# KASHMIR JOURNAL OF LEGAL STUDIES (KJLS)

**PEER REVIEWED AND UGC CARE LISTED JOURNAL**

**Vol XI, NO.2, December, 2024**

## Statement of ownership and other particulars

Place of Publication : Srinagar

Publisher : Kashmir Law College

Address : Khawajapora, Nowshera
Srinagar – 190011
J&K India

Ownership : Kashmir Law College

**Acknowledgement**

The College acknowledges with great appreciation the financial support by ICSSR for the publication of the previous vols X & XI(1) (2023-2024) of Kashmir Journal of Legal Studies.

I, Altaf Ahmad Bazaz, Chairman of the College, do hereby declare that the particulars given above are true to the best of my knowledge and belief.

**Printed by**
**Valley Book House**
Hazratbal, Srinagar-190006
On behalf of
**Kashmir Law College**
Nowshera, Srinagar

# KASHMIR JOURNAL OF LEGAL STUDIES

# Editorial

In this dynamic landscape of Jurisprudence, we embark on a journey to explore the evolving legal frontiers that shape our societies. The articles in this volume delve into a diverse range of legal topics, offering insights that challenge conventional wisdom and pave the way for progressive change.

As the legal realm gripples with technological advancements, examining the intersection of law and emerging technologies is much needed.

In this respect, Kashmir Journal of Legal Studies has been contributing substantially in the field of legal education and research and serves as a repository for intellectual exploration and critical analysis. The Journal is being indexed by Indian Citation Index (ICI) as a sequel to its quality of content. It gives us immense pleasure to note that the ICI has authorized the college to use their Logo in this Journal which is duly acknowledged.

In a time when legal principles are continuously tested, our journal seeks to provide a platform for thoughtful discourse. This journal is not merely a compilation of articles; it is a testament to the intellectual curiosity and dedication of legal scholars. We extend our heartfelt gratitude to the authors who have contributed their expertise, the reviewers who have diligently evaluated the submissions and our editorial team that has worked tirelessly to bring this volume to fruition.

# Kashmir Journal of Legal Studies

Volume-XI (2) (2024)

## CONTENTS


| S. No. | | Page No. |
|---|---|---|
| **Articles** | **Editorial** | |
| 1 | Environmental Challenges, Statutory Compliance and Education: An Indian Perspective<br>**Bindu Sangra**<br>**Aasma Sharma** | 01-20 |
| 2 | Tech-Driven Justice: Accelerating Legal Access in India<br>**Balwinder Kaur**<br>**Alka Bharti** | 21-42 |
| 3 | Evaluating the Effectiveness of the Dispute Resolution Mechanism under the Consumer Protection Act, 2019<br>**S. A. Bhat**<br>**Mudassir Nazir** | 43-62 |
| 4 | Validity of Plain Packaging under TRIPs Agreement: Analysis of WTO Panel Findings<br>**Vandana Mahalwar** | 63-76 |
| 5 | Conceptualizing Muslim Women's Empowerment through Criminalization of Triple Talaq: An Analysis<br>**Surender Mehra**<br>**Arpit Keshari** | 77-92 |
| 6 | Educational Services and Consumer Protection Act: An overview<br>**Uzma Qadri**<br>**Rehana Shawl** | 93-114 |
| 7 | Cyber Crimes against Women: A Socio-Legal Study with special reference to Kashmir<br>**Mir Junaid Alam, Mir Farhatul Ain**<br>**Wakar Amin** | 115-134 |
| 8 | Refugee, Gender, Religion and Climate Change: An Analysis of Multi-Dimensional Discrimination<br>**Amit Ghosh**<br>**Mohammadi Tarannum** | 135-156 |
| 9 | Children's Right to Genetic Information: An Analytical Study of the Surrogacy (Regulation) Act, 2021<br>**Mehak Hameed** | 157-166 |
| 10 | Breaking Barriers: A Pilot Empirical Study on Accessibility and Awareness for Students with Disabilities in Higher Education<br>**Dr. Neha**<br>**Chandresh Soni** | 167-198 |

| | | |
|---|---|---|
| 11 | Online Dispute Resolution: The Future of Justice in India – A Boon or A Challenge<br>**Purnima Gupta, Surender Mehra**<br>**Arpit Keshari** | 199-210 |
| 12 | The switch to Sustainable and Green Arbitration: The uncharted road towards an environmental friendly Arbitration in India - Challenges and Prospects<br>**Ankit Anand**<br>**Ishita Chatterjee** | 211-232 |
| 13 | Greater Participation Strengthens the Democracy: An Analysis of Indian Perspective<br>**Riyaz Ahmad Mir** | 233-244 |
| 14 | Impact of US Agricultural Policies on the Sustainability and Resilience of India's Food Systems amid Environmental and Geopolitical Challenges<br>**Aejas Naik**<br>**Vinayak Pandey** | 245-266 |
| 15 | A Comparative Study of Legislative Framework on Senior Citizens in India, UK And Japan<br>**Sarbani Bhowmik**<br>**Bhupal Bhattacharya** | 267-280 |
| 16 | Exploring the Impact of False Charge of Rape on Human Rights: A Comprehensive Analysis<br>**Shahnawaz Sadiq** | 281-292 |
| 17 | The Culture of 'Hijab': A Justiciable Freedom of Expression or Arbitrary Denial of Educational Rights of Muslim Women in India<br>**Amruta Das**<br>**Reetesh Kumar Jena** | 293-312 |
| 18 | Multiple FIRs: "Challenges and Legal Considerations"<br>**Swapnil Pandey** | 313-328 |
| 19 | Current Practices of the Relinquishment of Property amongst Women in Kashmir: A Socio-legal Perspective<br>**Syed Shahid Rashid**<br>**Dr.Shahnaz** | 329-342 |
| 20 | Navigating Crossroads of Consensual Adolescent Relationships And Sexual Autonomy In India: The Need For Having A Close-In-Age Exception<br>**Aayush Tripathi**<br>**Harleen Kaur** | 343-370 |
| 21 | Legal Mechanism related to Persons suffering from Mental Health: An Issue of fixing their Criminal liabilities<br>**Bibhabasu Misra** | 371-378 |
| 22 | Dealing with gender bias: Lessons for India and way forward<br>**Suman Yadav**<br>**Parth Jain** | 379-388 |

| | | |
|---|---|---|
| 23 | CONSTITUTIONAL FRAMEWORKS FOR ENVIRONMENTAL PROTECTION: BALANCING DEVELOPMENT AND CONSERVATION<br>**Akhil Kumar, Narender Kumar Bishnoi**<br>**Deepika Kulhari** | 389-408 |
| 24 | Electronic Portals in Criminal Justice: Challenges and Prospects of the Interoperable Criminal Justice System in Jammu and Kashmir<br>**Mohd Yasin Wani**<br>**Ajaz Afzal Lone** | 409-424 |
| 25 | Navigating the Legal Regulations in Parallel to Cyber Security Concerns in Indian E-Commerce<br>**Madhusmita Ronghangpi**<br>**Naveen Kumar** | 425-444 |

# Environmental Challenges, Statutory Compliance and Education: An Indian Perspective

**Dr. Bindu Sangra***

**Aasma Sharma****

**Abstract**

*Every year on June 5th, World Environment Day is commemorated to keep reminding people of the value of nature. The day has been observed all around the globe to remind folks that the environment must not be taken as a given and that its virtues must be protected. The biggest existential threat to humanity and quasi-nature is environmental conservation, which is the defining social progress challenge of the twenty-first century. The Intergovernmental Panel on Climate Change (IPCC) has produced five evaluations, all of which have verified our greatest fears: namely human emissions are indeed the primary cause of observed global climate change. Climate change is distinct from other environmental issues in that it poses an immediate and perhaps irreversible threat to human cultures as well as the globe. As a result, environmental protection, policies, and laws are critical for sustaining and improving societal well-being now and in the future. Environmentalism, social equity, and sustainable growth must all be considered and achieved within the paradigm. Environmentalism must be linked to economic and development decisions, and social justice and economic viability must be integrated into environmental protection decisions. This paper makes an effort to increase awareness well about the vulnerability of the environment in which we already live, which can only be properly protected if people's choices and desire to participate in its conservation grows. Everyone in the country should respect and recognise the numerous policies and regulations enacted to protect the environment, as well as commit to carrying out the Constitutional duty.*

* Assistant Professor of Law, The Law School, University of Jammu

** Ph.D. Scholar, Dept. of Environmental Science, University of Jammu.

***Keywords:*** *Improvement, Environmental, Humanity, Educational Protection, Constitutional Rights*

## I. Introduction

Sustainability issues cover a wide range of topics, including environmental preservation, sustainability, and environmental challenges. Environmental studies have emerged as a unique academic discipline as a result of scientific and academic focus on environmental challenges. To address the diverse character of environmental research, such programmes often require an interdisciplinary approach. Environmental crime research necessitates a multidisciplinary approach that covers biodiversity, criminology, criminal justice, economics, sociology, chemistry, and psychology.

As a result, the government has a significant role to play in addressing environmental issues, especially through the formulation of severe policies, regulations, and public education. Unfortunately, environmental protection research is still in its early stages, and more work remains to be done. A person's existence is impossible without excellent health as well as a healthy environment. Health and environmental awareness are essential for maintaining oneself and the environment. Furthermore, one's heath and indeed the environment are intimately linked. If one's health is poor, he or she cannot bear any responsibility for the environment, and the unhealthy environment has a direct or indirect effect on one's health.

A social conscience arises when consciousness has been developed. This necessitates environmental education as well as familiarity with environmental legislation. Even after being literate, one may not be properly attentive or aware of one's surroundings. This demonstrates the importance of environmental education and laws in developing proper awareness today. Furthermore, every citizen should be required to understand the fundamentals of environmental standards.

The environmental conservation responsibilities allocated to each individual demonstrate reality. Articles 48-A and 51-A combined laid the groundwork for environmental jurisprudence, holding that "Today,

the state and citizens have a fundamental commitment to safeguard and improve the environment, including forests, lakes, rivers, and wild life, as well as to have compassion for living creatures."[1]

These provisions are, without a doubt, in the State Policy Directive Principles, but it is now well established that the Fundamental and Directive Principles must be read together because it is stated in Article 37 that the Directive Principles are fundamental in the country's governance, and it is the state's duty to deal with a situation in making law.The Directive Principles encapsulate the state's goal and purpose under a Democratic Constitution, namely, that it is a welfare state rather than a police state. As a result, protecting and improving the environment is a top priority for the state administration. The notion of checks and balances, through which every institution of the state is controlled and responsible to the Adherence to the rule of law, is one of the most fundamental characteristics of the Indian Constitution.

**II. Environmental Protection- A Constitutional Mandate and Commitment**

Dimensions of sustainability can be defined in a variety of ways. Environmental challenge, from a legal standpoint, can be described as environmental harms performed in breach of statutorily prescribed conditions. Philosophers may broaden this concept to encompass environmental harms that aren't covered by existing legislation. Many organisations, including corporate executives, environmentalists, criminologists, and politicians, face unique obstacles as a result of differing perceptions of what constitutes an environmental challenge. Any act, or attempted act, even against environment that breaches statutory provisions recognized law is characterised as an environmental challenge for the purposes of this study.

Supreme Court held in case[2] that "State should not play a passive role when environmental assaults produced by bad socio-economic policies pose a threat to the ecology, Courts cannot sit with their eyes

1 *T.N Godavarman Thirumulpad* v. *Union of India*,2202(10) SCC 606.
2 *Charanlal Sahu* v. *Union of India*, AIR 1990 SC 1480.

closed," the Supreme Court further stated that "environmental preservation is a fundamental responsibility. It is the country's commitment to wellbeing." The Indian Constitution makes numerous references to the philosophy of peaceful cohabitation between man and his environment. The chapters on "Directive Principles of State Policy and Fundamental Duties" spell out the government's responsibility to conserve in addition to develop the surroundings. This constitutional requirement is bolstered by judicial interpretations.[3]

The Union and the States share authority in India's federal system. Legislative bodies have the authority to make law in favor of the complete nation, whereas state legislatures have the authority to legislate for their own states. The Union as well as the States is separated under Article 246 of India's Constitution. The 7th Schedule's Union List (List I) covers 97 items over which Parliament has sole legislative authority. Defence, international affairs, nuclear materials, industries, statewide transport, shipping, major ports, regulatory oversight as well as advancement of oil field, mining and stone exploitation, and interstate river are among those concerned with the environment. The Legislative bodies have sole legislative authority over 66 items on List II, including public health and sanitation, agriculture, water resources, irrigation, drainage, and fisheries.[4]

Both Parliament and the State Assembly share jurisdiction over the 47 entries on the Concurrent List (List III), which include forests, animal protection, mining and minerals progress not covered by the Central List.Upper houses also have the authority to pass legislation on matters not enclosed by the three lists. As soon as a union law and a local law on the same focus dispute, the previous takes precedence. A state legislation approved following a central law, on the other hand, will take force if it has acquired the President's approval under Article 254.

3 H. Seervai, Constitutional Law of India: A Critical Commentary, Vol.p.164(1991).

4 Narender Kumar, *Constitutional Law of India* 300 (Allahabad Law Agency, Faridabad, 8thedn., 2011).

In addition, Legislature has the authority to pass laws in the country wide significance on issues specified in the State List. Furthermore, legislative body has the authority to pass laws on behalf of those states whose legislature encompass given their consent to the central legislation. Environmentally, the distribution of parliamentary authority is critical: some ecological problems, such as hygiene and trash dumping, are finest handled at the municipal point.[5]

In besides these rules, India is bound by international law and treaties under Article 51 of the Constitution (in the dealings of organised people with each other). Committed to fostering respect for, as stated in "Article 253", "authority to make any law for the whole or any part of India for the purpose of giving effect to any decision reached in the Union or other body."

The Directive Principles encapsulate the state's goal and purpose under a democratic constitution, namely, that it is a welfare state rather than a police state. The 42nd Amendment to the Indian Constitution added crucial environmental measures. The "Stockholm Declaration", adopted by the "United Nations Conference on the Human Environment in 1972", asserts, among other things, that "man has a fundamental right to liberty, equality, and appropriate living conditions in an environment of equality that allows a life of dignity and goodness." The "42nd Amendment to the Constitution", ratified in 1976, made environmental preservation and improvement explicit. The chapter "Directive Principles of State Policy" was amended to include Article 48A, which states:

"The government will make every effort to maintain and grow the environment, as well as the country's forests and animals."[6]

Each national has a comparable accountability under Article 51A(g) of the "Fundamental Duties" chapter.[7]Although the two articles have different language, the difference is more about form than substance.

5 Constitution of India, art. 253.
6 Constitution of India.
7 *Ibid*

These provisions, taken together, demonstrate the national agreement on the need of environmental conservation and enhancement.

Furthermore, it establishes the legal framework for environmental preservation in India. The amendment in question also made revisions to the Constitution's Seventh Schedule, transferring some articles from the "State List to the Concurrent List", allowing Parliament to act on environmental concerns such as forest, wildlife, population management, and family planning. However, in order to achieve uniformity in the law across the country, a comprehensive revamp was required.[8]

The government is guided by directive principles, which are policy prescriptions. The interpretation of Article 48A has influenced the courts in several environmental cases. For example, in landmark case,[9]the Supreme Court has ruled that if the question of ecology is raised before it, the Court must consider Article 48A and Article 51A (g) of the Constitution. When the Court is asked to put the Directive Principles and Fundamental Duties into action, it should not escape its responsibilities by claiming that priority is a material of public guiding principle and hence only within the purview of policy-making power. At the very least, courts can look into whether reasonable considerations have been taken into account and irrelevant factors have been eliminated. The courts can go further in appropriate cases, but how much further depends on the facts. The court always can issue necessary orders.

Furthermore, the Court will not attempt to correctly balance the important views, and because doubts about the balance of relevant views have been raised, the Judiciary may deem it appropriate to retire and recognize the authority's decision.[10]

The "Fundamental Rights" chapter III of the Constitution seems to have no direct influence on environmental deterioration or ecological imbalance. However, legal decisions have helped to provide a new and improved perspective on environmental protection as a fundamental

8 C.M. Jariwala, The Constitutional Amendment Act and the Environment, in Aggarwal (ed), Legal control of Environmental Pollution,14(1980).
9 *Satchidanand Pandey* v. *State of WB*, AIR, 1987 SC 1109.
10 *Virender Gaur* v. *State of Haryana*,1995(2) SCC 571.

right. When it comes to environmental issues, courts have resorted to and based their findings on the right to equality (Article 14). The basic right to life as well as the constraints of personal liberty set forth in Article 21 were broadened to encompass environmental preservation.

"Article 21" was strengthened by the Apex Court in two ways.

i. First, law affect human liberation have to get ahead of the constitutional test of "Article 14 and Article 19" to ensure that the process of depriving someone of their life and personal liberty was just, fair, and cool Beans.

ii. Second, the court acknowledged a number of ambiguous liberties guaranteed by Article 21.

The Apex Court defined the "right to life and personal liberty" in this way, incorporating the right to a healthy environment.[11]Supreme Court Observed in a case[12] that environmental conservation is not just the responsibility of citizens, but also of the state as well as all other action includes, such as the courts.In the Apex Court decision,[13] the Court decided that the preservation of health, cleanliness, and the environment falls under Article 21 of the Constitution since it has a negative impact on resident's lives and causes slow poison and death as a consequence of the threats they face. The Apex Court inthe case[14] observed: "As a fundamental right, Article 21 safeguards the right to life. It comprises the pleasure of life, including the right to live in dignity, environmental protection, and natural ecosystems free of contamination of air and water, and cleanliness, all of which are necessary for life to really be enjoyed. Any negative action or work will pollute the environment. Article 21 violations should include environmental, ecological, air, and water pollution. As a result, a clean environment is an essential component of the right to a healthy existence, and living

11 Shyam Divan and Armin Rosenkranz, *Environmental Law and Policy in India*,50(2001)

12 *Damodaran Rao* v. *SO Municipal Corporation Hyderabad*, AIR 1970 AP 170.

13 *L.K. Koolwal* v.*State*, AIR 1988 Raj 2.

14 *Virendra Gaur* v *State of Haryana*, AIR 1995 (2) SCC 577.

with human dignity would be impossible without one.The State Government and Municipalities have a constitutional obligation to guarantee and safeguard the correct environment, as well as to take appropriate actions to promote, preserve, and enhance both of the man-made as well as ecological integrity."

Similarly, in a landmark case,[15]The Supreme Court ruled that just about any disruption to key natural essentials such as air, water, and soil, which are essential for 'living,' would just be harmful to 'life' under Part III of the law of land, in further, (CNG Fuel Case)[16]Article 21 of the Constitution trumps all statutes, including that of the Motor Vehicles Act of 1988, as the Supreme Court has made chevalier. They will be punished if the law goes against Article 21. In this instance, the judiciary refused to extend the time restriction for switching buses to CNG fuel since doing so would have permitted a premium to be placed on the administration's delay and lapse.

**III. Environmental Protection Legislation and Policies in General**

There are several laws in India that deal with various aspects of environmental protection regulation, the conduct of ecologically destructive activities, and remedies in the event that they are broken. Some are "generic" and have an "indirect" impact on environmental protection, while others are "specific".[17]For example, in Indian law, the remedy for a civic annoyance includes:

(i). a charge of producing a public disturbance ("Indian Penal Code 1860, Sec. 268"),

15 *M.C. Mehta* v.*Kamal Nath*, 19997 (1) SCC 388.

16 *M.C Mehta* v. *Union of India*, AIR 2002 SC 1696.

17 (e.g., the Water, Air, and Environmental Acts, the Forest Act, and so on) and have a "direct" impact on environmental protection. "The Indian Penal Code, 1860"; "the Code of Criminal Procedure, 1973"; "the Code of Civil Procedure, 1908"; and specialized sector legislations affecting environmental issues, such as the "Code of Criminal Procedure, 1973"; and the "Code of Criminal Procedure, 1973". "Factories Act, 1948", "Mines Act, 1952", "Industries (Development and Regulation) Act, 1951", "Insecticides Act, 1968", "Atomic Energy Act, 1962", "Motor Vehicles Act, 1939 and 1988", "Delhi Municipal Corporation Act, 1957", and so on.

(ii) a process facing a Magistrate for the removal of a civic nuisance ("sections 133-44 of the Criminal Procedure Code of 1973"), and

(iii) a proceeding for a declaration, an injunction, or both brought by the "Advocate General or two or more members" of the public with the court's approval ("Civil Procedure Code 1908, Section 91"). Although the civil law remedy is rarely invoked, it serves as a pool for class actions in opposition to environment infractions.

The explanation of the "Indian Penal Code" has always been seen as a conventional approach to "enforcement". Due the penalties and fine have been described as insufficient. The legal provision for"public nuisance", found in "Section 133 Cr. P.C.", has been invoked to safeguard the environment in a number of situations.

In 1987, soon after the "Bhopal gas tragedy" and the Apex Court's verdict in the "*Shriram Gas Leak Case"*[18]special provisions on hazardous industrial operations were added to the Factories Act in 1987. The modifications allow state to create "site appraisal committees" to provide guidance on the preliminary position of dangerous process plants. Every hazardous unit's owner must inform her employees, the Plant examiner, the local government, and the civic in the area about any health hazards at the factory and the preventive measures adopted. "The Atomic Energy Act of 1962" and the "Radiation Protection Rules of 1971" control the regulation of nuclear energy and radioactive substances in India.

The Central Government is mandated by the Act to avoid radiation dangers, safeguard civic protection and the protection of personnel managing "radioactive" materials, as well as dispose of "radioactive wastes". Legislation[19]dealt with regulation of air contamination caused by automotive emissions, which account for around 65-70 percent of India's pollution load. The Act at present replaced the 1939 Act. The recent Act gives the Union Government the authority in the direction of

18 AIR 1987 965.
19 The Motor Vehicles Act of 1939.

creating regulations governing building kit and vehicle and trailer preservation.

Our "law of land" openly state that it is the state's accountability to "protect and improve the environment, as well as safeguard the country's forests and animals."All citizens have accountability to "guard and improve the natural environment," which include forest, lake, river, and flora and fauna. The Directive Principles of State Policy, as well as the Fundamental Rights, make mention of the environment. The following is a list of recently enacted environmental legislation.

**A. Legal Framework/Policies of Environmental Protection**

India has a complex legislative system for environmental protection, with over two hundred statutes.[20] The following are some of the most important national legislation for preventing and controlling industrial and urban pollution:

**1. "Water (Prevention and Control of Pollution) Act, 1974"[21]**

The rules prohibit the clearance of contaminants into irrigate bodies in surplus of a certain level and impose penalties for violations. The statute was revised in 1988 to make it more consistent with the 1986 EPA regulations. It established the "Central Pollution Control Board", which sets guidelines intended for water pollution impediment and be in charge of. The SPCBs "State Pollution Control Boards" work under the rule of the CPCB and the state government at the state level.

**2. "Water (Prevention and Control of Pollution) Cess Act, 1977"[22]**

It establishes a charge and a cess on water consumed by industry and municipal governments. It intends to supplement the Union and local board's resources for water pollution prevention and management.

20 Bajaj R., CITES and the wildlife trade in India, New Delhi: Centre for Environmental Law, WWF – India, p.182 (1996)

21 See Statement of Objects and Reasons of*Water (Prevention and Control of Pollution) Act, 1974.*

22 See Statement of Objects and Reasons ofWater (Prevention and Control of Pollution) Cess Act, 1977.

In 1978, the "water (prevention and control of pollution)" cess regulations were established to establish criteria and guidelines for the type and location of metres that every water consumer must install.

**3. "Air (Prevention and Control of Pollution) Act, 1981"[23]**

Ambient air excellence rules, which ban the use of harmful fuels and substances and regulate equipment that causes air pollution, are a tool for controlling and reducing air pollution. The "Air (prevention and control of pollution) amendment act of 1987" was adopted to give the both boards the authority to respond to serious emergency. The board were given authority to take instant action in the event of an emergency and to recoup the costs from the violators. The revision to the air legislation emphasises the right to revoke approval if the necessary requirements are not met.

**4. "The Air (Prevention and Control of Pollution) Rules, 1982"[24]**

Define the methods for conduct board meeting, the authority of presiding officers, judgement, the quorum, as well as the way in which meeting's recordings were to have been kept, among other things.

**5."The Wildlife (Protection) Act, 1972: The WPA (Wildlife Protection Act), 1972"[25]**

Protects designated species of flora and animals while also establishing a system of environmentally sensitive "protected areas". The "WPA" gives the federal government and state governments the power to announce which ever region a flora and fauna "reserve, national park, or closed area".

**6. "The Forest (Conservation) Act, 1980"[26]**

23 See Statement of Objects and Reasons ofAir (Prevention and Control of Pollution) Act, 1981.

24 See Statement of Objects and Reasons of The Air (Prevention and Control of Pollution) Rules, 1982.

25 See Statement of Objects and Reasons ofThe Wildlife (Protection) Act, 1972: The WPA (Wildlife Protection Act), 1972.

26 See Statement of Objects and Reasons ofThe Forest (Conservation) Act, 1980.

Limits the state's power over jungle de-reservation including the make use of of forest areas for non-forest activities.

**B. The ability of the central administration to implement policies that protect and develop the environment**

According to the requirements of this act, the federal government shall have the authority to take whatever actions it considers essential for such purpose of protecting and maintaining ecological integrity, along with avoiding, reducing, and subsiding environmental damage. With limiting the foregoing of subsection (1), such countermeasures may include any or all of the following:

1. Formulation and deployment of a federal program for environment emission control, mitigation, and removal.

2. Developing regulatory requirements in all of their facets.

3. Establishing pollution or discharge standards, provided, notwithstanding, that different emission or outflow criteria may be created under this paragraph due to the nature or character of the production or release of pollutants from such sources.

4. Restriction of regions whereby any industry, operations, or technique, or category of industry, procedures, or processes, may not or may only is carried out with certain safeguards.

5. Approach and precautions for the mitigation and correction of incidents that may affect the environment damage.

6. Developing protocols and protections for the proper management of chemical materials.

7. Investigating manufacturing processes, substances, and chemicals that are likely to produce environmental damage; performing and financing environmental degradation inspections and research.

8. Investigating any locations, plants, machinery, manufacturing, or other processes, materials, or compounds, and giving, by order, such directions to such agencies, officials, or individuals as it may think suitable to avoid, control, and abate environmental pollution.

9. Environmental laboratories and institutes must be established or recognised in order to carry out the functions given to them by this Act.

10. Preparingmanual, code, or recommendations dealing to the avoidance, manage, and elimination of ecological degradationany additional measures as the national government deems appropriate to ensure the efficient enforcement of this act's provisions

If the federal government deems it necessary or efficacious for the purposes of this act, it may, by taking an order in the Official Gazette, establish an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the central government's powers and functions (including the power to issue directions under section 5 and taking measures with respect to such of the powers and duties sub-section (2) of this section) subject to the central government's supervision and control, as well as the requirements of the order, as if empowered by this Act to exercise those powers, perform those functions, or take those measures.

## IV. The Meaning, Scope, and Importance of Environmental Education

The word "environment" comes from the French word "environnre," which meaning "to encircle or surround." Humans and living organisms are surrounded by an environment that is a complex of numerous aspects. The interrelationships between creatures, the surroundings, and all the variables that affect life on Earth, such as meteorological pressure, food chains, and the water cycle, are described in education programs. It is a fundamental knowledge of planet as well as its every day performance, as well as it is thus essential to everybody.

### A. Scope of Environmental Education

In the realm of environmental education, there are many more multidimensional areas. This research is vital and necessary for everyone, not just children. The following are the main areas of work:

1. Raises public knowledge of the research area's diverse renewable and non-renewable resources.

2. It gives information on ecosystems and causal links.

3. It gives important data about the biodiversity of the environment's species of plants, animals, and microbes, as well as potential dangers.

4. The research allows for a better understanding of the causes and consequences of natural and anthropogenic disasters (floods, earthquakes, landslides, cyclones, etc.) as well as pollution and impact reduction methods.

5. It allows for the examination of alternate environmental responses before deciding on a different path of action.

6. The learning equips environmentally knowledgeable persons (those who are familiar with environmental acts, rights, laws, and legislation) to make appropriate decisions for the maintenance and enhancement of the planet.

7. The study emphasises the importance of art, science, and technology in eradicating or lessening societal problems such as overcrowding, health, sanitation, and other ills.

8. The study's purpose is to discover and create indigenous sustainable and environmental skills and knowledge that can be used to a host of different issues.

9. It instils in citizens the importance of resource sustainability, because these "resources" are passed down starting one generation to the next with noweakening in superiority.

10. Research allows for application of theoretical knowledge in practise as well as numerous environmental uses.

**B. Environmental Education is Very Important**

Environmental research is based on a broad understanding of many environmental processes. Its goal is to empower citizens to engage in scientific research and provide practical answers to today's environmental issues.

1. The global population is steadily expanding, especially in developing nations.

2. Surrounding ecosystems resources are finite.

3. Environmental resource extraction methods and techniques have progressed.

4. Resources have been over-exploited, with no regard for coming generations.

5. Unplanned extraction of natural resources results in contamination on all levels.

6. Pollution and the deterioration of the environment have a major impact on human physical condition of each and every living species on the planet, as well as people.

7. Individuals have to bear the blame for the deteriorating environment and take steps to "save the earth".

8. Training, as well as education,is required in the direction to prevent "biodiversity loss and species extinction".

9. Pollution is primarily caused by urban areas and industries.

10. The number and size of extinction areas within conservation areas should be enhanced to ensure that at least the species at these sites is safeguarded.

11. The research helps individuals comprehend the intricacies of the surroundings and the requirement of individuals to adopt suitable performance and follow environmentally sustainable development.

12. Encourages children to participate in neighbourhood service, plusa variety of ecological projects.

13. It is past time for educational systems and curriculum to be redirected to meet these demands.

14. Environmental protection is a comprehensive approach to studying human relationships with the natural world.

15. Environmental studies are an important tool intended forbringingconcerning the necessary change in information, beliefs, attitudes, and lifestyle to attain internal plus international constancy.

Every topic that has an impact on an organism is addressed in environmental education. It's essentially an interdisciplinary approach that emphasizes the human influence on the environmental world's integrity. It is a scientific discipline since it looks for practical solutions to keep human existence afloat on the planet's finite resources.

**C. There is an immediate need for education and awareness**

The alarming rate of environmental destruction has prompted an increasing need for environmental education and awareness. We need to be very advanced in our thinking in order to discover strategies to maintain and conserve the environment in the twenty-first century. Any development is always accompanied by environmental risks, necessitating environmental education, awareness, and regulations to protect the environment. We don't need to read the media to learn about the environment's deterioration. Seeing our surrounds and the nature around us is enough to remind us that we are all alive. To begin with, our country is rife with the impoverished, illiterate, and unemployed.

The main cause is that it is overcrowded and socially and economically unequal. As a result, if the government fails to meet basic human needs, the major environmental issues will remain unsolved. Environmental education is a broad field that spans local to global levels and back again. Meeting the basic requirements of millions of people, then educating them about their surroundings, is not a simple task. To do this, frequent methodical planning with the assistance of environmental protection officials is required. People are becoming increasingly restless in their pursuit of their needs, and the market has gotten so competitive that nature will eventually run out of resources.

People's demands and actions in modern times are affecting the environment and a barrier to long-term development. As a result, the primary motivation for environmental education (EE) and awareness is to address this issue. Simultaneously, there is an increasing demand for it among responsible citizens who are acutely aware of the negative consequences of ecological concerns and those who want to save their lifestyles, the continues to live of subsequent generations, and contribute to sustainable safeguard by following simple methodologies, laws, and regulatory requirements.

**D. Environmental education's rationale**

1. According to the National Policy on Education, one of the key goals of environmental education in India is to provide competency in using scientific knowledge to conserve and solve environmental concerns. Environmental education necessitates understanding of

environmental changes, such as soil, river, weather, and vegetation, and also the economic, cultural, and political settings. As a result, in attempt to remedy environmental challenges, the general population needs be equipped with all of these.

2. The extraction of natural resources from our surrounds underpins India's socioeconomic progress (as it does that of any other developing country). Agriculture is the driving force behind the rural economy, which is controlled by the usage of land, water, timber, and other mineral resources. The uncontrolled and inappropriate exploitation of natural resources has significant environmental repercussions, including poorer living standards, starvation, displacement, and human misery. Scarcity of food and medical supplies, pollution, epidemic outbreaks, and natural disasters such as flood, erosion, and desert encroachment all necessitate environmental education to increase understanding of the causes and consequences of these issues, as well as how to prevent them.

3. To encourage international cooperation and collaboration, environmentalist education is required. For the exploitation of natural resources, developed countries rely on high technology, whereas developing countries such as India are completely dependent on agriculture, timber harvesting, and mineral deposits, resulting in concentrated and over-exploitation of usual"resources", with grave consequences for the "resources".

4. Both the government and the citizens should benefit from public education regarding the effects of government policies on the local environment. Regular people's environmental education should include awareness of such global environmental concerns.

5. Environmental education for general social and economic independence of women and children. These are responsible for a large share of natural resource consumption, particularly in rural areas. Environmental education is crucial in the absence of it. Environmental education is virtually unknown in this part of the world. Environmental education is also essential for our continued survival on this planet.

Natural resources and cultural heritage must be preserved not just for current generations, but also for future generations.

**E. Environmental education has several goals**

1. **Curriculum**: Curriculum should promote environmental appreciation. It should assist various organisations and individuals in being more aware of and sensitive in the direction of the general surroundings and its associated issues.

2. **Knowledge**: Environmental education should provide opportunity for social groups and individuals to gain a broad understanding of the environment and its issues through a variety of experiences. People should be educated about their roles in environmental challenges such deforestation, overgrazing, bushfires, desertification, erosion, and soil fertility loss.

3. **Attitude**: Environmental education should promote the development of environmental values and feelings, as well as the desire to participate actively in environmental rehabilitation and protection programmes. Individuals and organisations must embrace ethical values that elicit strong feelings of concern for the environment and all of its living and non-living components.

4. **Skill**: Environmental education should promote and support conservation practices as well as the skills needed to prevent environmental degradation, such as biological and mechanical erosion control. Individuals should be taught how to use their human and natural resources to avoid ecological problems.

5. **Evaluation**: People should be able to evaluate newly adopted government programmes and land management approaches through environmental education.

6. **Participation**: Environmental education should encourage social groups and people to take an active role in addressing environmental issues at all levels.

**F. Strategies for Environmental Education**

There have been several suggestions for introducing environmental education into school curricula and non-formal education.

Some of them are as follows:

1. Environmental studies are offered as a special and separate subject taught by teachers who have received additional training.

2. Environmental problems are incorporated into traditional fields.

3. Aligning the scope, goals, objectives, strategies, and guiding characteristics of environmental learning with the subject matter in traditional schools.

4. Re-evaluation and re-organization of the entire topic to include environmental education.

5. Blending of content from many areas into a framework that addresses important environmental issues.

**V. Conclusion**

Environmental laws in India, while significant in scope and breadth are more commonly violated than implemented. Ecologicalregulation enforcement, as anextremelyspecializedregion of execution entrusted to numerous agenciesunderneath multiple law, paints a cheerful picture. Lack of or inadequacy of skills; inadequate infrastructure; deprived and bland grasp of the ruling; court conflict and coordination among the many implementing agencies appear to contribute to poor and ineffective law enforcement. The capacity of some of the more sophisticated companies to conceal their infractions and noncompliance while putting immense pressure on enforcement agencies has also contributed to the enforcement mechanism's inefficiency.

The stringent and absolute culpability concept's deterrence notion of punishment has had some success. Nonetheless, the hunt for superior alternative liability theories does not require much explanation. Because growth is such a vital component of life, the time has finally come to combine capacity building with the environment. For this reason, the environmental system must be considered and enhanced by means of additional authority methods to transactions with a wide range of trouble that are not addressed by law.

The cautionary approach ensures timely decision-making as well as the development of expert environmental authorities at the appellate and review levels, primarily as the guiding concept for the administrative

process to avert undesirable environmental effects. Such a measure would surely be a significant step toward long-term growth and the promotion of a healthy ecosystem. The human race is endangered by the polluted environment, which threatens its existence on the globe. These environmental concerns may not be limited to a certain country or region by national borders, but their impact is worldwide. This huge environmental degradation has sparked worldwide awareness about environmental conservation and protection. As a result, efforts are being made to raise environmental awareness among the general public. Education is the only way to make people aware of the environment and related issues.

# Tech-Driven Justice: Accelerating Legal Access in India

**Dr.Balwinder Kaur***
**Dr.Alka Bharti ****

**Abstract**

*The paper enumerates various digital initiatives initiated by the Government to provide access to justice. The purpose behind efforts is to help marginalized people. Indian Constitution guarantees free legal aid to all citizens. Despite this many people are deprived of legal services because of delays in case settlements and tedious procedures one has to go through. The Government has spent huge funds to reduce the pending cases in the various courts by embracing technology to get rid of procedural barriers and trying to transform the way it offers legal services. The paper also analyzes the various steps taken by the government to include the Internet to ease the lives of all the stakeholders.*

***Keywords:*** *Technology, e-courts, National Judicial Grid system, pending cases, Nyanbandhu.*

## 1.1 Introduction

The Preamble of the Indian Constitution guarantees every citizen equality of status and opportunity.[1] Further, it ensures every citizen social, economic, and political justice. Fundamental Rights given under Article 21[2], and the provision of Directive principles contained in Article-39-A[3], and other provisions of the Constitution support the need for legal aid and put an obligation on the state to offer access to justice to needy people. The purpose behind Legal aid is to bring poor and marginalized sections of society at par with well-off counterparts so they

* Associate Professor, Dr. B.R. Ambedkar National Law University, Sonepat, Haryana
** Assistant Professor, Department of Laws, BPSMV Khanpur Kalan, Sonipat ( Haryana)

1 Preamble, The Constitution of India (1950).
2 Article 21, The Constitution of India (1950).
3 Article 39-A, The Constitution of India (1950).

can also get equal access to justice. Access to Justice is the Constitutional mandate as well as the duty of government to provide an affordable, accessible, and speedy justice system to all. India's Legal aid system is the most extensive and largest in the world. Almost 80% of India's population is eligible to avail of legal aid as the statutory provision under Section 12 of LSA Act 1987 identifies disabled people, children, scheduled tribes, and scheduled castes, those who are have a mental illness, victims of mass disasters, and prisoners.[4] Justice Ramana said, "India is probably the only country where the "means test" does not apply to certain categories. In India, women, children, persons in custody, SC, ST, victims of disaster, amongst others, are entitled to free legal aid irrespective of their income/means," at the same time millions of people in India are people existing without access to basic fundamental amenities of life, including access to justice."[5]

### 1.1.1. Judicial interpretation of access to justice

The British Prime Minister William E. Gladstone said "Justice delayed is justice denied."It was in the **State of Haryana v. Darshana Devi and others** that the Supreme Court observed and accepted that access to justice is a basic human right.[6] The principles that were laid down in this case were First, Access to Court is an aspect of Social Justice and the state has no rational policy if it forgets the fundamentals.[7] The Hon. Apex Court of India in its judgment of **Hussainara Khatoon v. Home Secretary State of Bihar** held that speedy trial is a part of Article 21 of the Constitution guaranteeing the right to life and liberty.[8] In the case of **Hussain v. Union of India**, "This constitutional right cannot be denied even on the plea of non-availability of financial resources."[9]In its judgments, the Supreme Court has on various events

4 Section 12, Legal Services Authorities Act (1987).
5 Express News Service, "Access to justice still a challenge for millions: Justice Ramana ", The Indian Express, March 23,2021.
6 *(2013) 170 PLR 70*
7 *Ibid.*
8 *979 SCR (3) 532*
9 *Ibid.*

has made it abundantly clear that there will be no delay in the trial process, as this would constitute a denial of justice in and of itself.[10]

### 1.1.2 SDG 16: Promote just, peaceful and inclusive societies

Sustainable Development Goal 16 is one of the 17 Sustainable Development Goals established by the United Nations in 2015, the official wording is: "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".[11] The Supreme Court with the help of different verdicts interpreted different components of access to justice. Justice Thakur in the case of Anita Kushwaha V. PushpaSudan, stated that "a) the state must provide an effective adjudicatory mechanism; b) the mechanism so provided must be reasonably accessible in terms of distance; c) the process of adjudication must be speedy; d) the litigant's access to the adjudicatory process must be affordable."[12]

### 1.1.3 An overview of Pending Cases in Courts

**As** per the National Judicial Data Grid up to the current date the number of cases that are more than one year old is as follows:

- Civil Cases 6861292(62.1%)[13]
- Criminal Cases 21469600 (64.32%)[14]
- Other Cases 28330892(63.77%)[15]

The NJDC mentioned the reason for the pendency of the cases. As per Data the main reasons for delay are cases unattended, parties getting stay orders, awaiting records of the cases, and securing the presence of

10 *Ibid.*
11 United Nations (2023).*Goal 16 | Department of Economic and Social Affairs*. [online] sdgs.un.org. Available at: https://sdgs.un.org/goals/goal16 [Accessed 5 Oct. 2023].
12 *AIR 2016 SC 3506.*
13 National Judicial Data Grid,pending cases available at https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard accessed on 10.08.2023.
14 *Ibid.*
15 *Ibid.*

witnesses and parties. As per NJDC record in only civil cases, the pendency is because of the following reasons.

