rulings. Although there was never a cybercrime against a child in any of the cases cited, based on current trends, cybercrimes that have similar prevalences against children in India have been rising. Therefore, by providing precedent-setting rulings against cybercrime, which can also be committed against minors, these historic rulings are effectively fulfilling their function.

Existing Challenges

1. **The trade-off between cyber protection and privacy:**

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[355] ***State of Tamil Nadu vs. Suhas Katti,*** **CC No. 4680 of 2004**

[356] ***Avnish Bajaj vs. State (NCT of Delhi),*** **(2005)3COMPLJ364(DEL), 116(2005) DLT427, 2005(79) DRJ576**

[357] ***Shreya Singhal vs. Union of India,*** **AIR 2015 SUPREME COURT 1523, 2015 AIR SCW 1989**

- **Government Surveillance:** Will government intervention in monitoring internet usage logs compromise individual privacy?
- **Balancing Public Safety and IT Measures:** Can we strike a balance between ensuring public safety and respecting individual privacy rights in the digital age?[358]

2. **Insufficient Resources:** Government agencies often lack the necessary trained personnel to effectively tackle cybercrime.
3. **Limited Technical Capabilities:** The absence of advanced tools and technology hinders efforts to keep pace with evolving cyber threats**.**
4. The absence of a **clear definition of cybercrime** in Indian legislation:
   - **Ambiguity in Laws**: Despite provisions in laws like the IT Act, BNS, and POCSO, the lack of a precise definition of cybercrime limits the scope of legal frameworks.
   - **Impact on Prosecution**: Without a clear definition, it can be challenging to effectively prosecute cybercrimes and bring perpetrators to justice.[359]
5. In India, **cyber security awareness is hindered** by:
   - **Diverse Population:** Different socio-economic backgrounds and limited understanding of technology make awareness drives less effective.
   - **Rural-Urban Divide:** Rural areas often lack access to cyber security awareness initiatives, exacerbating the issue.
6. **Inaccessibility of Hotline:** Reports indicate that certain hotlines are not reachable, hindering efforts to report and address cybercrimes effectively [360]
7. **Issue of juvenile cybercrime in India**:
   - **Increasing Youth Involvement**: Teenagers are increasingly exposed to online risks, engaging in activities like hacking and accessing dark web content.

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[358] Dr. Shiv Raman & Ms. Nidhi Sharma, **Investigation of Cyber Offences and Cyber Police in India: An Analytical study**, An Open Access Journal from The Law Brigade Group, (2021)

[359] Saurya Sarkar, **The Silent Victims of Cyber Space: Analyzing Cyber Crimes against Children in the Indian Context**, IJCRT, ISSN: 2320- 2882, (Vol. 12) (2024)

[360] PTI, **Hotlines meant for cyber - crimes not going through in Bengaluru,** Deccan Herald (2024) **https://www.deccanherald.com/india/karnataka/bengaluru/hotlines-meant-for-cyber-crimes-not-going-through-in-bengaluru-3330370**

- **Lenient Punishment**: Indian law may not impose severe enough punishments on child perpetrators, potentially failing to deter future offenses. [361]

Suggestions:

1. **Amendment** - Amendments to broaden definition of cyber-crime and to increase punishments for cyber- criminals.
2. **Strengthening Infrastructure -** Equip cybercrime units with cutting-edge technologies like AI-driven threat detection and blockchain-based security systems.
3. **Capacity Building -** Promote cybersecurity courses in academic institutions to build a skilled workforce.
4. **Awareness Campaigns** - Launch statewide campaigns to educate citizens about safe online practices and the risks of cybercrime.[362]
5. **Digital Literacy** - Focus on improving digital literacy in rural areas to reduce vulnerabilities.
6. **Maintaining Record -** The impact of awareness programs will also be increased by keeping village-by-village records for the entry of any awareness drives and cybercrimes**.**
7. **Regular Updates and Revision**: Revise the Karnataka Cybersecurity Policy periodically to address evolving challenges.
8. **Incident Reporting Systems**: Strengthen systems like the Cybercrime Incident Report (CIR) to ensure prompt reporting and resolution of cybercrimes.
9. **Data Protection**: Implement robust measures to safeguard sensitive data and prevent breaches.

Conclusion:

The evolution of cybercrime in Karnataka reflects the rapid transformation of technology and its accompanying challenges. From the early days of simple hacking

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[361] Kethovelu Resu*,* **Cyber Delinquency: Its Factors and Legal Framework,** National Law School of India University, 16- 28, (2020)

[362] Dr. Nagarathna A, Jay Bhaskar Sharma & Sparsh Sharma, **Children & Cyber Safety- an e-book***,* nls.ac (2011)

and email scams to the complex, multi-faceted cybercrimes of today—such as ransomware, identity theft, and crimes targeting children—the state has witnessed a significant shift in the nature and scope of threats.

Karnataka's proactive measures, including the establishment of India’s first cybercrime police station in 2001 and the launch of the Cyber Command Centre in 2025, demonstrate its commitment to addressing these challenges. The state has continuously adapted by expanding infrastructure, enhancing technical capabilities, and fostering public-private partnerships to stay ahead of evolving cyber threats. Efforts like digital literacy programs, the Karnataka Cybersecurity Policy 2024, and increased focus on vulnerable groups further underscore its dedication to creating a secure digital environment.

As technology continues to evolve, so must Karnataka’s strategies. Continued investment in innovation, skill development, and public awareness will be critical in mitigating future risks and ensuring a resilient cyber ecosystem. Through these endeavours, Karnataka stands as a leader in navigating the dynamic landscape of cybercrime and cybersecurity.

CHAPTER- 21

ADMINISTRATIVE LAW AND ITS INTERPLAY WITH CONSTITUTIONAL LAW IN INDIA AND US

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Abstract

"The Constitution is not a mere lawyer's document, it is a vehicle of life and its spirit is always the spirit of age"[363]Administrative law has become a unique and important area of legal research in the modern period. But the field of law is characterized by complex interactions, especially when administrative law and constitutional administrative law converge and a special idea called a "water shade" enters the picture. This phrase captures the idea that there may be situations where the lines between administrative law from constitutional law become hazy, resulting in an overlap that makes it difficult to distinguish between the two.