- Cases unattended- 1195334 (27.80%)[16]
- Parties got stay order-1078977(20.51%)[17]
- Awaiting records-884450 (20.57%)[18]
- Pending cases because of securing presence- 541576 (12.62%)[19]

As per the written information submitted by Law Minister Kiran Rijiju approximately Dec 31, 2022, the number of pending cases is over 4.32 crore in the district and subordinate courts.[20] To speed up the disposal of cases, the Indian Government has taken various steps with the help of Information and Communications Technologies (ICT) for digitalization of the judicial sector. Honourable Justice P Sathasivam, Former Chief Justice ofIndia, during the training Programme for Judges at District State Judicial Academy in his speech, stated that "The need of the hour is to fill the chasms where no law exists and to reduce it into writing where judicial pronouncements have held up the system so far. There is a need for overhauling the entire justice system by adopting E-governance in the judiciary. E-Governance to the judiciary means, the use of information and communication technology for smoother and accelerated case progression to reach its logical and within the set time frame, with the complete demystification of the adjudicatory process ensuring transparency. This would perhaps make us close to the pursuit of truth and justice."[21]

**1.1.4 Technology and Access to Justice: A new era in the justice system**

The Apex Court of India reminded us that technology was not meant for the pandemic but "is here to stay for future forever. Therefore, the answer is not to ban technology. The answer is to make technology

16 *Ibid.*
17 *Ibid.*
18 *Ibid.*
19 *Ibid.*
20 PTI, "Nearly 5 Crore Pending Cases In Courts, Over 69,000 In Supreme Court", NDTV February 09, 2023.
21 Tamil Nadu State Judicial Academy on 23-06-2011

available to the grassroots. Technology must reach out to every taluka court in the country. That's why part of phase 3 of the e-courts project, going to set up e-seva Kendra… Lawyers who do not have access to the internet… can go to the e-seva Kendra and get all the available facilities." Said CJI.[22]Technology will ensure that those who do not have access to justice due to distance will not be excluded anymore.In a farewell address, Former Chief Justice of India S.A. Bobde said "Access to justice now depends on access to technology."[23]

Recently the chief justice of India who was speaking at the inauguration of 'Online e-Inspection Software' of the Delhi High Court said that "technology has become a powerful tool in the legal system for improving efficiency, accessibility, and accuracy in the administration of justice, further he stated that the success of any initiative and innovation depends on the ability to collaborate with stakeholders and incorporate critical feedback of those who will be using it." [24]

The Apex Court in 2003 allowed the recording of deposition through video-conferencing. The judgment was given in a case where a US-based doctor was unable to come to India to depose in a case. He was ready to dispose through video-conferencing which was allowed by the Mumbai trial court.[25] The Supreme Court of India launched in 2004 e-Committee.

The purpose of the e-Committee is to oversee the e-Courts project constituted under the "National Policy and Action Plan for

22 Express News Services, "Technology is here to stay, forever', CJI Chandrachud tells High Court Chief Justices ", The Indian Express, February 14,2023.

23 ReshmaShekhar, "Justice now depends on technology,' said SA Bobde. Indian judiciary has miles to go. "The Print, published on November 01 ,2021.

24 PTI, "Technology A Powerful Tool In Legal System To Improve Efficiency, Accessibility: Chandrachud", Outlook published on 25 JAN 2023.

25 PTI, 'Video-conferencing allowed for evidence' TOI, published on Apr 2, 2003.

Implementation of Information and Communication Technology (ICT) in the Indian Judiciary-2005".[26]

The E-Courts project is initiated by the Department of Justice, Ministry of Law and Justice, Government of India. It's pan Indian project funded by the Ministry. The idea behind this project is to equip the judicial system of the country with information and technology. This project aimed to offer competent and time-bound services to the citizens as per the e-courts Project Litigants' Charter. In addition to this to develop judicial productive making the justice delivery system available, cost-effective, dependable, and clear.[27]E-governance in the justice system in India started in the 1990s but it in actual sense was fast-tracked when the Information and Technology Act, of 2000 was enacted. It is a fact that technology has transformed the administration of justice in India. It has encouraged the government to deal with social disparities in access to justice. There is no doubt that technology has and will continue to have a deep impact on the legal system in India. The Legal Services Authorities Act was enacted by the Parliament in the year 1987 and came into force on 9th November 1995 to start a nationwide uniform system for offering free and competent legal services to the weaker sections of society.[28]

**1.1.5. Number of Internet users in India 2010-2040**

As per statistics in 2020, India had crossed 749 million internet users across the country.[29] In 2040 it is estimated that this figure will grow exponentially to over 1.5 billion. After China India is known as the second largest online market in 2019 worldwide.[30] The count of internet users is expected to increase in both rural as well as urban regions

26 E-COMMITTEE Supreme Court of India New Delhi, National Policy and Action Plan for Implementation of Information and Communication Technology In The Indian Judiciary 1st August, 2005.

27 Ibid.

28 National Legal Services Authorities.https://nalsa.gov.in/about-us/introduction access on 17.07.23.

29

30 https://www.statista.com/statistics/262966/number-of-internet-users-in-selected-countries/ accessed on 11.08-23.

depicting mammoth growth in access to the internet. [31]The author of "The Future of Law" book Richard Eric Susskind stated in his book that in coming years, lawyers and their litigants would communicate through email. Further, he stated that technology will bring radical changes in the field of law and will transform the Court system.[32] In India in 2005 on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" the vision of e-Courts was capsulised. Based on the proposal received from Hon'ble the Chief Justice of India to create an E-committee to help in framing a National policy on the computerization of the Indian Judiciary and advise on technological communication and management-related changes the Govt. constituted E committee.[33] The project e Courts was a Pan-India Project funded by the Department of Justice. This project is divided into three different phases.

### 1.1.6. Phases of e-court project in India

**Phase-I**

The Apex Court in order to increase the use of information and technology constitutedane-Committee. The reason for constituting an e-Committee was to implement the e-Courts project initiative in 2005 with a budget of 4.42 billion.[34] The e-court means a court that is equipped with modern ICT devices. The project started in 2007; during this phase, maximum computer server rooms Court complexes, and judicial services centers were computerized. The benefits of the installation of case information software were that it was used to provide services to advocates and also to litigants. Most of the district courts created their

31 Tanushree Basuroy, "Number of internet users in India from 2010 to 2020, with estimates until 2040" Statista, July 27,2022.

32 Richard Susskind, Daniel Susskind "The Future of professions: How technology will trans form the work of human experts(OUP,2017).

33 E-Committee, Supreme Court of India, available at http://supremecourtofindia.nic.ac.in/e-committee accessed on 11.08.2023.

34 Ibid.

websites for stakeholders. The judicial officers and staff of the courts were trained.[35]

**Phase II:**

The Hon'ble Chief Justice of India approved Phase II of the Ecourts Project. In Phase-II, the courts are equipped with additional hardware with (1+3) systems per courtroom; the uncovered courts of Phase-I and the newly established courts have (2+6) systems per courtroom; and the court complexes are provisioned for hardware, LAN, etc. The District Legal Services Authority, the Taluka Legal Services Committee, the National Judicial Academy, and the State Judicial Academies were computerised for efficient delivery of services and training. During this phase, left-out court complexes connected with jails and desk-based video conferencing were used to provide justice to under-trial prisoners.[36] Phase II of the project focuses on service delivery to litigants, lawyers, and other stakeholders. To offer access to justice on all the websites, the relevant information was provided in the local languages. SMS, emails, and applications for mobile were used to provide information to the litigants.

**Phase-III**

The e-Courts Phase III project, approved by the Supreme Court of India, aims to create an affordable, accessible, cost-effective, predictable, reliable, and transparent judicial system in India. It includes digital and paperless courts, online courts, virtual courts beyond traffic violations, and the use of emerging technologies like artificial intelligence for case pendency analysis and litigation forecasting.

The particulars of the court complex and digitalisation of courts under eCourts project Phase-II are as under[37]:

| S.No | High-Courts | State | Courts Complexes | Courts |
|---|---|---|---|---|
| 1 | Allahabad | Uttar Pradesh | 180 | 2222 |
| 2 | Andhra Pradesh | Andhra Pradesh | 218 | 617 |
| | | | | |

35 Ibid.
36 Ibid.
37 Ibid.

| | | | | |
|---|---|---|---|---|
| 3 | Bombay | Dadra and Nagar Haveli | 1 | 3 |
| | | Daman and Diu | 2 | 2 |
| | | Goa | 17 | 39 |
| | | Maharashtra | 471 | 2157 |
| | | | | |
| 4 | Calcutta | Andaman & Nicobar Islands | 4 | 14 |
| 5 | | West Bengal | 89 | 827 |
| 6 | Chhattisgarh | Chhattisgarh | 93 | 434 |
| 7 | Delhi | Delhi | 6 | 681 |
| 8 | Gauhati | Arunachal Pradesh | 14 | 28 |
| 9. | Gujarat | Gujarat | 376 | 1268 |
| 10. | Himachal Pradesh | Himachal Pradesh | 50 | 50 |
| 11. | Union Territory of Jammu & Kashmir and Union Territory of Ladakh | Union Territory of Jammu & Kashmir and Union Territory of Ladakh | 86 | 218 |
| 12. | Jharkhand | Jharkhand | 28 | 447 |
| 13. | Karnataka | Karnataka | 207 | 1031 |
| 14. | Kerla | Kerala | 158 | 484 |
| 15. | Madhya Pradesh | Madhya Pradesh | 213 | 1363 |
| 16. | Madras | Puducherry | 4 | 24 |
| | | Tamil Nadu | 263 | 1124 |
| 17. | Manipur | Manipur | 17 | 38 |
| 18. | Meghalaya | Meghalaya | 7 | 42 |
| 19. | Odisha | Odisha | 185 | 686 |
| 20. | Bihar | Patna | 84 | 1142 |
| 21. | Punjab & Haryana | Chandigarh | 1 | 30 |
| | | Haryana | 53 | 500 |
| | | Punjab | 64 | 541 |
| 22. | Rajasthan | Rajasthan | 247 | 1240 |
| 23. | Sikkim | Sikkim | 8 | 23 |

| | | | | |
|---|---|---|---|---|
| 24. | Telengana | Telengana | 129 | 476 |
| 25. | Tripura | Tripura | 14 | 84 |
| 26, | Uttarakhand | Uttarakhand | 69 | 271 |
| | | **Total** | **3452** | **18735** |

### 2.1 Disseminating legal aid: physical or virtual mode?

The traditional system of dissemination of legal aid involves establishing legal aid clinics in various areas so that people can physically approach these clinics for redressal of their grievances and to seek legal aid and advice. However, with the increasing demand for legal aid in India, the shortcomings of the traditional system started to emerge, and the greater need for the introduction of technology in the process of delivery of legal aid was observed by policymakers and the government.

Indian citizens, in their quest for legal advice and justice, face a lot of hardships in approaching appropriate judicial forums and authorities for their grievance redressal, and there is a greater demographic disadvantage in rural India, which precludes the rural population from seeking legal aid and advice for the legal problems of civil and criminal nature. In India, the overall allocation of funds by NALSA for legal services in 2021–22 was just 145.3 crore.[38] It means that the Per capita expense on Legal aid by Union Govt. Is even less than Rs. 1.2 per Citizen.[39] The poor budgeting of legal aid activities In India, is one of the fundamental reasons behind the backwardness of legal aid-related projects. However, the Department of Justice identified the problem and suggested that the technology can mitigate the high-end expenses that are required to meet India's legal aid needs. Ultimately, certain techno-legal projects, including Nyaya Bandhu and Tele-law, were formalized

38 NATIONAL LEGAL SERVICES AUTHORITY, "STATEMENT SHOWING the AMOUNT of FUNDS ALLOCATED to the STATE LEGAL SERVICES AUTHORITIES INCLUDING SUPREME COURT LEGAL SERVICES COMMITTEE during the FINANCIAL YEAR 2021-22 .," *Https://Nalsa.gov.in/* (NEW DELHI: NATIONAL LEGAL SERVICES AUTHORITY, 2022), https://nalsa.gov.in/grants-and-accounts/grands/grants-2021-2022.

39 Ibid.

and introduced by the Department of Justice under the aegis of the Ministry of Law and Justice of India. Existing No. of Legal Services Clinics in villages-4134[40], Total Beneficiaries – 2,82,140

Total Functional legal aid clinics in villages as of 2020 - 14159[41]

The India Justice Report Rankings revealed that between 2020 and 2022, the number of functional legal aid clinics at different village panchayats covering nearby villages fell tremendously.[42] Surprisingly, out of 14159 functional legal aid clinics, only 4134 legal service clinics remained operational. The statistics reveal how difficult it is for the rural population to access free legal aid-related services.[43] However, the justification given for the massive reduction in the number of functional legal aid clinics in rural areas stated that this was an effort to enhance quality and optimize service delivery in these rural legal aid clinics.

In different parts of the country, various legal aid clinics were established for the dissemination of free legal aid and advice via physical mode and these legal aid clinics only functioned in non-virtual mode only under the guidelines of various legal service authorities at the district, state, and national levels.

As per the statistical information of legal service clinics functional in India as revealed by the National Legal Service Authority in the year 2023 the total functional legal aid clinics in India as of March 2023 is 11711[44], and the Total Beneficiaries of this scheme are –1014464[45]. The

---

40 NALSA, "Statistical Information in Respect of the Legal Services Clinics during the Period from April, 2022 to March 2023.," *Https://Nalsa.gov.in/* (NEW DELHI: NATIONAL LEGAL SERVICES AUTHORITY, 2023), https://nalsa.gov.in/statistics/legal-service-clinics-report/legal-service-clinics-april-2022-to-march-2023.

41 DAKSH, Commonwealth Human Rights Initiative, Common Cause, Centre for Social Justice, Vidhi Centre for Legal Policy, and TISS-Prayas. , "India Justice Report Ranking States on Police, Judiciary, Prisons and Legal Aid (2022)," *Https://Indiajusticereport.org* (NEW DELHI, April 2023), https://indiajusticereport.org/files/IJR%202022_Full_Report1.pdf. (P-3)

42 *Ibid.*

43 *Ibid.*

44 *Supra (see note no. 40)*

45 *Supra (see note no. 40 )*

details of the offline legal aid clinics established by various legal service authority is given here under -

Existing No. of Legal Services Clinics in Law Colleges/ Universities – 1093[46], Total Beneficiaries – 37351.[47]

Existing No. of Legal Services Clinics in Community Centres – 776,[48] Total Beneficiaries –88638[49].

Existing No. of Legal Services Clinics in Jails and Juvenile homes etc. – 1616[50], Total Beneficiaries –2,93,873[51].

Existing No. of Legal Services Clinics in other places – 3188[52], Total Beneficiaries – 1,98,895[53]

**2.2. NYAYA BANDHU : Promoting voluntary legal aid**

The scheme was intended to collaborate efforts of institutional pro-bono clubs and channel the legal education institutions into contributing towards facilitating legal aid. For this purpose, both legal education institutions and practicing advocates were brought under the same platform to exchange their learnings and efforts and contribute towards the enhancement of excess justice through the use of technology.[54] The scheme was formulated by the Department of Justice, the Ministry of Law, and the Justice Government of India to enhance access to justice by means of technology and innovation and remove geographical boundaries between service providers and beneficiaries.[55] The intent behind the implementation of the Nyaya Bandhu scheme was to maximise voluntary legal aid delivery infrastructure in the country, but it

46 *Supra (see note no. 40)*
47 *Supra (see note no. 40)*
48 *Supra (see note no. 40)*
49 *Supra (see note no. 40)*
50 *Supra (see note no. 40)*
51 *Supra (see note no. 40)*
52 *Ibid.*
53 *Ibid.*
54 PIB (2023).*Free legal aid and advice through the Nyaya Bandhu program*. [online] pib.gov.in. Available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1944789 [Accessed 5 Oct. 2023].
55 *Ibid.*

thus did not achieve its targeted goal, and a very limited number of cases were disposed of by advocates who are registered under the scheme.

Number of Advocate(s) Enrolled under Nyaya Bandhu Panel – 6476[56]Total beneficiaries - 2618[57]

**2.3 TELE LAW: Interaction of technology with access to justice.**

Tele-law is the largest technical revolution brought in the field of enhancing access to justice through technology, as it has surpassed all the geographical and demographic barriers and formalized systems that sometimes negatively impact the will of people to approach appropriate authorities for legal aid and advice. This e-interaction between lawyers and people would be through the video-conferencing infrastructure available at the CSCs. The Department of Justice has partnered with NALSA and CSC e-Governance Service India Limited to mainstream legal aid to marginalized communities through the Common Services Center (CSC).[58] These common service centres are located in the surroundings of most of the villages, and they act as a medium for connecting panel advocates with the legal aid beneficiaries so that even the poor person who does not have access to a cell phone or computer can also get competent legal aid and advice at no cost.[59] The objective of Tele-Law is to eradicate geographical foundations and other shortcomings of the existing legal aid delivery system and connect legal aid beneficiaries belonging to economically and socially backward and marginalised sectors with designated panel lawyers. This is executed via the use of technology, like video conferencing and telephonic conversation, so that they can seek effective consultation on legal

56 DEPARTMENT OF JUSTICE, "Nyaya Bandhu - Home," *Https://Probono-Doj.in/*, July 14, 2023, https://probono-doj.in/home/index.

57 *Ibid.*

58 DoJ (2021).*Faq | Tele-law*. [online] www.tele-law.in. Available at: https://www.tele-law.in/faq.html#:~:text=Common%20Service%20Centre%20(CSC)%20is [Accessed 6 Oct. 2023].

59 *Ibid.*

disputes and matters. The motto of Tele Law is "reaching the unreached."

As per the data available on the website, the total number of visitors to the Tele-Law website and app is more than 11,53,98,784[60] this data clearly indicates how popular the tele-law app has become in India for people who are in need of legal advice and legal aid at the expense of the state.

**2.3.1 Functioning of Tele-law**

Tele-law makes the use of communications and information technology for the delivery of legal information and advice. Under the project, tele-law dissemination of legal aid and advice is ensured through the appointment of regular panel advocates, who are appointed at offices of the District Legal Services Authority nationwide. The project achieved remarkable success in bridging the gap between deprived, marginalized, and eligible rural populations and legal service authorities, particularly over 2.5 lakh village panchayats, where local representatives were entrusted with the responsibility of connecting rural people in need of legal aid to lawyers appointed under the tele-law project to ensure effective communication of their legal grievances and accessibility to the remedy thereof.[61]

**2.3.2 How to use the Tele-law app**

The tele-law app is available in the Google Play Store and Apple Store for free download. After downloading, the user needs to feed his basic information, and subsequently, he may seek legal aid or advice for civil matters and criminal cases accordingly.[62] He can also trace the case progress and status of his request in the app portal. The app is extremely easy for new users to use and gives complete transparency and information about the process and procedure of handling these legal aid

60 DEPARTMENT OF JUSTICE, "Overview of Tele-Law," *Https://Www.tele-Law.in/*, 2022, https://www.tele-law.in/overview-of-tele-law.html.

61 *Ibid.*

62 DOJ (2021).*Tele-law total outcome Report 2021*. [online] Available at: https://d3fp5tyfm1gdbn.cloudfront.net/2022/Jan/20/1642678164_Outcome%20Report%20of%20Tele-Law.pdf [Accessed 6 Oct. 2023].

cases. The fundamental idea behind launching a tele-law mobile app was to remove communication barriers between legal aid beneficiaries and legal aid service providers which includes panel lawyers.[63] the most significant advantage of the Tele Law app is that it is free for all the persons who are entitled to seek legal aid and advice under section 12 of the Legal Services Authorities Act 1987 however even all other Indian citizens are entitled to seek legal aid upon payment of Just Rupees 30 as service charge Which means each and every citizen of India irrespective of their income levels can now access tele-law for seeking legal advice upon various matters of their concern.[64] Another major advantage of the app is that it is available in Marathi, Punjabi, Tamil, Telugu, Hindi, and English languages. Like major service-providing apps, there is an e-tutorial for guiding the users relating to the functionality of the app and there is also a chat support system developed where the chatbot answers frequently asked questions and queries of the users and collects feedback on services provided.[65]

### 2.3.3 Data of Tele-law Beneficiaries

Total Case Registered: 54,77,923[66]

Total Advised Enabled: 54,11,009[67]

Total no of CSCs: 2,50,000[68]

As per the current statistical display given on the website of Tele-Law, about 5.5 million cases have been registered based upon queries and requests of beneficiaries who sought legal aid through the Tele-Law app and telecommunication via cell phones. About 5.4 million legal advisers on various matters of civil, criminal, administrative, and constitutional nature have been disseminated by panel advocates. A

63 *Ibid.*
64 *Ibid.*
65 *Ibid.*
66 DEPARTMENT OF JUSTICE, "DASHBOARD," *Https://Plv.tele-Law.in/*, October 07, 2023, https://plv.tele-law.in/DGQI/index.html.
67 *Ibid.*
68 Department of Justice, "CENTERS DATA," *Https://Plv.tele-Law.in/*, October 07, 2023, https://plv.tele-law.in/DGQI/centersData.html.

significant area is now covered under the common service centers scheme, where the government-established service center can link legal aid beneficiaries through 2.5 lakh common service centers nationwide to tele-law officials and panel advocates appointed thereto.[69]

**3.1 Promoting access to justice through the Digitalization of Court infrastructure**

**3.1.1 E-Courts National Portal**

In 2013, the e-Courts National Portal was launched by the Hon'ble Chief Justice of India. The purpose of these e-court portals is to provide information regarding online cause lists, case status, and other information.

**3.2.2 Virtual Courts**

Virtual Courts It is aimed at eliminating the presence of lawyers or litigants in the court so that small cases can be settled with the help of court resources. It is suggested that the judge administer a virtual court over a virtual platform for the entire state. Judges or litigants would not visit a court physically. Every process would be accomplished online.Since it is important to first classify the kind of cases that can be successfully disposed of by Virtual Courts.

**3.2.3 E courts Services Mobile App**

This application can be accessed through the Apple App Store and the Google Play Store. Through this application, one can see case status, court orders, and cause lists. The service is available 24x7. It's useful for advocates, police, government agencies, litigants, and the judiciary. Through CNR, litigants can see information regarding the pendency of the case. The data available on the National Judicial Data Grid can be accessed through this mobile app. The number of downloads has reached more than 58,15,211 (5.81 million) as of May 7, 2021, indicating the popularity and usefulness of this application.[70] As part of the eCourts project, 7 platforms have been created to provide real-time information

69 Department of Justice, "CENTERS DATA," *Https://Plv.tele-Law.in/*, October 07, 2023, https://plv.tele-law.in/DGQI/centersData.html.

70 http://vcourts.gov.in/ accessed on 13,08.23.

on case status, cause lists, judgements, etc. to lawyers and litigants **High Court Services**

A central repository of information and data about High Courts is accessible on this portal. Details of 46,37,128 (4.6 million) pending cases are available on the website.[71]

### 3.2.4 E courts Fee Payment

Service enabling online payment of court fees, fines, penalties, and judicial deposits. The payment portal is also integrated with state-specific vendors like SBI ePay, GRAS, e-GRAS, JeGRAS, Himkosh, etc.[72]E-filing of cases requires the option of electronic payment of fees, which include court fees, fines, and penalties that are directly payable to the Consolidated Fund. A total of 20 high courts have implemented e-payments in their respective jurisdictions. The Court Fees Act has been amended in 22 High Courts until December 31, 2022.

### 3.2.5 E-Filing

The e-filing system permits the electronic filing of legal papers. Using e-filing, cases (both civil and criminal) can be filed before the high courts and district courts that have accepted e-filing systems. The introduction of e-filing is intended to endorse paperless filing and save time and money by adopting technological solutions to file cases before courts in India. A new e-filing system (version 3.0) has been rolled out for the electronic filing of legal papers with upgraded features. Draft e-filing rules have been formulated and circulated to the high courts for adoption. A total of 19 high courts have adopted the model rules of e-filing as of December 31, 2022. e-filing of cases requires the option of electronic payment of fees, which include court fees, fines, and penalties that are directly payable to the Consolidated Fund. A total of 20 high courts have implemented e-payments in their respective jurisdictions. The Court Fees Act has been amended in 22 High Courts until December 31, 2022.[73]

---

71 http://hcservices.ecourts.gov.in/ accessed on 13.08.23.
72 http://pay.ecourts.gov.in/ accessed on 13.08.23.
73 https://efiling.ecourts.gov.in/ accessed on 14.08.23

### 3.2.6 The Nyaya Mitra

The Nyaya Mitra program, like the E-Courts program, targets judges and court administrators. In this project, retired judicial or executive officers with legal experience work as "friends of the law," or Nyaya Mitras. They provide legal assistance to resolve cases that have been pending for more than ten years, as identified from the National Judicial Data Grid across select districts of India.[74] Apart from this, the Department of Justice has designed a Scheme for Access to Justice titled "Designing Innovative Solutions for Holistic Access to Justice" for a period of five- years (2021-2026).[75] DISHA aims to protect 'justice' for the people of India as enshrined in the Constitution.[76] The Ministry of Law and Justice expands the outreach of pro bono legal services (Nyaya Bandhu) and tele-law and legal awareness programs. Further, DISHA aims to generate awareness and broadcasting through the use of technology and develop simplified information, education, and communication (IEC) material for the masses. It's a fact that technology can help everyone access justice in India.[77]

### 3.2.8. National Judicial Data Grid

The National Judicial Data Grid (NJDG) is an online platform created under the eCourts Project, providing information on judicial proceedings and decisions of all computerized districts and subordinate courts in India. It has over 21.99 crore cases and 20.10 crore orders and judgments. Open APIs were introduced in 2020 to improve pendency monitoring and compliance. The Courts Integrated Mission Mode Project aims to digitize lower and higher courts, improving access to

74 Siddharth Peter de Souza &VarshaAithala, "Can Technology Finally Deliver on India's Legal Aid Promise?" Standford social Innovation Review Jul. 27, 2018.

75 https://doj.gov.in/designing-innovative-solutions-for-holistic-access-to-justice-disha/ accessed on 13.08.23.

76 Articles 39A, 14 and 21 of the Constitution of India.

77 SrinathSridharan, Namita Shah 'A digital legal system needed for speedy justice'. The Hindu Business Line January 19, 2023.

justice and enhancing the competence and efficiency of the Indian judiciary..[78]

### 3.2.9 Case Information Software

The Case Information Software (CIS) is a free, open-source software developed by NIC, implemented in district and high courts. The National Service and Tracking of Electronic Processes (NSTEP) is a technology-enabled process serving and issuing of summons in 28 states and UTs. A new "Judgment Search" portal is available free of charge. 39 LED display message sign board systems called Justice Clocks have been installed in 25 high courts. A manual and brochure on eFiling and eCourts services are available in English, Hindi, and 11 regional languages.

### 3.2.10. Touch Screen Kiosks

In most of the court complexes in the country, a screen called Touch Screen Kiosks is installed. Through this screen, advocates and litigants can gather information relating to cause lists, case status, and any information relating to pending cases.[79]

### 3.2.11. E-Sewa Kendra

E-SewaKendras have been created in the high courts and one district court in each state on a pilot basis. It enables litigants to obtain information concerning their case status and to obtain copies of judgments and orders. These centers also extend assistance in the e-filing of cases. These kinds represent a significant step for the common man and his right to access justice.

### 3.2.12. Facilities To Be Provided In E-Sewa Kendra

E-SewaKendras will offer services for litigants and lawyers, including case status investigations, simplified online applications for certified copies, e-filing of petitions, online purchases of e-stamp papers, Aadhaar-based digital signatures, and e-Courts mobile app. They will

78 *Ibid.*
79 Available at https://ecommitteesci.gov.in/service/touch-screen-kiosks/ 16.08.23.

also facilitate e-Mulakat appointments, handle judge leave queries, and guide people on free legal services.[80]

### 3.2.13. Promotion of e-LokAdalat

Legal Services Authorities have taken steps to develop e-LokAdalats, which include standard operating procedures for conducting e-LokAdalats, technical training through system officers for the court staff, WhatsApp groups for litigants, advocates, and respondents for conveying relevant information and links for attending e-LokAdalats, and video conferencing links and cause lists displayed on the website of the district courts. During the COVID pandemic, the legal services authorities, under the aegis of the National Legal Services Authority (NALSA), ingeniously integrated technology to move LokAdalat to the virtual platform, better known as e-LokAdalats. Since e-LokAdalats are organised simultaneously with regular LokAdalats, benches are constituted on the basis of the volume of cases referred by various courts, tribunals, and institutions for pre-litigation cases. The first e-LokAdalat was held in Madhya Pradesh on June 27, 2020. The details of the e-LokAdalatsorganised from June 2020 to June 2022 in 28 states and UTs, including Maharashtra, The LokAdalats are the most effective mode of alternative dispute resolution (ADR) mechanism for arresting the mounting arrears of the courts, including the high courts. 38.36 lakh pre-litigation cases and 8.34 lakh pending cases in courts have been disposed of by e-LokAdalats from June 2020 to June 2022.[81]

## 4.1 Towards Technology Transformed Justice System

With the presence of information technology, the working of the judiciary has been enhanced, and during the pandemic, virtual hearings had an advantage for all, which saved both time and money. It is definite that with the role of technology, legal services will become more efficient and give us an opportunity to do more of what we are already doing. Technology can be a game changer in legal services. This can be viewed in two ways. First, technology makes it possible for stakeholders

80 e -committee,Supreme Court of India available at https://nalsa.gov.in/lok-adalat accessed on 16.8.23.

81 LokAdalat available at https://nalsa.gov.in/lok-adalat accessed on 16.8.23.

to offer meaningful service to society. Second, most of the data and information are available, so the legal services advocate has an opportunity to represent and protect the interests of their clients. Further, technology has improved the delivery of effective legal help at an affordable price. Former Chief Justice of India MN Venkatachaliah said, "Pendency is a serious problem plaguing our judicial system. The Indian judiciary needs to adopt new tools and technology that will speed up the process and mitigate delays. Technology, like artificial intelligence (AI), can help the judiciary in a big way, and with this, Indian courts would be able to dispose of almost 90% of the pending cases in just 18 months."[82]The Indian judiciary is utilizing AI technology to streamline the justice process through the eCourts Mission Mode Project, aiming to connect AI with basic computing hardware for administrative purposes."[83]

### 4.2 Challenges in e-court project implementation in India

Indian courts struggle with paper and files, while Singapore has embraced e-litigation by introducing electronic filing, extract, summoning, and information services to reduce paper usage and streamline courtroom operations..[84] Corruption is the biggest problem in the lower judiciary, as is the lack of transparency. The digitization of the process will curb corruption and facilitate providing justice to all.[85] An online database regulates the justice system, allowing under-trial prisoners to file petitions and request fast-track cases, reducing police

82 Moneylife Digital Team, "By Using Technology 90% of the Cases Can be Disposed of in 18 Months"- Justice MN Venkatachaliah,MoneyLife,December 19,2020.

83 Justice L.N. Rao, 'AI and the law', (Online webinar of ShyamPadman Associates, 6 August 2020) https://www.youtube.com/watch?v=ZJsIQwPn5AU accessed on 16.08.23.

84 Himadri Ghosh, " 8 Years: The Time It'll Take India's Lower Courts To Clear Their 25 Million Pending Cases!"IndiaSpend.com December 03,2015.

85 PrantikSengupta, From CJI Impeachment To Justice Loya Case: The Judiciary Needs Major Reform

and prison burdens, and automatically scheduling dismissal cases.[86] The 2005 National Policy aims to enhance access to justice by implementing ICT in the Indian Judiciary, ensuring effective legal assistance for vulnerable and poor citizens.

### 5.1. Conclusion

From the wide range of literature reviewed for the purpose of the study, it can be concluded that the judicial system of India remained untouched by technological innovations, and unlike other government departments that adopted digitalization at a fast pace, Indian courts and judicial systems digitalized in a slow manner. As a result, the benefits and outcomes of effective utilisation of technology for strengthening the judicial process and enhancing access to justice were not observed. Effective utilisation of emerging modern technology for overhauling the entire judicial framework is highly required so that the barriers and shortcomings of the existing traditional judicial system can be mitigated by the use of technology and the Internet. Although India's recent effort towards the digitalization of judicial infrastructure by establishing virtual courts and launching applications like the e-court app, the Nayaya Mitra app, the Nyaya Bandhu app, and the Tele-Law initiative has achieved milestones in the dimension of enhancing access to justice through the usage of technology, It is our need to adopt some other global technologies, such as artificial intelligence, etc., so that the usage of technology can be more properly generalised and the common citizens of India shall benefit from the same. Lastly, it can be stated that the state has rectified its mistake of delaying the acceptance of technology in judicial functioning. By taking remarkable steps in the past decade, however, a lot has to be done to strengthen technological initiatives to promote citizen-friendly and court-friendly innovations for bringing justice to the doors of economically and socially marginalised communities in India.

86 Yashswini Mathur, 'Why Do Indian Courts Take So Long To Deliver Justice?'YKA ,Feb 15,2017.

# Evaluating the Effectiveness of the Dispute Resolution Mechanism under the Consumer Protection Act, 2019

Dr. S A Bhat*
Dr. Mudassir Nazir**

***Abstract***

*The disputes are bound to happen in any established legal mechanism. The Indian jurisprudence not only recognized justice as a matter of right to litigants but also recognize access to justice as well. The 2019 Consumer Protection Act is an act of the Indian Parliament. The 1986 Consumer Protection Act is replaced by this Act. By establishing authorities for the efficient, prompt, and appropriate administration and resolution of consumer disputes and other consumer-related matters, this revised Act aids in protecting the interests of consumers. With the passage of this Act, the customer was supposed to rule in a free market. The phrase "caveat amptor"—which originally meant "let the buyer beware"—has been replaced with "caveat venditor," which means "let the vendor beware." This Act is obviously focused on giving the consumer greater power by increasing openness. The Consumer Protection Act calls for the creation of consumer dispute redressal commissions because of increased competition and the temptation to engage in unethical, exploitative, and unfair business practices like selling faulty and unsafe products, adulterating products, and running false or misleading advertisements in an effort to increase sales and market share (CDRC).In the light of above stated backdrop, the paper is an attempt to analyses the various modes of redressal mechanism under the Act, and to highlight various legislative and policy gaps and suggest the suitable measures for the same.*

***Keywords:*** *Justice, Access to Justice, caveat venditor, and "caveat amptor.*

---

* Assistant Professor, School of Law, University of Kashmir.
** Assistant Professor, School of Law, Galgotias University, Greater Noida.

## I. INTRODUCTION

"*Customers are the most important visitor on our premises, they are not dependent on us, and we are dependent on them. They are not an interruption in our work. They are the purpose of it. They are not outsiders in our business. They are part of it; we are not doing them a favor by serving them. They are doing us a favour by giving us an opportunity to do so*." – Mahatma Gandhi.

Consumer protection ensures the attainment of the constitutional goal of social and economic justice.Consumer protection is essential in attaining economic justice because it promotes fair competition, protects consumers from fraudulent or deceptive business practices, and ensures that all consumers have access to safe, affordable, and high-quality products and services.

It is crucial for attaining social justice because it promotes fairness, equity, and equal opportunities in the marketplace.The consumer also plays a key role in the world economy. The growth and development of a nation is dependent on the consumption of the goods.Therefore, Consumer protection is crucial for economic systems to function well, and to ensure the balancing of rights of the parties within the constitutional mandate.The object of the Consumer Protection Act (hereinafter CPA) is the delivery of speedy justice and dispute settlement arising between consumer and seller or service provider. This paper will delve into the important aspects of dispute redressal mechanisms set up at different stages.

II. TRANSFORMATION IN THE LEGAL FRAMEWORK SAFEGUARDING CONSUMERS IN INDIA

Early forms of consumer protection can be traced back to ancient times, such as in the Old Testament and the Code of Hammurabi, these mainly focused on commercial interests. It was not until the United States that consumer advocacy movements began to form in response to monopolistic and fraudulent business practices that were prevalent at the time.In the past, consumers were responsible for verifying the quality of the goods they purchased, and sellers could only be held accountable in cases of gross negligence. However, as consumerism and concerns about

capitalism and food fraud grew, the need for more robust consumer protection became apparent. The first phase of consumerism emerged, leading to the formation of consumer organizations in the 1940s and 1950s, such as in Denmark and Great Britain where the government established the Consumer Council to provide a platform for consumers to voice their opinions on issues related to producers and traders. However, the significant progress towards consumer protection came with the Single European Act, which revised the Rome Treaty and empowered the Economic and Social Committee to safeguard the interests of consumers. Subsequent amendments were introduced, creating a path for a more comprehensive consumer policy. Despite these improvements, a strong foundation for effective consumer protection was still lacking. This spurred further development towards more robust consumer protection policies.

The UNGA adopted the UN Guidelines for Consumer Protection[1] in April 1985, which were later updated in 1999. This served as a tool for nations to promote consumer protection and, at the international level, served as the foundation for the consumer movement. Today, more than 240 organizations from over 100 countries are united under a single entity called Consumers International.In accordance with United Nations guidelines, a National Consumer Protection Council was established in India, consisting of 28 members who were representatives of various ministries. After conducting two meetings, it was decided to arrange a National Workshop on Consumer Protection on March 11-12, 1985, where consumer representatives would be present. A draft bill was created based on the inputs and advice shared by representatives from State Governments, Voluntary Consumer Organizations, Central Ministers, and Officials from different Government departments at the national seminar. The bill was formulated by closely studying and analyzing the consumer protection laws of the United Kingdom, United

1 The UN Guidelines for Consumer Protection, 1999, *available at:*https://www.un.org/esa/sustdev/publications/consumption_en.pdf (last visited on 19 March, 2023).

States of America, Australia, and New Zealand.[2]The final draft of the consumer protection bill was prepared and presented to the Lok Sabha on December 9, 1986, by the then Minister of Parliamentary Affairs and Food and Civil Supplies, H.K.L.Bhagat, following several inter-ministerial meetings. In addition, amendments were made to six other consumer protection laws to empower consumers and their organizations to take legal action against offenders. The laws that are included in this category are the Standards of Weights and Measures Act, 1976; Prevention of Food Adulteration Act, 1954; Bureau of Indian Standards Act, 1986; Agricultural Produce (Grading and Marking) Act, 1937; Monopolies & Restrictive Trade Practices Act, 1969; and Essential Commodities Act, 1955.

The Consumer Protection Act, 1986 was passed by the Parliament and received approval from the Indian President on December 24, 1986. The objective of this Act was to establish a three-level quasi-judicial mechanism to swiftly and affordably address consumer complaints. This mechanism provides a single avenue to resolve consumer grievances.Law is a living document,hence with the development in technology and time, the need and requirements of a consumer has also changed. In order to address the shortcomings of 1986 Act, in 2019 the consumer protection law has gone through a major amendment.The Indian legislature passed the CPA, 2019, which addresses issues related to violations of consumer rights, unfair trade practices, and misleading advertisements, as well as any other actions that are detrimental to consumers. The main aim of enacting this Act was to include provisions for e-consumers as online buying and selling of goods and services have increased significantly in recent years.

This Act aims to protect the interests and rights of consumers by establishing Consumer Protection Councils to resolve disputes and provide adequate compensation to consumers in case their rights are infringed upon. It also emphasizes the use of alternate dispute resolution

2 Dr. M Rajanikanth, "A Study on Evolution of CPA in India– CPA1986,"6(4) *International Journal of Application or Innovation in Engineering & Management* 133-138(2017).

mechanisms to ensure the speedy and effective disposal of consumer complaints[3]. Moreover, the Act promotes consumer education to create awareness about their rights, responsibilities, and options for seeking redressal of grievances.

**Meaning of Consumer**

Before going into the details of the dispute settlement mechanism it is important to know the meaning of the consumer as the complaint is initiated by him and it is entertained by the Commission only if he qualifies the definition as per the act.The act defines Consumer[4] refers to someone who purchases goods for a consideration that has been made or promised, or a combination of both, including anyone who uses those goods with the approval of the purchaser, but not someone who obtains the goods for resale or commercial purposes; or hires or uses services for a payment that has been made or promised, or a combination of both, including anyone who benefits from those services with the approval of the person who hired or used the services, but not someone who uses the services for commercial purposes.

In the case of *Shrikant G. Mantri* v. *Punjab National Bank*[5], the Supreme Court held that in order for a person to be considered a 'consumer' while using a service for commercial purposes, they must prove that the service was solely intended for self-employment livelihood. The court found that the relationship between the appellant and the respondent in this case was purely a "business to business" arrangement, which falls under commercial purpose. The court emphasized that if business disputes were to be considered consumer disputes, it would defeat the purpose of the CPA, which aims to provide swift and simple resolution to consumer grievances. The court noted that the intention of the legislature was to keep commercial transactions outside the scope of the Act, while still granting protection to those who use such services solely for their self-employment livelihood.

3 The Consumer Protection Act, 2019.
4 The Consumer Protection Act, 2019, s.2(7).
5 Civil Appeal No.11397 of 2016.

**Power of Consumer Commission And Remedies Available To Consumers.**

The **Consumer Protection Act, 2019** serves as a robust legal framework aimed at safeguarding the rights and interests of consumers in India. Under the act, a **consumer** is defined as an individual who purchases goods or avails services for a valid consideration, whether fully paid, partially paid, or under deferred payment arrangements. This definition also extends to those engaging in **online and offline transactions**, including purchases made through electronic means, teleshopping, direct selling, or multilevel marketing. Additionally, it encompasses individuals who use goods or services with the buyer's consent.

Key Objectives of Consumer Protection:

1. **Upholding Consumer Rights**: To shield consumers from unfair trade practices, deceptive advertisements, and substandard products or services.
2. **Effective Grievance Mechanism**: To provide consumers with accessible and efficient platforms for resolving disputes.
3. **Encouraging Fair Trade Practices**: To ensure businesses adhere to ethical and transparent practices.
4. **Ensuring Accountability**: To hold manufacturers, sellers, and service providers responsible for the quality and safety of their goods or services.

Highlights of the Consumer Protection Act, 2019:

- **Consumer Rights**: The act guarantees rights such as safety, access to information, freedom of choice, grievance redressal, and the right to be heard.
- **Central Consumer Protection Authority (CCPA)**: A dedicated body established to address violations of consumer rights, unfair trade practices, and misleading advertisements.
- **Consumer Dispute Redressal Forums**: These forums, operating at District, State, and National levels, provide structured and efficient resolutions to consumer grievances.

- **E-commerce Coverage**: The act explicitly includes e-commerce transactions, holding online platforms accountable for consumer rights.
- **Penalties for Misleading Advertisements**: Manufacturers, advertisers, and endorsers face strict penalties for false or deceptive claims.This act empowers consumers while fostering a fair and transparent marketplace, benefiting individuals and the economy as a whole.

III. THE THREE-TIER DISPUTE REDRESSAL MECHANISM UNDER CPA, 2019

Chapter IV of the Act[6] provides for the establishment of a dispute redressal commission which is divided into three levels, namely the District, State, and National Commission.

**Establishment of District, State, and National Consumer Disputes Redressal Commissions**

Section 28[7] states the establishment of a Consumer Disputes Redressal at the level of the District, also known as the District Commission. Every district of the State is obligated to notify it. However, if deemed necessary, the State Government may establish more than one District Commission in a district. The District Commission shall be composed of a President and a number of members as prescribed in consultation with the Central Government, ranging from two to a maximum limit.

The State Government needs to set up a State Consumer Disputes Redressal Commission, known as the State Commission, by issuing a notification to enhance the resolution of consumer disputes. The State Commission will be headquartered in the State capital but may operate in other areas based on a notification issued in the Official Gazette by the State Government, in consultation with the State Commission. Additionally, the State Government may establish regional benches of the State Commission in various locations as it deems necessary. The composition of each State Commission shall include a President and a

6 The Consumer Protection Act, 2019.
7 The Consumer Protection Act, 2019,s. 41

minimum of four members, or the number of members specified in consultation with the Central Government.[8]

The National Commission is primarily based in the National Capital Region and carries out its duties in other locations as determined by the Central Government in collaboration with the National Commission, which will be announced in the Official Gazette. However, the Central Government may also set up regional Benches of the National Commission in various locations, as deemed appropriate, by issuing a notification[9].

In the case of *Vodafone Idea Cellular* v. *Ajay Kumar Aggarwal,*[10] the Supreme Court ruled that the availability of arbitration clause in the contract does not prevent the jurisdiction of the consumer forum. The court clarified that although consumers have the option to pursue arbitration, they are not obligated to do so and may choose to seek relief under the CPA. The court also stated that the addition of "telecom services" to the definition of Section 2(42) in the CPA of 2019 does not imply that telecom services are exempt from the jurisdiction of the consumer forum under the CPA of 1986. In fact, the definition of "service" in Section 2(o) of the 1986 Act is broad enough to encompass all types of services, including telecom services.

**Jurisdiction of the respective Commissions**

**Territorial Jurisdiction**

To file a complaint, one must approach the District Commission established within the local jurisdiction:[11]

(a) The opposite party, or all of the opposite parties (if there are multiple), at the time of filing the complaint, usually reside, conduct business, operate a branch office, or work for personal gain; or

(b) Any of the opposite parties (if there are multiple), at the time of filing the complaint, actually and willingly reside, conduct business,

8 The Consumer Protection Act, 2019, s. 42.
9 The Consumer Protection Act, 2019,s. 53.
10 2022 Live Law (SC) 221.
11 The Consumer Protection Act, 2019, s.34.

operate a branch office, or work for personal gain. However, in such cases, the permission of the District Commission is required.

(c) The cause of action, either wholly or partially, arises;

(d) The complainant resides or works for gain personally.

The State Commission is authorized to hear appeals against orders issued by any District Commission operating within the State and review the records and issue appropriate orders in consumer disputes that are either pending before or have been decided by any District Commission operating within the State. This applies when the State Commission finds that the District Commission exceeded its lawful jurisdiction, failed to exercise jurisdiction when it was required, or acted unlawfully or with significant irregularity in exercising its jurisdiction.[12]

The National Commission is empowered to:

(a) Adjudicate appeals against orders issued by any State Commission;

(b) Hear appeals against orders issued by the Central Authority; and

(c) Scrutinize records and provide suitable orders in consumer disputes that are either ongoing or have been resolved by any State Commission. This is applicable if the National Commission determines that the State Commission exceeded its legal jurisdiction, failed to exercise jurisdiction when necessary, or acted illegally or with considerable irregularity in exercising its jurisdiction.The National Commission's jurisdiction, powers, and authority may be exercised by its Benches, which can be constituted by the President with one or more members as deemed fit.[13]

The announcement of the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 by the Central Government brings attention to the quasi-judicial system established by the Consumer Protection Act of 2019. This system comprises three consumer commissions at different levels- district commissions, state commissions, and national

12 The Consumer Protection Act, 2019, s.45.
13 The Consumer Protection Act, 2019, s.58.

commission, each with its pecuniary jurisdiction. However, it was observed that the existing provisions were leading to cases that should have been under the National Commission's jurisdiction to be filed in State Commissions and those that should have been under State Commissions to be filed in District Commissions. This led to a significant increase in the workload of District Commissions, leading to a backlog of cases and slowing down the resolution process, which went against the Act's aim of providing prompt relief.

**Pecuniary Jurisdiction**

The Consumer Protection Act of 2019 has specified the financial jurisdiction for each level of the consumer commission, and in line with this, the Central Government has issued the Consumer Protection Rules of 2021. As per the Act's provisions, the District Commissions have the authority to handle complaints where the value of goods or services paid is up to one crore rupees. Complaints where the value of goods or services exceeds one crore rupees but does not exceed ten crore rupees are to be addressed by the State Commissions, while complaints where the value of goods or services paid exceeds ten crore rupees come under the jurisdiction of the National Commission.However, it was noted after the Act came into effect that the current provisions regarding the financial jurisdiction of consumer commissions resulted in a surge of cases being filed in District Commissions, which were previously under the jurisdiction of State Commissions. Furthermore, cases that should have been heard by the National Commission were now being filed in State Commissions, leading to a significant increase in the workload of District Commissions. This delay in resolving cases undermined the purpose of providing timely redressal to consumers, which the Act aimed to achieve.As per the provisions of the Act, complaints that involve goods or services worth up to one crore rupees as consideration are within the jurisdiction of the District Commissions. For complaints where the value of goods or services paid exceeds one crore rupees but is not more than ten crore rupees, the State Commissions have jurisdiction.

Complaints that involve goods or services worth over ten crore rupees as consideration fall under the jurisdiction of the National Commission.[14]

The 2021 rules stated[15] that, subject to other provisions of the Act, the new pecuniary jurisdiction will be as follows:

- Complaints with a value of goods or services paid as consideration not exceeding 50 lakh rupees will fall under the jurisdiction of District Commissions.
- Complaints with a value of goods or services paid as consideration exceeding 50 lakh rupees but not exceeding 2 crore rupees will fall under the jurisdiction of State Commissions.
- Complaints with a value of goods or services paid as consideration exceeding 2 crore rupees will fall under the jurisdiction of the National Commission.

It should be noted that the CPA, 2019 mandates that every complaint must be resolved as quickly as possible, with an effort made to make a decision within 3 months from the date of notice by the opposite party for complaints that do not require analysis or testing of commodities, and within 5 months for complaints that do require analysis or testing of commodities.

**Filing of Complaint**

According to Section 2(6) of the Act, a complaint is defined as a written allegation made by a complainant seeking relief under the Act for various reasons, including unfair trade practices, defective goods, deficient services, excessive pricing of goods and services, and the selling of hazardous goods. Furthermore, the complainant has the right to claim product liability against the manufacturer or service provider. The new Act has also introduced a provision for product liability, which makes the manufacturer or service provider liable to compensate consumers for any injuries caused by manufacturing defects or deficient services.In regards to the sale or delivery of any goods or services or any

14 The Consumer Protection Act, 2019, s. 58.
15 Ibid.

agreement, a complaint can be filed with the respective Commission having jurisdiction"

(a) The parties eligible to file a complaint include:

(a) The consumer who purchases or receives the goods or services, or claims unfair trade practices related to such goods or services;

(b) A recognized consumer association, irrespective of whether the consumer who purchased or received the goods or services or alleged unfair trade practices related to such goods or services is a member of the association or not;

(c) With the Commission's authorization, one or more consumers on behalf of all consumers with similar interests, for their benefit; or

(d) The Central Government, the Central Authority or the State Government, as applicable.

It is worth noting that complaints under this subsection can be submitted electronically, as prescribed. **A "recognized consumer association," as used in this subsection, refers to any voluntary consumer association registered under any prevailing law**.Every complaint submitted should be accompanied by a fee, as prescribed, payable in the prescribed manner, including electronic form.[16]

In the case of *Debashis Sinha* v. *M/S RNR Enterprise represented by its Proprietor/Chairman, Kolkata,*[17] the Supreme Court held that complaints by consumers should not be rejected by consumer forums on the ground that the consumers knew what they were purchasing.

**E-Daakhil Portal: A Convenient Electronic Filing System for Consumer Complaints**

The Act[18] offers consumers the convenience of filing their complaints electronically. To facilitate this, the Central Government has created the e-portal Portal, which enables consumers to approach the relevant consumer forum from anywhere in the country without the need for physical travel. This portal offers many features, such as e-notices, links to download case documents, and links for video conferencing

16 The Consumer Protection Act, 2019, s.35.
17 Civil Appeal No.3343 OF 2020
18 Supra note 14.

hearings. The opposite party can file a written response, while the complainant can file a rejoinder, and alerts via SMS/email are also available. **The E-Daakhil facility is currently available in 544 consumer commissions, including the National Commission and consumer commissions in 21 states and 3 Union Territories. Over 10,000 cases have already been filed on the portal, with more than 43,000 users having registered**[19].

**Procedure for Dispute Redressal in District Commission**

The District Commission shall be presided by the President and at least 1 member shall preside over each proceeding before the Commission. However, if a member is unable to continue the proceeding for any reason, the President and the remaining member carry on with the case from the point at which the previous member left off.

Upon receiving a complaint under Section 35, the Commission may accept or reject the complaint by order. The complaint cannot be rejected without giving the complainant an opportunity to be heard. The admissibility of the complaint should be determined within 21 days from the date of filing, except in exceptional circumstances. If the District Commission fails to make a decision on the admissibility of the complaint within the specified time, it will be presumed that the complaint has been admitted[20].The same procedure is applicable to the State and National Consumer Commissions as well.

In *IbratFaizan* v.*OmaxeBuildhome Private Limited,*[21]theApex Court ruled that the National Consumer Disputes Redressal Commission (NCDRC) qualifies as a "tribunal" as defined by Articles 227 and 136 of the Indian Constitution. Furthermore, the court determined that a writ petition against an order issued by the NCDRC under Section 58(1)(a)(iii) or Section 58(1)(a)(iv) of the CPA can be filed before the High Court under Article 227.

19 Ibid.
20 The Consumer Protection Act, 2019, s.36.
21 The Consumer Protection Act, 2019, s.74.

**Mediation as a Mode of Dispute Settlement Under CPA**

Mediation is an alternative method of resolving disputes outside of court, allowing parties to determine the procedure themselves. It is known for its efficiency in facilitating the settlement of disputes.[22]Under the CPA, 2019, a provision has been introduced allowing the relevant Commission to refer a consumer dispute for mediation if there is potential for a settlement between the parties. However, the parties must consent to the mediation process within a 5-day timeframe, as their agreement is crucial to the success of the mediation. In the event of a dispute being referred to mediation, the fee paid to the Commission for dispute redressal will be refunded to the parties[23].

To settle consumer disputes, a panel of mediators is available at the "Consumer Mediation Cell". This cell maintains a record of the proceedings and the cases. Before the mediation begins, the parties are required to pay a fee to the mediator. The mediator is expected to act impartially and make a fair judgment. The mediation process is confidential and both parties are required to attend the proceedings. They must provide all the necessary information and documents to the mediator. If the parties reach an agreement within three months, a settlement report is submitted to the Commission along with the signatures of the parties. The Commission is required to issue an order within seven days of receiving the settlement report. If no agreement is reached through mediation, a report of the proceedings is sent to the Commission. The Commission then hears the issues and decides the matter. Once the dispute has undergone the mediation procedure, it cannot be taken to other proceedings such as arbitration or court litigation.[24]

22 The Consumer Protection (Mediation) Rules, 2020, rule 5.
23 The Consumer Protection Act, 2019, s.37(2).
24 The Consumer Protection (Mediation) Rules, 2020, rule 6.

## IV. RECENT JURISPRUDENCE DEMONSTRATING EFFECTIVE DISPUTE RESOLUTION UNDER THE CPA

The passenger in M/S. Lufthansa German Airlines v. Mr. Rajeev Vaderah[25] misplaced seven luggage on a Lufthansa flight from Frankfurt to London. The bags were sent to him after a few days, completely empty and without any valuables. The customer claimed that the airline had not given them enough money to make up for their loss, anxiety, and mental anguish, and they lodged a consumer complaint with the District Consumer Commission. The District Consumer Commission concluded, after considering the facts, that the airline's employees had provided services negligently and could not be released from liability by asserting limited liability alone. The airline was ordered to reimburse the stolen goods for $5,000 USD and to pay Rs. 1.5 lakh in compensation for the costs of harassment, litigation, and other charges. The Delhi State Consumer Disputes Redressal Commission (DSCDRC) has maintained the District Forum's ruling on compensation for loss and mental harassment experienced by a passenger as a result of Lufthansa Airlines' improper handling of their baggage**.**

The National Commission denied that it lacked pecuniary jurisdiction in Anil Rawat v. Clarion Properties Limited[26], arguing that it did so because of Section 21 of the Act, which gave it jurisdiction over claims for compensation and goods and services valued at more than one crore rupees. The defendants' failure to give the complainant possession of the flat meant that the cause of action remained open, dismissing the objection that the Complaint was time-barred. The Commission was unable to locate any documentation to back up the opposing parties' assertion of "Force Majeure." Due to the developer's inability to furnish apartments within the allotted time frame, the matter was deemed to be in deficient service and fell under the purview of consumer forums. The respondent parties were directed by the Commission to provide delay compensation in the form of simple interest at an annual rate of 6% on

25 First Appeal No.-791/2014.
26 C.C.No. 1512 of 2017.

the sum paid by the complainants between the date of the offer of possession and the promised date of possession.

Similarly, in *Dr. AnandGnanaraj* v. *Floor N Dector*,[27]the District Consumer Disputes Redressal Commission, partly upheld a complaint filed by an individual against the company that supplied defective tiles for the complainant's house. The Opposite Party was directed to either replace the defective tiles in the complainant's house or pay a sum of 4,18,080/- INR, which was the cost of the tiles. Additionally, a compensation of 50,000/- INR was awarded to the complainant for the deficiency in service and mental agony caused.

The State Commission upheld a consumer complaint against a car dealer, service provider, and manufacturer for a brake-mechanism problem in Saravana Stores Tex v. Audi-Chennai[28]. The complainant applied for relief from the Commission, asking Audi, the automaker, to replace the defective car and to compensate him or her for suffering and mental anguish, among other things, to the tune of thirty lakhs/-INR.

Furthermore, the District Forum and State Commission's Order was maintained in Dr. Indra Chopra v. Rashmi Saxena…[29], a revision petition that was heard by a single bench of the National Consumer Dispute Redressal Commission. The Doctor was ordered by the NCDRC to pay Rs. 3,00,000 in compensation and Rs. 15,000 towards litigation costs after it was determined that they had engaged in carelessness. The patient had been admitted to the physician's assisted living facility in preparation for giving birth; but, as a result of the physician's and her helpers' carelessness, the patient's ureters were damaged during the caesarean section, and the infant was stillborn. The patient required more surgery, which added to the costs. An FIR was issued against the doctor under Sections 316 and 326 of the IPC after the patient's spouse filed a police case. A consumer complaint was also pending before the District Forum in Lakhimpur, Uttar Pradesh, in addition to the criminal prosecution. Following hearing from all parties, the NCDRC found that

27 Consumer Complaint No 313/2019.
28 C.C. No. 171 of 2014.
29 Revision Petition No. 2716 Of 2016.

the doctor had failed to uphold his duty of care. When the woman began experiencing intense labour pains, the doctor did not see her right away. The patient was placed in the care of untrained and unqualified aides by the doctor. The infant died because the caesarean section was hastily done at a later stage.

The NCDRC accepted a complaint against IDBI Bank Limited in BinodDokania v. IDBI Bank[30] Limited, alleging a failure in service on the side of the respondent bank. The complainants have lodged their initial complaint against the other party/IDBI bank under sections 21 and 22 of the CPA, 1986. The complaint claimed that the other party had lost or destroyed the original title documents to his residential flat, so constituting a failure in service. In order to obtain a house loan from the Bank, the paperwork was sent to the other party.

Regarding all the papers that have not been returned to the complainants in their original form, the NCDRC ordered the opposing party to provide an indemnity bond in the complainant's favor. Additionally, the NCDRC ordered the respondent to pay the complainants Rs. 20 lakhs for financial damages, Rs. 1 lakh for mental suffering and harassment, and Rs. 50,000 for litigation costs.

**Critical analysis of The Act.**

The **Consumer Protection Act, 2019** is a landmark piece of legislation that addresses the complexities of consumer rights in the digital and globalized era. It modernizes the framework established under the Consumer Protection Act of 1986, aligning it with the needs of contemporary commerce. This Act offers substantial improvements, but its implementation and certain gaps merit closer scrutiny.

**Strengths and Key Features**

The 2019 Act introduces several progressive provisions that strengthen consumer rights and enhance accountability for businesses. One of the key features is the **expanded definition of "consumer"**, which includes transactions conducted online through e-commerce platforms, teleshopping, and multilevel marketing. This ensures that

30 C.C. 2218 of 2018.

digital consumers are afforded the same legal protections as those purchasing offline. Another significant development is the establishment of the **Central Consumer Protection Authority (CCPA)**. This regulatory body has the authority to investigate complaints, impose penalties, and order product recalls, providing a centralized mechanism to address consumer grievances and unfair trade practices.The Act improves the **dispute redressal process** by increasing the monetary jurisdiction of consumer courts and allowing consumers to file complaints in the district of their residence or workplace. This enhances accessibility for consumers, especially in rural areas. Additionally, the introduction of **mediation** as an alternative dispute resolution mechanism promotes amicable settlements and helps reduce the burden on courts.A noteworthy advancement is the regulation of **misleading advertisements**. Advertisers, manufacturers, and endorsers can now face penalties for false or deceptive claims, promoting transparency and consumer trust. The Act also places obligations on e-commerce platforms, requiring them to provide clear product details, adhere to return policies and address grievances effectively. These measures reflect the Act's adaptability to the evolving marketplace.

***Challenges and Opportunities for Improvement***

Despite its much strength, the Consumer Protection Act, 2019, faces significant challenges in its implementation and scope. The effectiveness of the CCPA depends on adequate resources, coordination with local authorities, and avoidance of jurisdictional conflicts with existing regulatory bodies. Moreover, while penalties for misleading advertisements are a step in the right direction, the absence of a robust mechanism to verify claims in advertisements could limit enforcement effectiveness.Although the inclusion of e-commerce transactions is commendable, the Act lacks provisions addressing key concerns like **cross-border transactions, data privacy, and cybersecurity**. With the increasing prevalence of online fraud and data breaches, these omissions leave consumers vulnerable. Similarly, while the revised monetary jurisdiction of consumer forums allows them to handle higher-value

claims, the limits may still be inadequate in light of rising costs and inflation.The backlog of cases in consumer forums continues to pose a challenge, even with the introduction of mediation. Public awareness of the mediation process and the availability of trained mediators are essential for its success. Furthermore, as the digital economy grows, the Act must evolve to address issues such as deceptive practices in digital marketing and emerging technologies.To maximize the Act's impact, there is a need for **greater consumer awareness campaigns**, training for mediators and adjudicators, and enhanced monitoring of its provisions. Amendments addressing **data protection and cybersecurity** would make the Act more comprehensive. Clearer guidelines for endorsements and advertisements would further ensure accountability among businesses and celebrities.The Consumer Protection Act, 2019, is a forward-thinking piece of legislation that empowers consumers and modernizes the regulatory framework. It demonstrates significant progress in addressing unfair trade practices, enhancing consumer grievance mechanisms, and regulating e-commerce. However, its successful implementation and the resolution of emerging challenges in digital commerce will be crucial to achieving its objectives. By addressing these gaps and building on its existing strengths, the Act can ensure a more equitable and transparent marketplace for Indian consumers.

## V. CONCLUSION

A crucial component of consumer protection legislation is dispute resolution procedures, which give customers a way to resolve any complaints they may have against companies. These procedures may be conducted in court, through arbitration or mediation, among other formats.Because they offer a fair playing field for customers who might not have the financial or legal means to sue companies in court, consumer forums are crucial to consumer protection. In the absence of such procedures, customers might feel helpless and unable to hold companies responsible for any harm they may have caused.Additionally, dispute settlement procedures offer a more effective and economical

means of resolving conflicts, especially in cases involving lesser claims. For instance, disputes handled through mediation and arbitration can frequently be settled faster and more affordably than those resolved through drawn-out, costly judicial procedures. Furthermore, strategies for resolving disputes can promote improved ties between customers and companies. Consumers are more inclined to trust firms and keep doing business with them when conflicts are settled fairly and effectively, while businesses are more likely to see customers as valued clients and treat their complaints seriously.In many countries, consumer protection laws require businesses to have dispute settlement mechanisms in place, which can be a powerful deterrent against fraudulent or deceptive business practices. When businesses know that consumers have access to a fair and impartial dispute settlement process, they are more likely to comply with consumer protection laws and avoid engaging in unethical or unfair trade practices.The recent judicial approach has adopted the process of consumer constitutionalism by adopting consumer centric approach. The judicial approach is more inclined towards consumer rights centric as it has adopted the model of right based approach. The adoption of mediation centric mode as one of the model of dispute redressal under the Act has added its importance and relevance as expressed by the various judicial dictums. There is a need to regulate the mechanism for effective redressal mechanism. The identified gaps need to be regulated for effective administration of redressal mechanism. The online dispute redressal mechanism need to be strengthen more.

# Validity of Plain Packaging under TRIPs Agreement: Analysis of WTO Panel Findings

Dr.Vandana Mahalwar*

***Abstract***

*The Plain Packaging of cigarettes and tobacco products to discourage the consumption of tobacco, has raised a number of trademark issues in international IP regime. The 'plain packaging' measure prohibit the use of trademarks on the packaging of tobacco products. This Article discusses the fundamental question whether plain packaging requirement deprives the trademark proprietors from exercising the essential function of trademark rights. The WTO Dispute Resolution Panel gave its landmark decision on 28 June 2018, pronouncing that the law on plain packaging in Australia comply with the TRIPS Agreement. The decision is significant as it reaffirmed that there is no 'positive' right to use a trademark, and that the plain packaging measures are in concurrence with TRIPS obligations. In this Article, the author attempts to examine the trademark issues that are discussed by WTO Panel in its Report on Australia's Tobacco Plain Packaging. It also discusses the main arguments made by parties and key findings of the Panel on trademark issues. Lastly, the Article presents that the WTO Report can encourage the countries to adopt such measures for other products also.*

* Assistant Professor, Faculty of Law, University of Delhi.
Email: vandana.mahalwar@gmail.com

## I. Introduction

Plain Packaging refers to those regulations or guidelines that require tobacco products and cigarettes to be sold in generic or standardised packaging, without any trademarks, logos or brand names. In other words, the term plain packaging refers to generic packaging of tobacco products that simply has the company name on the packet in a standardised size, font and colour. This packaging aims to discourage the promotional and advertising aspects of the cigarette packs. Instead, it bears the geographical health warnings, tax stamps and other mandatory information. Hence, there is no trademark on the packaging of cigarette except the name of company that has manufactured this product. The trademarks, if allowed to be used on cigarette packaging enhance the appeal and attractiveness attached to the cigarette box which acts to pose risks to public health. On the other hand, the plain packaging initiative helps in restricting the smoking behaviours and the overall consumption of tobacco. The dull and non-appealing packaging of cigarettes with only brand name helps in inhibiting its consumption by the consumers.In the case *J. T.*International *S.A v. Commonwealth of Australia*[1], the validity of Tobacco Plain Packaging Act 2011 was contested by some tobacco companies. While upholding the validity of the Act, the High Court of Australia noted: "The objects of the Packaging Act are to improve public health…Improving public health encompasses discouraging people fromusing tobacco products, encouraging people to give up smoking…."

While the packaging policy seems to be of immense benefit for public health, it stands in conflict with the interests of trademark proprietors. The right to possess property, be it physical or intellectual, is a basic human right. There has been much litigation by various tobacco companies against the plain packaging scheme as it deprives the tobacco manufacturers from the recognition of their trademarks. Trademark, primarily serves the purpose of identification of source of a product to the consumers, and this essential purpose gets jettisoned by the plain packaging policies. The tobacco companies who spend massive amount

1 *JT International SA v Commonwealth of Australia* [2012] HCA 43

in promoting their trademarks at national and international levels, get affected by ban on use of trademarks. Many of such companies' trademarks are those who emerge as well-known trademarks. The proprietors have to face the persistent threat on their monopoly rights, not only from the legislation and courts, but also from the civil society groups. From the consumers viewpoint as well, it becomes difficult to ask for a product manufactured by a particular manufacturer. Hence, it diminishes the competition and discourages investment by traders.

## II. The Convention for Tobacco Control

The expansion of tobacco at international fora never remained ungoverned. There have been international efforts to make flexible arrangements to regulate tobacco for public health reasons. One of the significant steps is the establishment of WHO Framework Convention on Tobacco Control (FCTC *hereinafter*).

On May 21, 2003, the WHO FCTC was adopted by the World Health Assembly, and it came into force on February 27, 2005.[2]WHO FCTC emerged as a response to globalization of the tobacco industry that represented a menace to the public health worldwide. The FCTC provided a strategy to the parties to combat the tobacco epidemicand adopt some measures for the reduction in demand of tobacco.[3] To note, the Convention focuses on the strategy to only reduce the demand and supply of tobacco, not to prohibit the same as in other drug control treaties. The Convention has been ratified by 182 countries till date. India ratified the Convention on 5th February 2004. The use of trademarks has not been dealt under the Convention. But, Article 11 provides the measures that member states need to adopt in order to prevent deceptive and misleading promotion of tobacco.

## III. Plain Packaging Restricting Trademark Rights

Trademark, like other Intellectual Properties, is an intangible property and confers no absolute right on the proprietor. Trademark acts as communication tool that performs primary functions of:

2 The W.H.O.Framework Convention on Tobacco Control[2003], foreword
3 Ibid, art 6 & 7

- Product differentiation function
- Identification of origin of the product
- Guarantees the quality of product

From trademarks perspective, the plain packaging affects the basic functions. With plain packaging, it becomes difficult for consumers to identify the brand of product which they want to purchase. Restricting the use of brand logos, plain packaging impedes the basic purpose of trademark, that is, the indication of origin. The standardisation of packaging has both restrictive element as well as positive element. The restrictive element deprives the trademark proprietor from exercising the core function of trademark, while the positive element mandates the manufacturers to use the graphic health warning more prominently.[4]One of the most contentious issues in plain packaging scheme is its compatibility with the TRIPs Agreement. The TRIPs Agreement has laid down the minimum standards of protection which the member states are required to implement at national levels. The provisions of trademarks protection as contained in the TRIPs Agreement are largely derived from the Paris Convention. Article 15-21 of the Agreement deal with substantive standards of trademark protection. These Articles include protectable subjectmatter of the trademark (Article 15), 'content and scope of the exclusive rights conferred on trademark proprietors' (Article 16), the 'exceptions to the trademark protection' (Article 17), the 'term of trademark protection' (Article 18) and other Articles regarding requirement of the use of trademarks and licensing and assignment.[5]

*Article 20*

As already mentioned, the interpretation of Article 20 of the TRIPs Agreement is crucial in the present debate. It is imperative to consider Art.31 and 32 of the Vienna Convention on the Law of Treaties for interpreting the provisions of TRIPs. The controversies regarding plain

4 Chang Fa Lo, 'Plain Packaging and Indirect Expropriation of Trademark Rights Under BITs' [2012] 31 Medicine and Law Journal 521, 527

5 The TRIPS Agreement, article 18, 19 & 21

packaging have centred around the construction of Article 15(4), 17 and 20 of the Agreement. The argument that plain packaging is in contravention of TRIPs, triggered disputes before WTO dispute settlement adjudication bodies.[6]The first sentence of Article 20 lays emphasis on 'the prevention of unjustifiable encumbrances' on 'the use of trademark in the course of trade'.[7] Article 20 prevents small scale encumbrances on trademark's use, but does not impose a complete ban.The provision is silent as to what constitutes a justifiable encumbrance, but it lists three kinds of requirement which can be regarded as unjustifiable encumbrances on use of trademarks.[8] The first pre-requisite refers to the linking-procedure, that is requiring the trademark to be used in combination with another trademark.[9] The second requirement under Article 20 prohibits use of the trademark in a 'special form'. The phrase 'special form' can be interpreted as a standard format or colour scheme for all the trademark proprietors. The third requirement mentions about those measures that can be detrimental to trademark's 'capability to distinguish'.[10] In put in other words, the use of trademark in a manner that affects its ability 'to distinguish the goods or services of one undertaking from those of other undertakings'. This requirement is aimed at enabling the consumers to identify the goods they want to purchase and to be assured about the quality associated with the trademark. To put in other words, any scheme requiring standardised packaging impairs the distinguishing function of trademark. This probably is a situation that Article 20 aims to encumber on a justifiability scale. The issue is 'whether plain packaging is an

6 Alberto Alemanno& Enrico Bonadio,'The Case of Plain Packaging of Cigarettes' [2010] European Journal of Risk Regulation 268

7 AmulyaChinmaye&SaahilDama, 'Plain packaging: TRIPping on trade marks?' [2016] 11 *JIPLP* 913

8 A. Maxwell, 'Plainly Justifiable: The World Trade Organizations Ruling on the Validity of Australia's Plain Packaging under Article 20 of the TRIPS Agreement' [2019] 14 Asian Journal of W.T.O.and International Health Law and Policy 115

9 Stoll PeterTobias et al., *W.T.O.- Trade-Related Aspects of Intellectual Property Rights*[7 ed. MartinusNijhoff2008] 345

10 ibid

encumbrance by special requirement' and is covered under Article 20 of TRIPs. The issue needs the examination of the language of Art.20 in this context. Article 20 must not be interpreted in isolation as if it stands on its own. Rather it needs an interpretation in light of other provisions of TRIPs.

*Use versus Registration*

Art. 15.4 of the Agreement provides that "*the nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark."* Hence, the measures that prevent registration of any trademark on the ground that it is used on tobacco products may violate Article 15.4 of TRIPs.[11] The other significant provision that may help us to interpret the functioning of trademarks, is Article 15.1 of TRIPs. This Article refers to the product distinguishing function of the trademark. The proprietors of trademark have a clear manifest interest in trademark's capability to distinguish.[12] Some commentators have also argued that the scheme of plain packaging is not in contravention of Article 15 as it prevents only registration of trademark, not the use of trademark.[13] Consequently, in case of plain packaging, a trademark is prohibited from being used on tobacco products, but its registration is not prohibited in respect of tobacco products. Moreover, the TRIPS Agreement does not give any right to anyone to use the trademark but to simply prevent unauthorized use of a registered trademark.[14] This interpretation further gives rise to a pragmatic question: why a manufacturer would apply for registration of a trademark which is prohibited from being used?

11 Paris Convention for the Protection of Industrial Property 1883, art 7.

12 Daniel J. Gervais & Susy Frankel, 'Plain Packaging and Interpretation of the TRIPS Agreement'[2013] 46 Vanderbilt Journal of Transnational Law 1149

13 Voon& Mitchell, 'Face Off: Assessing WTO Challenges to Australia's Scheme for Plain Tobacco Packaging' [2011] 22 Pub. L. Rev. 218, 236

14 Carlos M. Correa, '*Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement'* (OUP 2007)182–6

To answer this question, it is relevant to analyse Article 19.1 of the TRIPS, which provides "if use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, *unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner*." The provision provides that registration can not be cancelled if the proprietor justifies non-use due to 'valid reasons'.[15] Valid reasons may include any technical problem in manufacturing the products to be labelled with the trademark. Hence, on the basis of the above provisions, it would be appropriate to conclude that there exists no explicit right to use trademark.

## IV. The Tobacco Plain Packaging Act, 2011

On 21st November 2011, parliament of Australia passed the Tobacco Plain Packaging Act , requiring plain and generic packaging on all tobacco products. The legislation was adopted as a tobacco control measure. The Act was enacted with an object to improve the health of publicby motivating folks to quit using tobacco products, to stop smoking, and to follow Australia' obligations of the Convention on Tobacco Control.[16] The Act intends to do this by 'making tobacco products less appealing to consumers, to increase the efficiency of health warnings on the tobacco products retail packaging and to lessen the potential of tobacco products' retail packaging to deceive customers about the adverse consequences of tobacco use, including smoking.[17] The Act is applicable to all the tobacco products and requires the retail packaging to have 'no decorative ridges, embossing, bulges, irregularities of shape or texture, or other embellishments, including coloured glues or adhesives, can be used on tobacco packaging.[18] Section 20 of the Act clearly prohibits the appearance of any trademark anywhere on tobacco products' retail packaging. The Act allows "the

15 Stoll Peter-Tobias et al., *W.T.O.: Trade -Related Aspects of Intellectual Property Rights*[ 7 ed. MartinusNijhoff 2008] 341
16 The Tobacco Plain Packaging Act 2011, s 3 (1) (a) (i) –(iv)
17 ibid s 3(2) (a) to (c)
18 ibid s 18

brand, business or company name for the tobacco products, and any variant name for the tobacco products" to be used on the packaging of tobacco products.[19] The law has also mandated that the graphic health warnings have to be displayed, covering '75% of the front of tobacco packaging and 90% of the back of packaging'. It also provides prescriptions of the packaging such as specific dimensions, 'matt finish in a drab dark brown colour'.[20]

V. **Plain Packaging and WTO Dispute**

The big tobacco companies challenged the TPPA at both national and international levels.[21] The reason behind challenges is not the incompatibility of TPPA with the IP laws, but with the international instruments like the TRIPs Agreement. During September 2012 to April 2014, five member states of WTO made requests to WTO to create dispute settlement panels for the adjudicating the validity of TPPA as per TRIPS provisions. The five nations are Indonesia, Cuba, Honduras, the Dominican Republic, and Ukraine (which later withdrew its complaint). Each of these complainant countries manufactured tobacco products but 'trade flows between them and Australia have been low or non-existent'.[22]The complainant members claimed that the plain packaging measures have been adopted in contravention of the TRIPs Agreement, the 'Agreement on Technical Barriers to Trade', 'the General Agreement on Tariffs & Trade 1994'.Six years after the complaints were filed, on 28 June 2018, the WTO circulated its panel report in favour of Australia. The WTO Panel Reports were adopted by Dispute Settlement Body on 27th August 2018. The panel's decision that runs to 888 pages is important mainly for the reason that it stated the right to use trademark as not a positive right and held that the plain packaging measures are not

19 ibid s 20 (3)
20 ibid s 19
21 There were 39 international cases at different levels. For more, see S.Puig, 'Tobacco Litigation in International Courts' (2016) Vol. *57(2)*Harvard Int. L. J., 283
22 S.Puig, 'Tobacco Litigation in International Courts'Vol. 57(2)(2016)Harvard Int. L. J.
38 3,411

consistent with the provisions of TRIPS Agreement. The Panel found that the TPPA measures adopted by Australia were a 'meaningful contribution to Australia's objective of reducing the use of, and exposure to tobacco products.'[23] In the voluminous report, the Panel examined the issues thread barely. This section discusses the findings of WTOPanel on trademark issues.