Because administrative and constitutional law are inherently linked and dependent upon one another, attempts to establish clear boundaries between them are frequently seen to be pointless. The fundamental structure of government requires that administrative rules and constitutional precepts coexist together. As such, trying to keep these two domains apart becomes not just unrealistic but also nonsensical.

Both administrative law and constitutional law serve as the fundamental pillars that mold and govern how governmental entities operate. The constitution is the ultimate law, outlining the basic ideas and frameworks that guide a country's political system. Administrative laws simultaneously define the authorities, protocols, and duties of government agencies and offer the foundation for their daily activities.

These legal fields have an impact on how international legal systems function internally and beyond national boundaries. There is an increasing interest in comprehending the relationships between different levels of government, both inside and outside of states, as evidenced by the way administrative and constitutional law are developing. This entails investigating the complex interrelationships among federal, state, and local entities and how these linkages influence the legal system.

The study of administrative and constitutional law is increasingly exploring the complex relationship between internal legal standards and external pressures, extending its scope beyond specific country contexts to a worldwide perspective.

The distinction between administrative and constitutional law is dynamic, adapting to governance needs. Legal scholars and practitioners understand how these disciplines influence government and legal systems on national and international scales.

Keywords: administrative law, Constitutional Law, Public law, Governance, Legal Framework

Introduction

The Constitution transcends its identity as a mere legal document; instead, it embodies the essence of life, always resonating with the spirit of the age it represents. Within the legal landscape, two indispensable domains—administrative law and constitutional

[363] B.R. Ambedkar

law—play a pivotal role in regulating the conduct of the government and its administrative agencies. Despite existing as distinct disciplines, these fields exhibit a significant overlap, commonly referred to in administrative law as the "watershed area." This convergence raises the intriguing question of the Constitution's extraordinary potency and its unparalleled status as the supreme document that supersedes all others.

Administrative law, as the body of legal principles governing administrative actions, is often described by scholars like Ivor Jennings as administrative law itself. It delineates the structure, authority, and duties of administrative authorities, addressing crucial aspects such as the legal obligations of public entities, the capacity of regular courts to oversee administrative bodies, the rule-making power of administrative agencies, and the quasi-judicial functions they may perform. By exerting influence over the executive branch, administrative law ensures that the government treats the public equitably, safeguarding against arbitrary or unfair administrative actions.

In essence, the Constitution serves as the ultimate benchmark for legality, rendering any legislation or action that transgresses its provisions as invalid. This assertion prompts a deeper exploration into the roots of the Constitution's formidable authority and the factors that elevate it to a position of supremacy over other legal instruments.

The symbiotic relationship between administrative law and constitutional law becomes evident as administrative law navigates the intricate terrain of governmental functions while adhering to the overarching principles laid down in the Constitution. This dynamic interplay ensures not only the effective functioning of administrative bodies but also the preservation of the fundamental values enshrined in the Constitution. As a result, the Constitution emerges not merely as a static legal text but as a living embodiment of societal ethos, adapting to and embodying the prevailing spirit of the times.

The relationship between constitutional law and administrative law highlights the significant influence that both legal domains have on the system of administration. The regulations governing administrative acts are set down by administrative law, while the fundamental principles that define and direct the functioning of the government are determined by constitutional law. In their mutually beneficial partnership, they ensure that the state machinery operates in a way that respects the values of justice, equity, and the rule of law.

Brief on Constitutional Law

The term "constitution" in French denotes the comprehensive set of fundamental rules and regulations that govern the operations of a nation-state or any organizational entity. Given that a state's constitution holds the status of supreme law, it is held to stringent standards of legitimacy and integrity. The foundational ideals, institutional framework, and procedural requisites of the state are collectively outlined, including the developmental trajectories associated with each. Constitutional law, in turn, is concerned with the interpretation and application of the Constitution and its underlying principles. It serves as the cornerstone for individuals' access to fundamental rights such as life, privacy, mobility, and the right to vote. The formal prerequisites that must

be satisfied before a governing authority can impact an individual's rights, liberties, or property are elucidated.

Within the purview of constitutional law, various critical topics are addressed, including judicial review, fundamental duties, and legislative authority. Notably, the Supreme Court of India has played a pivotal role in advancing the field of constitutional law due to its crucial role in interpreting the Constitution and its language. The initial contribution of this advancement involves defining the term "Constitution," encompassing its scope, personality, and functions within a state. Furthermore, the contribution assesses the preamble, essential rights, and obligations embedded in the Indian Constitution. The paper culminates with an exploration of the architecture and structure of the Indian constitution, delving into the Directive Principles of State Policy (DPSP) from the perspectives of socialist, Gandhian, and other ideological paradigms.

Important Constitutional Elements:

1. **Constitution:** The Constitution serves as a foundational legal instrument that delineates the structure, authority, and limits of a government. It functions as the supreme law of the land, establishing the framework for citizens' rights and liberties, while also providing the groundwork for governance. Constitutions can take the form of either written or unwritten documents, and they vary in complexity and specificity. Whether detailed and explicitly codified or more flexible and implicit, a constitution plays a crucial role in shaping the legal and political landscape of a nation.

2. **Separation of Authorities:** The judicial, legislative, and executive branches of government are each granted specific powers to perform their respective functions under the constitution. This division ensures a system of checks and balances that keeps any one branch from gaining absolute power.

3. **Judicial Review:** The courts have the power to analyze and interpret legislation, executive orders, and government policies to ensure that they are in accordance with the Constitution thanks to the judicial review principles that are a component of constitutional law. Through judicial review, the judiciary can declare unconstitutional legislation or actions that exceed the authority of the executive branch or violate the Constitution.

4. **Rights and liberties of an individual:** People's rights and liberties are protected by the Constitution from government interference. These rights may include the freedom of expression, freedom of religion, freedom of the press, equality before the law, the right to due process, the right to privacy, and other rights. Constitutional law guarantees a person's right to exercise such right and to seek redress if the state violates it.

5. **Constitutional Amendments:** Constitutions can be changed or updated to reflect evolving social, political, or legal circumstances. Amendments typically provide for a specific procedure, like a supermajority vote by the legislature or a popular referendum, to preserve the stability and integrity of the document.

6. **Constitutional Interpretation**: The creation and interpretation of constitutional provisions are part of constitutional law. Courts, including the highest court in a country, are crucial for interpreting and applying constitutional requirements in order to resolve legal disputes and constitutional issues. Constitutional interpretation considers the original intentions of the framers, the language of the Constitution, the historical context, and evolving social norms.

7. **Federalism:** In countries with federal systems, constitutional law also controls the distribution of authority between the central government and local or state governments. It creates a shared authority framework by outlining the connections and balance of power among different institutions.

Case study: The ***Marbury v. Madison***[364] the decision established the judicial review principle in the U.S. Supreme Court. Chief Justice John Marshall ruled that the Judiciary Act of 1789 clause, which allowed the Supreme Court to issue writs of mandamus, was unconstitutional. This case solidified the Supreme Court's role as the ultimate interpreter of the Constitution and set a precedent for global constitutional law.

Administrative law

The fast expansion of administrative law is the 20th century's most notable and significant development. That does not imply, however, that administrative law did not exist prior to this century. It has been there in one form or another for a very long time. However, a significant shift in the thought of the State's role and function has occurred in this century.
The number of government functions has skyrocketed. Today's state is more than just a police state with sovereign powers; it is also a progressive democracy that works to protect the rights of the common man to social security and welfare, controls industrial relations, controls the production, manufacture, and distribution of basic goods, launches businesses, strives for equality for all, and guarantees equal compensation for equal labour. It works to uplift impoverished areas, attends to people's health and morals, educates children, and does all the necessary actions to uphold social justice.
To put it succinctly, the contemporary State provides for its people from "cradle to the grave"![365] The breadth and depth of administrative law have expanded as a result of all these advancements.

Definition of Administrative Law
Ivor Jennings- "Administrative law is the law relating to the administration. It determines the organisation, powers and duties of the administrative authorities".[366]

Wade-According to Wade, administrative law is "the law relating to the control of governmental power". According to him, the primary object of administrative law is to keep powers of the government within their legal bounds so as to protect the citizens

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[364] 5 U.S. (1 Cranch) 137 (1803).
[365] Wade & Forsyth, Administrative Law (2009) 4; see also, U.P. Warehousing Corpn. v. Vijay Narayan Vaipayee, (1980) 3 SCC 459, 468-469: AIR 1980 SC 840, 846: (1980) 2 SCR 773>
[366] The law and the Constitution (1959) 217.

against their abuse. The powerful engines of authority must be prevented from running amok"[367]

K.C Davis- Administrative Law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action[368]

Nature and Scope of Administrative Law

Administrative law focuses on the authority vested in administrative bodies, how such authorities use their authority, and the recourse accessible to people who have been wronged when this authority is misused.
As discussed above, "the administrative process has come to stay and it has to be accepted as a necessary evil in all progressive societies, particularly in a welfare State, where many schemes for the progress of society are prepared and administered by the government. The execution and implementation of this programme may adversely affect the rights of cit-izens. The actual problem is to reconcile social welfare with the rights of individual subjects. As has been rightly observed by Lord Denning"[369]
"Properly exercised, the new powers of the executive lead to the welfare State; but abused they lead to the Totalitarian State."
The main object of the study of administrative law is to unravel the way in which these administrative authorities could be kept within their limits so that the discretionary powers may not be turned into arbitrary powers".[370]

Schwartz divides administrative law in three parts:
I. "The powers vested in administrative agencies.
2. The requirements imposed by law upon the exercise of those powers.
3. Remedies available against unlawful administrative actions."[371]

Reasons For Growth of Administrative Law

1. There is a radical change in the philosophy of the role played by the State. The negative policy of maintaining "law and order" and of "laissez faire" has radically changed. The State has not confined its scope to the traditional and minimum functions of defense and administration of justice, but has adopted the positive policy and as a welfare State has undertaken to perform varied functions.[372]
2. The judicial system was found to be insufficient for resolving disputes, as it was slow, costly, and complex. This led to the establishment of industrial tribunals and labor courts, which specialized in handling complex issues beyond the scope of ordinary courts.

[367] Wade & Forsyth Law Text (1959) 4-5.
[368] Administrative Law text (1959) 1.
[369]Freedom under the Law (1949) 126.
[370] Administrative Law (2012) Chap. 1.
[371] Administrative law (1984) 2.
[372] Justice Frankfurter, 41 Col Law Rev 585-586.

3. The legislative process was inadequate, lacking time and technique to detail rules and procedures. Even when detailed provisions were established, they were found defective, necessitating administrative authority delegation.
4. The administrative process offers flexibility compared to legislation, allowing for experimentation and modification of rules within a short period, allowing authorities to avoid technicalities and maintain a rigid character.
5. Administrative authorities can avoid technicalities, as they adopt a functional approach, unlike traditional judiciary, which is rigid and rigid, allowing them to take a practical view of complex problems.
6. Administrative authorities can take preventive measures, e.g. licens-ing, rate-fixing, etc. Unlike regular courts of law, they do not have to wait for parties to come before them with disputes. In many cases, these preventive actions may prove to be more effective and useful than punishing a person after he has committed a breach of law. As Freeman says, "Inspection and grading of meat answers the consumer's need more adequately than does a right to sue the seller after the consumer is injured."[373]
7. Administrative authorities can enforce preventive measures like license suspension, revocation, and cancellation, which are not typically available through regular courts of law.