*Article 16.1 of TRIPS*

In relation to TPPA, it was crucial for the Panel to interpret the scope of Article 16.1. The complaining parties claimed that TPPA provisions are in contravention of Article 16.1 as bar on the use of the tobacco-related trademarks diminishes trademark's distinctiveness and erodes the ability of trademarks to demonstrate the 'likelihood of confusion'. In other words, complainants argued that TPPA measures contravene Article 16(1) in dual manner; first, by diminishing the distinctiveness or strength of a trademark and second, the reduced distinctiveness of a trademark makes it for difficult for the trademark owners to prove the 'likelihood of confusion'. [24] Citing the previous Panel decision in *E.C.- Trademarks and Geographical Indications*[25], Australia argued that trade marks proprietors have 'legitimate interest to use' their trademarks and 'the ability to use the trademark is a general market freedom and not a right protected by Article 16.1'. Australia also argued that Article 16(1) does not give any 'right to confusion' which"would require Members to ensure that a likelihood of confusion arises so that trademark owners would be able to prevent use of similar signs".[26]

23 The W.T.O. Panel Report, Australia "Certain Measures Concerning Trademarks, and other Plain Packaging requirements applicable to Tobacco Products and Packaging", ( June 28, 2018] WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R, 7.1043

24 Ibid,7.1986

25 European Communities - Protection of Trademarks and Geographical Indications for Agricultural products and foodstuffs [15 March 2005] (WT/DS174/R)

26 The W.T.O. Panel Report, 7.1984

*Article 20 of the TRIPS Agreement*

Complainants made claims under Article 20 of TRIPs, which reads as:

"The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings."

Complaining members argued that the trade mark restrictions under TPPA impose 'special requirements' that 'encumber' use of trademark 'in the course of trade', and such special requirements are 'unjustifiable'.[27] To establish a violation under Article 20, following three elements need to be proved:

*'Special Requirement'*

The first issue related to Article 20 was whether Australia's TPPA measures constituted 'special requirement'. It further posed a question whether prohibition on use of trademark is a special requirement under Art. 20. To determine what constitutes 'special requirement', the Panel looked at the ordinary meaning of the phrase in consonance to purpose and aim of the Agreement.Australia argued that rights that the member states are obliged to confer as per theAgreement are the negative rights to exclude others, not 'rights of use'.[28] Australia was of the view that Article 20 deals with special requirement imposed *on the use of trademark*. Hence, Article 20 is concerned with '*how* a trademark may be used *when it is used*, not to *whether* it can be used.'[29] If the national legislation does not allow use of trademark, then Article 20 does not come into play.

27 Ibid. 7.2135
28 Ibid. 7.2188
29 ibid.7.2185

*'Encumbrance'*

The next question before the Panel was for deciding whether 'special requirement' can be considered asimpedingthe use of a trademark. In order to determine the violation under Article 20, it is necessary to prove that the special requirements impede in the use of a trademark. The term 'encumber' was also given an ordinary meaning, that is, 'to restrict or impede something in such a way that the action or movement is difficult'.[30] To determine the ambit of 'encumbrance' under Article 20, the WTO Panel differentiated between highly restrictive requirement that is almost near to prohibition and would require a justification, and on the other hand, an outright prohibition of use that would not require any justification.[31]The TPP standards only allow for the use of wordmarks which convey name of brand. They forbid the use of any figurative or stylised word marks. The complaining parties claimed that TPP measures requiring use of word marks impose 'special requirements'. The Panel agreed with this view of the parties that such use constitutes 'special requirements' as per Art. 20.

*'In the course of trade'*

The next important question before the Panel was whether these special requirements encumber use in the course of trade. The phrase 'in the course of trade' has diverse interpretations. Australia argued that 'the course of trade' means acts undertaken during purchase and sale of products for profit[32] and use of trademark can be impeded only when the goods bearing the trademark remain within 'the course of trade' that culminate at time of sale.[33] The Panel noted that the phrase is also used in Article 16.1 and Article 24.8 of the TRIPS Agreement, as well as in Article 10$^{bis}$(3)(3) and (3)(2) of the Paris Convention. The validity of the TPPA hinged upon the interpretation of 'unjustifiably' in light of Art.

30 Ibid7.2235
31 Ibid 7.2238
32 Ibid 7.2252
33 Ibid

20.[34] WTO Panel had not considered interpretation of this word earlier. The Panel gave an ordinary meaning to the term 'unjustifiably'. The term 'unjustifiable' means 'without justification, indefensible'. Justifiable means ability 'to be legally or morally justified, able to be shown to be just, reasonable, or correct, defensible'. The term 'justifiable' means in 'a justifiable manner with justification'.[35]It was concluded by Panelthat the phrase 'unjustifiably' means a state wherein the use ofatrademark is encumbered by certain restrictions without adequate reason or justification.[36]To sum up, WTO Panel recognised that 'trademarks have substantial economic value and that the special requirements are far-reaching in terms of the trademark owners possibilities to extract economic value from the use of figurative or stylized features of trademarks'.[37] The Panel noted that requirements of plain packaging do not 'unjustifiably encumber the use of trademarks in the course of trade' as per Art.20 of the Agreement.

34 A. Maxwell, 'Plainly Justifiable: The World Trade Organization's Ruling on the Validity of Australia's Plain Packaging under Article 20 of the Trips Agreement' [2019] 14*Asian J. W.T.O.& Int. Health .L &Pol'y 115*, 124

35 The WTO Panel Report, 7.2394

36 ibid 7.2395

37 ibid 7.2604

## VI. Conclusion

WTO Panel's decision can be said to have various positive impacts. The most obvious impact of the TPPA is the reduction in tobacco use. According to World Health Organization, consumption of tobacco kills more than 8 million of population annually. The report provides that above7million of the deaths are due to the direct use of tobacco and around 1.2 million deaths are of passive smokers.[38]The report can encourage other countries to regulate other injuriouseatables and drinks. The Chilean Government took an initiative to diminish the advertising of unhealthy foods. The Chilean laws impose ban on the sale of food items like ice cream, potato chips and chocolates in schools and also prohibits the advertisements of such products during television programmes for kids. As per the recommendation by Public Health England,[39] a government advisory agency, alcohol bottles should be offered in simple packaging with higher health warnings. It can be said that the WTO findings on plain packaging can go beyond tobacco products.Apart from the right to use a trademark, this issue also involves a question of proportionality. The standardised packaging also needs to be considered from the lens of proportionality. As there is a clash of interests between trade interests and public health, it becomes imperative to apply the proportionality standard in order to balance the two opposite interests. The proportionality test is known for decades to balance the interests. As per the proportionality, the right to use a trademark should be conferred on a person, keeping in mind that it is not disproportionate to harm the public health. The proportionality standard is generally applied by courts in those cases wherein the question of fundamental right is involved. In the present case, the standardized packaging is a measure that impinges upon the right to health of the passive smokers, thatneeds to be weighed

38 *Tobacco Fact Sheet*, WHO, https://www.who.int/news-room/fact-sheets/detail/tobacco#:~:text=Tobacco%20kills%20more%20than%208,%2D%20and%20middle%2Dincome%20countries.

39 C. R.Zocco, 'Plain Packaging: A Growing Threat to Trade mark Rights', *Les Nouvelles*, 141 (2013)

against the trade interests of the companies. It is important to note that fundamental right of citizens at large has to be the considered while applying the proportionality standard. The larger public health issues demand the application of proportionality. As there is no right to use a trademark in international instruments, the traders' interests can successfully be limited in favour of the larger public health issues.

# Conceptualizing Muslim Women's Empowerment through Criminalization of Triple Talaq: An Analysis

**Dr. Surender Mehra***

**Arpit Keshari****

***Abstract***

*"Instant Triple Talaq" refers to the practice of irrevocably divorcing a wife by pronouncing "talaq" three times consecutively, regardless of the iddat. Under this form of talaq, once a definitive separation occurs, the parties cannot remarry without undergoing Halala and then being divorced from him. This practice has been criticized as arbitrary, discriminatory, and oppressive to Muslim women. While recognized but disapproved among Hanafi schools, it lacks sanction from the Holy Qur'an or approval from the Prophet. In this paper, the author attempt to deal with various divorce modes in Muslim law and examines the Supreme Court's judgment in Shayara Bano v. Union of India[1], which invalidated triple talaq. Additionally, it analyzes The Muslim Women (Protection of Rights on Marriage) Act, 2019, assessing impact on empowering Muslim women and fostering marital harmony while suggesting alternative remedies to prevent triple divorce and protect women's rights*.

***Keywords: -****Personal Law, Muslim Women, Triple Talaq, Marriage*

## Introduction

As citizens and members of the largest minority in India, Muslim women confront significant obstacles due to the widespread portrayal of them as helpless victims. Muslim women's poor status is primarily defined by their lack of three fundamentals: knowledge (measured by literacy and average years of schooling), economic power (job and money), and autonomy (ability to make decisions and physical

* Assistant Professor,Faculty of Law,BHU, Varanasi.

** Research Scholar, Ph.D.(Law), Faculty of Law, BHU, Varanasi.

1 *Shayara Bano v. Union of India,* AIR 2017 9 SC 1

movement).[2]Personal law is a contentious topic for both the women's movement and orthodox Hindu and Muslim groups. This includes marriage, divorce, inheritance, custody rights, and other issues. It marks the interaction between women and the State as well as the dynamics between men and women in marriage and family life. In post-independence India, personal laws are regulated by the relevant religion laws, while civil and criminal laws are secular. Muslim women were therefore subject to Muslim personal family law.

Muslim personal law, which had not been altered by legislation since the Dissolution of Muslim Marriages Act of 1939 and the Muslim Personal Law (Shariat) Application Act of 1937, was brought back into focus by the Shah Bano case[3]. The Domestic Violence Act, 2005[4], the POSH Act, 2013[5], and other gender-just laws, along with the Indian Constitution that grants equal citizenship rights to all Indians [6]and offers protections for minorities[7], do not give Muslim women the visibility they deserve.

## DISSOLUTIONOF MUSLIM MARRIAGE

Divorce is undoubtedly a social evil, but it is also a necessary evil since it destroys family cohesiveness. By forcing the parties into an unpleasant companionship, it is preferable to destroy the family's unity than to destroy their future happiness. Even the children will not benefit much from being in a hostile family, but even though divorce is inevitable, we can try our best to make sure that the members of the family's standing is clear following the decree absolute.[8]

According to Muslim law, a marriage can be dissolved by the parties themselves or by the death of one of the spouses.

---

2 Kalpana Kannabiran (ed.), *Religion, Feminist Policies and Muslim Women* (NewDelhi,2014).
3 *Mohd. Ahmed Khan v Shah Bano Begum (*1985) 2 SCC 556.
4 The Protection of Women from Domestic Violence Act, 2005
5 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), 2013
6 The Constitution of India, Art. 14-18.
7 The Constitution of India, Art.29&30.
8 GC Chesire, '*The International Validity of Divorces*' (1945) 61 *Law Quarterely Review 352.*

According to Muslim law, a party's act of dissolution can take one of the following forms:

1. By the husband, such as through zihar (harmful absorption), ila (vow of continence), and talaq (repudiation).

2. By the spouse: tafwid-e-Talaq

3. By agreement: mubara'at (mutual liberation), khula (redemption).

4. Through Judicial Process; faskh (judicial revocation) and li'an (mutual imprecation).

## Talaq

The term "talaq," which is commonly translated as "repudiation," derives from the Arabic word "tallaqa," which means "to release (an animal) from a tether." Repudiating a wife or releasing her from the bonds of marriage is the result. It represents the husband's unrestricted ability to divorce his wife at any time in legal terms.[9] The divorce operates from the time of the pronouncement of *talaq*. It may be oral or in writing (*talaqnama*).If a Muslim husband is of sound mind, he is free to divorce his wife at any time and without giving a reason. It may not be essential that the *talaq*be pronounced in the presenceof the wife, such a pronouncement to be effective, it ismade known to her.[10]

**Modes of Talaq:**

**Talaq pronouncements can be made in an irrevocable or revocable manner. Since the Prophet of Islam disapproved of talaq, the reversible versions are regarded as "approved," while the irreversible ones are regarded as "disapproved."He is reported to have said that 'with Allah the most detestable of all things permitted is divorce.'[11]Talaq may be effected by the act of the husband by the following modes i.e.,**

talaq-al-sunna (i.e., according to the prophet's teachings): (i) ahsan, the most favoured; (ii) hasan, the most favoured.

9 Encyclopedia of Islam III, 636-40

10 Fyzee, *Outlines of Muhammadan Law* 120(Oxford University Press,London 5th Edn., 2008).

11 Tyabji, *Muhammadan law* 143(Bombay, 3rd Edn., 1940).

talaq-al-bid'a, or innovation; as such, it is not authorised. This involves: (i) making three statements at once, sometimes known as the "triple divorce"; (ii) making one irreversible pronouncement (usually in writing).[12]

While the husband has the authority to end a Muslim marriage, the woman may also do so by using one of the aforementioned methods, such as Khula, Lian, Mubar'at, etc.

This discussion will be limited to Talaq, or divorce by the husband's act, also known as Talaq-ul-bid'a and Talaq-us-Sunnah.

***Talak-ul-Sunnah*** –This is a talaq that is influenced by the Prophet's customs. It may be in the most authorised format.

***Ahsan*** – The *Hedaya* brands it as the most laudable divorce.[13]Under the "Ahsan" version, a single proclamation is made during the tuhr (purity, or when a woman is free from her menstrual cycle). This is followed by a complete Iddat and a period of abstention from sexual activity at that time. Under Shia law, a divorce is null and void if any such sexual relations occur during the previously stated term. Throughout Iddat, it is reversible. A revocation of this kind may be made explicitly or through actions, such as the restart of conjugal relations.

***Hasan*** –Though not as approved as Ahsan, Hasan is nonetheless a valid form. It is composed of three statements made one after the other during three consecutive tuhrs (purity times). The divorce in Hasan form becomes final on the third declaration. The husband has been granted two opportunities to divorce and then win back the wife using this form of talaq; but, after the third attempt, the talaq is final. Remarrying between the parties becomes impossible unless the wife enters halala, the marriage is annulled, and having sex becomes illegal.

***Talaq-ul-Bid'a or talaq-ul-bain***–Bidat is a term meaning unacceptable, incorrect, or partially outlawed innovation. Another term for this in common usage is instant triple talaq.[14]Both during the first

12 Tyabji, *Muhammadan law* 141(Bombay,3rd Edn.,,1940)

13 Syed Khalid Rashid, *Muslim Law* 72, (Eastern Book Publication, Lucknow, 5thEdn.,2009).

14 Yawer Qazalbash, *Principles of Muslim Law* 186 (Modern Law House, Lucknow, 3rd Edn., 2016)

Caliph Abu Bakr's reign and for more than two years under the second Caliph Umar's, it was not in use. Later on, Hazrat Umar gave his permission due to a unique circumstance. After conquering Syria, Egypt, Persia, and other regions, the Arabs sought to marry the women there because they were more attractive than those from Arabia. However, the Syrian and Egyptian women stipulated that in order for them to marry them, they had to simultaneously seek for three divorces in one sitting from their current spouses. The requirement was easily accepted by Arabs since they were aware that divorce is only legal in Islam twice, during two different times of tuhr; repeating the divorce at one sitting is invalid, un-Islamic, and will not be effective. This allowed them to keep their current wives in addition to marrying additional women. In order to stop dishonest husbands from misusing the religion, this information was brought to the attention of the second Caliph, Umar, who declared that even saying the word "talaq" once would permanently end a marriage. However, Caliph Umar's action was only administrative, meant to address a situation rather than establish a permanent law.[15]In Hanafi schools in India, this type is only followed by Sunnis. Other schools and Shias failed to acknowledge it.

According to Hedaya, talaq-ul-biddat is defined as a divorce in which the husband renounces his wife three times in a row, or as three independent divorces within a single hour. It falls under one of the following categories:

The Triple Declaration is a form in which three statements are delivered in one breath, for example, "I divorce thee triply or thrice," or "I divorce thee" in three phrases. This type of divorce is known as an irreversible talaq-ul-bain.

Single, Irrevocable Declaration: This type of rejected divorce also takes the form of a single, irrevocable declaration made during the tuhr period or at any other time. It can be provided in writing and is known as a "bill of divorcement," which dissolves the marriage instantly.

15 Prof. I.A. Khan (rev.), Aqil Ahmad, *Mohammedan Law*,174-175 (23rd Edn., 2009).

By just using the Arabic word for divorce, "talaq," three times, a Muslim man might easily get a divorce from his wife. This method of divorcing a wife is also known as *talaq-e-biddat* or *talaq-e-mughallazah*. The announcement may be communicated to the wife in any form i.e., orally or in writing or even electronically via email, message, or even social media. The physical presence of the wife was not required during the pronouncement of divorce[16] and neither the husband was obliged to furnish any reasons. It was blatantly biased towards men to the extent of giving them unlimited discretion on divorcing their wives. This commoditized women in such societies and was a major pullback.

The Hon'ble Supreme Court in the famous *Shah Bano Case*[17] has compared the conditions of Women *"who have been traditionally subjected to unjust treatment*."

"Women are once such segment. '*Na stree Sawtantramarhati'* said Manu, the lawgiver; the woman doesn't deserve independence and it is alleged that the fatal point in Islam is the degradation of women." [18]

Tyabjii claims that because "men have always moulded the law of marriage so as to be most agreeable to themselves," [19]the immoral or abominable versions of the Hanafi law have become the most prevalent due to a deplorable evolution of the law.

"Mahmud-b, Labeed reported that the Messenger of Allah was informed about a man who gave three divorces at a time to his wife. Then he got up enraged and said; Are you playing with the Book of Allah who is great and glorious, while I am still amongst you? So much so that a man got up and said; Should I not kill him."[20]

This condemned form is considered heretical because of irrevocability. Earlier, it was held by the courts in India that "*Talaq-ul-*

16 *Aisha Bibi v Kadir Ibrahim* (1910) 3 Mad. 22.
17 *Mohd. Ahmed khan v. Shah Bano Begam* (1985) 2 SCC 556
18 Edward Wiliam Lane, *Selection form Quran,* XC(1843 Reprint).
19 Tyabji, *Muhammadan law* 163(Bombay,3rd Edn.,,1940) citing Mayne, *Hindu Law.*
20 Fazlul Karim, *Mishkat-ul-Masabih: An English Translation and Commentary*693 (IslamicBookService,New Delhi).

*biddat is good in law though bad in theology and practiced in India*."[21] However, some courts have refused to recognize it [22]

*Talaq-ul-biddat* was held unlawful by the Allahabad High Court because this type of talaq is against the dictates of the holy Quran. This form of talaq has not found sanction from any divine Islamic authority. *Justice Tilhari* gave a new meaning and direction to the law of *talaq-ul-biddat* and held it is violative of Article 14 of the Constititution.[23]The constitutionality of the practice was finally challenged by *Shayara Bano* in Supreme Court in 2017.[24] The Constitution Bench of the Supreme Court held that the challenged divorce process is apparently arbitrary. The Supreme Court invalidated this form of divorce practice on August 22, 2017, ruling that *Triple Talaq* as a practice is violative of Article 14, 15 21 and 25 of the Indian Constitution.

**Legal Implications of Triple Talaq:**

1. The property of one divorcing party cannot be inherited by the other.

2. During the iddat of divorce, but not during the iddat of death, the wife is entitled to maintenance.

3. If a woman marries the same husband again, she must follow nikah halala.

**TRIPLE TALAQ AND ITS CONSTUTIONALITY: SHYARA BANO AND ORS. V. UNION OF INDIA**[25]

Matrimony is considered holy and permanent by the Holy Quran. Talaq is acceptable, nevertheless, provided efforts are made to reconcile, in cases where it is really inevitable. Though there is no evidence to show that Muslims all over the world use *Triple Talaq* as the most favoured form of *talaq*, the practice of *Triple Talaq* has been abrogated by legislation in most Islamic as well as non-Islamic states. Egypt was

21 *Sarabai v. Rabia bai* 1905 SCC Online Bom. 31; *Rashid Ahmed v. Anisa* AIR 1932 PC 25.
22 *Fazlur Rahman v. Aisha* 1929 SCC Online Pat. 179.
23 *Rahmatlullah v State of U.P.* 1994 Lucknow Civil Div. 463
24 *Shayara Bano V. Union of India,* AIR 2017 9 SC 1
25 AIR 2017 9 SC 1

the first Muslim nation that abolished this social evil in 1929 and other countries such as Pakistan, Bangladesh, Sri Lanka, Syria, and Turkey etc., have abrogated it by legislation.[26]

In the Indian case of Shayara Bano v. Union of India[27], the constitutionality of the Triple Talaq practice was contested. Based heavily on Shamim Ara v. State of U.P[28]., the five-judge Supreme Court of India bench struck down the practice of instantaneous Triple Talaq by a majority vote of 3:2. The court declared that the practice violates the fundamental rights of Muslim women and basic Quranic tenets. The three judges who ruled against the instant triple had different justifications for their decisions.

Judgement of JJ. R.F. Nariman and Lalit held that "*Triple Talaq*was unconstitutional on the grounds of "arbitrariness" under Art.14 of the constitution.They observed that the *Muslim Personal Law (Shariat) Application Act, 1937* is a law made by the legislature before the constitution came into force and therefore, it would fall squarely within the expression "*laws in force*" in Article 13(3)(b) and would be hit by Article 13(1) if found to be inconsistent with the Provision of Part III of the Constitution to the extent of such Inconsistency. Therefore, the 1937 Act, insofar as it seeks to recognize and enforce *Triple Talaq*, is void. Consequently, Section 2 of the 1937 Act was held to be constitutionally invalid to the aforesaid extent."[29]

Judgment of Justice Kurien Joseph observed that "the whole purpose of the Shariat Act 1937 was to declare *Shariat* as the rule of decision and to discontinue anti-shariat practices with respect to subjects enumerated in section 2 of the 1937 which includes *Triple Talaq*." He also held that "*InstantTriple Talaq* was *not an integral part of Islam* under Art.25 of the Indian constitution." He gave his reasoning by comparing it with the practice of the *Sati System* among Hindus which

26 pib.gov.in. (last visited on 4 August 2024)
27 Ibid.
28 JT 2002 (7) SC 320.
29 Syed Khalid Rashid, *Muslim Law* 82-83, (Eastern Book Publication, Lucknow,5thEdn.,2009).

was regressive and therefore, it had been abolished though it was mentionedin history for a long time.

The minority, the former Chief Justice J. Khehar, on behalf of J. Nazeer and himself, says that Triple Talaq being a part of personal law is protected by Article 25 of the Indian Constitution.

## Muslim Women (Protection of Rights on Marriage) Act, 2019

Due to the Supreme Court's ruling and the fact that it was still being practiced, The *Triple Talaq*Act, also known as the *Muslim Women (Protection of Rights on Marriage) Act, 2019 (20 of 2019)*[30] was enacted declaring the practice of "*Triple Talaq*" void and illegal. The said act replaced the *Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019.*[31]

According to Section 3 of the Act, the act of a Muslim husband announcing talaq to his spouse verbally, in writing, electronically, or in any other way is illegal and void, meaning it has no legal standing. Section 2(c) of the Act, 2019 defines "talaq" as "talaq-e-biddat" or any other type of talaq that is identical and has the same impact as an immediate, irrevocable divorce proclaimed by a Muslim husband.[32]

Under Section 4 of the Act[33], Furthermore, it criminalises saying "talaq, talaq, talaq," with a maximum sentence of three years in prison and a fine. The offence is cognizable, compoundable, and non-bailable.[34]

According to Section 5 of the Act, a married Muslim woman who has been declared talaq is entitled to receive from her husband as much subsistence allowance as the magistrate deems appropriate for her and any dependent children.

30 W.r.e.f. 19-09-2018.
31 This ordinance was promulgated because the earlier ordinance, viz. Muslim Women (Protection of Rights on Marriage) Ordinance, 2018 was lapsed.
32 Ibid.
33 Ibid.
34 Ibid , Section 7.

According to section 6 of the aforementioned act, a married Muslim woman is entitled to custody of her minor children in the event that her husband declares talaq.[35]

## CRIMINALISATION OF TRIPLE TALAQ:

*Triple Talaq*is a social evil.Therefore, it should be examined in the context of the society. According to the sociological school of jurisprudence, law is an instrument of social change. Law has a function in the society. This school does not give importance to sanction any more rather the purpose which is to be achieved by law, it is very much prominent.*Triple Talaq* is a grave wrong and if strengthened and used correctly, this law can act as a deterrent. It is similar to social evils like dowry and polygamy. Approximately 100 Triple Talaq cases have occurred since the Supreme Court invalidated the practice, and it has persisted unchecked even after the verdict.[36]

However, the legislature makes the practice of *Triple Talaq* through this act a criminal offence which seems to be inappropriate to bring a matter of personal law like divorce which falls into a "civil jurisdiction" to a "criminal jurisdiction".

Islam views marriage as just a civil arrangement. Triple Talaq is ineligible for any of the crime tests. It's also important to remember that until Triple Talaq was made illegal, the required actions to offer civil remedies had not been taken. They had to demonstrate that every civil remedy had been exhausted before turning it into a crime. If punishment is truly required, civil law may also be used to carry it out. For example, the Protection of Women from Domestic Violence Act, 2005 contains a provision for punishment in the event that the husband disobeys court orders, despite the act being civil law.[37]

Section 7 of the Muslim Women (Rights on Marriage) Act, 2019 designates instant *Triple Talaq*as a cognizable and non-bailable offense. This means that the police can arrest a Muslim man and file a First

35 Ibid.

36 100 Triple Talaq Cases Since Supreme Court Verdict in August: Ravi Shankar Prasad (ndtv.com) (last visited on 4 August 2024).

37 Section 20 (1)(d) of PWDV Act, 2005

Information Report (FIR) against him based on the information provided by his wife or her relatives, without requiring a preliminary investigation. The severity of this provision has been compared to offenses like murder and dacoity. However, some argue that making the pronouncement of instantaneous talaq non-bailable is excessive, especially when more serious offenses, such as causing death by negligence under Section 304A of the Indian Penal Code (IPC), are treated differently.

The legislation rendered *Triple Talaq* a non-bailable offence, except after the wife's testimony. However, this provision could be susceptible to misuse e.g. Dowry Prohibition Act 1961. Furthermore, there may be circumstances in which the Muslim woman is unable to be present before the magistrate. Even in situations where there are valid reasons for bond, the husband who is being held in custody may suffer unjustly. When examined in light of Article 21, this process might not be just, fair, or reasonable..[38]

**EMPOWERMENT OF MUSLIM WOMEN:**

The empowerment of Muslim women through the criminalization of triple talaq is rooted in the philosophy of gender equality, justice, and human rights. This approach recognizes that:

1. Women have inherent dignity and worth, deserving equal treatment and opportunities.
2. Gender-based discrimination and violence, including triple talaq, perpetuate patriarchy and oppression.
3. Criminalization serves as a deterrent, protecting women from sudden, unjust divorce and its consequences.
4. Empowerment through law enables women to assert their rights, challenge patriarchal norms, and claim their rightful place in society.
5. This legislation aligns with constitutional values of equality, justice, and dignity, promoting a more inclusive and equitable society.

By criminalizing triple talaq, the law embodies the philosophical ideals of:

38 The Constitution of India.

1. Feminism: challenging patriarchal structures and promoting gender equality.
2. Humanism: recognizing women's inherent dignity and worth.
3. Social Contract Theory: protecting vulnerable individuals from exploitation.
4. Justice Theory: promoting fairness, equality, and human rights.

This philosophical foundation underpins the empowerment of Muslim women through the criminalization of triple talaq, fostering a more just and equitable society.

This is a historic shift in support of Muslim women's empowerment that will protect them from patriarchal abuse by their husbands and families as well as give them greater social confidence to speak out against injustice. By doing this, Muslim women and their children would be less exposed to such cruel religious practices and brings Indian law in line with global human rights standards. A mandate of the Constitution is to provide legal protection for women, and the Triple Talaq law has done just that for the unfortunate Indian Muslim women who have been subjected to this discriminatory practice for the past few decades. The current state of Muslim women will be improved by this legal reform, which will also assist them in escaping prejudice and domestic abuse.[39]

The Muslim Women Protection of Marriage Act, 2019, appears to have been largely successful in deterring Triple Talaq, as intended by the law that was passed against the unwanted societal practice. While 3,82,964 occurrences of instant divorce were registered from 1985 to 2019, or an average of 11,264 cases year, just 1,039 instances of Triple Talaq have been reported throughout the nation in the last year after the law was passed in August 2019. The information demonstrates how the legislation has greatly given Muslim women more ability to safeguard their marriages.[40]

A noted Scholar **Sakina Yusuf Khan** has written in another article that "Today, an ideal situation seems to be emerging- instead of law courts and reformists proposing changes in the Muslim Personal law

39 doc202192011.pdf (pib.gov.in) (last visited on 4 August 2024).
40 Law criminalizing Triple Talaq brings down cases to 1K from 11K in a year (newindianexpress.com)(last visited on 4 August 2024).

getting stonewalled by fundamentals- the move for change is from within the community's orthodox leadership. And it must unequivocally be welcomed.

"The All India Muslim Personal Law Board (AIMPLB), the apex law-making body of Muslims on religious and personal issues, has suggested several reforms in marriage and divorce laws aimed at giving the community's women a better deal." But how substantive are the suggested reforms? Will they actually ensure gender justice for the estimated 60 million Muslim women in the country who've borne the cross of antiquated *Shariat* law?"

"The most important of the suggested changes relates to the continuous issue of *Triple Talaq*. On this the board recommendation's that Muslim men be "restrained" from pronouncing *instant Triple Talaq* falls short of expectations…"

"By far the most positive contribution of the AIMPLB's reform exercise appears to be the drafting of a model *Nikahnama* (marriage contract) incorporating the rights sanctioned by the *Shariat* but hitherto denied to Muslim women in India, for instance, the right to claim divorce or *Khula*."

"As marriage in Islam is a contract, a woman can incorporate in her *Nikahnama* the right to divorce. The contract can even specify the exact grounds on which she can seek divorce. She can have the marriage dissolved without assigning a reason and without seeking the husband's or anyone else's consent, provided this clause is laid down in her *Nikahnama*."

"The Board's insistence on a written Nikahnama and compulsory registration of marriage would not only empower and protect women's interests but also make polygamy that much more difficult."[41] Therefore, it is clear that there is a need of legislation to curb this social evil to prevent the absolute and arbitrary power of Muslim men."

41 Sakina Khan, *Divorced from Reality - Amending the Triple Talaq Law,* (TOI, October 5, 2000) Divorced from Reality (islamawareness.net) (last visited on 4 August 2024).

## LACUNAS IN THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

With the enactment of laws new problems emergedearlier, husbands threw out wives after pronouncing instant *Triple Talaq*but now they simply abandon the wife and the police refuse to do anything about it… even if a husband does leave his wife by way of instant *Triple Talaq*and the wife somehow goes to the police, the husband simply denies the divorce and then leaves the wife to fend for herself.[42]

Apart from this form of *talaq*, there are various other forms thatalready prevail among Muslims and husbands while going behind the bar may pronounce another form of *talaq*which means that this act does not ensure that the protection of marital tie and any reconciliationmechanism among the parties to the marriage which held in the supreme court judgment of 2017.Puttingtheir husband behind the bar only that he declared *Triple Talaq*will lead his family to financial crisis if he is the sole bread earner in his family.Another point is that when the husband is sent to prison then who will provide maintenance to the wife and their children? And also who will provide subsistence allowance during the trial proceedings?

It is to be noted that though the act provides the punishment for declaration of *talaq* in any form but in case of oral declaration, it is difficult for the prosecution to prove it in a court of law because the burden of proof lies on the wife regarding *mens rea* and *actus reus*. The husband caneven deny the pronouncement before the police officer in such cases. And he would never consider the prospect of reconciliation with his wife because of whom he is behind the bar.

Section 4 of the said act[43] is also inconsistent with the provision of dissolution of Muslim Marriage Act, 1939 which deals with the situations in which Muslim women in India can obtain divorce who failed to provide maintenance for the period of two years.

This act also does not signify the right to divorce by women unilaterally as a right given to the husband in case of *talaq-e-ahsan or*

42 https://thefederal.com/analysis/triple-talaq-ban-5-years-after-sc-verdict-fewer-cases-newproblems/?infinitescroll=1(last visited on 4 August 2024).

43 The Muslim Women (Protection of Rights On Marriage) Act, 2019.

*talaq-e-hasan* because in the case of *khula* wife seeks divorce from her husband. If the husband consents, then only divorce is possible. Otherwise, she has to go for judicial pronouncement of divorce under the Dissolution of Muslim Marriage Act, 1939 whatever grounds are given in that act.

There are several examples that alone deterrent legislation cannot bring changes in society e.g. Criminal Law Amendment Act of 2013,Criminal Law Amendment Act of 2018, Dowry prohibition Act, 1961 etc.

Upon assessment, it can be concluded that while the Act will not empower Muslim women, it will undoubtedly cause victimisation and unfairness to some degree for both Muslim women and men in the absence of the necessary change.

## SUGGESTIONS AND CONCLUSION

Marriage is though a civil contract but it also has religious and social purposes. There is a need for a codified Muslim family law Like Hindu codified laws[44] which is based on the *Quranic* and *Constitutional values*. As the suggestion given by the AIMPLB, there shall be public awareness programs among the Muslim community regarding their right to divorce and maintenance. At the time of the wedding as suggested by the board she should be allowed to lay down a condition in the *Nikahnama* that she has a right to divorce unilaterally and would not be subjected to *instant triple talaq* in case of a marital problem otherwise she would exercise her right and become entitled to four or five times of the amount of *Mehr* and failure to pay the amount of *Mehr* should be criminalized. *Triple Talaq* instead of being criminalized can be placed within the ambit of the Protection of Women from Domestic Violence Act, 2005. As at the time of Marriage, there is requirement of two male witnesses or one male and two female witnesses among Hanafi School that a requirement must also be available at the time of divorce. There should also be a mechanism for reconciliation before the dissolution of marriage between the parties.

44 Hindu Marriage Act, 1955; Hindu Succession Act,1956 etc.,.

In conclusion, *Triple Talaq*or *talaq-e-biddat* is a form of divorce through which the marriage can be dissolved in seconds and there was no going back and this right to divorce was only available to the husbands (Muslim men). It was clearly against the basic notions of equality and justice. Shayara Bano case [45]is a landmark judgment by the hon'ble Supreme Court on personal law, as it is indefinitely a great move towards upholding the principles of natural justice. Triple Talaq is only one amongst the many ill practices, prevalent in almost all religions. It's time to keep a check on all such practices and to constantly endeavour toward the goal of a harmonious Uniform Civil Code as enshrined in the Directive Principles of State Policy under our Constitution.[46]

45 *Shayara Bano V. Union of India,* AIR 2017 9 SC 1
46 The Constitution of India, Art. 44.

# Educational Services and Consumer Protection Act: An overview

**Dr. Uzma Qadri***
**Dr. Rehana Shawl****

***Abstract***

*In the contemporary epoch, consumers can not be guaranteed of proper pricing and quality without a legal framework. The undistinguishable marketplace needs to be channeled by procedures of fair trade. The "unfair trade practices" find itself in the legal framework of every nation. The definition of Unfair Trade Practice in India is fairly detailed. However, it is debatable whether or not such details make the definition accurate or elusive in the relevant contexts. The goal of current article is to draw attention to the ongoing unfair trade practices in India's education sector.*

*Higher education is in doldrums. Its stakeholders are displaced with its performance. On one side quality of education is poor, while on the other side the quality of education is low. It is in this background, that present study is a modest effort to examine the factors which are responsible for poor quality of educational services. The study reveals that there are large numbers of unfair Trade practices predominantly poor academic leadership, inadequate mobility and growth, recognition in higher education. The deregulation of economy, higher education in India is exposed to new challenges and expectations from its stakeholders. Higher education is becoming more accountable to the stakeholders whose expectations vary significantly and surge continuously. Higher education today is dominated by terms like academic capitalism, competition, efficiency, new production of knowledge, performance, value for money and quality.*

***Keywords:*** *Educational services, consumerism, quality, basic human right*

* Assistant professor law, school of legal studies, Central University of Kashmir, Tulmulla, Ganderbal, email:qadriuzma64@gmail.com

** Assistant Professor, Department of Law, Central University of Kashmir, Tulmulla, Ganderbal, email:rehan.shawl@gmail.com

## 1. Introduction

Different communities, castes of peoples, languages, religious and culture principle constitute the land of India. Though people relish complete political independence vast share of the population is uneducated. The most effective strategy for the growth and improvement of such varied communities is education. The education that is bestowed by the state is missing the adequate fabric of substance that will make the understudies self-adequate is missing. We dedicate ourselves to be more proactive in spreading consumer movement for and wide so that each one of us knows our rights and responsibilities for our own welfare and development of a vibrant and stable economy. It is an incredible work to safeguard the interest and right of every consumer in a country like India where the existing population is almost 1,430,377,262 based on worldometer elaboration of the latest United Nations data[1] . A number of legislations, including Agricultiral Products ( Grading and Marketing)Act, 1937, Drug Control Act, 1950, Industries( Development and Regulation) Act, 1951, Monopolies and Restrictive Trade Practices Act, 1969, etc have been passed in this regard to protect the interest of consumers.[2]

The country's consumers, who are dispersed across, are frequently illiterate, impoverished, and largely unaware of their rights, though their awareness has recently grown. A number of unethical business tactics are frequently used by producers and providers of goods and services to take advantage of consumers. Subsequently, Indian parliament sanctioned the Consumer Protection Act, 1986(COPRA). This Act gave partitioned requirement apparatus and redressal forum/commission with the point to supply the shoppers, a basic, less costly, speedy arrangement to consumer problems. The COPRA may be a turning point in the history of socio-economic legislation in India.[3] The Consumer Protection (Amendment) Act, 2002 excluded 'Commercial Services', also from the

1 https://www.worldometers.info accessed on 20/8/2023 at 12.15PM

2 Can You Sue An Educational Institution Under Consumer Protection Act? Sudarshna Thapa, Image Courtesy :https://maharashtratimes. India times.com/editorial/ column/ time-to-time/consumer-protection-act/article show/56128914.cms

3 Patil.Ashok.R, *Consumer Protection Law*, Annual Survey Of Indian Law.2016, p. 319,The Indian Law Institute, New Delhi

preview of the CP Act. In our J&K, we had Jammu and Kashmir Consumer Protection Act, 1987.

However, the COPRA, 1986 was repealed and replaced by new Consumer Protection Act, 2019 passed by Parliament on 9th August 2019.[4]In 2019*,* the Parliament of India took another step of seminal importance by enacting new Consumer Protection Act, 2019. The Act of 2019 has been enacted for safeguarding the interests of consumers and for that purpose to make provisions for the establishment of Consumer Councils, Commissions and other Consumer Protection Authorities (CCPA etc.) for the settlement of consumer disputes. The *Preamble* of the new C.P. Act, 2019 reads*:*

> *"An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto."*

Consumer protection Act of 2019, is designed to monitor buyers and assist buyers in dealing with certain illegal activities specified in Act. For protection of rights of consumers and settlement of consumer disputes and enforcing the claims of the consumers, the C.P. Act provides for the establishment of three-tier quasi-judicial bodies at District, State and National levels; Central Consumer Protection Authority(CCPA), Mediators etc.