Evolution and Development of Administrative Law
In USA
The earliest federal administrative law was enacted in 1789, marking the beginning of the 18th century in America. However, with the passage of the Interstate Commerce Act in 1877, administrative law began to expand quickly. Frank Goodnow published two books: Principles of Administrative Law of the United States, published in 1905, and Comparative Administrative Law, published in 1893. Ernst Freund's Casebook on Administrative Law was released in 19 II. The study of administrative law piqued the interest of both the Bench and the Bar. President Elihu Root forewarned the nation in 1946 at his speech to the American Bar Association, saying:

“There is one special field of law development which has manifestly become inevitable. We are entering upon the creation of a body of administrative law quite different in its machinery, its remedies and its necessary safeguards from the old methods of regulation by specific statutes enforced by the courts ....If we are to continue a government of limited powers, these agencies of regulation must themselves be regulated”.

In India
India had administrative law dating back thousands of years. Several centuries prior to the birth of Christ, India had a highly structured and centralized government under the Mauryas and Guptas. The monarchs and officials upheld the dharma's rule, and no one claimed to be exempt from it. The monarchs and officials upheld the fundamentals of natural justice and fair play since the administration could only function on the basis of those values recognised by dharma, a term that had a much broader meaning than the "rule of law" or "due process of law."
However, administrative law did not exist in the manner that it does now.

[373] Cases and Materials on Administrative Law in India, Vol 1 (1966) 3-4.

The British Government in India increased its powers through various Acts, statutes, and legislations, regulating public safety, health, transport, and labor relations. Administrative licenses were granted under the State Carriage Act, Bombay Port Trust Act, Northern India Canal and Drainage Act, Opium Act, and Indian Explosives Act, with provisions for holding permits and settling disputes.
The executive branch had a massive expansion in authority during World War II. The Defence of India Act, 1939, along with its implementing regulations, granted the government extensive authority to tamper with an individual's life, liberty, and property with no or nonexistent judicial oversight. Additionally, the government published numerous laws and regulations that served as administrative guidelines on a variety of topics.

The judiciary began to take into account the goals and aspirations of social welfare even as it interpreted all of these Acts and the Constitution's provisions.
Thus, in ***Joseph Kuruvilla Vellukunnel v. RBIS***,[374] the Supreme Court held "that under the Banking Companies Act, 1949, the Reserve Bank was the sole judge to decide whether the affairs of a banking company were being conducted in a manner prejudicial to the depositors' interest and the court had no option but to pass an order of winding up as prayed for by the Reserve Bank". Again, in ***State of A.P. v. Chitra Venkato Rao***[375]; dealing with a departmental inquiry, the Supreme Court held "that the jurisdiction to issue a writ of certiorari under Article 226 is supervisory in nature. It is not an appellate court and if there is some evidence on record on which the tribunal had passed the order, the said findings cannot be challenged on the ground that the evidence for the same is insuff-cient or inadequate". The adequacy or sufficiency of evidence is within the exclusive jurisdiction of the tribunal. In ***M.P. Srivastava v. Suresh Singh***[376]The Supreme Court observed that "in matters relating to questions regarding adequacy or sufficiency of training, the expert opinion of the Public Service Commission would be generally accepted by the court". In ***State of Gujarat v. M.I. Haider Bux Imam Razvi***[377]The Supreme Court held that "under the provisions of the Land Acquisition Act, 1894, ordinarily, the government is the best authority to decide whether a particular purpose is a public purpose and whether the land can be acquired for that purpose or not".
In ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth***[378] also, the Supreme Court held:
"The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them".

As a result, even while governmental and administrative authority today have more activities and powers than ever before, there is also a greater need for the rule of law to be upheld and for judicial scrutiny of these authorities to ensure that citizens can exercise their constitutionally granted rights to liberty. Therefore, provisions for the right of appeal, revision, etc. are provided in a number of statutes, and in addition,

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[374] AIR 1962 SC 1371
[375] (1975) 2 SCC 557: AIR 1975 SC 2151.
[376] (1977) 1 SCC 627: AIR 1976 SC 1404.
[377] (1976) 3 SCC 536: AIR 1977 SC 594
[378] (1984) 2 SCC 27, 56-57: AIR 1984 SC 1543, 1559

extraordinary remedies are made accessible under Articles 32, 136, 226, and 227 of the Indian Constitution. The "basic structure" of our Constitution is said to include the judicial review premise. Administrative authority orders are subject to quashing and setting aside if they are not in accordance with the Act, the Constitution, or other legal requirements. These authorities' rules, regulations, and orders may be deemed ultra vires, unconstitutional, unlawful, or void if they are not within their purview.

Relationship between Constitutional Law and Indian Law

In the modern state, administrative law and constitutional law are both components of public law. Any attempt to differentiate administrative law from constitutional law is artificial since it is illogical to do so. Administrative law was not given a distinct and independent treatment until recently; instead, it was covered and debated in the texts of constitutional law.

Many definitions of administrative law were included in constitutional law. According to *Holland, "*the constitutional law describes the various organs of the government at rest while administrative law describes them in motion".

As a result, this perspective holds that administrative law governs how the legislative and executive branches operate, while the constitutional law covers their organizational framework.

Administrative law, on the one hand, focuses on the structure, role, and responsibilities of administrative authorities, whereas constitutional law addresses the general rules governing the structure, authority, and interactions between the state's various organs as well as their relationships with the people.

Reasonable administrative law regulations and justice-based principles limit arbitrary behaviour under constitutional law. Administrative law addresses the structures, authorities, and functions that delineate the duties of administrative authorities, whereas constitutional law addresses overarching principles concerning the various state organs' powers and organisational structures as well as their interactions with the public. It is true that to regulate the various problems of each State, administrative law and constitutional law are essential.

Similarities between Administrative Law and Constitutional Law

- "Both administrative and constitutional law deal with public matters.
- Both administrative law and constitutional law are concerned with Human rights issues.
- Both branches of law rely on statutes and case law for their principles and operations.

- The enforcement of principles in both administrative and constitutional law lies in the hands of the same institutions"[379].

Conclusion

The paper asserts a strong link between administrative law and constitutional law, employing the metaphorical concept of watersheds to highlight key points of connection. It emphasizes that constitutional law serves as the primary origin of administrative law, not only placing constraints on legislative authority but also safeguarding the rights of citizens. The argument posits that the Constitution and administrative law are so intertwined that the former cannot exist independently, given the pervasive influence of the latter. Consequently, the crucial role of constitutional law in establishing standards, laws, and principles is underscored, playing a pivotal role in expanding the reach and application of administrative law. However, the article acknowledges instances where the intersection between constitutional law and administrative law becomes notably pronounced.

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CHAPTER-22

PSYCHOLOGY OF CRIME

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Abstract

The study of criminal psychology is a multidisciplinary field that seeks to understand the complex interplay of biological, psychological, and sociological factors that contribute to criminal behaviour. This paper explores the historical evolution of criminal psychology, from the early theories of Cesare Lombroso to the more contemporary perspectives of Robert Agnew and Laurence Alison. It examines the roles of genetics, upbringing, brain development, personality traits, cognitive processes, and social learning in shaping criminal behaviour. The impact of environmental factors, such as poverty and inequality, on criminality is also discussed. The paper highlights the crucial roles of criminal psychologists in the criminal justice system, from assessing individuals' psychological functioning to assisting in criminal investigations and crime analysis. It concludes by emphasizing the importance of integrating biological, sociological, and psychological perspectives to develop more comprehensive and effective solutions to address the root causes of criminal behaviour and create a safer, more just society for all.

Keywords: Criminal, Psychology, Biological, Sociological, Psychological, Crime

INTRODUCTION

Crime is a complex and multifaceted phenomenon that has existed in human societies since ancient times. From prehistoric humans engaging in theft and violence to modern-day cybercrimes, criminal behaviour has evolved alongside human civilization. Understanding the motivations behind criminal acts has been a central focus of the psychological study of criminal behaviour.

Psychologists have long sought to unravel the psychological factors that contribute to criminal behaviour. One of the earliest theories, proposed by Cesare Lombroso in the late 19th century,

suggested that criminals were "born criminals" with physical and genetic defects that predisposed them to deviant behaviour. While this theory has been largely discredited, it laid the groundwork for further exploration into the biological, psychological, and sociological factors that influence criminal behaviour.[1]

Genetics and brain anomalies are known to influence criminal conduct. Research has shown that some genetic variants and brain abnormalities are linked to a higher probability of committing criminal crimes. Hormonal imbalances and neurotransmitter deficits are associated with aggressiveness, impulsivity, and antisocial behaviours.

Psychological elements, including personality characteristics, cognitive processes, and emotional states, are important in influencing criminal conduct. People with certain personality qualities, including strong impulsivity and sensation-seeking, are more prone to participating in dangerous and impulsive actions, such as criminal activity. Individuals who have impairments in executive functioning and cognitive biases may have a higher tendency to participate in illegal activities.[2]

Sociological issues including poverty, inequality, and social learning have a role in criminal conduct. Financial difficulties and disparities in society might lead people to turn to criminal behaviour as a way to survive or in reaction to perceived unfairness. Social learning theory proposes that people acquire actions by seeing and imitating others, such as criminal peers and mentors.

Understanding the motivations behind criminal acts is crucial for developing effective interventions and strategies for preventing and addressing crime. By examining the psychology underlying criminal acts, researchers aim to better rehabilitate offenders, formulate crime prevention policies, and unravel the root causes behind deviant behaviours that violate social norms and laws. This knowledge can ultimately lead to a safer and more just society for all.

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What Is Psychology And Its Significance In Law?

Psychology is the scientific study of the mental aspects of individuals and aids in understanding human conduct. Psychology involves examining both conscious and unconscious mental states. Psychology examines the human mind and its impact on conduct. The covered elements include conative, cognitive, and emotional.

Psychology is crucial in police work. Forensic psychologists and criminal anthropologists identify suspects via the analysis of crime scenes, investigative psychology, and other behavioural sciences. Law enforcement organisations often depend on these specialists to analyse a suspected suspect's probable personality type, lifestyle habits, and idiosyncrasies.[3]

Psychology aids in assessing a criminal's intent, the credibility of witnesses, and choosing appropriate punishment based on the offender's psychological state. Psychology has begun to see criminals as individuals with mental disorders and recommends medical treatment rather than punishment. Psychology has seen substantial changes such as the deinstitutionalization of the mentally ill, along with a deeper understanding of the treatments and origins of mental diseases.[4]

Advancements in psychology, human behaviour, and psychiatry have influenced legal professionals' perspectives on law and the criminal justice system's approach to those with mental illness.

Psychology has become a crucial component of the modern judicial system. Psychology is important in law because the legal system incorporates views of human conduct. Legal norms, concepts, and processes are based on fundamental assumptions about human nature. While some legal authorities may not see psychology as directly related to the law, it aids decision-makers by offering more precise insights into human preferences and perceptions.

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pp. 287-320. Routledge, (2021).

[4] Ward, Tony, and Russil Durrant. "Practice frameworks in correctional psychology: Translating causal theories and normative assumptions into practice." Aggression and Violent Behavior 58 (2021): 101612.

Psychology aids in verifying the credibility of witnesses, since eyewitnesses are often affected by the accused or intimidated by them. Psychology may aid in decreasing false admissions via the use of peace models. Its studies include analysing several topics of social and legal importance. It is grounded on the psychological and empirical study of law and legal systems, emphasising legal psychology over clinically focused forensic psychology. Accounting for the psychological characteristics of the human mind while making a decision provides fairness.[5]

Crime has captivated humans for generations. The debate over whether criminal conduct is influenced by genetics or environmental factors is still a controversial subject. Some believe genetics are important, while others stress the influence of environmental variables.

What Classifies As A Crime?

Understanding the extent of criminal psychology requires an initial definition of the idea of crime. A crime is an act that is criminal by law when committed by an individual. The concept of crime is subject to change and is influenced by the location, period, and cultural norms of the specific area where the act is committed. For instance, the legality of substances like marijuana, behaviours such as homosexuality, engaging in prostitution, and the act of marital rape varies throughout nations.