In view of the above title of the present paper, the definition of 'service' under the new Act of 2019 is almost the same, however commercial services have been again kept away from the application of the Act of

---

4 The Consumer Protection Act, 2019,*NO. 35 OF 2019 [9thAugust, 2019.].* CHAPTER-IPRELIMINARY: Short title, extent, commencement and application:Section1. (1)
This Act may be called the Consumer Protection Act, 2019.
(2)It extends to the whole of India except the State of Jammu and Kashmir.
(3)It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as are ference to the coming into force of that provision.
(4)Save as otherwise expressly provided by the Central Government,
By notification, this Act shall apply to all goods and services.

2019 but rest of the definition clauses are wide enough to include even those services not expressly mentioned under the Act where the service is availed or hired for consideration. Although "education service" is not expressly mentioned but it can be covered by the expression "any other service" availed or hired for consideration. However, in this paper an attempt has been made to discuss-whether education as a whole is a consumer service or not-in light of conflicting decisions of Consumer Commissions, and the Supreme Court's inclination to consider it as service where there is deficiency in service, or unfair trade practices or fraudulent practices adopted by educational institutions which had a direct bearing on the career of the innocent students.

**2. Education and Consumerism**

Education is vital for everyone. One faces the clear challenge of determining, investigating and reviewing the means to secure access to it. Commercialization of education has now compelled students and their parents to be cautious about the educational institutions. In today's times when students seek admission to various educational institutions and computer training, they have to ensure that they do not commit mistakes by assuming that everything that is mentioned in the brochures or advertisements is correct. Many times misleading advertisements have been put out by these institutes. Where in misleading statements regarding affiliation to a recognized university, institute are made in a disguised manner almost like 'make believe' statements. Gullible students and enthusiastic parents are taken for a ride. When the students lose couple of years studying in such institutions as those courses are not recognized and the years spent in these institutions have no value in respect of recognition for further studies or jobs.

Another important issue is that while taking admissions in a hurry, both parents and students do not make correct inquiries because at that moment getting the admissions is of paramount importance. The demands made in these schools, colleges, institutions, universities are such that people have no choice but to pay whatever amount is being demanded by them, in any manner hefty donations. Students pay security deposit and costs like the high tuition fee, sports fee etc. But what parents do not know is that many institutions are adding hidden

costs like building charges and develop charges. They collect huge amount in the form of advertisement in souvenir which parents are compelled to pay. Today, education has become a full-fledged business preposition.

### 3. Development of Consumer Protection Laws to Curb Unfair Trade Practices in Educational services

The term "Unfair Trade Practice (UTP) extensively alludes to any deceitful, misleading or deceptive exchange practice; or business deception of the items or administrations that are constantly sold; which is disallowed by a statute or has been perceived as significant under law by a judgment of the court. In any case, the term does not have an all-inclusive standard definition".[5]Misrepresentations can be about any characteristic of a goods or services, real or imagined. Accordingly laws prohibiting unfair trade practices often include a general provision and more specific provisions addressing some of the more common types of misrepresentations.[6] Unfair trade practices envelop a wide cluster of torts, all of which include financial harm brought on by tricky or unlawful behavior. The legitimate hypotheses that can be stated incorporate claim, for example, unjustifiable rivalry, competitive advantage misappropriation, false promoting, palming-off, weakening and stigmatization.[7]Unfair trade practices can arise in any line of business and also frequently appear in connection with the more traditional intellectual property claims of patent, trademark and copyright infringement.[8] The extensive scattering of new communication and data process advances have gotten huge monetary and social

5 Beena Dewan, Abhinav (2015) *Unfair Trade Practices And Its Emerging Challenges*, National Monthly Refereed Journal of Research in Commerce & Management,Volume4,Issue12

6 Buik,Carl, "Dealing with Unfair Trade Practices",AddisAbaba, May2008, source:http://www.circ.in/pdf/CPS-06-Unfair_Trade_Practices.pdfaccessedonNovember5,2014.

7 Pham, Alice(2007), "Competition Law in Vietnam: A Toolkit",CUTSHRC,Hanoi,source:http://www.cuts-international.org/HRC/pdf/Vietnam_Toolkit.pdf,accessedonNovember 7,2014.

8 Unfair Trade Practices And Its Emerging Challenges, BeenaDewan, Abhinav National Monthly Refereed Journal of Research in Commerce & Management, Volume4,Issue12(December,2015)

changes that have distressed the way markets serve purchasers. Customers everywhere on the globe are requesting quality for cash as quality products and superior administrations.

The MRTP Act, a socialist-era constituted law to check monopolies and restrictive trade practices in India, was the single statute to deal with unfair trade practices as for a very long time after independence, the private sector was not deliberated as important. Likewise, consumerism as such was deliberated bad, so there was no specific provision for consumer protection in the law. MRTP primarily dealt with unfair trade practice in sense of competition among different companies. This was up to 1984, the MRTP Act provided protection to consumers to deal with false or misleading advertisements or other related unfair market practices. There was a necessity to protect the innocent consumers from such unfair trade practices. The Government of India then appointed an expert committee on the MTRP Act, under the chairmanship of Justice Rajindar Sachar. The Sachar committee was to review and advise changes required to be made in MRTP Act in sight of latest expansions in economy and market structure. This was an indication towards an advanced economy where consumers have rights vis-a-vis industries.[9] The Sachar Committee went on to an intense survey and reached at an assumption that a new chapter should be added to the MRTP Act for the purpose of dealing with unfair trade practices with a modification that stakeholders will be consumers, manufacturers, suppliers, traders and other persons in the market. This was to discourse the entire supply chain system making everybody in the chain to recognize their analogous practices as unfair or fair. Otherwise it would have been tough to identify the exact origin of unfair trade practices from the composite supply chain of market. This multi shareholder approach made each conscious of nature of activities which they are not thought to do. The commendation was adopted in 1984 and the amendment for the determination of institutional enforcement of recently added provisions

9 Mella ,Akshra(2015). *Unfair Trade Practices – A Lost Imperative Of The Indian Economy*,. International Journal Of Electrical and Electronics Enginers.Vol.No 7.Issue 02 ,
Mehla,Akshra(2015). *International Journal of Electrical and Electronics Engineers,* Vol. No 7 Issue 02, 2015.www. arresearch publication. Com, ISSN 2321-2055.

created a new authority which was supposed to be an autonomous body, called as the Director General of Investigation and Registration (DGIR). It was to work under MRTP Commission, the ombudsman for MRTP Act. It could take up cases on the basis of a complaint, or suo-moto. Director General of Investigation and Registration possibly will investigate into matters of restrictive or an unfair trade practice from a host of activities mentioned in Section 36A of the MRTP Act. But after the investigation it should convey the problem in the MRTP Commission for taking forward the case and aimed at a full-fledged inquiry. If, in the inquiry of MRTP Commission, it was opined that the activities under scan are "prejudicial to the public interest or to the interest of any consumer or consumers generally", then the MRTP Commission was sanctioned to act and stop the activity of such a trade practice under the statute. For the determination of complaint, either MRTP Commission can take matter suo-moto or receive complaint from particular consumer or any association of consumers. Trade associations also could approach the MRTP Commission for complaint. During 1990s when economy was unlocked, steadily the economy progressed towards well-organized market practices. This innovative opportunity where private sector was to develop a key player demanded for legal amendments to such practices as old provisions were outshined by changing composition of markets. Consequently, same was brought into depiction to hold up the changes in economic system to Liberalization, Globalisation and Privatization developments and to institutionalize a appropriate process for regulating business management and resolving disputes regarding unfair trade practices. The growing issue of tackling "antitrust laws issues" in the Indian economy, the Government of India went to establish a committee on Competition Policy and Law led by Mr. S.V.S. Raghavan in 1999. The Raghavan Committee was to deal with competition issues in market. It was a turning point in growth of the Indian economy as pejorative MRTP Act which had fundamental negative view on the private sectors was to be substituted by a competition law which saw companies as affirmative stakeholder in the Indian economic development. The committee also went on to say that the MRTP Act, owing to its actual nature, could not contend the thrust of liberalisation, privatization and globalisation developments. The narrow

provisions of the MRTP Act were to handle state driven economy with a miniature private sector activity. This was understanding of the fact that to reap the benefits of emerging Indian economy in wider context of international economy, it was ideal that policy of ensuring competition was necessary. These recommendations were sweeping in nature and changed the whole outlook of the Indian system of dealing with competition. This later led to creation of the Competition Act. So, the unfair trade practices from then on were dealt under Consumer Protection Act. The rational being the consumer not only needs protection from fraud in goods and services being used by him but this problem should be perceived in larger sense of unfair trade which harms consumer safeties. Consumer Protection Act, in sense, turn into de facto adjudicatory law for all unfair trade practices. It formed a three layered legal structure that is at district level, state level and national level, quasi-judicial bodies for dealing with affairs in Consumer Protection Act. But all these bodies are not efficacious and competent. Poorly operated bodies with hardly any skills of tackling complex issues have developed an institutional paradox as mentioned previously. One important change which usually goes unnoticed in this is definition of a consumer was changed and was significantly reduced to people who are direct consumers. This was to tackle with unnecessary mess of complaints as litigations become a major legal issue in 1990s. Nevertheless, all the diverse definition appear to highlight Unfair Trade Practices as a practice of misleading, deceiving and unlawful exchange practice received with the end goal of advancing deal or supply of a specific decent or procurement of a specific administration.[10]

## 4. Consumer Services: Whether Inclusive of Education as Consumer Service

The question as to "whether the Universities and Boards in conducting public examination, evaluating answer papers, announcing the results thereof and thereafter conducting re-checking of the marks of any candidate on application made by the concerned candidate perform any

10 BeenaDewan, Abhinav (2015) *Unfair Trade Practices and Its Emerging Challenges* ,National Monthly Refereed Journal of Research in Commerce & Management, Volume 4,Issue 12

service for hire be examined". The question has been considered directly by the National Consumer Disputes Redressal Commission, New Delhi and also by the State Commissions. The question arose for consideration before National Consumer Disputes Redressal Commission in the case *Chairman, Board of Examination, Madras v. Mohideen Abdul Kader*,[11] the ratio of the decision of the National Commission was that a person who appears at an examination is not in the position of a person who has hired or availed of the services of the institution for a consideration. The Supreme Court has not ruled that whenever education is imparted for consideration there exists a quid pro quo. Explaining the meaning of the word "service" the National Commission Said:

> "section 2(1)(d) of the Act defines "consumer" as meaning any person who(i) buys any goods for consideration etc.; and(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. Hiring any services for consideration is thus one of the essential pre-conditions before a person can be considered to be a consumer within the meaning of the Act. The word 'hire' means to acquire the temporary use of a thing or the services of a person in exchange for payment, to engage the temporary use of a thing or the services of a person in exchange for payment, to exchange for payment, to engage the temporary use for a fixed sum, to procure the use of services of, at a price, to grant temporary use of for compensation. This is the ordinary, plain, grammatical meaning of the expression and has been so expressed by this commission in several cases.

11 (1997)IICPJ49(NC)

> The consumer must be one who has hired services for consideration and to be a consumer the nexus of hiring of services for consideration must be established. The definition of 'service' is contained in section 2(1) (o) of the Act."

**(a) Tertiary Educational Activities**

Tertiary educational activities are those activities, which are ancillary to the actual impartation or facilitation of education, and are as such unrelated to such impartation or facilitation, but which nonetheless constitute an integral quota of the services rendered by the establishment. They cover the provision of accommodation (in the form of hostels), food (in the form of a mess or canteen etc.), recreational facilities (such as gymnasiums, sports grounds etc.) and health facilities (such as nurse or an in house doctor). Moreover, liabilities of institute's staff that are classifiable neither as primary services, nor as secondary services, but which encompass a duty of care by the staff in reverence of the students are also classifiable as tertiary services. Theoretical situations in respect thereof, which could probably create a valid claim for deficiency of service, in respect of tertiary services are: in respect of accommodation: uninhabitable living conditions due to, for example, dysfunctional or unhygienic bathrooms in the accommodation, the presence of rodents, insects and/or other pests in large numbers, lack of appropriate housekeeping staff, dysfunctional plumbing and the whole lethargy of the institute in remedying any of these; in respect of recreational facilities: the provision of, for example, defective equipment (the provision of which can be reasonably foreseen to occasion upon the user thereof, damage), the omission to employ (especially in case of physically intense contact sports) qualified support personnel, etc.; in respect of health facilities: the employment of a person short of the necessary qualifications as a nurse or a doctor, etc. to stock expired medicines, which are to be administered to students in need of medication etc. Judicial pronouncements in esteem of tertiary services are relatively scant, especially at the higher level; due to the absence of claims instituted in their respect; however, the position in law respecting

the same can be fairly ascertained through a perusal of the relevant decisions which have been rendered.

**(1) Provision of infrastructure**

In *Swami Parmanand Para-Medical & GNM School of Nursing v. Pardeep Kaur,*[12]the State Commission was tasked with the determination of whether the denial of the opposite party institute to refund the fees when the complainant, disappointed with the quality of the accommodation and food provided to her by the institute, did not desired to remain a residential student, and instead come to be a day student, and in lieu of such conversion, sought a refund, constituted deficient service. The State Commission alleged that complaints, in respect of the quality of accommodation and food provided by the institute, or fees remitted, are not within the purview of the 1986 Act, and as a result that the institute was not liable for deficient service.

**(2) Duty of care cases**

In *Madan Lal Arora v.MahashyaChuni Lal Saraswati Bal Mandir Senior Secondary School*[13] ,the issue which arose before the National Commission was whether the omission of the teachers of the school to personally accompany a student, or otherwise confirm his safety, while he took a bath in the river during the school excursion, where the student ended up slipping into the river and drowning, and the subsequent miscarriage in promptly initiating rescue exertions amounted to deficient service, on part of the school, on grounds of being a breach of duty to care, of the teachers, particularly since the student had signed an undertaking, forgiving the school of responsibility, in respect of the materialisation of unforeseen accidents or injuries. The National Commission held that the abovementioned omissions constituted deficient service on part of the school. However, this case need to be contrasted with that of *FakhreAlamv.Amity Business School*[14], where the

12 SwamiParmanandPara-Medical&GNMSchoolofNursingv.PardeepKaur,FANo.1765of2009,decidedon24-1-2014

13 Madan Lal Arorav. Mahashya Chuni Lal Saraswati Bal Mandir Senior Secondary School,2013SCCOnLineNCDRC363:(2013)2CPJ450(NC).

14 FakhreAlamv.AmityBusinessSchool,2015SCCOnLineNCDRC1839

opposite party university was not held accountable for deficient service, in respect of a fact situation which was almost identical to that of *Madan Lal Arora*, the difference however, being the age of the deceased – the deceased in FakhreAlam, was a major, and in Madan Lal Arora, a minor. In FakhreAlam, the question which arose for settlement before the National Commission was whether the conduct of the faculty of the opposite party university, in permitting students (who were adults) to go to the beach as part of their trip/excursion, without accompanying them or otherwise ensuring their safety, where the students ultimately drowned at sea, constituted deficient service on part of the university, on grounds of being a breach of duty to care, of the teachers. The National Commission held that there was no such duty of care on part of the teachers, in respect of adult students, and that it was unreasonable to expect them to accompany the students to the beach or otherwise ensure their safety by arranging for life-guards etc. and that therefore, there existed no valid claim of deficient service against the university.

**(b) Misrepresentation by Educational Institutes**

Primary, secondary and tertiary activities aside, valid claims against educational institutes can lie in respect of misrepresentations made by them, which encouraged and occasioned the enrolment of the student in the university, and consequently the remission of fees by such student. While these cases do not come under the banner of 'educational activities', they do constitute an important amount of the cases relating to educational institutes, which arise for settlement before courts and consumer forums, and therefore need inspection in this article.

In *Mukesh Gupta v.Kiran Thakur,*[15] the issue which arose before the National Commission was, whether the false representation of the contrary party institute that its course in organic agriculture management was in joint collaboration with the National Productivity Council, and that the students enrolled therein would get a certificate from the National Productivity Council, upon finishing the course therein, amounted to deficient service, and whether therefore, fees remitted by students, who had in reliance of such false representation, joined the

15 Mukesh Guptav. Kiran Thakur, 2010 SCC On Line NCDRC 218: (2010) 3 CPJ 400 (NC).

course, was refundable to them. The National Commission held that the misrepresentation of the opposite party institute amounted to deficient service under the 1986 Act.

In *Dr. Alexander Educational Foundation v. B. Chandrasekaran,*[16] the question which arose before the State Commission of Pondicherry was whether the false representation of the opposite party institute that its course was affiliated to the Pondicherry University, in advertisements in daily newspapers, amounted to deficient service and whether therefore, fees submitted by students, who had in reliance of such false representation joined the course, was refundable to them. The State Commission alleged that the misrepresentation by the opposite party constituted deficient service, and further, rejecting the contention that activities of an institute are not within the purview of the 1986 Act, that the statistic of admitting students in exchange for monetary consideration constituted service, in respect of the performance of which an action could be maintained under the 1986 Act. This position was reiterated by the National Commission in *IT&T Learning Solutions Ltd. v. Gaurav Malik*[17] and by State Commission of Andhra Pradesh in *Ramayanam Varun Kumar v.Gannavaram Technical Training Centre*.[18]

In *Dhirendra Kumar v.M.R. Sarangapani,*[19] the opposite party institute had, in its advertisement, made multiple false representations in respect of itself as well as its undergraduate programs – that it was recognised by and affiliated to multiple renowned universities abroad, which universities, it represented would accept students from itself, for graduate studies, that it had a placement cell that had successfully placed multiple students in key positions across the globe. Moreover, the Dean of the institute went to the level of bringing in the director of an American university to address the parents of prospective students, to falsely represent to them, that the institute was affiliated to that university, and that the students would receive a diploma there from

16 Dr.Alexander Educational Foundation v.B. Chandrasekaran, 1994 IndlawSCDRC12329.

17 IT & T Learning Solutions Ltd.v. GauravMalik, 2011 SCC On Line NCDRC207:(2011)3CPJ105(NC).

18 Ramayanam Varun Kumar v. Gannavaram Technical Training Centre, (2015)1CPJ1(AP).82 Dhirendra Kumarv.M.R.Sarangapani, 2015 SCC On Line NCDRC 1410.

19 Dhirendra Kumarv. M.R. Sarangapani. 2015 SCC On Line NCDRC 1410.

upon completing their degree. Additionally, the institute falsely represented to having sound faculty, a well-stocked library, and highly specialised laboratories. The institute charged exceptionally extraordinary fees, one of the justifications tendered for which, was that the examination papers were being prepared and conducted by foreign universities and the answer sheets of the students were being evaluated by professors from foreign universities. The unsuspecting students, swayed by the false representations of the institute, enrolled in it only to discover that they had been deceived. The institute had no affiliation whatsoever with any of the universities they claimed to be affiliated to; there were practically no libraries, the ones which were existing were dysfunctional to the point of otiosity, the library had hardly any books, the course, which was claimed to be designed was haphazardly taught by unqualified teachers etc. In order to secure a repayment of the moneys remitted to the institute and compensation for the cash and time wasted, the complainants instituted a complaint. The National Commission held, allowing the complaint that, the institute was liable under the 1986 Act, for deficient service, on grounds of having made flagrant misrepresentations.

The position, therefore, has consistently been that educational institutes shall be accountable for deficient service for enticement of enrolment as well as remission of fees through misrepresentation as to affiliations, accreditations and recognitions that they may have.[20]

**(c) Accident on school premises**

In *Dilipkumar v. lokhandwala education trust*[21], where the movement of students going down the school premises was not regulated and a

20 *Seealso* Satheesa /nv. TKVTSS Medical and Charitable Trust, 1997 Indla wSCDRC117,(here theoppositepartycollege was held to beliable for deficientserviceforhavingmisrepresentedasbeingaffiliatedtoMGRUniversity );DAVInstituteofPhysiotherapyv.NavleenKaur,1998IndlawSCDRC339;Man toshKumarv.NationalInstituteofVisuallyHandicapped,2013IndlawSCDRC 220(theoppositepartycollegewasheldtobeliablefordeficientserviceforhaving misrepresentedthatitwasaffiliatedtotheUttarakhandTechnicalUniversity);In dianInstituteofAeronauticsv.DiwakarDhyani,2008IndlawSCDRC1033;Blue MountainCollegeofTeachersEducationv.NeeluVerma,2014IndlawSCDRC12 10;*See*RegionalInstituteofCooperativeManagementv.NaveenKumarChaud hary,2014SCCOnLineNCDRC164:(2014)3CPJ120(NC).

21 (1995)3CPJ451guj.

stampede on the stairs caused death of a girl, the school was held liable to compensate the parents. Education provided by the school fell within the concept of "service" because good amount of fee was being charged. To permit stampede-like situation to develop on stairs was a deficiency in service.

In *S.somasunder v. correspondent, srichakravarthy international matriculation academy*[22], the complainant's daughter fell into an open septic tank in the school toilet and drowned. The state commission of Rs.1000 only. The national commission held that the parents had been deprived of the company of their child, comfort and enjoyment of bringing up a child and all this due to the deficiency in service by the school authorities which they had availed, they were entitled to a compensation of at least Rs.2,00,000. There are two consumers in such cases; one is the child and the other parents. Not only that child suffered, the parents also suffered the loss of their child and were entitled to damages in the capacity.[23]

## 5. Judicial Approach

Although the Consumer Protection Act, 1986 passed for guarding interest of consumer at large and for that purpose a number of redressal agency established but still all these efforts were unsuccessful to protect consumer in full satisfaction.[24] The common consumer is neither knowledgeable, nor well informed. He needs support and protection from unscrupulous sellers. Liberalization, privatization and globalization of our economy gave a large scope for unfair trade practices in our country. So an alert consumer is need of the hour. An unfair commercial practice may constitute a breach of contract in appropriate cases, but actions for breach of contract are not accurately seen as part of any general policy commitment to rooting out-unfair commercial practices

22 [2002]1CPJ5(NC)

23 Reference was made to spring meadows hospital *v* harjotahluwalia, [1998]4SCC39:[1998]1CPJ1(SC):[1998]3SLT684,parentsalsosufferedbecauseofthewrongtreatmentoftheirchild.

24 Problem of Unfair Trade Practice & Its Impact on Society with Special Reference to Consumer Protection Act 1986 in Jalga on City Prof.Yogita*v*.Patiland Prof.Dakshata S.Gadiya,IBMRD's Journal of Management and Research, Print ISSN:2277-7830, Online ISSN:2348-5922Volume,Volume-3,Issue-2,September2014

which harm the collective interests of consumers. Similarly the use of deception or illegitimate pressure to attract a party into a contract, but this would be considered as a matter falling within fairly well-defined rules governing misrepresentation and duress rather than as a general protection against unfair commercial practice.[25]

In *RithvikK.R.v.Union of India*[26]four students applied for admissions in against management quota for 1 year MBBS course for the academic year 2014-2015 along with fees and donations amounting to around eighty lakhs. The father of one of the student was also made to sign an undertaking that he comprehends that for admission given to his son was only provisional and subject to approval by Raju Gandhi University of Health Sciences/Medical Council of India(MCI)and in excess of the stipulated management seats. In case of non-approval, the management and the college will not be accountable. Later, three of the students were discharged from the college on the ground that their admission in colleges for that academic year. The issue was whether there was a deficiency in service by the college authorities in admission procedure.

The High court established that the conduct of the college of taking such an undertaking from the parents of the student along with huge amounts of donation disturbing and ordered the MCI and Central Government to take stern note of the matter and take actions to ensure transparency in the admission process even against management quota, particularly by making it more technology based. The High Court also found the college's action of not discharging the students with illegal admission and not refunding the amount received from them well before the last date for admission in colleges for the academic year and unnecessary litigation causing unthinkable mental agony to them the High Court ordered the college to pay Rs.1 crore each to all the three students as compensation besides with refund of the amount paid by them to the college for the admission.

BMDCH contended that the institute was not an industry and so the service rendered by it did not amount to deficiency in service within the meaning of section 2(1) (g) of the CP Act. They further contended that

25 Howells Gerant Weather ill Stephen '*Consumer Protection Law*' second Edition Ashgate Publishing Limited England, 2005.

26 ILR 2015 Kar 4459; 2015 SCC online Kar 2305

the students, allegation of unfair trade practice within the meaning of section 2(1)(r) against the institute was without any merit as imparting education cannot amount to trade and, therefore, the consumer forum lacks jurisdiction to deal with the complaint. The court, after considering rival contentions of both the parties, observed that it was an admitted position that BMDCH was neither affiliated with the Magdha University nor recognized by the Dental Council of India and without obtaining the affiliation, the BMDCH could not have started admissions in the four years' degree course of BDS.The Court held:

> (i)Education is a service provided to the community; hence the university is an industry.
>
> (ii)The complaint hired the services of the BDDCH for consideration and hence they are covered under the definition of 'consumer' under the consumer Protection Act 1986.
>
> (iii) This was a case of total misrepresentation on behalf of the institute which tantamount to unfair trade practice.
>
> (iv) On payment of an amount as consideration the complaints were admitted nor recognized for imparting education. Therefore, such an act falls within the purview of 'deficiency 'as defined in the consumer Protection Act, 1986.

Consumer forums are not in a position to declare that a provision in the prospectus of an educational institution to the effect that fee would be unrefundable as unconscionable or illegal. Demand for full yearly fee before issuing transfer certificate was held to be proper.

Refund of fee can be had only in accordance with the Rules of the Institution. Where the candidate after taking admission on payment of fee could not continue because of the climatic conditions of the area, the institution was ordered to refund 2/3$^{rd}$ of the fee amount. Where the candidates for admission to post graduate medical courses deposited a sum of 2.5 lakh rupees each as the initial amount of fees, but the admission was denied, refund of the amount to each complaint was ordered.

*1. Provision of infrastructure (misrepresentation),*in *BhupeshKhuranav.*

*VishwaBudhaParishad,*[27] question before the National Commission was whether students, who had been deceived by a fake university into joining it, were allowed to a refund of fees paid thereof. In this case, the opposite party ran a sham college, which solicited applications through advertisements, which affirmed the college to be affiliated to Magadha University, and accorded recognition by both the Dental Council of India and the Bodh Gaya Dental Council, despite such affiliation and recognition, respectively having been explicitly denied to it. The institute further did not conduct examinations at the end of term, as it was required to. As a consequence, the innocent students, who had been enticed into joining the institute, ended up wasting two years of their life, and experienced large expenditures throughout the course of their enrolment in the institute. The National Commission held, in respect of the recovery of the payments paid to the institute, that the institute was accountable to refund the fees, having attracted the students to enroll in it through deceitful strategies, and further imposed punitive damages. On appeal (by the institute), the Supreme Court held in *Buddhist Mission Dental College &Hospital v.BhupeshKhurana,*[28]affirming the decision of the National Commission, that educational institutes can be said to provide services for consideration, where they charge fees, and hence that they are accountable to compensate the students for having scammed them.[29]

2.*Deceptive practices of educational institutions,* in *Naresh Jaggi v. R.R.Gupta*[30], Candidates were enrolled by a college for various university courses claiming affiliation on the Magadh University. He subsequently told them that due to strikes, Magadha University could not hold examinations and decided to award degrees to candidates on deemed pass basis. The degrees turned out to be false. Fees refund was ordered at 18% interest, plus Rs 5000 by way of compensation.

*3. Admission into recognized course,*in*Shridharan Nair v. Registrar, University of Kerela*[31], The complainant candidate was admitted into

27 Bhupesh Khurana v. Vishwa Budha Parishad, (2001) 2 cPJ74(NC).
28 Buddhist Mission Dental College & Hospital (2) v. Bhupesh Khurana, (2009) 4 SCC473, 12, 13.
29 *See also* Dhirendra Kumarv. M.R. Sarangapani, 2015 SCCOnLine NCDRC1410:2015 Indla wNCDRC278.
30 (2003)3CPJ56(NC)
31 [2004]1CPJ27(NC)

three years LLB course. It turned out after completing education up to three years that the course was not recognized by any university. This amounted to consumer wrong under the category of an unfair practice. Compensation totaling to over 5 lakh rupees was allowed. It comprised of wasted fees, wasted years and loss of potentialities and loss of face.

The Supreme Court in the case of *Buddhist Mission Dental College & Hospital v. BhupeshKhurana&Ors*[32]., referred to the definition of the term "deficiency[33]"as provided in the Act. In Lucknow Development Authority, the Supreme Court examined the definition of "Consumer", "Service" and "Unfair Trade Practice" and observed that the definition clauses have used the said expressions indicating their wide sweep with the intention to widen the ambit of their meaning beyond their natural import. Reference was made to the word "consumer" as defined in various dictionaries as, "one who consumes".

In the case of Buddhist Mission Dental College and Hospital, the Supreme Court examined the contention that whether the Act is applicable to a dental college, charging fees from students. It was detected by the Supreme Court that when educational institutes divulge education but indulges in deficiency of service in the form of misrepresentation, it falls within the purview of deficiency of service. The Supreme Court observed as follows:

> *"The Commission justly came to the decision that this was a case of total misrepresentation on behalf of the institute which tantamount to unfair trade practice. The respondents were admitted to the BDS Course for getting education for consideration by the appellant college which was neither recognized nor affiliated for imparting education. This undoubtedly falls within the purview of deficiency as defined in the Consumer Protection Act. Therefore, the Commission properly held that there was deficiency in service on the part of*

32 2009(2)SCALE685

33 "Deficiency" means any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by orunderany law for the time being in force orhasbeenundertakentobeperformedbyapersoninpursuanceofacontractorotherwiseinrelationtoanyservice."

> *the institute and the claimants respondents are allowed to claim the relief as prayed in the plaint. The appeal filed by the appellant is without any merit and deserves to be dismissed. Education was held to be a service and, therefore, deception as to affiliation was held to be an unfair trade practice and actionable as such as a consumer wrong".*

However, in *PT Koshy v. Ellen Charitable Trust &ors*[34] (2012), the apex court emphatically held that "education is not a commodity and educational institutions are not providing any kind of service and therefore such matters cannot be entertained by the consumer forum under the CP Act, 1986".

But in*P.Sreenivasulu v. P.J Alexander (2015)* the highest Court reiterated that *"educational institutions come under the purview of the CP Act". However, in 2017 in Anupama College of Engineering v. Gulshan it retracted to its position in the P.T.Koshy case.*

So when Manu Solanki and eight others filed a complaint against Vinayaka Mission University[35] , a large Bench of the National Commission examined in detail the decisions of the Supreme Court and concluded that all educational institutions and related activities were outside the purview of the CP Act and dismissed it[36]. On the same grounds, it also dismissed the appeal of the father who had sought compensation for the death of his child by drowning in a school swimming pool *(Rajendra Kumar Gupta v. DrVirendraSwarup Public School &Anr)*[37].

Both the cases went before the Supreme Court. While granting leave in a special leave petition filed by Rajendra Kumar on October 29, 2021, the Supreme Court observed that an appeal pertaining to the issue of whether education is a service within the CP Act was already pending before the court (Civil Appeal of Manu Solanki was admitted in 2020) and that this should be tagged with that. This decision of the Supreme Court has elevated the hopes of millions of students everywhere in the

34 2012(3)CPC615(SC)
35 2020SCCOnLineNCDRC7
36 PushpaGirimaji, *SC to decide whether consumers laws govern educational services or not,*Hindustan Times 13February 2022.
37 SLP(C)16591/2021

country and they are aspiring that same will be upheld by the highest court of the country.

## 6. Conclusion

Thus, Consumer Protection Act protects the consumers from the unfair trade practice and services. It too protects the consumer from deficient services including educational services. The judiciary has played a very significant role in harmonizing the wellbeing of the providers and users of service. On one hand, it has approached to save the consumers in significant cases and issues, where it has enlarged the scope of the definition of services and given beneficial interpretation so as to benefit the consumers. On the other hand, it has refused to intercede and has given preventive decisions. Thus the judiciary has packed up the interstitial gaps in the Act by its creations and judicial Activism. Imparting education is invaluable contribution to the country but, undue advertisement is being taken through dubious and devious methods that should be brought to light by vigilant consumer, so that issue can be redressed by commissions under the Consumer Protection Act,2019. Students and parents who pay money in return for educational services must not accept the wrong doings of these institutions which have taken undue advantages of this almost monopolistic situation. Right to Education Act,2009 should be followed by private institutions in letter and spirit in order to save the basic human right.

Educational institutions right to establish can be regulated; but such monitoring actions must, in general, be to certify the maintenance of truthful academic standards and infrastructure (including competent staff) and the avoidance of maladministration by those in charge of super vision. The setting of inflexible fee structure, verbalizing the formation and structure of a governing body, necessary recommendation of staff and teachers for appointment or nominating students for admissions would be unendurable restrictions.

Basically, the government can decide what qualifications are needed for entrance into college. However, private colleges can still choose who they admit, as long as they have a fair selection process. They may also have agreements with the government to admit some students from poor backgrounds and provide scholarships. When it comes to setting fees,

making a profit is not a common practice in India. The fees must consider the need to generate money for the improvement and growth of the school, the progress of education in the school, and to provide necessary facilities for the students. In any case, a private organization can create its own group of leaders, as long as the state or university suggests what qualifications these leaders should have. It will be annoying if the state has the power to choose certain individuals for governing positions. When the government appoints people, possibly based on politics, it will make it difficult for private companies to start and manage schools. For the same reason, when the Department or Service Commission directly chooses teachers for private schools, it is an unfair and unnecessary control over the freedom of those schools.

# Cyber Crimes against Women: A Socio-Legal Study with special reference to Kashmir

**Dr. Mir Junaid Alam***
**Dr. Mir Farhatul Ain****
**Dr.Wakar Amin*****

***Abstract***

*Cyber crimes against women have emerged as a significant concern in the digital era with far-reaching consequences for their safety and dignity. This paper makes an empirical evaluation of the socio-legal aspects of cyber crimes against women in Kashmir. Through a mixed-methods approach, combining qualitative and quantitative data, the research paper investigates the prevalence and impact of cyber crimes on women in Kashmir. It also explores the legal and institutional frameworks in place to combat these crimes, highlighting the gaps and challenges in implementation.*

***Key words:*** *Cyber Crimes, Defamation, Harassment, Internet, Social media, Stalking*

## I. Introduction

Internet has increased its reach and coverage phenomenally over the period of time. From the proliferation of artificial intelligence to the omnipresence of smart devices, the landscape of modern technology is characterized by its relentless pursuit of efficiency and convenience. Computers, aided by the internet have emerged as the predominant medium for communication, information exchange, commerce and entertainment. It transcends physical boundaries, space, time, nationality, citizenship, jurisdiction, gender, sexual orientation and age, essentially extending life in the real world into a virtual realm.[1]Internet has become

* Assistant Professor, School of Law, University of Kashmir.
** Assistant Professor, School of Law, University of Kashmir.
*** Associate Professor, Dept. of Social Work, University of Kashmir.

1 S.K. Verma and Raman Mittal, Legal Dimensions of Cyberspace, Indian Law Institute, New Delhi,P. 228.

inseparable part of our lives. The United Nations Human Rights Council has recognised access to the internet as a fundamental human right, acknowledging its essential role in facilitating communication, information exchange, and global connectivity.[2] In 2015, the Supreme Court of India declared that access to internet is a fundamental right under Article 19 of the Constitution of India.[3]According to the Internet and Mobile Association of India, there are 692 million active internet users in India out of which 351 million are from rural areas and 341 are from urban areas. The number of internet users in India is likely to reach 900 million by 2025.[4]The Internet of Things (IoT) is another emerging area which is going to hold the field in near future. The Internet of Things (IoT) represents a significant evolution beyond the current internet, transforming it into an intricate network of autonomous yet interconnected systems. These systems seamlessly integrate with innovative services and diverse communication modes, enabling a new paradigm of smart interactions and data exchange. The IoT is not simply an expansion of the existing internet, but rather a sophisticated web of interconnected devices, platforms, and applications that revolutionise the way of life, work, and communication. There is hardly any field of life that has not been revolutionised by internet. However, it is also being transformed into a heaven for criminals. There have been various kinds of computer and internet related crimes.

Broadly, there are three main types of new crimes that can be committed through, by means of, and using, the internet. They can be classified into:[5]

- Hacking without any intention to commit any further offence or crime;

2 The Promotion, Protection and Enjoyment of Human Rights in Internet, A/HRC/32/L.20,27 June 2016.

3 Anuradha Bhasin v. Union of India, AIR 2019 SC 808.

4 Available at https://www.livemint.com/news/india-to-have-around-900-million-internet-usersby-2025-report-11659063114684.html (Accessed on 15 November 2023)

5 Nandan Kamath, Law relating to Computers, Internet and E-Commerce, Universal Law Publishing Co., 2007, P. 214.

- Unauthorised access with the intention to commit further offences. These can include theft, fraud, misappropriation, forgery, etc.
- Destruction of digital information through use of viruses, trojan horses, logic bombs etc.

The internet has created an environment where criminal activities can be carried out with increased ease and anonymity, making it more challenging for perpetrators to be detected and held accountable. The rapid expansion of the internet has been matched by a corresponding surge in cybercrime, with the variety of offences committed or attempted online growing in tandem with the internet's growth. This correlation highlights the need for robust cybersecurity measures and effective law enforcement strategies to combat the evolving landscape of online criminal activity.[6]

With the rapid advancement of technology, the incidence of cyber crimes has escalated, making women and children particularly vulnerable. While cyberspace offers a powerful platform for women to learn about and assert their rights, access information and express themselves freely, it also exposes them to different types ofcyber crimes. The alarming rise in crimes against women poses a significant threat to personal security. The internet facilitates the sharing and circulation of content such as pictures, audio, videos, and texts on a global scale. This widespread dissemination of information can be particularly harmful to women. Reports from the National Crime Records Bureau (NCRB) indicate a marked increase in cyber crimesagainst women. There have been numerous instances where women have received unsolicited emails containing indecent, obscene, and offensive language. These crimes take various forms, including defamation, sending obscene images, emails, videos, and audio files as well as morphing pictures obtained from social media to create pornographic content. Offenders often find their victims on social media platforms like Facebook, Instagram, dating apps and on job and marriage websites, where people tend to share personal information. The vulnerability of women in these cases often stems from

6 Id. P. 209.

the exposure of private information on such sites. Anonymity over the internet motivate offenders toengage in criminal activities including perpetrating violence against women. The use of internet for stalking, trafficking, intimidation and humiliation of women is widely prevalent in developing countries like India. Although the Information Technology Act, 2000, amended in 2008 takes steps to address these issues, it does not comprehensively cover all aspects of cyber crimes and cyber security especially those concerning women. Additionally, the underutilisation of technology has contributed to a steady rise in cybercrimes. Thus, there is a pressing need for a comprehensive socio-legal study to understand the specific nature, prevalence and consequences of cybercrimes against women. The universe of study is District Srinagar of Jammu and Kashmir. This study aims to elucidate underlying factors contributing to this phenomenon and accordingly comes up with strategies to safeguard women in the digital era.

**II. Cyber Crimes against Women: An Indian Legal Approach**

The Budapest Convention of November 2001 is the first ever Convention on cyber crimes. However, India is not signatory to this convention.

The UNCITRAL Model Law on Electronic Commerce served as the foundation for the laws relating to Information Technology at global level including the Information Technology Act, 2000. The IT Act, 2000 contains following provisions for combating cyber crimes against women:

**Punishment for cheating by personation by using computer resource**[7].–*Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.*

**Punishment for violation of privacy**[8].–This provision prescribes punishment for intentionally or knowingly capturing, publishing or

7 Section 66D, Information Technology Act, 2000.
8 Section 66E, Information Technology Act, 2000

transmitting the image of a private area of any person without his or her consent, under such circumstances as violating the privacy of that person.

For the purposes of this section "private area" shall mean the naked or undergarment clad genitals, pubic area, buttocks or female breast.

**Punishment for publishing or transmitting obscene material in electronic form**[9].–Any person who publishes or transmits or causes to be published or transmittedany material in electronic form that is lascivious or appeals to prurient interests or having the effect of depraving and corrupting individuals who are likely to access it shall be punished under this provision.

**Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.**[10]–It shall be a punishable offence to publish or transmit or cause to be published or transmitted in the electronic form any material containing sexually explicit act or conduct.

**Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.**–*Whoever*

*a. publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or*

*b. creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or*

*c. cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or*

*d. facilitates abusing children online, or*

*e. records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,*

9 Section 67, Information Technology Act, 2000.
10 Section 67A, Information Technology Act, 2000.

*shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees*

**Bharatiya Nyaya Sanhita (BNS),2023 and crimes against Women**

Bharatiya Nyaya Sanhita is a general criminal law of the country, whereas the Information Technology Act, 2000 is a special law which largely covers commercial transactions (e-commerce) and computer related offences. In most cases of cyber crimes which are committed against women, BNS is widely applied for charge framing. The provisions of BNS which are frequently used in cases involving cyber crime cases against women are discussed as under:

**Sexual harassment and punishment for sexual harassment[11]**

The offender who tries to establish physical contact or attempts to make unwelcome advances or explicit sexual overtures or demands or requests sexual favours or shows pornography against the will of the woman or makes sexually coloured remarks, shall be guilty of an offence of sexual harassment. If any of these acts are committed with the use of the internet, computer device, or computer network,it would amount to cyber crime and would be punishable under this provision. Section74 prescribes punishment on the basis of nature of sexual harassment caused. If the offence is of the nature of unwelcome physical contact and advances or a demand or request for sexual favoursor showing pornography, then punishment can go up to 3 years or fine or both. Whereas if the sexual harassment is of the nature of making sexually coloured remark then punishment is lesser but can extend up to 1 year or fine or both.

**Voyeurism[12]**

11 Section 75, Bharatiya Nyaya Sanhita, 2023.
12 Section 77, Bharatiya Nyaya Sanhita, 2023.

Watching or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be a punishable offence. On the first conviction, the penalty shall be imprisonment for a minimum of one year, extendable up to three years, along with a fine. For subsequent convictions, the imprisonment term shall be a minimum of three years, extendable up to seven years, along with a fine.

**Stalking**[13]

A person commits the offence of stalking if he:

(i) repeatedly follow a woman and try to contact her to initiate personal interaction, despite her clear lack of interest or explicit rejection; or

(ii) monitor a woman's online activities, including her use of the internet, email, or other electronic communication platforms, without her consent.

Any person found guilty of stalking shall be subject to the following penalties:

(i) For the first conviction, imprisonment for a term not exceeding three years, along with a fine;

(ii) For a second or subsequent conviction, imprisonment for a term not exceeding five years, along with a fine.

Apart from these specific sections, there are a number of other provisionsunder which cyber-attacks may be reported and the accused prosecuted. These include the provisions relating to defamation,[14]Criminal intimidation,[15]Criminal intimidation by an anonymous communication[16], word, gesture or act intended to insult the modesty of a woman.[17]

13 Section 78, Bharatiya Nyaya Sanhita, 2023.
14 Section 356, Bharatiya Nyaya Sanhita, 2023.
15 Section 351, Bharatiya Nyaya Sanhita, 2023.
16 Section 351(4), Bharatiya Nyaya Sanhita, 2023.
17 Section 79, Bharatiya Nyaya Sanhita, 2023.

## III. Cyber Crimes against Women in District Srinagar: An Empirical Evaluation

Srinagar the summer capital of Jammu and Kashmir due to its unique socio-legal environment, is a significant urban area for unveilingthe prevalence of cyber crimes and their impact on women. Located in the Kashmir Valley Srinagar is a city steeped in historical and cultural significance, nestled in the picturesque landscape of the Western Himalayas. The city is a bustling hub with a diverse population making it an important focus for examining the intersection of modern technology and traditional societal norms. As the region experiences rapid digitalisation, the rise of cyber crimes particularly those targeting women presents a critical issue. This study aims to explore the socio-legal dimensions ofcyber crime in Srinagar analysing how these crimes impact women and assessing the effectiveness of legal frameworks and societal responses in addressing these challenges.

### Methodology

The researchers employed a combination of quantitative and qualitative research methodologies including surveys, interviews, and data analysis. This evaluation seeks to unveil the underlying patterns, prevalence and impact of victimisation in cyber space experienced by women in Srinagar.Through a comprehensive understanding of the challenges and vulnerabilities faced by women in the digital sphere, this evaluation aims to provide evidence-based interventions and policy responses aimed at fostering a safer and more inclusive online environment for women in District Srinagar.

The data provided by Cyber Police Station Kashmir Zone Srinagar provides an insight into the landscape of cyber crimes. The study includes the number and nature of cases reported, as well as their current status. Over a period of time a significant number of complaints have been registered including those relating to various cyber crimes such as online fraud, cyber bullying, identity theft and hacking. These cases are being diligently investigated, reflecting the commitment of Cyber Police Stationin addressing cyber crimes effectively. While some cases have

been disposed off indicating resolution or closure, others are being investigated, highlighting the ongoing efforts to pursue justice and ensure the safety and security of individuals in the digital environment.

The study aims to explore the issue of cyber crimes against women in District Srinagar over a period of five years. Since 2020, the Cyber Police Station Kashmir Zone Srinagar has provided detailed statistics related to cyber crimes against women.

**Complaints registered in Cyber Police Station Kashmir zone Srinagar**

| Year | Number of Cases/ Complaints | Nature of Cases/Complaints | Disposed Off | Under Investigation |
|---|---|---|---|---|
| 2020 | 106 | Miscellaneous complaints of cyber-crime against women like harassment, defamation, cyber bullying, abusing, extortion etc. | 106 | - |
| 2021 | 712 | | - | - |
| 2022 | 521 | | 512 | 9 |
| 2023 | 618 | | 580 | 38 |
| 2024 (TillApril) | 120 | | - | 120 |

**Source:** Cyber Police Station Kashmir Zone Srinagar.

In 2020, there were a total of 106 cases or complaints related to miscellaneous cyber crimes against women, including harassment, defamation, cyber bullying, abuse, and extortion. All 106 cases were disposed of in the same year. In 2021, the number of cases significantly increased to 712. However, there no information was provided regarding the status of these cases, suggesting that they may still be under investigation or pending resolution. In 2022, 521 cases were reported, and all of them were disposed of. However, out of these disposed cases, 512 were resolved while the remaining 9 are still being investigated. In 2023, there were 618 cases registered, out of which 580 were disposed of, while 38 cases are still being investigated. Till April 2024, 120 cases have been reported, all of which are under investigation, with none disposed of yet. Overall, the data indicates a significant increase in reported cyber crimes against women over the years, highlighting the

imperative need for effective measures to address and combat these crimes.

Despite efforts being made to combat cyber crimes, a considerable percentage of cases remain unresolved. This trend highlights potential inadequacies in existing legal framework, resource constraintsand the persistence of social stigmas preventing victims from reporting. The data highlights the urgent need for stringent law, enhanced law enforcement and increased awareness initiatives to effectively combat cyber crimes against women in Srinagar.

**Cybercrimes against Women: Cases registered in Cyber Police Station Kashmir zone Srinagar**

| S.No. | Year | Number of Cases | Nature of Cases | Redressal |
|---|---|---|---|---|
| 01 | 2020 | 04 | Cyber bullying, Sexual Harassment, Black mailing, abusing, outraging modesty, stalking etc,by way of transmission of obscene material, morphed obscene videos, photos threatening, defaming on social media platform. | 04 |
| 02 | 2021 | 02 | | 02 |
| 03 | 2022 | 24 | | 24 |
| 04 | 2023 | 27 | | 27 |
| 05 | 2024 | 07 | | 07 |

**Source:** Cyber Police Station Kashmir Zone Srinagar.

The data from the Cyber Police Station Kashmir Zone, Srinagar, regarding cyber crimes against women in the past five years reveals a fluctuating trend: 4 cases were registered in 2020, 2 in 2021, 24 in 2022, 27 in 2023, and 7 in 2024. All these cases have been resolved. The nature of these cases primarily include cyber bullying, sexual harassment, blackmailing, abuse, outraging modesty, stalking and transmission of obscene material. While specific reasons for the fluctuations are not provided, potential factors may include variations in awareness and reporting rates among women, changes in the efficiency of law enforcement and support mechanisms, as well as socio-political influences impacting societal attitudes towards cyber crimes against women. Overall, the data highlights the ongoing prevalence of cyber

crimes against women in District Srinagar and the continued efforts by authorities to address and resolve such cases.

The questionnaires were prepared, one each for the different target groups. The responses given by the respondents are classified into two main groups viz., Group A and Group B.

Group A: Cyber Police

Group B: General Survey of Women/Girls Resident of District Srinagar

**GROUP A: Cyber Police**

For the empirical study under Group A, both questionnaire and semi structured interview method were used to gather the opinion of Cyber Cells personnel. The police forms one of the important functionaries of the criminal justice system having the duty to maintain law and order in society. These are the authorities actively involved in the investigation and also the first respondent in any cyber crime incident with whom women victim contacts. The Cyber Police Station located at Srinagar was the part of the survey. In total 5 officers with different ranks ranging from Assistant Sub Inspectors to Inspectors, have participated in this survey. They provided valuable information regarding the trend of cyber crimes, problems in investigation of cyber crimes committed against women, reporting of major cyber crimes committed against women, issue of under reporting, possible causes of under reporting along with frequency in reporting, mode of reporting, training sessions in Srinagar. The major findings are summarised here as under:

**Work Experience in law enforcement, specifically in handling cyber crimes**

The respondents have been engaged in law enforcement, particularly in handling cyber crimes for over a year. This suggests a significant period of experience and familiarity with the complexities of combating digital threats within the realm of law enforcement. Such tenure likely involves encountering a diverse range of cyber incidents, refining skills in data analysis, threat detection and response strategies. It also implies a continuous adaptation to the rapidly evolving landscape of

cyber threats, reflecting a commitment to staying updated on emerging technologies and tactics employed by cybercriminals.

**Specialised Training**

The respondents indicated that they have received specialised training in dealing with cyber crimes against women, specifying that they underwent online courses. Online courses often offer flexible learning schedules, allowing individuals to acquire relevant knowledge and skills at their own convenience. This training likely encompasses various aspects of cyber crimes targeting women, including but not limited to online harassment, cyber stalking, intimate partner violence, and privacy breaches. By undergoing such training, the respondents demonstrate a proactive approach to addressing gender-based cyber crimes and enhancing their capacity to support victims and investigate these offences effectively.

**Common channels through which victims report cyber-crimes against women**

The respondents believe that the women who are victim of cyber crimes commonly report such incidents through helplines, online complaint portals, and in-person visits to police stations. These channels provide various options for victims to seek help and report their experiences, catering to different preferences and circumstances. Helplines offer immediate assistance and support over the phone. Online complaint portals provide a convenient platform for documenting incidents and initiating investigations, and reporting in-person at police stations allows for more personalised interaction with law enforcement officials. By utilising multiple channels, victims can access the support and resources they need to address their problems effectively.

**Reasons for underreporting of cyber crimes by women**

The respondents agreed that underreporting does exist. Fear from family members, including in-laws, parents, siblings, and relatives often deters victims from reporting such incidents. Societal pressures and the fear of public perception further compound this reluctance to come forward. Moreover, the enduring social stigma attached to these crimes and the lack of awareness about available support services create

additional barriers to reporting. Victims may also feel isolated and unsure of where to turn for help leading to a reluctance to disclose their experiences.

**Common types of cyber crimes reported against women in District Srinagar**

The respondent's assertion highlights the multifaceted nature of crimes targeting women. This suggests a complex landscape of online abuse and harassment ranging from non-consensual intimate image sharing to hacking and online harassment. Recognising the gendered dynamics of these crimes is crucial for developing effective prevention and intervention strategies. Moreover, the breadth of reported cyber crimes highlights the need for comprehensive legal frameworks, law enforcement efforts and support services tailored to the diverse experiences and needs of women affected by online abuse and exploitation.

**Steps taken by authorities to bring confidence in women to report cyber crime**

The respondent believes that one crucial step authorities take to foster confidence in women to report cyber crimes against them is by ensuring the protection of the victims identity. By safeguarding the identity of the victim, authorities aim to create a safe environment where individuals feel comfortable coming forward to report incidents without fear of exposure or retaliation. This approach emphasises the importance of prioritizing victim confidentiality and privacy rights in the investigative process, thereby encouraging more women to seek help and support.

**Technical assistance required during investigation of cyber crime against women**

The respondent indicates that in cases where technical assistance is needed during the investigation of cyber crimes against women they would seek support from both cyber crime officers and the cyber crime division of the Union Territory of Jammu and Kashmir. Additionally they would consult the Forensic Science Laboratory (FSL) for expertise in gathering and analysing digital evidence. This approach highlights the

importance of leveraging specialised resources and expertise to effectively investigate cyber crimes particularly those involving women where sensitive handling and thorough analysis are essential for securing justice. By utilising multiple avenues for technical assistance, the authorities can enhance the efficiency and accuracy of their investigations ultimately improving outcomes for victims and holding perpetrators accountable.

**Challenge faced while gathering\sending the digital evidence in cyber crime against women to the FSL for seeking opinion under the Indian Evidence Act, 1872 (now replaced by Bharatiya Saksha Adhiniyam, 2023) or the Information Technology Act, 2000**

The respondents highlighted two significant challenges encountered while gathering and sending digital evidence in cyber crimes against women to the Forensic Science Laboratory (FSL). Firstly, seizing digital devices from the accused to be used as evidence poses a substantial challenge. Securing access to these devices is crucial for forensic analysis but can be difficult due to potential resistance or obstruction from the accused. Secondly, the respondents get poor response from social media sites while attempting to gather digital evidence. This hurdle may include delays, lack of cooperation or limitations in accessing relevant data from these platforms. These challenges highlight the complexities involved in digital forensic investigations and emphasise the need for improved protocols, cooperation mechanisms, and legal frameworks to facilitate the collection and utilisation of digital evidence in cases of cyber crimes against women.

**New tactics used in committing cyber crimes against women**

The respondents observe new tactics being used in committing cyber crimes against women. These include the use of system-generated virtual IDs, allowing perpetrators to conceal their true identities during online interactions. Additionally, the creation of real-time virtual rooms where users can communicate via calls presents new challenges for monitoring and investigating illegal activities. Other tactics mentioned include cloning, hacking, and the misuse of strangers' SIM cards and WiFi connections, highlighting the growing sophistication and variety of

methods used by perpetrators to target women online. These trends underscore the need for enhanced cybersecurity measures, increased awareness, and proactive strategies to protect women from evolving forms of cyber exploitation and harassment.

**Primary challenges faced by law enforcement agencies in investigating cyber crimes**

**Against women**

The respondent identifies two primary challenges faced by law enforcement agencies in investigating cyber crimes against women viz., lack of skilled manpower and a lack of tools and techniques. These challenges highlights the need for investment in training programs to enhance the capabilities of law enforcement personnel in dealing with cyber crimes effectively. Additionally, there is a need for the provision of advanced tools and techniques to aid in the investigation and forensic analysis of digital evidence.

**Access to adequate resources and technology to effectively combat cyber crimes**

The respondents indicate that they have access to adequate resources and technology to effectively combat cyber crimes against women. This suggests that they are equipped with the necessary tools, technologies and resources to address these crimes efficiently. Access to such resources is crucial for law enforcement agencies to investigate cyber crimes thoroughly, gather evidence, and hold perpetrators accountable. However, it is essential to continuously assess and update these resources to keep pace with evolving cyber threats and ensure effective response and prevention strategies.

**Services which are available for victims of cyber crimes**

The respondent indicates that victims of cyber crimes in their jurisdiction have access to a comprehensive range of support services including counselling, legal aid and awareness programmes. Counselling services offer emotional and psychological support to victims helping them cope with the trauma and aftermath of cyber crimes. Legal aid provides assistance in navigating the legal process including filing complaints and seeking protection orders. Awareness programmes aim to

educate the public about cyber risks, prevention strategies and available support resources, empowering individuals to recognise and respond to cyber crimes effectively. By offering these diverse support services, authorities and organisations strive to provide holistic assistance to victims of cyber crimes addressing their emotional, legal and informational needs.

**Group B: General Survey of Women/ Girls Resident of District Srinagar**

For the empirical study under Group B, researchers have used questionnaire to gather the opinion of women residing in Srinagar. Based on the responses from the important stakeholders dealing with cyber crimes against women, the questionnaire was designed. The researchers used purposive sampling technique.

In this survey 70 girls/women participated by filling the questionnaires. The sample includes women residing in Srinagar pursuing different courses and professions. The findings of the study are:

- The data shows that the majority of respondents believe that cyber crimes based on gender are increasing in Srinagar. It is concerning that most women are unaware of how to report such crimes highlighting the need for increased awareness programmes.
- The data shows that 92.9% of respondents prefer using mobile phones for internet access highlighting the widespread use of smartphones. This trend suggests a shift away from tablets and computers. Additionally the absence of respondents using cyber cafes indicates a declining relevance of such establishments. Overall these findings emphasise the significant impact of mobile technology on internet access and usage habits.
- The data displays diverse internet usagewith 5.7% for education, 7.1% for entertainment and 1.4% for online shopping. However the majority (85.7%) use the internet for all listed purposes showcasing its versatility.
- The data reveals a significant portion of respondents spend considerable time online with 31.4% spending 2-4 hours and 32.9% spending 4-6 hours. Notably 22.9% exceed 6 hours of internet use. This

distribution underscores the pervasive nature of online activities indicating varying levels of dependence for personal and professional needs. Overall it highlights the internet's integral role in modern society.

- The data shows a varied landscape of social media harassment experiences among respondents with significant incidents reported across different platforms. Facebook and WhatsApp emerge as primary sources with 27.4% and 19.4% of respondents experiencing harassment respectively. Additionally, 11.3% and 9.7% reported harassment on Instagram and Snapchat. Notably 30.6% experienced harassment on platforms not listed indicating its pervasive nature across various digital spaces. Almost half (47.1%) reported cyberbullying, cyber stalking or other forms of harassment underscoring the prevalence of such issues in today's digital landscape and the need for concerted efforts to address them.
- Around 25.7% of respondents reported experiencing unauthorised use of their photos highlighting digital privacy concerns. The highest reported misuse was of images (34%), followed by SMS messages (31.9%) and calls (25.5%). While audio and video content misuse was less common their inclusion suggests varied targets for exploitation. This underscores the need for robust security measures to protect personal data and communications from unauthorised access and exploitation.
- 20.3% of respondents reported taking action by reporting the misuse of their private content, while the majority (79.7%) did not report. This suggests a significant proportion may not actively address content misuse due to factors like lack of awareness or concerns about repercussions. Approximately 27.9% reached out to content providers potentially to request removal or clarification while 72.1% did not. This data underscores the importance of enhancing awareness about reporting options and providing support for victims to effectively address content misuse.
- A notable shift towards digital reporting for cyber crimes is observed with approximately 26.5% using online portals while as 14.3% resort to traditional methods. However, the majority (59.2%) opt for

alternative approaches reflecting the complexity of cyber-related incidents.

- Approximately 33.3% of respondents encountered challenges in removing or deleting harmful online content, while 66.7% did not. This suggests a significant minority facing obstacles in addressing online harassment or threats potentially indicating systemic issues in content moderation processes. Understanding reasons behind these challenges could help coming up with strategies to improve online safety and support for victims.
- Only 9.7% of respondents received cyber awareness or counselling before experiencing incidents, suggesting a lack of proactive education. Following incidents, 25.8% received support indicating a need for timely assistance. Implementing cyber awareness and counselling initiatives could foster a safer online environment and aid to those affected by online harassment.
- Based on the survey, the data collected strongly supports the hypothesis that women in Kashmir lack awareness of cyber security measures. It reveals a concerning trend where most respondents are unaware of how to report cyber crimes indicating a fundamental gap in knowledge regarding online safety. Moreover while there is widespread use of smartphones for internet access and heavy reliance on the internet for various purposes there is a notable absence of corresponding awareness about protecting personal data and content online. The prevalence of social media harassment experiences, unauthorised use of photos and content misuse further underscores the vulnerability of women to cyber threats due to insufficient awareness or preparedness. Although there is a partial shift towards digital reporting for cyber crimes, it coexists with a significant reliance on alternative reporting approaches, potentially stemming from unfamiliarity with online reporting systems. Overall, the data highlights a critical need for increased cyber security awareness programs targeting women in Kashmir to empower them with the knowledge and tools necessary to navigate the digital landscape safely.

- Based on the empirical evaluation the data supports the hypothesis that existing laws are not sufficient to protect women against cyber crimes in Kashmir. Despite experiencing significant incidents of harassment across various digital platforms there is a lack of clarity regarding the effectiveness of legal recourse taken by victims.Challenges in removing harmful online content and the preference for alternative reporting methods over traditional or digital channels indicate potential dissatisfaction or limitations in existing legal avenues.

## IV. Conclusion and suggestions

There is lack awareness about cyber security measures among women in Kashmir. Despite a noticeable rise in cyber crimes impacting women like cyber bullying, image-based sexual abuse, cyber stalking and defamation, these crimes mostly go unreported due to social stigma and perceptions that they are not serious. New trends in cyber crimessuch as using system-generated virtual IDs and real-time virtual rooms for communication make monitoring and prevention even more challenging. There is a need for better legal framework, including harsher punishments and dedicated courts for handling cyber crimes against women. The absence of a dedicated digital forensic laboratory also highlights the lack of resources for investigating such crimes. Despite efforts to raise awareness there is still a significant gap in knowledge and understanding of cyber security among women in Kashmir emphasising the urgent need for improved education and proactive measures to effectively tackle cyber threats.Despite widespread smartphone use and heavy internet reliance for various purposes there is a notable lack of awareness about safeguarding personal data and content online. Instances of social media harassment, unauthorized use of photos and content misuse further emphasise women's vulnerability to cyber threats due to inadequate awareness or preparedness. While there is a partial transition towards digital reporting for cyber crimes, many still rely on alternative methods of reporting possibly due to unfamiliarity with online reporting systems. The data highlights the urgent need for enhanced cyber security awareness programs for women in Kashmir aiming to empower them with the

necessary knowledge and tools to navigate the digital landscape safely.While registering a crime is crucial to initiate criminal law proceedings, analysing the charge sheet, conviction and acquittal rates is essential to assess the effectiveness of laws. Data from the National Crime Records Bureau (NCRB) indicates an alarmingly low conviction rate in cases of cyber crimes targeting women under both the IT Act, 2000 and IPC (now BNS, 2023). The data also reveals a low rate of charge sheeting in such cases with only about 20% of reported cases resulting in charges being filed by the police. The low rate of charge sheeting may indicate shortcomings in the investigation process. The IT Act, 2000 mandates that investigations be conducted by a police officer of at least the rank of an inspector which often leads to ineffective investigations due to the shortage of. Additionally police officers should receive adequate training to investigate and prosecute cyber crimes more effectively. There is a need to amend existing laws and enact a special legislation specifically focussing oncyber crimes against women.

# Refugee, Gender, Religion and Climate Change: An Analysis of Multi-Dimensional Discrimination

**Dr. Amit Ghosh***
**Dr. Mohammadi Tarannum****

***Abstract***

*India, a diverse and multicultural nation, has long been a refuge for various communities fleeing persecution and conflict. The interplay of gender, religion, and refugee status presents unique challenges and dynamics within this context. These abstract aims to provide an overview of these complex intersections, exploring how they shape the experiences and rights.Gender significantly influences the refugee experience. Violence against women and girls, limited access to schooling and health care, and discrimination in refugee camps are some of the problems that women and girls face. Gender roles and expectations within refugee communities and the broader societal context in India further complicate these issues. Efforts to address these challenges must consider female refugees' specific needs and vulnerabilities.Religious identity plays a critical role in the refugee experience in India. For instance, Hindu refugees from Pakistan and Bangladesh might experience different treatment compared to Rohingya Muslims or Tibetan Buddhists. The intersection of gender, religion, and refugee status creates complex and multifaceted challenges for refugees in India. Women belonging to religious minorities, for example, may face compounded discrimination and vulnerability. Addressing these challenges requires an intersectional approach that recognizes and*

---

* Assistant Professor, Head of the Department, Department of Law, Maulana Abul Kalam Azad University of Technology, West Bengal.
** Vice-Principal, Surendranath Law College, University of Calcutta.

*responds to the layered nature of identity and oppression.This abstract underscore the need for a comprehensive legal framework and targeted support mechanisms to address the unique challenges faced by refugees in India. The impact of this discrimination on refugee women is demonstrated by a case study of one area of Indian refugee policy.*

**Keywords:** Gender, Discrimination, Violence, Refugee, Policy

## 1. Introduction

Gender refers to the societal conceptions of roles, behaviours, expressions, and identities associated with girls, women, boys, men, and people who identify as gender diverse. It influences people's perceptions of themselves and others, their behaviour, interactions, and the distribution of power and resources in society. Gender identity goes beyond binary classifications of girl/woman and boy/man and is not static; it exists on a continuum that can change over time.

Sex is a set of biological features seen in both humans and animals, mostly related to physical and physiological traits such as chromosomes, gene expression, hormone levels and function, and reproductive/sexual anatomy. It is commonly characterised as female or male, despite the biological traits that define sex and how they express vary.

Rescue status is awarded to those who have been compelled to leave their own country due to persecution, war, or violence. The impact of religion and gender on refugee status is significant, as individuals may face discrimination and persecution based on their religious beliefs or gender identity. Women and members of the LGBTQ+ community, in particular, may be at greater risk of violence and persecution in their

home countries, making it crucial for them to be granted refugee status to escape harm and secure a safe future.

Governments can ensure that their refugee policies are inclusive and responsive to the specific needs of women and LGBTQ+ individuals, upholding human rights principles and promoting a more just and equitable society for all. By offering support and resources to refugees from diverse backgrounds, countries can benefit from the contributions and talents of these individuals, creating a welcoming and supportive environment for all refugees.

To establish a fair and impartial society, governments can actively attend to the distinct requirements of marginalized groups within the refugee community, implementing focused assistance initiatives, facilitating access to healthcare and social services, and guaranteeing inclusive and non-discriminatory policies. This will demonstrate their dedication to maintaining human rights and fostering social unity, ultimately constructing more robust and resilient communities for everyone.[1]

Governments can ensure inclusive refugee policies by recognizing the unique challenges faced by marginalized groups, such as women and LGBTQ+ individuals. This not only upholds human rights principles but also promotes a more just and equitable society. By providing support and resources to refugees from diverse backgrounds, countries can benefit from their contributions and talents.

---

1 What is Gender? What is Sex, *available* at: https://cihr-irsc.gc.ca/e/48642.html (last visited on August 4, 2024).

Prioritizing the needs of marginalized groups within refugee populations can create a more inclusive and supportive environment for all individuals seeking asylum. This promotes a sense of acceptance and belonging for all individuals, fostering a more cohesive and resilient society. Governments can also establish a fair and impartial society by implementing focused assistance initiatives, facilitating access to healthcare and social services, and ensuring inclusive and non-discriminatory policies.

## 2. Importance of the Study

Understanding the reasons people seek refuge due to discrimination based on religious views or gender identity is crucial for developing effective solutions. By addressing the unique challenges faced by women and LGBTQ+ individuals, policymakers can create more welcoming refugee policies. This approach demonstrates support for human rights and ensures the safety and well-being of all refugees, regardless of their religious or gender identity. Countries should prioritize the safety and well-being of all refugees.

## 3. The Refugee Convention

The United Nations High Commissioner for Refugees (UNHCR) relies on the 1951 Refugee Convention and its 1967 Protocol to provide aid to refugees. Refugees are individuals who have departed their home countries to avoid conflict, violence, or mistreatment and seek safety in another country. UNHCR has provided aid to refugees for over seven decades, with a total of 31.6 million refugees and 5.8 million individuals under UNHCR's protection.

Currently, there are 43.4 million refugees worldwide, with UNHCR providing assistance to an additional six million Palestinian

refugees. The definition of a refugee is established by international law, stating that a person is outside their home country and unable or unwilling to seek protection due to fear of persecution based on race, religion, nationality, membership in a specific social group, or political beliefs. This definition has been expanded to include individuals forced to flee their homeland due to external aggression, occupation, foreign control, internal conflicts, widespread human rights abuses, or events that disrupt public order.

The 1951 Refugee Convention defines a refugee and outlines their legal rights, protections, and support. UNHCR safeguards these records and assists governments in converting these principles into national legislation to ensure refugees' rights are protected and enforced. India has consistently honoured the principle of non-refoulement, even though it is not a party to the UN Refugee Convention. This value must be respected within and beyond national boundaries.[2]

### *3.1 Core Principles of the 1951 Convention*

The 1951 Convention emphasizes non-refoulement, stating that refugees should not be sent back to countries where they face serious threats to their life or freedom. It outlines essential requirements for refugees, including housing, employment, and education, to ensure they maintain a dignified and independent life. The Convention also outlines obligations refugees must fulfil towards countries providing shelter and identifies certain individuals, such as war crimes ineligible for refugee

2 The 1951 Refugee Convention, *available* at: https://www.unhcr.org/in/about-unhcr/who-we-are/1951-refugee-convention (last visited on August 4, 2024).

status. It also provides a comprehensive account of the legal responsibilities of participating states.[3]

## 4. Religion and Refugee Status

Religion significantly influences refugee policies, as religious beliefs often shape the difficulties faced by individuals seeking asylum. Policymakers must examine the intersection of religious identity and refugee status to understand the unique challenges faced by specific religious communities. This knowledge can be used to develop more inclusive and fair refugee policies. Recognizing the unique needs and protections for different religious communities can ensure dignified and respectful treatment for all refugees, regardless of their religious background.

Developing more effective and compassionate refugee policies that uphold human rights and provide necessary support is crucial. This approach can enhance social cohesion and understanding within host communities, while encouraging religious tolerance and respect for diversity. Recognizing the connection between religion and refugee status allows policymakers to strive for a fair and inclusive asylum system that prioritizes the welfare of all those seeking refuge from persecution or conflict. Working with religious leaders and organizations can create solutions respectful of different cultures and religions,

3 *Ibid*.

meeting the unique needs of diverse religious groups and creating a more inclusive and supportive environment for refugees.[4]

### *4.1 Influence of Religious Belief in Refugee Status Determination*

Religious beliefs play a significant role in refugee status determination, as they often lead to persecution in their home countries. It is crucial for governments to ensure fair and just asylum processes, respecting everyone's religious practices and beliefs. This approach can help create a more considerate and efficient asylum system that respects the rights and dignity of all refugees.

Incorporating religious beliefs into the refugee status determination process can foster cultural sensitivity and inclusivity within host countries, leading to better integration and support for refugees. This approach also addresses potential conflicts and misunderstandings due to cultural differences, creating a more welcoming environment for refugees to rebuild their lives.

Embracing religious diversity enriches societies and fosters mutual respect and cooperation among people of different faiths. This leads to a more peaceful and cohesive community where everyone feels valued and respected. By celebrating the unique traditions and perspectives of each religion, communities can learn from one another and grow stronger together.

Governments can set an example for citizens to follow, promoting unity and harmony within society. Embracing religious

4 Sandra Pertek, *Adaptive religious coping with experiences of sexual and gender-based violence and displacement*, [2024] 37 (2) JRS, *available at*: https://doi.org/10.1093/jrs/feae003 (last visited on August 6, 2024).

diversity benefits individuals in the present and lays the foundation for a brighter and more tolerant future for generations to come. By championing empathy and open-mindedness, we are forging a society that leaves no room for discrimination or prejudice. By celebrating and valuing one another's beliefs, we are laying the groundwork for a world that celebrates diversity and recognizes differences as powerful forces that unites us instead of dividing us.[5]

### *4.2 Discrimination Faced by Refugees of Certain Religions*

Discrimination against refugees of certain religions undermines understanding and tolerance efforts, perpetuating division and promoting harmful stereotypes. Addressing this issue is crucial for creating a society where all faiths can coexist peacefully. Denying entry or facing hostility to Muslim refugees in predominantly Christian countries contradicts religious diversity principles and reinforces harmful stereotypes. Combating discrimination through education, advocacy, and policy changes can promote tolerance and acceptance of all faiths. Fostering interfaith dialogue can break down barriers and promote unity among diverse religious communities. Governments and communities must work together to ensure refugees are treated with dignity and respect, and their rights are protected. Standing up against discrimination and promoting religious freedom for all can lead to a more harmonious and inclusive society. By fostering an environment of tolerance and understanding among diverse religious communities, we can cultivate a

5 Pooja R. Dadhania, *Gender-Based Religious Persecution*, 107 Minn. L. Rev. 1563 (2023), *available at*: https://scholarlycommons.law.cwsl.edu/fs/420 (last visited on August 6, 2024)

harmonious and united society. Persistently championing the rights of all individuals, regardless of their faith, is essential for a world where everyone can coexist and flourish in harmony.[6]

*4.3 Support Networks Provided by Religious Organizations*

Religious organizations provide support networks that promote unity and compassion among diverse communities. These networks offer spiritual guidance, foster a sense of belonging, and celebrate differences among individuals of all faiths. By working together, people can learn from one another, celebrate their differences, and work towards a common goal of peace and understanding. Interfaith collaboration can lead to a more tolerant and inclusive society by fostering deep discussions and partnerships on community service projects.

However, interfaith collaboration may not address underlying systemic issues contributing to religious discrimination and intolerance. Some individuals or groups may not be willing to participate in such efforts, hindering progress towards true religious freedom for all. Despite these challenges, interfaith collaboration remains a crucial tool in fostering dialogue and building bridges between different religious communities. By working towards common goals, individuals of diverse faiths can break down barriers and challenge stereotypes, ultimately creating a more inclusive and harmonious society. While it may not solve all issues related to religious discrimination, interfaith

6 Religion and the Crisis of Displaced Persons: Gender, Religion, and Displacement, *available at*: https://berkleycenter.georgetown.edu/posts/religion-and-the-crisis-of-displaced-persons-gender-religion-and-displacement (last visited on August 6, 2024).

collaboration is a powerful step towards creating a world where all individuals can practice their beliefs without fear or prejudice.[7]

## 5. Gender and Refugee Status

Interfaith collaboration can significantly benefit marginalized groups like women and refugees by addressing structural disparities and providing assistance. This collaboration allows different faith communities to strengthen their voices and advocate for policy reforms that protect the rights and dignity of all individuals, regardless of gender or refugee status. By embracing interfaith collaboration, we can promote understanding, tolerance, and drive positive change for social justice and human rights. Collective unity among individuals from diverse religious backgrounds can confront unjust systems and build a fair and equal society. This collective effort benefits under-represented groups and enhances community unity, fostering a sense of interconnectedness among individuals. Fostering interfaith collaboration can lead to enduring transformation and a global society characterized by dignity and respect for all. The strength of people coming together and showing empathy, regardless of their religious beliefs, can revolutionize communities and establish a world that is fair and welcoming.[8]

### *5.1 Different Experiences of Male and Female Refugees*

The experiences of male and female migrants can reveal the interconnected nature of prejudice and oppression. Female refugees may face discrimination and violence based on their gender, while male migrants may struggle with expectations and masculinity conventions.

7 *Supra* Note 4.
8 *Ibid*.

Recognizing and addressing these unique experiences can lead to a more inclusive and fair society. By focusing on the perspectives of both genders, we can develop a more intersectional strategy for social justice. Intersectionality is crucial in resolving complex refugee challenges, as it allows us to recognize and destroy interconnected oppression systems. By focusing on the opinions and experiences of both genders, we can create more effective solutions to their challenges. This inclusive approach can lead to a society where all people, regardless of gender or refugee status, can live without prejudice or violence. Customizing support services to meet the unique needs of refugee women and acknowledging the unique experiences of male refugees can help build a more inclusive and fairer society.[9]

### *5.2 Gender-Based Violence and Discrimination Faced by Female Refugees*

Gender-based violence and discrimination can significantly impact the physical and mental well-being of female refugees, affecting their ability to establish relationships, trust others, and navigate their new environment. To address this issue, comprehensive support services should be offered, including counselling, medical care, legal assistance, and secure accommodations. These services can help female refugees reclaim agency and self-determination, enabling them to progress with fortitude and perseverance. Prioritizing the needs of female refugees can help establish a more inclusive and fairer society. Advocating for the rights and welfare of female refugees is crucial, ensuring they have the necessary resources and assistance to flourish in their new communities.

9 *Supra* Note 6.

For instance, providing trauma-informed counselling and legal assistance can help female refugees heal from past experiences and navigate the legal system to seek justice. Offering job training programs and access to education can empower female refugees to gain financial independence and contribute positively to their communities, breaking the cycle of poverty and dependence.[10]

### *5.3 Challenges in Accessing Resources and Opportunities for Female Refugees*

Female refugees face numerous challenges in accessing resources and opportunities, including language barriers, lack of awareness about available services, cultural norms, and discrimination in host countries. Despite these obstacles, advocating for the rights and well-being of female refugees is crucial. By removing these barriers and fighting for equal rights for men and women, we can help break out of poverty and dependence. Support networks and tailored education programs are essential for female refugees to deal with their problems. Empowering female refugees through mentorship and job training programs can enhance their employability and empower them to seek treatment and heal from traumas. Providing safe spaces and support groups for survivors of gender-based violence can further empower women to make positive contributions to their new communities.[11]

## 6. Intersection of Religion and Gender on Refugee Status

The intersection of religion and gender is a complex issue that significantly impacts female refugees' refugee status. Religious practices

10 *Supra* Note 7.
11 *Supra* Note 4.

and beliefs can influence gender norms and expectations, impacting the opportunities and resources available to women. Conservative religious backgrounds may limit women's movement and autonomy, making it difficult for them to access education, work, and healthcare. Liberal religious families may provide more freedom for women to achieve their goals. To develop inclusive and effective support systems for female refugees, it is crucial to understand and address this intersection. Empowering refugee women to overcome difficulties and reach their potential involves culturally responsive services, policy advocacy, and gender equality in all areas of society. A more inclusive and friendly atmosphere can help women refugees flourish and contribute to their new communities. Initiatives and policies must prioritise religion and gender intersectionality to ensure equal success for all women.[12]

### *6.1 Unique Challenges Faced by Refugee Women of Certain Religious Backgrounds*

Refugee women from diverse religious backgrounds face challenges like discrimination, limited resources, economic limitations, and social isolation. Cultural norms and traditions further complicate these issues. Organizations and governments must provide tailored support to empower these women, fostering a more inclusive society. Initiatives like Women for Women International offer vocational skills training and business development, while legal aid organizations provide pro bono services to help women navigate immigration processes and secure their rights.[13]

12 *Supra* Note 8.
13 *Supra* Note 6.