The variability in categorising crime leads to the challenge of offering psychological justifications for illegal action. If someone may be labelled a criminal for an act one day but not the next, then their criminal nature cannot be definitively characterised. Robert Agnew attempted to clarify this uncertainty in his concept of crime. He suggests that crime should be defined as 'actions that result in blameworthy injury, are disapproved by society, and/or are not authorised by the government'. This concept broadened the scope from illegal activities to include a larger array of harmful human behaviours.[6]

Our perceptions of the criminal world are shaped by several sources including media, social media, government, and personal experiences of the public. The media, because of its extensive coverage, has a significant impact on shaping individuals' views about crime, despite the interconnected effect of many sources. The media tends to sensationalise events rather than provide realistic coverage of crime phenomena. Property crime and theft, which are often underrepresented, receive less attention compared to violent crimes like homicide and rape.

The statistical data on crime rates in India from 2017 to 2022, as reported by the "National Crime Records Bureau" (NCRB), provides valuable insights into the evolving dynamics of crime in the country. This data can be analyzed through the lens of psychology to understand the underlying factors contributing to these trends.

An essential component of analysing crime data is understanding the motives and actions of persons engaged in criminal activity. Psychological theories, such rational choice theory, propose that people decide to engage in criminal activities after carefully evaluating the potential risks and benefits of their conduct. This idea may explain the rise in specific forms of crimes, such cybercrime, in recent years. The advancement of digital technology and the internet has opened up new avenues for criminals to take advantage of, resulting in an increase in cybercrime rates.

Social learning theory is another psychological approach that may be used in analysing crime statistics. This idea proposes that people acquire habits by observing and copying others. This idea may explain the persistence of certain crimes, such crimes against women, throughout society's criminal landscape. Individuals are more inclined to participate in illegal activity if they see others doing so without repercussions.[7]

Additionally, psychological research has shown that environmental factors, such as poverty and inequality, can contribute to criminal behaviour. Economic hardship and social inequality can create conditions that increase the likelihood of individuals engaging in criminal activities as a means of survival or as a response to perceived injustices.

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[5] Agrawal, Mayank, Joshua C. Peterson, and Thomas L. Griffiths. "Scaling up psychology via scientific regret minimization." Proceedings of the National Academy of Sciences 117, no. 16 (2020): 8825-8835.

[6]Bonta, James, and Donald Arthur Andrews. "The psychology of criminal conduct." Taylor & Francis, (2016).

[7] Akers, Ronald L., and Wesley G. Jennings. "Social learning theory." The handbook of criminological theory (2015): 230-240.

Overall, the statistical data on crime rates in India from 2017 to 2022 can be analyzed through the lens of psychology to gain a deeper understanding of the underlying factors contributing to these trends. By applying psychological theories and concepts to crime data analysis, policymakers and law enforcement agencies can develop more effective strategies for preventing and addressing crime in the country.[8]

Theory On Human Nature And Crime

1. The Role of Genetics

Proponents of the genetic perspective contend that certain inborn characteristics predispose individuals to criminal behaviour. They point to case studies and hard data that suggest a correlation between the children of violent criminals and abnormal behaviour. Mapping an individual's genetic code and identifying similarities among family members of criminals provide some evidence for this viewpoint. However, it is essential to recognize that genetics alone cannot fully explain criminal tendencies.

2. The Influence of Upbringing and Environment

Contrary to the genetic argument, I believe that family circumstances and social environment play a more significant role in shaping criminal behaviour. Consider the case of serial killers—without exception, they emerge from abusive, broken homes. Childhood experiences of physical and sexual abuse manifest later in their compulsions to exert power over others. However, it is crucial to acknowledge that not all abused children become criminals. Many overcome their difficult backgrounds to lead well-adjusted lives.

3. Brain Development and Social Factors

Recent research in developmental psychology sheds light on the physical changes that occur in brain formation due to upbringing. Children raised in supportive, loving environments are less likely to exhibit anti-social behaviour. Feeling loved and accepted by parents reduces the likelihood of seeking attention through negative actions or resorting to drug abuse—both early indicators of potential criminality.

[88] Sikand, Mehak, and K. Jayasankara Reddy. "Role of psychosocial factors in criminal behaviour in adults in India." *International Journal of Criminal Justice Sciences* 12, no. 1 (2017).

4. The Real Key: Social Environment

In conclusion, while genetics may marginally influence criminal psychology, the emphasis should be on the social environment. Investing in social services, education, and child welfare programs is crucial. By actively participating in childcare and providing positive family environments, we can prevent a significant proportion of crime. Rather than fixating solely on genetic factors, let us recognize that crime is a manifestation of the same human nature that produces acts of greatness. By nurturing our society, we can create a safer, more compassionate world.

Biological Perspectives

Some of the earliest viewpoints focused on biological factors to explain crime causation. The Italian criminologist Cesare Lombroso, regarded as the father of criminology, proposed his controversial atavistic theory in the late 1800s, positing that criminals represent an evolutionary throwback to primitive, barbaric humans with physical and genetic defects. Such biological determinism faded as the 20th century unfolded until the 1950s when new research on genetics and neurotransmitters renewed interest in biological correlates of deviance and violence. Contemporary studies indicate that deficiencies in serotonin, low autonomic arousal, Executive function deficits, and abnormal brain structures can increase one's risk for aggression, impulsivity, and antisocial behaviours associated with criminality. However, Lombroso's notion of a "born criminal" with fixed biological flaws has given way to interactionist perspectives acknowledging biology as just one contributing factor.[9]

Biological factors can influence criminal behaviour through various mechanisms, including genetic predispositions, brain abnormalities, and hormonal imbalances. These factors can affect an individual's cognitive, emotional, and behavioural processes, ultimately influencing their propensity for criminal acts.

[9] Savage, Joanne, and Satoshi Kanazawa. "Social capital, crime, and human nature." *Journal of Contemporary Criminal Justice* 18, no. 2 (2002): 188-2

1. Genetic Predispositions:

Genetic factors can influence an individual's propensity for criminal behaviour. Research has shown that some genetic differences are linked to a higher probability of committing criminal activities. Research in the Journal of Criminal Justice revealed that persons with a certain genetic mutation had a higher propensity for aggressive conduct. Research in the Journal of Abnormal Psychology revealed that those with a certain genetic mutation were more prone to engaging in antisocial conduct.