### *6.2 Role of Religious Beliefs in Shaping Gender Norms and Expectations*

Religious beliefs significantly influence gender norms and expectations, often reinforcing established gender roles and hierarchies. However, some religious leaders are campaigning for gender equality and women's rights within their faith communities. By reinterpreting religious texts and teachings, they promote a more inclusive and equitable perspective of gender, benefiting all members of the community. This shift towards progressive readings of religious teachings not only empowers women but also fosters a more sympathetic and compassionate community, appreciating the work of all individuals, regardless of gender.[14]

### *6.3 Support Systems Available to Refugees at the Intersection of Religion and Gender*

Refugees at the intersection of religion and gender face support systems like safe housing, job training, mental health services, legal assistance, and community integration initiatives. These systems help break down barriers to social and economic empowerment, fostering understanding and acceptance among diverse populations. Collaboration between religious leaders and support organizations can lead to positive social change and promote a more inclusive society. For example, local mosques can partner with refugee resettlement agencies to provide language classes and job training, fostering cross-cultural understanding and empathy.[15]

14 *Supra* Note 8.
15 *Supra* Note 7.

## 7. Statistical Analysis

### *7.1 Statistics of Refugees over the Years in India*

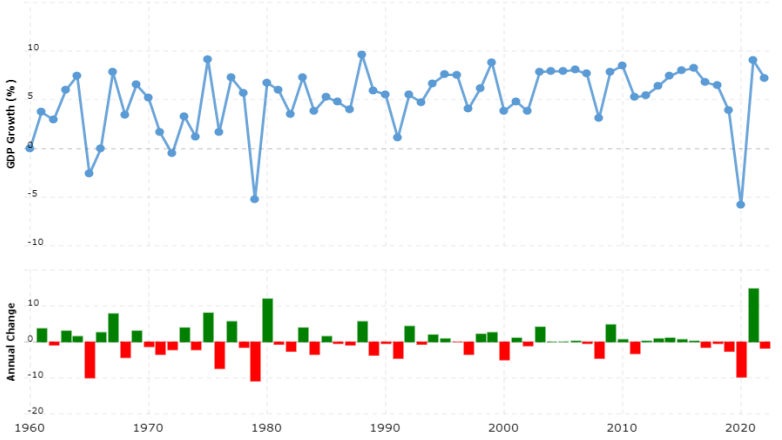

7.1.1 Figure 1: Refugee Population in India from 1989 to 2023[16]

Based on the provided Graph, it is evident that there has been a significant rise in the number of refugees throughout the years. India has recently awarded asylum to a total of 2,42,835 refugees.[17]

16 Refugee Population in India from 1989 to 2023, *available at*: https://www.statista.com/statistics/1370654/india-refugee-population/ (last visited on August 6, 2024).

17 *Ibid*.

*7.2 Statistics of GDP Growth over the Years in India*



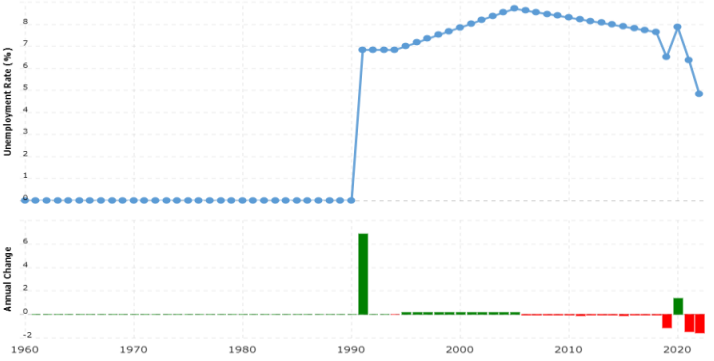

7.2.1 Figure 2: India GDP Growth Rate 1960 – 2024[18]

The Graph above depicting the rate of GDP Growth in India, shows us that, though there has been an increase in GDP Growth over the years, but at the end, there has not been much change in the overall GDP growth in India. India currently boasts of 7.24% rate of GDP Growth.[19]

18 India GDP Growth Rate 1960 – 2024, *available at*: https://www.macrotrends.net/global-metrics/countries/IND/india/gdp-growth-rate (last visited on August 6, 2024).

19 *Ibid*.

### *7.3 Statistics of the Unemployment Rate over the Years in India*




7.3.1 Figure 3: India Unemployment Rate 1960 – 2024[20]

From the Graphabove, we can see that, though there has been improvement in the employment status over the years, there is still a huge population in India who are unemployed. In fact, the current Rate of Unemployment in India is 4.82%.[21]

There is a very scary picture that becomes clear when we look closely at the graphs and data above. India has seen a big rise in the number of refugees over the years. The Rate of Unemployment and the GDP Growth Rate Statistics, on the other hand, do not look good. We're still a long way from being a developed country, and a lot of people in the country are still jobless. The number of educated unemployed is also going up.

---

20 India Unemployment Rate 1960 – 2024, *available at*: https://www.macrotrends.net/global-metrics/countries/IND/india/unemployment-rate (last accessed on August 6, 2024).

21 *Supra* Note 7.

## 8. Climate Change as a Factor in Refugee Migration

Climate change is driving refugee migration, as natural disasters like hurricanes, droughts, and rising sea levels are displacing millions of people from their homes. Addressing climate change is crucial for the planet's well-being and the protection of vulnerable populations. For example, Tuvaluans have fled to New Zealand due to increased floods and erosion caused by climate change. Millions have also fled to sub-Saharan Africa for food and water security.

To slow down climate change and avoid further displacement, sustainable practices and reducing carbon emissions can be implemented. Additionally, providing assistance and resources to nations most impacted by climate change can alleviate the burden on those forced to flee their homes. Collaborating globally to address climate change's causes and provide assistance to those most adversely affected is essential for creating a more robust and sustainable future. Investing in renewable energy sources like solar and wind power can reduce carbon emissions and foster sustainability.[22]

## 9. Empowerment Challenges and Strategies for Refugee Women

### *9.1 Barriers to Accessing Education, Healthcare, and Employment due to Gender Norms and Religious Beliefs*

Refugee women face unique challenges due to their gender and religion, making it difficult for them to access resources and opportunities. These obstacles not only hinder their integration into new

22 Environmental Refugee, *available at*: https://education.nationalgeographic.org/resource/environmental-refugee/ (last accessed on August 8, 2024).

countries but also perpetuate poverty and exclusion. To protect the health and safety of refugee women and ensure their rights, lawmakers and humanitarian groups must address discrimination. Understanding these dynamics can help create more fair solutions for refugee populations. For instance, a Muslim-female refugee may face discrimination in accessing education and employment opportunities, exacerbating her vulnerability and hindering her integration into society.[23]

### *9.2 Increased Risk of Gender-Based Violence and Exploitation within Refugee Settings*

Refugee women and girls are highly susceptible to abuse and exploitation due to their gender, and they lack the resources to address these risks. To tackle these issues, humanitarian actors must prioritize gender-sensitive programming and policy, including gender-based violence prevention training, educational and economic opportunities, and safe spaces for women to seek help. A comprehensive approach considering their needs and experiences can help them become resilient and empowered. For instance, in a refugee camp in Jordan, overcrowding and limited access to resources increase the risk of gender-based violence. Implementing gender-sensitive programming, such as providing safe shelters and conducting workshops on prevention, can protect these women and empower them to advocate for their rights within the community.[24]

### *9.3 Limited Decision-Making Power and Autonomy for Refugee Women in Religiously Conservative Communities*

---

23 *Supra* Note 7.
24 *Supra* Note 6.

Refugee women in religiously conservative communities often have limited decision-making power, increasing their vulnerability to gender-based violence and limiting access to essential services. To address this, humanitarian organizations should collaborate with local religious leaders and community members to advocate for gender equality and oppose harmful attitudes. They can enable women to express their rights and make informed decisions through debate and education. Economic opportunities and skill training can help women achieve financial independence and reduce their dependency on male family members. These targeted interventions contribute to creating an inclusive and equitable environment for refugee women in religiously conservative communities. In traditional refugee communities, organizations can offer vocational training in sewing and handicrafts, as well as savings and microfinance programs to help women develop small businesses and become financially independent.[25]

## 10. Conclusion

All things considered, it's of utmost importance to take into account the meeting point of religion and gender in the determination of refugee status. By acknowledging the fact that people come from all walks of life and have their own crosses to bear, we can guarantee a level playing field and a fair share for everyone. This not only keeps the playing field level and ensures a fair shake for everyone, but also helps keep society running smoothly and people working together like a well-oiled machine. Together, we can paint a picture of a kinder and more

25 *Supra* Note 8.

empathetic world where every individual has the chance to spread their wings and soar.

By hitting the nail on the head and going the extra mile to cater to the unique needs and circumstances of individuals, taking into account their gender and religious background, we can pave the way for a more welcoming and nurturing environment for refugees in search of safety and refuge. This approach can open doors to greener pastures and separate the wheat from the chaff in refugee status determination processes, ultimately hitting the nail on the head and killing two birds with one stone by benefiting both the individual's seeking asylum and the communities they become a part of.

Implications for policy and practice include the need for tailored support systems and resources for different refugee populations, as well as the importance of training decision-makers to recognize and address these specific needs. By implementing these strategies, we can ensure a more fair and equitable refugee status determination process that upholds human rights and promotes social cohesion.

Additionally, fostering collaboration between various stakeholders such as NGOs, government agencies, and community organizations can help streamline the refugee status determination process and ensure comprehensive support for refugees. This holistic approach can lead to more efficient decision-making and better outcomes for both refugees and the host communities.

The phenomenon of climate change is really making waves when it comes to uprooting populations, adding fuel to the fire of refugee migration. The writing is on the wall – extreme weather events, like hurricanes, floods, and droughts, are raining on people's parades and

forcing them to throw in the towel and abandon their homes. On top of that, rising sea levels are slowly but surely creeping up on them. Moreover, changing agricultural conditions, such as the writing on the wall of desertification and the land of opportunity slipping through our fingers, are adding fuel to the fire of food insecurity and setting the wheels of migration in motion. This complex issue calls for all hands-on deck and thinking outside the box to successfully reduce its impact. Bearing that in mind, it's important to take the weather into account when defining the term ‘Refugee’. Also, another important point to ponder upon is that of de-globalization. Deglobalization, in essence, is the gradual unwinding of international interconnections and interdependencies among countries. It involves a deliberate shift away from global economic integration, often through the implementation of protectionist measures, trade barriers, and limitations on cross-border movements of people and capital. This phenomenon can be influenced by various economic, political, and social factors, and its effects can be far-reaching, impacting global trade networks, economic development, and international relations. For developing countries like India, deglobalization should be taken into consideration while dealing with refugees. This is because there is a huge portion of the population of India that is still unemployed.

# Children's Right to Genetic Information: An Analytical Study of the Surrogacy (Regulation) Act, 2021

**Mehak Hameed***

***Abstract***

*The Surrogacy (Regulation) Act, 2021, introduced by the Indian government, aims to regulate surrogacy practices by ensuring that they are altruistic in nature and prevent exploitation. While the Act addresses critical issues related to the commercialization of surrogacy, the eligibility of intended parents and surrogates, and the rights of the child born through surrogacy, it fails to address a significant gap: the right to genetic information for children born via donor inseminated surrogacy. This research identifies and critically analyzes this loophole in the Act, which denies children born through such surrogacy the essential right to know their genetic origins. Drawing on ethical, legal, and medical perspectives, this paper argues that the right to genetic information is fundamental to a child's identity and well-being. The paper also explores the international standards on the rights of children to know their genetic origins and presents arguments for reforming the Act to include these rights. By proposing amendments to the Surrogacy (Regulation) Act, 2021, this study aims to ensure that children born through donor inseminated surrogacy are granted the same genetic rights as children born through natural conception, aligning Indian law with international human rights standards and ethical practices in surrogacy.*

***Keywords:*** *Surrogacy (Regulation) Act, 2021, Genetic information, Children's rights, Donor inseminated surrogacy, International human rights standards, Personal identity.*

---

* Phd Research scholar Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia , mahakhamid9797@gmail.com

## Introduction

The advent of assisted reproductive technologies (ART), particularly donor-inseminated surrogacy, has reshaped family structures and parenthood, providing solutions for couples who are otherwise unable to conceive. However, these technologies also introduce challenges, especially regarding the child's right to know their genetic origins. The importance of genetic information for a child's identity, health, and psychological well-being has been increasingly recognized in international human rights discourse, yet it remains inadequately addressed in India's Surrogacy (Regulation) Act 2021.

The Surrogacy (Regulation) Act 2021, while progressive in regulating surrogacy practices and prohibiting commercial surrogacy, does not provide clear provisions for safeguarding the child's right to access genetic information. This oversight has significant implications for both the child's personal identity and their medical needs. This paper critically analyzes the Act, arguing that it must be amended to incorporate provisions that ensure transparency regarding genetic origins. By reviewing international standards, medical implications, this study seeks to highlight the necessity of comprehensive legal reforms that uphold the rights of children to know their genetic origin who are born through donor-inseminated surrogacy.

### Overview of the Surrogacy (Regulation) Act 2021

A strict prohibition on commercial surrogacy, allowing surrogacy solely for close relatives without financial incentives.[1]It also specifies stringent eligibility criteria for intending parents, surrogate mothers, and medical practitioners, requiring surrogates to be aged 25–35, with prior childbirth experience, and limiting surrogacy to one instance per lifetime. Indian couples seeking surrogacy must have been married for at least five years, fall within specified age brackets (25–50 for women and 26–55 for men), and possess no prior biological, surrogate, or adopted children unless the child is physically or mentally challenged.

1 Section 4 of Surrogacy Regulation Act (2021

The Act establishes the National and State Surrogacy Boards for regulation, granting and revoking licenses for surrogacy clinics to ensure compliance. Registration and certification of clinics are mandated under Section 11 to maintain ethical medical practices. It ensures that children born through surrogacy are recognized as biological offspring of the intending parents, with full inheritance rights and protections against abandonment. Surrogates are safeguarded through written agreements detailing their rights and obligations, including the option to withdraw consent before embryo implantation.[2]Ethical considerations under the Act address issues such as commodification, exploitation, and consent, seeking a balance between the rights of surrogates, intended parents, and the child. Violations of the Act attract strict penalties, including imprisonment and fines, with harsher consequences for repeat offenses.

However, the Act lacks provisions to secure the right to genetic origin for children born through donor inseminated surrogacy. This missing safeguard leaves a critical gap in ensuring such children have access to essential genetic information, which is crucial for their identity and medical history. Addressing this omission is imperative to align the Act with international standards and ethical frameworks that prioritize the child's right to know their genetic origin while protecting the integrity of surrogacy arrangements in India.

**Need for disclosure of genetic Information**

The need for the disclosure of genetic information, particularly in the context of surrogacy arrangements, is an essential aspect of modern legal and ethical frameworks aimed at safeguarding individual rights and ensuring personal identity.[3]Genetic information disclosure is crucial for several reasons, including the right to know one's genetic origins, the impact on personal identity and psychological well-being, and the

2 Section 6 Surrogacy Regulation Act (2021)

3 Dye, D.E., Youngs, L., McNamara, B. et al. The Disclosure of Genetic Information: A Human Research Ethics Perspective. Bioethical Inquiry 7, 103–109 (2010). https://doi.org/10.1007/s11673-010-9207-9

broader implications for legal and medical practices. [4] Genetic information refers to data about an individual's genetic makeup, including information about their biological parents and lineage.[5] In the context of surrogacy, where a child is born to a surrogate mother but has genetic parents who may be different from the birth parents, the issue of disclosing genetic information becomes particularly complex. The need for transparency in this area is critical to protect the child's rights and to ensure that they have access to vital information about their genetic origins.[6]

**International Standards on Children's Rights**

One of the fundamental reasons for disclosing genetic information is the right of a child to know their biological origins.[7] This right is deeply rooted in the principles of personal identity and autonomy. The ability to understand one's genetic background is integral to a person's sense of self and personal identity.[8] The United Nations Convention on the Rights of the Child (CRC), which India has ratified, emphasizes the importance of preserving the child's identity and ensuring their right to know their origins.[9] Article 7 of the CRC states that a child has the right

4 Ravitsky, Vardit. (2017). The right to know one's genetic origins and cross-border medically assisted reproduction. Israel Journal of Health Policy Research. 6. 10.1186/s13584-016-0125-0.

5 MANSON, N. C. (2006). What is Genetic Information, and why is it Significant? A Contextual, Contrastive, Approach. Journal of Applied Philosophy, 23(1), 1–16. http://www.jstor.org/stable/24354961

6 Gunnarsson Payne, J., & Handelsman-Nielsen, M. (2022). The surrogacy question, unresolved: surrogacy policy debate as a hegemonic struggle over rights. Critical Policy Studies, 17(3), 372–389. https://doi.org/10.1080/19460171.2022.2105736

7 Phillips, A., Borry, P., Van Hoyweghen, I. et al. Disclosure of genetic information to family members: a systematic review of normative documents. Genet Med 23, 2038–2046 (2021). https://doi.org/10.1038/s41436-021-01248-0

8 WRIGLEY, A. (2007). Personal Identity, Autonomy and Advance Statements. Journal of Applied Philosophy, 24(4), 381–396. http://www.jstor.org/stable/24355096

9 Tristan Cummings, United Nations Convention on the Rights of the Child, Article-by-Article Commentary, International Journal of Law, Policy and the Family, Volume 35, Issue 1, 2021, ebab050, https://doi.org/10.1093/lawfam/ebab050

to know and be cared for by their parents. This provision highlights the significance of genetic information in shaping a child's identity and their understanding of their heritage.[10]

**Psychological And Medical Implications of Missing Genetic Information**

The psychological impact of not knowing one's genetic origins can be profound. Studies have shown that individuals who are unaware of their biological background may experience identity confusion, emotional distress, and difficulties in forming personal relationships.[11]Knowing one's genetic origins can provide a sense of closure and understanding that is crucial for psychological well-being. In the absence of such information, individuals may struggle with unanswered questions about their identity, health risks, and familial connections. This lack of transparency can lead to a range of psychological issues, including feelings of alienation, anxiety, and insecurity.[12]

The disclosure of genetic information also has significant implications for health and medical care. Knowledge of one's genetic background can be critical for identifying potential hereditary health conditions and making informed decisions about medical treatments and preventive care.[13] For instance, if a child is aware of their genetic

10 Arkadas-Thibert, A., Lansdown, G. (2022). Article 7: The Right to a Name, Nationality, and to Know and Be Cared for by Parents. In: Vaghri, Z., Zermatten, J., Lansdown, G., Ruggiero, R. (eds) Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research, vol 25. Springer, Cham. https://doi.org/10.1007/978-3-030-84647-3_6

11 Alfrey, K. L., Waters, K. M., Condie, M., & Rebar, A. L. (2023). The Role of Identity in Human Behavior Research: A Systematic Scoping Review. Identity, 23(3), 208–223. https://doi.org/10.1080/15283488.2023.2209586

12 Ravitsky, V. The right to know one's genetic origins and cross-border medically assisted reproduction. Isr J Health Policy Res 6, 3 (2017). https://doi.org/10.1186/s13584-016-0125-0

13 McCormick KA, Calzone KA. The impact of genomics on health outcomes, quality, and safety. Nurs Manage. 2016 Apr;47(4):23-6. doi:

predispositions, they can take proactive steps to monitor their health and manage any potential risks. In cases where genetic information is not disclosed, individuals may miss out on crucial opportunities for early diagnosis and treatment of hereditary conditions, which can impact their overall health and quality of life.

**Legal perspective**

From a legal perspective, the right to genetic information is increasingly being recognized as an essential aspect of individual rights.[14] Various jurisdictions have developed legal frameworks to address the need for genetic information disclosure. For example, the Surrogacy (Regulation) Act 2021 in India aims to regulate surrogacy practices and protect the rights of surrogate mothers and intending parents. However, while the Act addresses several aspects of surrogacy, it does not explicitly mandate the disclosure of genetic information to the child born through surrogacy.[15]This gap highlights the need for further legal reforms to ensure that children have access to their genetic information and can make informed decisions about their identity and health. The lack of clear legal provisions regarding genetic information disclosure can lead to various challenges.[16] Internationally, there are established practices and guidelines for genetic information disclosure that can serve as a model for Indian law. For example, many countries have adopted regulations that require the disclosure of genetic

10.1097/01.NUMA.0000481844.50047.ee. PMID: 27022903; PMCID: PMC4883576.

14 Costello, Róisín Á, Genetic Data and The Right to Privacy: Towards a Relational Theory of Privacy? (July 20, 2022). "Genetic Data and The Right to Privacy: Towards a Relational Theory of Privacy?" 22(a) Human Rights Law Review (2022) 1, Available at SSRN: https://ssrn.com/abstract=4168087

15 Sinha, Sakshi, An Understanding of Surrogacy: A Legal Analysis in Indian Context (November 7, 2020). Available at SSRN: https://ssrn.com/abstract=3726683 or http://dx.doi.org/10.2139/ssrn.3726683

16 Gilbar, R., & Barnoy, S. (2020). Facing legal barriers regarding disclosure of genetic information to relatives. New Genetics and Society, 39(4), 483–501. https://doi.org/10.1080/14636778.2020.1755639

information to children born through assisted reproductive technologies. These regulations often emphasize the importance of transparency and the child's right to know their genetic origins. In some jurisdictions, laws mandate that genetic parents provide information about their genetic background to the child, while others require that this information be made available upon request.

In addition to legal frameworks, ethical considerations play a crucial role in the need for genetic information disclosure. Ethical principles related to autonomy, informed consent, and respect for individual dignity underscore the importance of providing individuals with access to their genetic information.[17] Ethical guidelines from professional organizations, such as the American Society for Reproductive Medicine (ASRM) and the European Society of Human Reproduction and Embryology (ESHRE), emphasize the need for transparency and the right of individuals to access information about their genetic origins. These guidelines provide a basis for developing legal and ethical standards that prioritize the rights and well-being of individuals involved in surrogacy arrangements.

The need for genetic information disclosure also intersects with broader societal issues related to family structure and lineage. In many cultures, including in India, family lineage and heritage are deeply valued, and the concept of knowing one's ancestry is integral to personal identity.[18] Traditional legal and cultural norms in India emphasize the importance of maintaining clear family connections and lineage. The Surrogacy (Regulation) Act 2021, while addressing some aspects of surrogacy regulation, does not fully align with these traditional values, potentially leading to conflicts between modern legal practices and

17 Reilly, P., Boshar, M. & Holtzman, S. Ethical issues in genetic research: disclosure and informed consent. Nat Genet 15, 16–20 (1997). https://doi.org/10.1038/ng0197-16

18 Haeusermann, T., Fadda, M., Blasimme, A., Tzovaras, B. G., & Vayena, E. (2018). Genes wide open: Data sharing and the social gradient of genomic privacy. AJOB Empirical Bioethics, 9(4), 207–221. https://doi.org/10.1080/23294515.2018.1550123

cultural expectations.[19] To address the need for genetic information disclosure effectively, it is essential to consider a holistic approach that integrates legal, ethical, and cultural perspectives. Legal reforms should include explicit provisions for the disclosure of genetic information in surrogacy arrangements, ensuring that children have access to their biological background and can make informed decisions about their identity and health. Ethical guidelines should support transparency and respect for individual autonomy, emphasizing the importance of providing genetic information to children. Additionally, cultural values and traditions should be considered in developing legal frameworks to ensure that they align with societal expectations and norms.

**Effect on children**

The Surrogacy (Regulation) Act 2021 in India, aimed at regulating surrogacy practices, has significant implications for children born through surrogacy arrangements. It is crucial to understand the potential effects on these children, considering various aspects, including their rights, identity, and psychological well-being.[20] One of the primary concerns regarding children born through surrogacy is their right to know their genetic origins.[21]Article 7 of the United Nations Convention on the Rights of the Child (CRC) emphasizes a child's right to know and be cared for by their parents, while Article 8 underscores the right to preserve identity, including nationality, name, and family relations.[22]

19 Sharma RS. Social, ethical, medical & legal aspects of surrogacy: an Indian scenario. Indian J Med Res. 2014 Nov;140 Suppl(Suppl 1):S13-6. PMID: 25673533; PMCID: PMC4345743.

20 Kashyap, S., Tripathi, P. The Surrogacy (Regulation) Act, 2021: A Critique. ABR 15, 5–18 (2023). https://doi.org/10.1007/s41649-022-00222-5

21 Saxena, Richa, Human Rights of the Children Born Through Surrogacy: An Extended Briefing (January 4, 2022). Edited Book Title of the Book,Contemporary Human Rights Issues and Challenges: Global and Regional Perspectives name of the Editors ,Prof. Dr. Aditya Tomer Dr. Kartika Bakshi Rupendra Singh Dr. Nitan Sharma I I P Iterative International Publishers (2023), Available at SSRN: https://ssrn.com/abstract=4788267

22 Arkadas-Thibert, A., Lansdown, G. (2022). Article 7: The Right to a Name, Nationality, and to Know and Be Cared for by Parents. In: Vaghri, Z., Zermatten, J., Lansdown, G., Ruggiero, R. (eds) Monitoring State

The Surrogacy (Regulation) Act 2021, however, poses challenges to these rights. Under Section 6(1), the Act mandates that the surrogate mother should not provide her egg, ensuring the child is genetically linked to the intending parents. However, the Act lacks explicit provisions guaranteeing the child's right to know their genetic origins, which can lead to identity issues as the child grows older.[23]

In India, the legal framework addressing children's rights includes the Juvenile Justice (Care and Protection of Children) Act, 2015, which under Section 3 outlines principles of care and protection, emphasizing the child's best interests.[24] However, the Surrogacy Act's silence on the right to know genetic origins may conflict with this principle, potentially affecting the child's identity and psychological health.[25] Psychological studies indicate that knowledge of genetic origins is vital for the well-being of children born through assisted reproductive technologies (ART). The lack of transparency can lead to identity confusion and emotional distress.[26]

---

Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research, vol 25. Springer, Cham. https://doi.org/10.1007/978-3-030-84647-3_6

23 Kashyap, S., Tripathi, P. The Surrogacy (Regulation) Act, 2021: A Critique. ABR 15, 5–18 (2023). https://doi.org/10.1007/s41649-022-00222-5

24 Bajpai, A. (2018). The Juvenile Justice (Care and Protection of Children) Act 2015: an analysis. Indian Law Review, 2(2), 191–203. https://doi.org/10.1080/24730580.2018.1552233

25 Paola Frati et al., 'Bioethical issues and legal frameworks of surrogacy: A global perspective about the right to health and dignity', (2021), Volume 258, European Journal of Obstetrics & Gynecology and Reproductive Biology, Pages 1-8, https://doi.org/10.1016/j.ejogrb.2020.12.020.

26 Wade K. The regulation of surrogacy: a children's rights perspective. Child Fam Law Q. 2017;29(2):113-131. PMID: 28781570; PMCID: PMC5540169.

## Conclusion

The Surrogacy (Regulation) Act, 2021, represents a significant step forward in regulating surrogacy practices in India, emphasizing the protection of surrogates and the ethical conduct of surrogacy arrangements. However, its failure to explicitly address the right of children born through donor-inseminated surrogacy to access their genetic information reveals a critical gap in its framework. The right to know one's genetic origins is not only a matter of identity and personal dignity but also a necessity for addressing medical, psychological, and social challenges faced by such individuals.

Drawing on international standards, medical and legal perspectives, and ethical considerations, this study highlights the importance of ensuring transparency and the protection of children's rights to their genetic information. Addressing this omission in the Act will bring Indian surrogacy laws in line with global human rights principles and foster a more comprehensive, child-centered approach to surrogacy regulation.

Reforms to the Surrogacy (Regulation) Act should prioritize the inclusion of provisions that secure the disclosure of genetic information, ensuring the well-being and identity of children born through donor-inseminated surrogacy. By doing so, India can balance the rights of all stakeholders in surrogacy arrangements while upholding the fundamental rights of children and aligning with ethical and legal imperatives at both the national and international levels.

# Breaking Barriers: A Pilot Empirical Study on Accessibility and Awareness for Students with Disabilities in Higher Education

**Dr .Neha***
**Chandresh Soni****

***Abstract***

*Higher education serves as an enabling right to secure other life essentials like food, clothing, and housing. Students with disabilities face a significantly different experience in higher education compared to their peers. This study explores the accessibility challenges faced by students with disabilities in the higher education sector, focusing on the issues of low enrollment rates and barriers they encounter. Accessibility means institutions addressing barriers for students with disabilities by following University Grants Commission standards and providing reasonable accommodations. This empirical study aims to understand the perspectives of students with disabilities regarding their institution's efforts to provide accessible education and raise awareness. The analysis highlights the need for institutions to improve accessibility and awareness, as these are key factors in increasing enrollment, participation, and success for students with disabilities in higher education.*

***Keywords:*** *Higher Education, Students with Disabilities, Accessibility, Barriers, Enrollment Rates, Reasonable Accommodations, Awareness.*

* Assistant Professor of Law, Campus Law Centre, University of Delhi.
** PhD Research Scholar, Faculty of Law, University of Delhi.

## I. Introduction

"Know me for my abilities, not my disability"-Robert M. Hensel[1]

The quote above clearly demonstrates that every human being focuses on their abilities, which they believe are strong, to succeed and achieve their desired way of life.The same applies to students with disabilities (hereinafter SwDs). Basic human rights include food, clothes, and housing, and to have them, all humans need to have the necessaryeducation to gain them and latermaintain them. Education plays an important role in any person's life, but for SwDs, education accessibility is a huge concern, especially in higher education. Theiroverall literacy rate is45%[2].This presents theconcern and raises the issue of systematic barriers at all levels of education for SwDs[3]. "Accessibility to education"refers to how institutions impart education, considering the barriers and hurdles for SwDs. Higher education for SwDs in India refers to the access and opportunities available for SwDs to pursue post-secondary education in universities and colleges.The education situation can be understood by relying on the fact that 27%of SwDs never attended any educational institution[4]. Among those who attend, 12% of them drop out[5]. The shift is clear when data presents

1 Angela Robinson, 47 Quotes for National Disability Employment Awareness Month, teambuilding.com. *available at*: https://teambuilding.com/blog/disability-awareness-quotes (last visited on October 15, 2024).

2 NuSocia, Is India Ready to Mainstream Children with Disabilities in its Education System? LinkedIn.com.*available at:*https://www.linkedin.com/pulse/india-ready-mainstream-children-disabilities-its-education-system-0y6nc (last visited on October 15, 2024).

3 *Ibid.*

4 India Today Web Desk,"75% of children with disabilities don't attend schools in India: UNESCO", *India Today*, 4 July 2019,*available at*<https://www.indiatoday.in/education-today/news/story/unesco-report-says-75-5-year-old-children-with-disabilities-don-t-attend-schools-in-india-1561722-2019-07-04>(last visited on October 15, 2024).

5 *Ibid.*

that a mere 9%of SwDs enrolled in secondary education complete it[6].As per the AISHE (All India Survey on Higher Education) survey from 2017-2022, only 0.19-0.22 percent is the range of total SwDs enrollments in higher education institutions in India[7]. It indicated significant dropouts of SwDs while shifting from secondary education to graduation. The challenge of accessibility of higher education for SwDs poses myriads of issues within its domain, like lack of necessary infrastructure (ramps and elevators), digital infrastructure (course material online is not of accessible standards), social attitudinal barriers within higher educational settings, it certainly requires an on-ground inspection of these issues to highlightit in the context of the present time.

## II. Objectives of the Study

This pilot study documents the experiences of SwDs in higher education institutions. It gathers insights from primary stakeholders, SwDs themselves, to evaluate accessibility and rights awareness on campus. The research investigates low enrollment rates among SwDs, aiming to identify contributing factors. Focusing on accessibility, the study explores physical, institutional, and social barriers that affect SwDs inclusion and equal access to academic opportunities. Additionally, it assesses SwDs awareness of their rights and accommodations, providing a comprehensive view of their challenges, experiences, and needs in higher education.

## III. Methodology

This pilot study examines the experiences of SwDs in higher education, testing two key hypotheses: that improved accessibility increases SwD

6 *Supra* note 2.

7 National Centre for Promotion of Employment for Disabled People, "Status of Higher Education of Students with Disabilities in India: End-Line Report" (March,2024).

enrollment and that greater awareness contributes to their upliftment in academic settings. Using accessibility and awareness as independent variables, with enrollment and upliftment as dependent variables, the study addresses key questions regarding accessibility challenges, barriers' impacts, SwDs concerns, and rights awareness. 20SwDs from Jawaharlal Nehru University (JNU) and the University of Delhi (DU) were selected through convenience and snowball sampling. Respondent SwDsrepresent various disabilities, visual impairment-10, locomotor disabilities-6, cerebral palsy-3, and multiple disabilities-1(hereinafter ***VI, LD, CP,*** and ***MD*** respectively) and educational levels, undergraduate-3, postgraduate-10, and PhD-7. Data was collected via structured questionnaires with open- and closed-ended questions, focusing on accessibility and awareness. A mixed-methods approach was applied; quantitative data were analyzed using SPSS, while qualitative responses were thematically analyzed. Findings are categorized by disability type and education level, maintaining confidentiality, and offer insights into SwDsexperiences, barriers, and rights awareness in higher education.

## IV. Analysis and Interpretation of Data

The analysis of the questionnaire is presented in two parts. The first part will deal with accessibility.Debra Ruh's quote can understand the importance of Accessibility,"Accessibility allows us to tap into everyone's potential"[8].

### "Accessibility Part"

Although Accessibility is not defined in the Rights of Persons with

8 14 Quotes That Celebrate a More Accessible World, Buffer: All-you-need social media toolkit for small businesses.*available at*: https://buffer.com/resources/accessibility-quotes/ (last visited on October 14, 2024).

Disabilities Act, 2016[9] (hereinafter RPWD Act),it sets broad accessibility standards[10]. By mandating accessibility in physical spaces, transportation, communication, and technology in both rural and urban landscapes, it indirectly supports inclusion by ensuring public facilities are designed to be accessible for SwDs[11]. Considering the National Education Policy, 2020[12] (hereinafter NEP), the University Grants Commission published guidelines[13] (hereinafter UGC guidelines) on July 4, 2022, ensuring accessibility measures covering all aspects of higher education from admission to course completion[14]. The accessibility to any college or university starts from the admission process, where "the institutions of higher education are required to adopt measures to make the admission process and curriculum inclusive as well as develop technology tools for better participation and learning outcomes"[15].

**Challenges in the Admission Process for SwDs**

The Hon'bleSupreme Courtreaffirmed that education opportunities should be given along with the accommodation of SwDs rather than

9 The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).
10 *Id.,* s. 40.
11 *Ibid.*
12 Government of India, "National Education Policy, 2020" (Ministry of Human Resource Development, 2020). available at: https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf (last visited on October 15, 2024).
13 University Grants Commission, "Accessibility Guidelines and Standards for Higher Education Institutions and Universities" (Ministry of Education, 2022).
14 Express News Service, "UGC issues guidelines for better inclusion of learners with disabilities on campuses",*The Indian Express*,14 July 2022,*available at*<https://indianexpress.com/article/education/ugc-issues-guidelines-for-better-inclusion-learners-with-disabilities-on-campuses-8025966/>(last visited on November 1, 2024).
15 *Supra* note 13. see page 6.

finding ways to disqualify them[16].The initial question posed to respondents focused on identifying the challenges they encountered during the admission process to their respective colleges.20% of theSwDs reported issues while taking admissions to their respective colleges.The majority, i.e., 80% of students, were satisfied and responded in negation to any problems they faced. They mostly reiterated that those usual issues were there that all the studentswere facing.Thus,commonissues were addressedand settled.Theproblemsthatemergedasper categorieswere:

***Subjective Responses of SwDsRespondents:***

***VI****:*Respondent1saidNO butremarkedthatthesubjectofchoicewasn'tprovided.Respondent 6 had to fight a court case[17] initially, a reserved seat forSwDs was not granted, which was later granted when the respondent won the case, but thatmatterresulted in a lossofawholesemester.Respondent 9 stated that some new guidelines for SwDs were framed, whichcausedissueswith their admission process.***LD****:*Respondent7statedissuesindocumentuploading.***MD****:*Respon dent 13 stated the lack of accessible resources and proper guidance duringadmissions.

**Campus Accessibility Challenges and the Perspectives of SwDs**

When any student is granted admission, the candidate explores the campus of the respective institutions. The institutional premise need sto

16 Amisha Shrivastava, "Government and Private Sector Should Focus on How to Accommodate, Not Disqualify, Candidates with Disabilities: Supreme Court",*LiveLaw,*15 October 2024,*available at*<https://www.livelaw.in/top-stories/government-and-private-sector-should-focus-on-how-to-accommodate-not-disqualify-candidates-with-disabilities-supreme-court-272539> (last visited on November 1, 2024).

17 National Federation of The Blind v. Union of India, AIRONLINE 2018 DEL 2214.

follow UGC guidelines[18] like ramps, lifts, and braille inscriptions outside each room and administrative building with tactile supported floors. "They must ensure that all buildings and infrastructure facilities are accessible and disabled-friendly for all"[19].The key point to note is that responses indicated 20% of respondents stated that the campus is completely accessible. In contrast, 80%of the respondents face disappointments after reaching campus, which is interesting to note and statistically opposite to the percentage at the time of admission. The follow-up question to the above, which seeks to know the reasons of those who responded NO to campus being accessible, enlists their concerns and highlights major issues such as:

***Subjective Responses of SwDs Respondents:***

***VI****:* Respondent 1 highlighted that (For visually impaired students) braille inscriptions outside the rooms and offices will be very helpful, but the same are not installed to ease their dependency. Respondent 2 stated that there are dogs on campus, and a similar story is there for bikes and motor vehicle sparking as other students park them here and there, which sometimes comes in their way; tactile tiles are in accessible. Respondent 3 complained about old buildings with structural limitations; thus, no lifts can be installed, but awarenessexists.Respondent4alsostatedtactileissuesandbrailleindications aren't there.Respondent 6 noted that the routes on the campus are not plain and systematically patterned. Thus, a lot of SwDswh of all in the visually impaired category saw this as their major hurdle. Also, the animals inside the campus, like dogs, create issues for them as they have to move for long distances even inside the campus, and they thus face issues with dogsinsidethe campus restinghereand there.Respondent 8 said that

18 *Supra* note 13.
19 *Ibid.*

technology such as map layouts of the inside premises of higher educational institutions, such as the way to the canteen and auditoriums, isn't uploaded. Also highlighted tactile tiles issues, braille inscriptions of rooms and accessible braille magazines that used to come earlier now aren't ordered or aren't there. Some colleges don't even have equal opportunity cells, and their enabling unit is just for namesake purposes as they are supposed to guide and support their respective institutional SwDs. Respondent 9 stated that tactile tiles aren't placed appropriately (concerning SwDs), which leads to confusion about the path to follow, as tactile support is one of the prime movers of accessibility for visually impaired students. Another striking issue is the administration's attitude and officers who keep stalling there quested work. As usual, they say to come after two o'clock in the afternoon, which shows a pathetic response considering the status of central universities. To simplify it, the staff are not cooperative or duly sensitized.Respondent10mentioned absent tactile support. Respondent 14 stated the issues of infrastructural barriers, and overall, neither The United Nations Convention on the Rights of Persons with Disabilities[20] (UNCRPD 2006) nor the RPWD Act[21]has been endorsed regarding accessibility concerns. Also, the Web accessibility of university sites and online library sites is missing. ***LD****:*For such SwDs, lifts, and ramps constitute the gateway to access to education, and India is committed to making buildings accessible. Also, the Accessible India campaign[22] rings similar bells. So, some responses also indicate no proper platform or ramp. As

20 United Nations Convention on the Rights of Persons with Disabilities, 2006, GARes A/RES/61/106.

21 *Supra* note 9.

22 Government of India, "Accessible India Campaign"(Department of Empowerment of Persons with Disabilities, 2015). *available at*: https://depwd.gov.in/accessible-india-campaign/ (last visited on October 14, 2024).