1. Brain Abnormalities:

Brain abnormalities may significantly influence an individual's likelihood of engaging in criminal activity. Studies have shown that people with brain abnormalities, including decreased prefrontal cortex function, have a higher tendency to do criminal behaviours. Research in the Journal of Neuroscience revealed that those with decreased prefrontal cortex activity were more prone to aggressive conduct. Research in the Journal of Abnormal Psychology revealed that those with decreased prefrontal cortex activity were more prone to engaging in antisocial conduct.

Psycho-Analytic Perspectives

Psychoanalysis impacted views on offender motivations through foundational thinkers like Sigmund Freud and his ideas regarding the unconscious forces, ego, id, and superego conflicts spurring deviance when the conscience and moral compass of individuals fail to develop properly. Building on such concepts, later theorists have suggested issues stemming from unresolved psychosexual stages, unmet needs for power/dominance, and insecure attachments can also provide some explanatory value for antisocial outcomes, though limitations exist regarding the inability to empirically validate such concepts. Still, treatment approaches geared toward enhancing personality growth have proven beneficial with many offenders.[10]

Psychological factors play a significant role in shaping criminal behaviour. These factors encompass a wide range of individual traits, cognitive processes, and emotional states that can influence an individual's likelihood of engaging in criminal acts. Understanding these psychological factors is crucial for developing effective interventions and strategies for preventing and addressing criminal behaviour.

[10] Costello, Stephen J. The pale criminal: Psychoanalytic perspectives. Routledge, (2018).

1. Personality Traits:

Personality traits are long-lasting patterns of thoughts, emotions, and actions that define how a person engages with the environment. Specific personality qualities are associated with a higher probability of participating in criminal activities. Individuals with high degrees of impulsivity and sensation-seeking are more prone to engaging in hazardous and impulsive actions, such as criminal crimes. Individuals with limited empathy and moral thinking are more prone to engaging in antisocial and illegal actions.

2. Cognitive Processes:

Cognitive processes refer to the mental processes involved in perception, memory, reasoning, and decision-making. These processes can influence an individual's likelihood of engaging in criminal behaviour. For example, individuals with deficits in executive functioning, such as poor impulse control and decision-making skills, may be more likely to engage in impulsive and antisocial behaviours. Similarly, individuals with cognitive biases, such as a tendency to overestimate the rewards and underestimate the risks of criminal behaviour, may be more likely to engage in criminal acts.

3. Emotional States:

Emotional states, such as anger, fear, and stress, can also influence an individual's likelihood of engaging in criminal behaviour. For example, individuals who experience chronic stress and anxiety may be more likely to engage in criminal acts as a way of coping with their emotional distress. Similarly, individuals who experience intense anger and hostility may be more likely to engage in aggressive and violent behaviours.

Behavioural And Social Learning Perspectives

In contrast to internal psychodynamic conflicts, behavioural theories emphasize external variables in one's situation and environment as conditioning criminal conduct. Concepts of differential reinforcement and punishment of successive approximations shape patterns of both prosocial and antisocial behaviours. As rewards for norm-violating acts exceed punishments, the probability of crime increases. Over time, conditioning solidifies deviant tendencies firmly

engrained through Pavlovian associations and instrumental learning mechanisms making behavioural self-regulation increasingly difficult. Social learning theories expand behaviourism's central tenets by highlighting the importance of observing and modelling other people's behaviour, attitudes, and outcomes. Social reinforcement combined with the vicarious learning that occurs through exposure to criminal peers and mentors provides powerful explanations for acquiring deviant lifestyles.[11]

Cognitive And Choice Theories

The rational choice perspective contends that criminals actively elect to offend based on a calculated analysis of goals, risks, and available alternatives. Rather than conceived of as a compulsive behaviour problem, offenders make decisions by evaluating their self-control, needs, and the immediate situational factors that incentivize or discourage criminal activity. Building on this, Cognitive schemas, scripts, errors in thinking, and information-processing deficits may further induce individuals down a path of criminality by engendering false views of the world, flawed appraisals of risks that enable criminal choices, or misperceptions of the victim's role. Restorative justice programs and cognitive-behavioural therapies work to transform such criminogenic thinking patterns with some success.[12]

The rational choice perspective is a prominent theory in criminology that posits that criminals actively choose to offend based on a calculated analysis of goals, risks, and available alternatives. This perspective views criminal behaviour as a rational decision-making process, rather than a compulsive behaviour problem. According to this theory, offenders make decisions by evaluating their self-control, needs, and the immediate situational factors that incentivize or discourage criminal activity.

Cognitive schemas, scripts, errors in thinking, and information-processing deficits are key concepts within cognitive theories of crime. These cognitive processes can influence an individual's likelihood of engaging in criminal behaviour by engendering false views of the world, flawed appraisals of risks that enable criminal choices, or misperceptions of the victim's role.

Cognitive schemas refer to mental frameworks or structures that organize and interpret information. These schemas can shape an individual's perceptions, attitudes, and behaviours. For example, an individual with a schema that associates violence with power and control may

be more likely to engage in violent behaviour.

[11] Tittle, Charles R., Olena Antonaccio, and Ekaterina Botchkovar. "Social learning, reinforcement and crime: Evidence from three European cities." *Social Forces* 90, no. 3 (2012): 863-890.

Cognitive scripts are mental representations of sequences of events or actions. These scripts can influence an individual's behaviour by providing a framework for how to respond to certain situations. For example, an individual with a script that associates stealing with obtaining desired items may be more likely to engage in theft.

Errors in thinking refer to cognitive biases or distortions that can lead to faulty reasoning and decision-making. For example, an individual with a cognitive bias that discounts the potential negative consequences of criminal behaviour may be more likely to engage in risky and impulsive acts.

Information-processing deficits refer to difficulties in processing and interpreting information. These deficits can impair an individual's ability to accurately assess risks and make informed decisions. For example, an individual with an information-processing deficit may have difficulty understanding the potential consequences of criminal behaviour.

Restorative justice programs and cognitive-behavioural therapies are interventions that aim to transform criminogenic thinking patterns. These programs work to challenge and modify cognitive schemas, scripts, errors in thinking, and information-processing deficits associated with criminal behaviour. By addressing these cognitive factors, it is possible to reduce the likelihood of individuals engaging in criminal acts and promote positive behavioural change.

History And Evolution Of Criminal Psychology

The area of criminal psychology emerged in the early nineteenth century and is still developing. The roots of criminal psychology in India can be traced back to 1916 when the first Department of Experimental Psychology was founded at Calcutta University. This was followed by the establishment of the Lok Nayak Jayprakash Narayan National Institute of Criminology and Forensic Sciences in Delhi in 1972. Since 1985, forensic psychological assessment has been utilised to evaluate crime suspects through projective tests like Henry Murray’s Thematic Apperception Test, Draw a Person, Bender Gestalt Tests, Carl Jung’s Word Association Test, Sentence Completion Test, and Rorschach Inkblot Test.

[12] Walters, Glenn D., and Matt DeLisi. "Antisocial cognition and crime continuity: Cognitive mediation of the past crime-future crime relationship." Journal of Criminal Justice 41, no. 2 (2013): 135-140.

From 1985 to 1988, this helped include psychological knowledge that assisted in suspect interrogations. The therapeutic method was combined with investigative skills to investigate the suspects, leading to the development of forensic interrogation procedures.

Criminal psychology enabled clinical psychologists to expand their services to civil and criminal matters, assessing competence to stand trial, facilitating reconciliation in family courts, and aiding in victim rehabilitation. Investigation techniques including psychological evaluation, hypnosis, statement analysis, modified polygraph technique, and narco analysis have evolved from heuristic approaches designed to fulfil investigative needs to more scientific methodology. Criminal psychology in India is still in its early stages but is growing as a distinct field.

Roles Of A Criminal Psychologist

Criminal psychologists are essential in the criminal justice system, offering vital insights and experience in several parts of criminal procedures. Professor Lionel Haward, a leading figure in the area of criminal psychology in the UK, detailed the essential functions that psychologists carry out in criminal procedures. The jobs include clinical, experimental, actuarial, and advising responsibilities.

Psychologists in clinical roles evaluate persons participating in legal procedures to provide a clinical assessment of their psychological well-being. This evaluation may provide information to law enforcement, jurors, and probation services on the person's competency to participate in a trial, their comprehension of legal procedures, and any potential mental health issues they may have. These evaluations may greatly impact the operation of the criminal justice system and the result of trials.

Psychologists in the experimental position do study to provide objective evidence for the specific situation. Assessments are conducted utilising psychological instruments to give additional information to aid the courts in their decision-making process. Psychologists might also provide the court with a synopsis of the latest research results that are pertinent to the case.

Psychologists in actuarial roles use statistics to provide the court information on the likelihood of an occurrence happening. Psychologists may provide insights for pre- or post-sentence reports submitted to the court.

Psychologists in an advising capacity may help the police by providing guidance during an inquiry. This may include presenting an offender's profile to aid the investigation or offering guidance on questioning procedures for suspects or witnesses. Psychologists may provide guidance to the judiciary, correctional facilities, and probation departments.

Criminal psychologists play a crucial role in aiding criminal investigations. Professor Laurence Alison from the University of Liverpool has promoted the ways psychologists might assist the police in their duties. This involves aiding in the identification of criminals, enhancing interviewing procedures for victims, offenders, and witnesses, and enhancing the precision of data collecting and processing processes.

Criminal psychologists are essential in analysing crimes by using psychological techniques to research and scrutinise crime data. This may include connecting incidents by analysing commonalities in criminal conduct or creating profiles of offenders using data from crime sites, eyewitnesses, and victims.

Criminal psychologists are essential in the criminal justice system, offering crucial insights and experience in several parts of criminal procedures. They contribute to the successful and equitable operation of the criminal justice system by providing appropriate evaluations and interventions for offenders.

Conclusions

Contemporary viewpoints tend to integrate across biological, sociological, and psychological levels of analyses to explain crime, such as Agnew's general strain theory articulating how adverse life events produce negative emotions ultimately leading to deviance and rule-breaking. Criminal sentiments and behaviours arise from an interplay of factors encompassing one's genetic liability, physiological functioning, character traits, cognitive-emotional frameworks, social influences, and environmental affordances that collectively shape behavioural outcomes. Complicated interactions between person and environment variables modulate down pathways towards or away from criminality. More integrative control theories and public policy solutions targeting multiple levels of causation continue to evolve so that the next generation may benefit from living in a society with greater sanity, empathy, and justice. the study of criminal psychology is a multifaceted and evolving field that seeks to understand the complex interplay of biological, psychological, and sociological factors that contribute to criminal behaviour. From the early theories of Cesare Lombroso to the more contemporary perspectives of Robert Agnew and Laurence Alison, researchers have sought to unravel the mysteries of human nature and its relationship to crime.[13]

Through the lens of psychology, we have explored the roles of genetics, upbringing, brain development, personality traits, cognitive processes, and social learning in shaping criminal behaviour. We have also examined the impact of environmental factors, such as poverty and inequality, on criminality. By understanding these factors, we can develop more effective strategies for preventing and addressing crime in our society. In India, criminal psychology is still in its infancy, but it is continuously evolving as an independent discipline. The roles of criminal psychologists in the criminal justice system are crucial, providing valuable insights and expertise in various aspects of criminal proceedings. From assessing individuals' psychological functioning to assisting in criminal investigations and crime analysis, criminal psychologists play a vital role in ensuring that the criminal justice system operates effectively and fairly. As we move forward, it is essential to continue integrating biological, sociological, and psychological perspectives to understand crime fully. By doing so, we can develop more comprehensive and effective solutions to address the root causes of criminal behaviour and create a safer, more just society for all.

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THE END

Thank you for reading this book. We hope it provided valuable insights and sparked meaningful reflections.

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