Respondent 7 stated, lift and rampissues.Respondent15 alsostatedthe needforproperrampsand lifts.Similarly, Respondent 16 also called for ramps and proper walking platforms, and thestaff was not cooperative.Respondent18statedthat the campusisgoodandaccessiblebutnotcompletely.Also,potholes are there on roads where wheelchairs get stuck; they are not maintained, which causesstrainon manual wheelchair users. Respondent 19 said that lifts, distance issues, and no battery-driven wheelchairs.The author(s) emphasise that providing battery-driven wheelchairs forVISwDs to navigate long distances could significantly enhance their independence. While this requires an initial investment, considering the institution's resources, it is a feasible solution.***MD****:*Respondent13statedinfrastructureissuesinvariousplaces.***CP*** : Respondent 12 had a specific demand for accessibility software called" N u a n c e D r a g o n [23]" software. Respondent 17 stated lifts and washrooms.

**Thosewhowereinthe minority,i.e.,respondedYES,gavetheirreasonsandexamplesofaccessibility.**

***VI****:*Respondent5saidpeoplearesupportive,andtheadministration'sbehaviouris satisfactory. ***CP***: Respondent20said theirdepartment hadlifts, ramps, disabled-friendly washrooms (wheelchair-accessibleones),and evenwheelchair-accessiblefootpaths.

**SwDs and Accommodation in University Hostels**

23 Dragon Education Solutions, Improve Student Learning, Nuance, Nuance Communications.*available at*: https://www.nuance.com/dragon/industry/education-solutions.html (last visited on October 14, 2024).

The RPWD Act mandates non-discrimination and the right to equality[24], implying no student should be denied accommodation based on their disability[25]. UGC guidelines state that students are entitled to clean and hygienic hostel accommodations which provide basic amenities[26].Judicial rulings alsostate that universities must provide free accommodation (JNU Case[27]) and all facilities provided to SwDs enforcing the right to equal treatment and services[28]. The on-campus residence also plays a big role in the lives of SwDs; they face manychallengesevenwhileresiding inthehostelsprovided byuniversities.Morethan80%ofrespondentssaidthattheircollegehashostelfacilities,andonly20%said that theirinstitution doesnot provideany accommodation via hostel.

**Understanding Hostel Accommodation Challenges for SwDs**

To understand the issues of hostel accommodation, the follow-up question was asked about SwDs availing of the hostel, to which the minority, i.e., 35%, responded to thenon-availingofthehostel.20% of

24 *Supra* note 9, s.3.

25 Moumita Barman, Towards Inclusivity: Assessing the Rights of Persons with Disabilities Act, 2016. *available at*<https://www.cdpp.co.in/articles/towards-inclusivity-assessing-the-rights-of-persons-with-disabilities-act-2016> (last visited on November 1, 2024).

26 University Grants Commission, "Guidelines for Students' Entitlement" (Ministry of Education).*available at:*https://www.ugc.gov.in/pdfnews/4336926_studentsentitlementguidelines.pdf

27 Arunima, "Equalizing the differently abled with their peers itself infracts Article 14'; Delhi High Court upholds Rights of visually disabled student for hostel accommodation at JNU" *SCC Times*, 28 February 2024, *available at*<https://www.scconline.com/blog/post/2024/02/28/delhi-high-court-upholds-rights-of-visually-differently-abled-student-for-hostel-accomodation-jnu-legal-news/>(last visited on November 1, 2024).

28 Disability Insider, "Delhi HC directs JNU to provide hostel accommodation to blind student" *Disability Insider*, 28 February 2024, *available at*<https://disabilityinsider.com/2024/02/28/law/delhi-hc-directs-jnu-to-provide-hostel-accommodation-to-blind-student/> (last visitedon November 1, 2024).

respondents stated that they could not bear the cost of living in their respective college hostel and said that they were not comfortable there and wanted to continue to live in another hostel where they have their type of community, which creates asuitableenvironment forthemlikeSevaKutirin Mukherjee Nagar. This corroborates with the National Centre for Promotion of Employment for Disabled People study[29], which states that the lack of accessible and affordable hostels complicated the ability of SwDs to attend universities. 45% responded YES to living in a hostel. They mainlystayed in full-fledged campusresidenceslikeJNU.Forthem,theissueisn'tabout theaccommodation money or hostel feebut rather fallsmainlyinthedomainofaccessible environmentssuch as:

***Subjective Responses of SwDs Respondents***

***VI****:*Respondent14respondedsimilarlytothecampusaccessibilityissuethatca tsanddogs menace inside the hostel premises.Respondent9saidthefoodisn'tthatgoodbutmanageable,consideri ngthe available hostel facilities.

***LD****:*Respondent 11 recalls the quota system applicable at the time of admission to the hostel. Since they considered rank while clearing for admission to the desired course and college and neglected the quota or availability of seats, the respondent believes that it is why they were denied hostel accommodation. Respondent 19 stated that there were even distance issues inside the campus to reach the hostel. They have to wait long for e-rickshaws, and the hostel isn't equipped with lifts for easy accessibility. Other than that, the disability-friendly toilets have flickering lights, which sometimes don't even work. When asked about their issues while living in hostels, they say that basic daily needs like

29 *Supra* note 7.

water aren't clean, and the caretaker responsible for bringing food isn't on time and is usually provided very late. Thus, the food doesn't remain warm enough to eat.

**Challenges in Classroom Inclusivity for SwDs**

The RPWD Act defines inclusive education[30] and outlines the responsibilities of government and local authorities in providing inclusive education, necessitating that all recognized and funded educational institutions create an accommodating environment for SwDs[31].UGC Guidelines advocates for inclusive classrooms and encourages creating an environment where SwDs can participate fully in the university experience[32]. It promotes adapting teaching methods, using assistive technologies, and resource centre establishments to support SwDs in academic pursuits[33]. Government initiatives like HEPSN (Higher Education for Persons with Special Needs) call for dedicated units within colleges to ensure proper infrastructural access and support for SwDs, focusing on counseling and academic support[34].Classrooms are where knowledge is imparted, and that place should be completely inclusive and disability friendly. Still, as in other areas, this aspect of the institution also does not cater to the needs and inclusion of SwDs. Also, an interesting thing to note is that disability is a very complex phenomenon, meaning that for one particular category of disability, the classroom poses no issues. Still, for another category,

30 *Supra* note 9, s.2(m).
31 *Id*., s.16 and 17.
32 *Supra* note 13.
33 *Ibid.*
34 Moumita Barman, "Barriers to higher education for persons with disabilities block their meaningful growth" *The Siasat Daily*, 26January 2024, *available at*<https://www.siasat.com/barriers-to-higher-education-for-persons-with-disabilities-block-their-meaningful-growth-2964762/> (last visited on November 1, 2024).

the same institutional classrooms pose issues that too in such a way that even render the education being imparted in classrooms completely useless and has no utility for that concerned SwDs. The responses gathered show no issues for 75%of respondents. While it highlighted that there were issues for one-fourth, i.e.,25% of the respondents, for them, studying at such institutions can be remedied by reasonable accommodation[35], which can be achieved by cooperation of the institution with the concernedSwDs.The concern of providing an accessible format for study material remained very prominent. Some teachers provided study materials in audio format, and some did not. Still, accessibility lies in providing braille-based notes for visually impaired SwDs, and, likewise, accommodation there for other disabilities. The audio-format study materials, if provided, are constrained and act as limited knowledge; it goes against the very conception of studying at universities. In response, largely, the issues that came up here were:

***Subjective Responses of SwDs Respondents***

***VI****:* Respondents 1 and 2 both raised the lack of study material in an accessible format as their issue. Respondent 6 stated that some professors provide reading material; some do not. Respondent 8 clearly stated that inclusion fails when professors don't know a candidate in classis visually impaired. They continue to write on boards without saying what they have written there. Also, the concerned respondent stated that recorded lectures have limited content and only constitute their study material. Respondent 14 stated that there is a lack of attention from professors and their inaccessible presentations in terms of PPT(s) and video(s). The attitudinal barrier seems to be remedied by

35 *Supra* note 9, s. 2(y).

sensitization.***CP:***Respondent12calledout the attitude in albarriers in class rooms.

**Everyday Barriers for SwDs, Attitudinal, Enabling, and Structural Challenges**

Barriers[36] and day-to-day hurdles are pervasive in the lives of SwDs, which is why 3 major types of barriers were posed to respondents in the form of MCQ so that they can select right away what they feel is a barrier in their lives. Both NEP 2020(especially in universities[37]) and UGC Guidelines advocatea barrier-free environment for SwDs, as judicial decisions[38] reaffirmed accessible education via committee formulation to suggest measures for physical infrastructure and pedagogy methods[39].Here, two types of additional information also came up that is 7SwDrespondents selected all 3 main barriers as their daily barriers,while3SwDrespondentsfaced none of them.The lack of understanding and support from administrators, faculty, staff, and other students is also known as the **"Attitudinal barrier"**. This barrier is faced by 50%of the respondents. Although it is the lowest of all 3, it is a very sad picture for institutions as it shows the crucial need for effective sensitization in the institutes of higher education. The second barrieris the **"Enabling barrier"**, which is the lack of adaptive aids and other accommodations. In higher education institutions, the focus on providing adaptive aids is much less. Mostly, the author(s) came to

36 *Id.,* s. 2(c).

37 Sarthak Educational Trust, "Accessibility & Inclusion in Higher Education in India"(July 2020).*available at:* https://sarthakindia.org/report/Sarthak_Report.pdf

38 Disabled Right Group v. Union of India,AIRONLINE 2018 SC 543.

39 Rahul Bajaj, "Through Two Progressive Rulings, Indian Supreme Court Bolsters Rights of the Disabled", *OHRH,* 21 February 2018*, available at*<https://ohrh.law.ox.ac.uk/through-two-progressive-rulings-indian-supreme-court-bolsters-rights-of-the-disabled/> (last visited November 1, 2024).

know that colleges distribute laptops to visually impaired SWDs, but they complain about such laptops in terms of their poor conditions and usability.Thus,55% of the respondents face issues regarding enabling barriers. Lastly, the **"Structural barriers"** are the inaccessibility of buildings, playgrounds, offices, and upper floors. Here, 75% of respondents do face issues that are far more than any of the above barriers, and this shows that those Students having physical disabilities are directly affected, including visually impaired SwDs,as they have to struggle a lot when it comes to movement within the campus. It was reaffirmed in the NCPED Study that the lack of ramps, elevators and accessible restrooms remains a significant challenge[40].

**Library Accessibility for SwDs: Challenges in Design**

The library is the soul of any institution. After getting an education in classes, many students leave, but some stay at libraries and study there. RPWD Act mandates accessible libraries and advocates the adoption of universal design in public spaces, including libraries. Here,30% of respondents believe the library is inaccessible mainly because of its old design, which has not undergone any repairs, updations, or upgrades. The same corresponds to a news article[41] as well.The national policy for persons with disabilities (hereinafter PwDs), 2006 also aligns with the broad goal of creating an inclusive educational environment, including promoting accessible libraries.

40 *Supra* note 7.

41 Hema Kumari "Troubled Access To Libraries, Lack Of Accessible Washrooms: Perils Of Students With Disabilities," *Outlook India*, 25 February 2023, *available at*<https://www.outlookindia.com/culture-society/troubled-access-to-libraries-lack-of-accessible-washrooms-perils-of-the-students-with-disability-weekender_story-265101> (last visited November 1, 2024).

**Institutional Access to Study Materials for SwDs**

As per the RPWD act, the mandate is there foran educational institution to provide inclusive education, which includes accessible study materials[42]. An effective library's feature is access to study material in an accessible or disability-friendly format. The statistics of the study material not provided is 60%, and those who responded YES (40%)described in which accessible format they were provided study material. The irresponses were:

***Subjective Responses of SwDs Respondents:***

***VI****:* Respondent 2 stated that an audio form of study material is provided. Respondent 5 also said that Audio format/ recorded lectures through talkies are there; in talkies, sometimes the library resource person assists, and sometimes their friends speak and give them the recordings of the books they want to learn about. Respondent 14 stated that most of the study material is in E-text format. ***CP:***Respondent 20 stated that PDF-format notes and books are provided. ***MD****:* Respondent 13 stated that all formats are provided, which does not answer the researcher's question. Some of the respondents failed to clarify in which format they were provided, so a clear picture isn't visible as to how they manage their studies and grades, and those respondents are three in number.

**"Awareness Part"**

**Understanding of Reasonable Accommodation Among SwDs, Insights, and Gaps:**"Cultural shift and awareness raising for more inclusive and respectful higher educational institutions are necessary[43]".

42 *Supra* note 9, s.17.

43 Yara Bastidas (2020) Breaking barriers in higher education for and with students with disabilities, UNESCO-IESALC, unesco.org. *available at:*https://www.iesalc.unesco.org/en/2024/05/02/breaking-barriers-in-

HerecomestheconceptofReasonableAccommodation[44], which is crucial to understanding how respondents see it in terms of their "right"as denial of reasonable accommodation constitutesdiscrimination. The respondents were asked to describe the term in their own words. Consequently, theirresponses were not at all satisfactory and loomed around, stating partial meanings oraspectsof the term.

***Subjective Responses of SwDs Respondents***

***VI****:* Respondent 14 said, "Reasonable accommodation means fulfilling the needs regarding my limitation and making me able to be a part of the mainstream society in terms of enjoying my life with respect, privilege, and inclusion". ***LD:*** Respondent7 stated, "Accessible accommodation and fair rent".Respondent18replied,"Itpromotesequality".Respondent19 explained it as"Easyaccess,infrastructureissues,potholesissues,multipledisability issues,escorts weregiven single occupancy". ***CP:***Respondent17 said, "Changes for disabled in the workplace", while Respondent 12 only mentioned, "It is good but not implemented". ***MD:***Respondent13 stated that it "meansthataccommodationwhichisrationalandlogical".Most (13 respondents) have no idea of the term. This clearly shows thelack of awareness, contributing to adopting a status quo shape and resisting individual changes. This stops the discussion on 5% reservation to institutes of higher education and4%in jobs. Out of these responses, the closest was: "Reasonable accommodation means fulfilling the needs regarding my limitation and making me able to be a part of the mainstream society in terms of enjoying my life with respect, privilege, and inclusion" and "Means that accommodation which is rational and

higher-education-for-and-with-students-with-disabilities/ (last visited on October 15, 2024)

44 *Supra* note 35.

logical".

These responses can be seen as an understanding of the term reasonable accommodation. Still, at the same time, we miss crucial awareness of this concept, as this concept facilitates the lives of PwDs. This concept isn't there only for benchmark disabilities[45] but for the larger community of PwDs. Denial of which constitutes discrimination[46]. Accessibility and reasonable accommodation are both different terms, and that is why a lot of responses were kind of mixed up. The clarity of this term especially should be a priority for any person having a disability as it acts as an enabling term for them, which can result in giving them a dignified life and takes away barriers that institutions impose on the general masses, in the form of norms or regulations as we saw in *Vikashkumar v. UPSC*[47].In this case, paragraph "H" is solely dedicated to explaining the term reasonable accommodation and describes how it enriches the lives of PwDs. More importantly, the concept involves conversation as its starting point, the accommodation happens later, which establishes a balance, as there cannot be an undue burden on the accommodator to facilitate any PwDs or SwDsas all of this should happen within reasonable bounds.

**Consultation and Support on Reasonable Accommodation for SwDs in Higher Education**

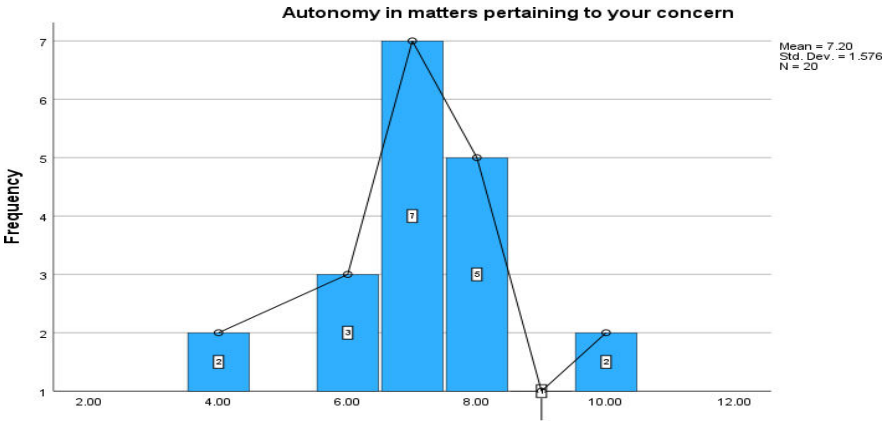
In the follow-up question, the responses presented the sad state of affairs regarding "reasonable accommodation". Regarding the specific concerns of SwDs, the responses stated that 35%stated YES and 65% stated NO consultation. The debate here lies in the initiation of dialogue, and

45 *Supra* note 9, s. 2(r)
46 *Id.,* s. 2(h).
47 MANU/SC/0067/2021

usually, when SwDs ask certain things for themselves, it is not seen as a part of reasonable accommodation. The approach here isn't "Right" based on the RPWDAct[48]. Rather, it is still seen as charity work done by the institution. The respondents who said YES to the institute reaching out for their concerns are those at the highest level of education, PhD,and2respondentswerefromthemaster'slevel.Thisshowslarge-scale neglect of the needs of the majority of SwDs who recently joined and have to adapt themselves to the extent that when they adjust, compromise, or settle through their struggles during their bachelor's, they will, to a major extent, be comfortable inmasters. At PhD level, they do have the support of a supervisor, so a helping hand from the institution is very much there. It is always appreciable that institutes are asking from them aster'sleve land onwards, but such support should be available for all the SwD at bachelor levels.

**Assessing Autonomy in Life Decisions for SwDs in Higher Education**

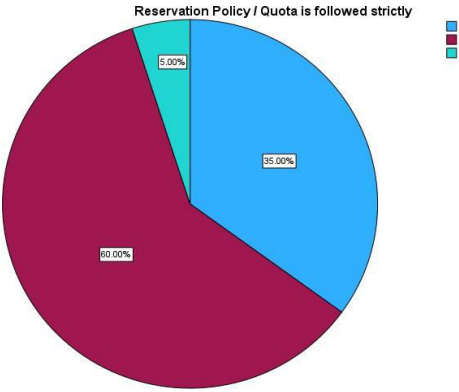
The RPWD act guarantees that PwDs have the right to legal capacity on




an equal basis with others to enjoy all aspects of life, including

48*Supra* note 9.

education. It affirms their ability to make personal, educational, and vocational choices. The act also states the concept of limited guardianship, where autonomy will be respected via a consultative approach and individual preference and rights will be prioritized[49].The autonomy of life decisions plays a major role in assessing the respondents' quality of life; the less autonomy there is, the more dependence there is.Similarly, the more respondents score, the more independent theyare in their lives. The mean score that came up overall is 7.20, which is good, taking into consideration that in normal life, too, family and friends do form a part of the opinion and help in formulating the decisions. 2 respondents fall in the low and high spectrum, the lowest being 4 and highest 10. The majority resides between 6-8, and the author(s) considers it normal for SwDs to have this level of autonomy. The question posed was taken in the sense of decisions taken by the respondents till now, i.e.,reaching higher education. It made them independent and was a common thread underlying their responses.




**Challenges in Implementing Reservation Policies for PwDs in Higher Education:**The RPWD act mandates 5% seats in higher education for PwBDs[50]. It implies educational institutions not only to reserve seats but also to ensure that

49 Choudhary Laxmi Narayan and Thomas John, "The Rights of Persons with Disabilities Act, 2016: Does it address the needs of the persons with mental illness and their families," 59 *Indian Journal of Psychiatry* 17 (2017).

50 *Supra* note 9, s.32.

infrastructure and support systems are in place to facilitate it[51]. The judiciary enforced the quota via *DisabledRights Group v.Union of India*[52].The major highlight we have is the reservation policy, as the RPWD Act 2016[53] raised it to 5% for institutes of higher education to reserve seats for PwDs. Interestingly, as we see here, 60% of respondents do believe that such a policy isn't strictly followed, as one of the respondents even shared that due to a court case[54], the seat was then granted. Also, this Question has alimitation, as the majority of responses were not asked why they believe as such.

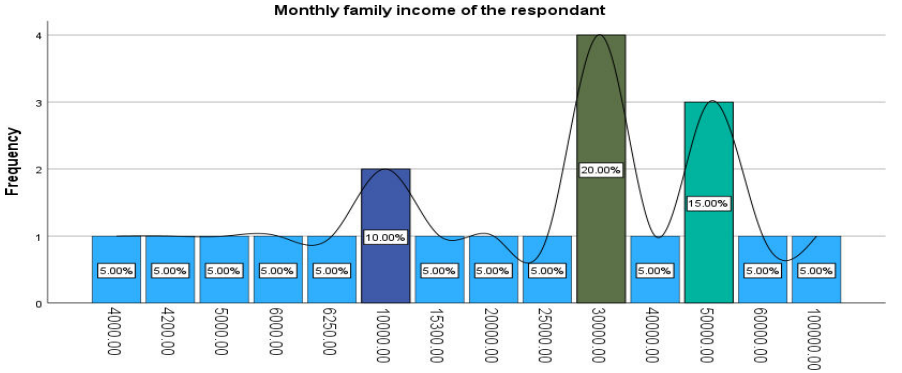
**Access and Utilization of Assistive Aids and Devices among SwDs in Higher Education** Interestingly, the RPWD act mandates the availing of free assistive aids till the age of 18 years[55] which serves ascounter-intuitive to the fact that awareness comes with coming of age and experiences. Rest it focuses on recreational activities[56] where there is mention of assistive devices but there is silence in the context of higher education as far as the RPWD Act is concerned. Assistive devices and tools are the first thing any PwDsor SwDs will have to start their day. In this survey, more than13respondentsreportedusingsomeassistive devices. Out of 20 respondents, 11 had to purchase them from their own pockets, and the rest of them were provided via institutions, government and NGOs. Here,consideration of the average monthly salary of their parentsbecomes prominent, as well as the quality of assistiveaids, as stated by respondents 8 and 4, both noted that ALMCO (Artificial Limbs Manufacturing Corporation of India) provided them. The company is

51 *Supra* note 31.
52 Supra note 38.
53 *Supra* note 12.
54 *Supra* note 17.
55 *Supra* note 9, s. 17(g).
56 *Id.,*s. 29(g).

said to be giving sub-standard products as the authorhimself has first-hand experiencewiththeir products.

**Socio-Economic Challenges Faced by SwDs in Accessing Essential Assistive Aids**

The average family income is thus 28,787 Indian rupees (monthly) for the whole family to survive. From that socio-economic background, the SwDs have to struggle to buy the equipment and aids that will assist them in leading a normal life, as their whole life's progressdependson




that pieceofaid/equipment or technology.

**Perspectives on Disability Disclosure Among SwDs**

The disabilities are also of two types. One is visible, for which nothing needs to be said since it is prima facie evident, and the other is invisible,whichdoes not give the appearance of physical disability. Thus, the Author(s) tried to gather the mindset and perspective of the respondentsaboutthedisclosureof disability andtried to evaluatetheirresponses.Here, we can see that 70%of SwDs do not feel uncomfortable sharing their disabilities and are rightly moving forward to face challenges as they all emphasize self-acceptance. Their subjective response was as follows:

***Subjective Responses of Respondants**:*

***VI:***Respondent 2 stated that we should disclose it as it makes life easier, while respondent 3 has no issues in disclosing their disability, but talking in general, they responded like it is a fifty-fifty per cent scenario of disclosure affecting them.Respondent 4 stated that they believe in telling people they understand them, which makes their lives easy. Similarly, Respondent 5 says "It is what it is" and yes by speaking up life becomes easy. Respondent 6 reiterated that how people see us matters a lot, which means that the existing social perception is that God gave such a disability to them, so he/she must have sinned.Another perception comes from jealousy related to quotas for SwDs as they believe SwDs do nothing and are still granted seats. So, either way, society swings between ignorance or sympathy until the very same people reach a social status fighting all odds, and then only, especially for them, does the perception change.Respondent 9 said "acceptability" keeps them going, and they have to disclose one day or another; thus, later on, it will be a case of nothing more than self-embarrassment.Respondent 10 says it makes life easy i.e., disclosure of disability. Respondent 14 submits that disclosure generally leads to stigmatization, as the idea he states is that those places known to you have a higher chance of acceptability and understanding, but the same is not there once we step out of our campus.***CP:***Respondent 12 stated that it depends on the context that is up to the concerned PwDs and society;Respondent 17 just stated the word "easy." Similarly, respondent 20 stated that it is sometimes good(easy)/ bad (stigmatized) experiences.***LD:***Respondent 11 said that while he/she may not be having issues, those of others have a very difficult life in education and the general citizenry. Similarly, respondent 16 highlights, "It's both. There are places where you don't want to get stigmatized, but you do get it". Respondent 19 said, "During schooling, I had uncomfortable feelings,

but in higher education, such disclosure isn't a problem".***MD*:** Respondent 13 failed to provide a proper response.Still, 30% of the respondents were uncomfortable, and their reasons were also easily understandable, considering our society's awareness and sensitization level. They shared their experiences.

***Subjective Responses of SwDs Respondents***

***VI**:*Respondent 1 highlighted stigmatization; being the only SwDs in the whole class resulted in teachers not focusing on the concerned respondent, which leads to insensitivity and, ultimately, the class does not see from the lens of sympathy.Respondent 8 stated that we feel uncomfortable when so many people in society don't even help us and aren't aware or sensitized to help us cross the streets.***LD:***Respondent 7 stated that there are hidden social perceptions of society in concerning relationships. This subconscious perception becomes an issue for relationships; based on that sole issue, the whole perception drives the understanding around relationships. Thus, marriage with disabilities and relationships even with friends and colleagues creates a strong reason to avoid disclosure of disability as much as possible. Sensitization on campus needs to be there as sensitization helps and makes them realize our disabilities as usually, they treat everyone similarly, and that becomes a case of humiliation in front of friends and colleagues.Respondent 15 stated that it stigmatizes life.Respondent 18 was very interesting as the concerned respondent felt uncomfortable disclosing their disability.Still, in a follow-up question, they responded, "I don't know about others, but it makes me strong".

**Awareness of Government Schemes for Higher Education Among SwDs**

The responses gathered for the schemes for higher education, such as HEPSN by UGC, and general schemes, such as the Accessible India

campaign, were all mixed up. This question was a part of theawareness module, and other important questions also made up its space. Since thequestionwasaboutawarenessofschemesrelatedtohighereducation,therespondents were asked to name the schemes, asapartofthe questionnaire.50% responded YES and were further analyzed by asking them which policy they wanted to be highlighted and which scheme specifically focused on higher education for SwDs. The responses were as such: some said the scholarship is there, but theydon't know the name; some mentioned National fellowship for the person with disabilities, DDRS (DeendayalDivyangjan Rehabilitation Scheme) and pension scheme, National scholarship by the government, and RGNF(respondentbelievesthatthegovernment haschangedthename). Some even mentioned the Accessible India campaign and the NationalScholarship Portal(NPS).

**Analysis of Scholarship(s) for Students with Disabilities**

Scholarships related to higher education, like those given to everyone as per meriti.e., JRF (obviouslyafter securing it in its exam), cannot be considered disability-specific scholarships, but 70% oftherespondentshavereceivedsomeformofgovernmentaidandsupportinthe formof scholarships. If we compare this data with the data just mentioned above, we can infer that manyrespondentshavereceivedthescholarshipduringtheirschoolingtillthecompletionofthe 12th. No one mentioned theSaksham scholarship for SwDs pursuing technical education and the National Fellowship for Persons with Disabilities. The problem withthisquestionisthattheresearcherhasn'tsegregatedthehigher education scholarship, so the statistics will mostly be taken as 70% of the respondents received scholarships at some stage.

## V. ResearchFindings

Lastly,asubjectivequestionwasposedtorespondentstoprovidesuggestionsa ndrecommendationsfor improvementsin highereducationfor SwDs. The responses are incorporated after duly considering their importance. Here, we can understand the lacuna areas and the experiences (good or bad) to analyzewhat they all responded to via broadheadingsorthematicapplications. Respondents provided key recommendations to improve higher education for SwDs, highlighting areas such as discrimination, with issues like refusal of sports participation and lack of accommodations in classes during lectures. On theRPWD Act, respondents noted a lack of concrete action despite the recognition of Disability Day, with calls for genuine commitment to rights-based approaches. In technology, respondents advocated for tools that foster independence, accessible study materials, and better-quality equipment. Unity among SwDs was emphasized, with suggestions for events to strengthen community bonds, while funding was identified as essential for policy execution. Perception/mindset changes and sensitization of teachers were called for, alongside accessible reading materials in braille. Respondents stressed the importance of reasonable accommodation, positive terminology, and physical accessibility with adequate infrastructure. Additional recommendations included creating a commission and monitoring body for PwD rights, ensuring affordability of essentials, strict adherence to the reservation policy, enhanced campus travel facilities, and awarenessraising for better public understanding of disability. Finally, respondents urged a strong support system for SwDs in higher education institutions.

## VI. Manual hypothesis testing based on the Majority of Responses

Manual hypothesis testing based on most responses was conducted to

assess accessibility and awareness concerning SwDs in higher education. In the "**Accessibility**" section, the analysis revealed that 80% of respondents reported no issues during the admission process, yet 80% found their campus inaccessible. Furthermore, 55% had to manage hostel accommodations independently, and 75% did not experience major issues in the classroom. However, all three categories of barriers (physical, attitudinal, and institutional) were reported by over 50% of respondents. Notably, 70% of students found the college library accessible, while 60% indicated accessible study materials were not provided. Overall, six out of nine variables related to accessibility had a majority response rate of 50% or higher, supporting the hypothesis that poor accessibility negatively impacts the enrollment of SwDs in higher education.

In the **"Awareness"** section, 65% of respondents were unfamiliar with the term "reasonable accommodation", and 65% also reported a lack of dialogue with educational institutions. Despite this, the autonomy of decisions was rated positively, with an average score of 7.6 out of 10. Additionally, 60% felt that the reservation quotas were not strictly applied, and 55% stated that assistive aids were not provided, with some having to purchase these aids despite a mean family income of 28,787 rupees. However, 70% were not uncomfortable disclosing their disabilities, and 50% were unaware of higher education schemes, though 70% had availed of scholarships. Five of eight awareness-related variables had a majority response of 50% or higher, confirming the hypothesis that awareness plays a crucial role in uplifting SwDs in higher education.

## VII. The procedure followed, difficulties encountered in the collection of data, and the limitations of the study

Data was collected manually from JNU and DU campuses through

snowball sampling. Challenges included time constraints, reaching female respondents, and connecting with those with invisible disabilities. The authors acknowledge the respondents' contributions, which enriched the study with valuable insights. However, limitations—such as a small sample size, lack of comprehensive university representation, and general rather than targeted questions—limit the study's generalizability. Additionally, responses were restricted to SwDs, without input from institutional representatives or enabling units. This pilot study serves as a foundation for future, more comprehensive research on accessibility and awareness in higher education.

## VIII. Suggestions and Conclusion

The objective of any study is to provide suggestions for improvements for the issue at hand. Likewise, the main purpose of this pilot study is to analyses the situation on the ground and provide solutions accordingly. Thus, in conclusion, the researcher tries to provide doable suggestions thematically, such as:

**Campus Accessibility Compliance and Legal Recourse:** Institutions must align with the RPWD Act and UGC guidelines to ensure accessible campuses. If institutions fail to provide necessary accommodations, affected students can file complaints with the Chief Commissioner for Persons with Disabilities[57] or approach the judiciary. Non-compliance may lead to penalties, mandates for changes, or other sanctions[58]. Braille signage, tactile tiles, technology-enabled accessibility, and supervised vehicle parking are essential to support visually impaired students. SwDs facing issues with stray animals hindering mobility on campus could legally request the removal of such barriers to ensure a safe and

57 *Supra* note 9, s.77.
58 *Id.,* s.89.

accessible environment[59].Key infrastructure requirements include ramps, lifts, and well-maintained roads. These features, beneficial to all students, are a one-time investment critical for accessibility, especially for students with cerebral palsy or other mobility challenges.

**Periodic Accessibility Audits and Penalties for Non-Compliance:** Regular audits of campus infrastructure, covering ramps, braille signage, tactile paths, and accessible pathways, can ensure that institutions remain compliant with accessibility standards. Audit results should be public, and institutions failing to meet these standards may face financial penalties or funding cuts, encouraging transparency and accountability.

**Accessible Housing and Accommodation:** The RPWD Act mandates equal access to on-campus hostel facilities for SwDs[60]. Institutions that do not comply with accessible hostel facilities could face directives through public interest litigation or governmental interventions[61]. Accommodations should include wheelchair-accessible paths, battery-operated wheelchairs for large campuses, and functional, disability-friendly amenities.

**Accessible Study Materials and Library Resources:** Institutions and universities are encouraged to adopt policies that facilitate access to libraries for SwDs including digital libraries, technologies and specialized training in library staff to assist them[62]. Courts have also recognized the obligations of universities for equitable access to libraries and stated that accessibility isn't merely a physical requirement but rather includes access to information and resources in formats that

59 Id., s. 40, 41 and 45.
60 *Id.,* s.40.
61 *Supra* note 58.
62 Babita Yadav and S. N. Singh,"Library and Information Services for Persons with Disabilities: Indian Students Perspectives Survey" 19(1) *Journal of Access Services*(2022).

cater to different disabilities[63].The lack of accessible study materials remains a critical barrier. Educational institutions must provide materials in various accessible formats[64], such as braille, audio, and e-texts, aligning with the RPWD Act. Failure to accommodate these needs can be legally challenged as a denial of reasonable accommodation[65]. Compliance could be mandated by court orders[66] or UGC guidelines, ensuring accessible education.

**Awareness and Implementation of Reasonable Accommodation:** Enrollment in higher education remains very low due to inadequate infrastructure and support along with a lack of awareness[67]. Raising awareness among SwDs about their rights to reasonable accommodation[68] is crucial. Educational institutions should conduct training sessions on reasonable accommodation for staff and students, transforming these requests from goodwill acts to recognized rights.

**Reservation Compliance and Awareness:** Institutions must display available reservations for SwDs before each admission cycle and adhere strictly to the advertised quotas. Awareness campaigns[69] should be

63 Mukesh Kumar Jha, "Equivalent access to library: A means of bridging the gap between the abled and disabled."*Library Philosophy and Practice (e-journal)* (2022).

64 *Supra* note 31.

65 "UGC issues guidelines for better inclusion of learners with disabilities on campuses," *The Indian Express*, 2022*available at*: https://indianexpress.com/article/education/ugc-issues-guidelines-for-better-inclusion-learners-with-disabilities-on-campuses-8025966/ (last visited November 1, 2024).

66 *Supra* note 47, note: relying on Rajiv Raturi v. Union of India,AIRONLINE 2018 SC 544; Sanjeev Kumar Mishra v. Jawaharlal Nehru University,MANU/DE/1416/2024.

67 Ayushi Bansal,"Affirmative Action Without Accessibility: India's Higher Education System Fails Disabled Students", *OHRH*, 10 January 2019, *available at*<https://ohrh.law.ox.ac.uk/affirmative-action-without-accessibility-indias-higher-education-system-fails-disabled-students/> (last visited November 1, 2024).

68 Supra note 9, s 2(y).

69 *Id.,* s.39(f).

conducted to inform SwDs about their rights under the RPWD Act, enabling them to monitor and demand strict adherence to reservation policies.

**Assistive Aids and Digital Accessibility Standards:** There is a lack of awareness among students and educational staff regarding the availability and utilization of assistive technologies which calls for training programs and awareness campaigns[70].Institutions should collaborate with government and private organizations to provide high-quality assistive devices to SwDs, particularly in higher education where technology can significantly enhance accessibility.

**Disability Support/ Enabling Units:** Each institution having established enabling units should actively participate from admission till course completion and especially encourage filling up of general seats and then moving on to reserved seats so that more and more SwDs should get a chance to pursue academics.The nomenclature of the enabling unit can be 'Disability Inclusion and Support Cell' to actively consult with SwDs. This unit should offer personalized support, guide SwDs, and foster an inclusive environment, addressing accessibility issues from the undergraduate level onwards. A supportive and responsive educational environment could enhance academic engagement and success of SwDs[71].

**Awareness of Schemes and Scholarships:** Institutions should actively promote government schemes and scholarships,on their websites and

70 JibanKarkia , Simon Rushtonb, SunitaBhattaraic and Luc De Witte, "Access to assistive technology for persons with disabilities: a critical review from Nepal, India and Bangladesh" 18(1) *Disability and Rehabilitation: Assistive Technology* 8–16 (2023).

71 Shalini Saksena and Rashmi Sharma, "Deconstructing Barriers To Access Higher Education: A Case Study of Students With Disabilities in University of Delhi" 1(2) *DU Journal of UndergraduateResearch and Innovation*316-337(2015).

during student orientation. Regular workshops could assist SwDs in understanding and navigating these resources, especially for those from marginalized backgrounds.

**Establishment of a National Disability Support Commission:** Drawing from models like the National Commission for Scheduled Castes and Tribes, a similar commission could be established to focus on SwDs in higher education. This body would be responsible for enforcing accessibility standards, overseeing resource allocation, and addressing grievances.

# Online Dispute Resolution: The Future of Justice in India – A Boon or A Challenge

**Dr. Purnima Gupta***
**Dr. Surender Mehra****
**Arpit Keshari*****

***Abstract***

*The advent of Online Dispute Resolution (ODR) signifies a paradigm shift in the Indian legal landscape, promising to enhance access to justice while addressing the chronic backlog of cases in traditional courts. This paper explores the dual nature of ODR as both a boon and a challenge, analyzing its potential benefits and the obstacles that must be overcome for its successful implementation in India. As India rapidly advances in the digital age, Online Dispute Resolution (ODR) emerges as a transformative force in the nation's legal landscape. This abstract examines whether ODR represents a promising future for India's legal system thatexplores the potential of ODR is a boon to revolutionize justice delivery by making it more accessible, efficient, and cost-effective or whether it presents significant obstacles or challenges that poses significant hurdles and that must be overcome. Through a balanced analysis, the discussion will shed light on whether ODR is indeed the future of justice in India and what steps are necessary to ensure its success in a diverse and complex society.Through a comprehensive examination of current trends, technological advancements, and socio-economic factors, this paper aims to provide a nuanced understanding of ODR's role in shaping the future of justice in India.*

***Keywords*:** ODR(Online Dispute Resolution), ICT (information and communication Technology), ADR (Alternative Dispute Resolution), access to Justice, confidentiality, arbitration.

---

* Dr. Purnima Gupta, Assistant Professor, Law, MAIMS, Rohini.advocatepurnima@gmail.compurnimagupta.faculty@gmail.com
** Corresponding Author: Dr. Surender Mehra, Assistant Professor, Law, Banaras Hindu University.
*** Research Assistant: ArpitKeshari, Research Scholar, Law, Banaras Hindu University.

## Introduction

The Indian judiciary is grappling with an overwhelming backlog of cases, with over 4.7 crore pending litigations as of 2023. As reported By Times of India, India's oldest litigation has been settled by the country's oldest High Court of Kolkata after 72 years long legal battle.[1]This situation has led to calls for innovative solutions to improve the efficiency of the justice system. Online Dispute Resolution (ODR) emerges as a promising alternative, leveraging technology to facilitate dispute resolution outside traditional court settings. With the rapid advancement of digital technology that has brought about significant changes in various sectors, and the legal system is no exception. ODR leverages technology to facilitate the resolution of disputes outside the conventional courtroom setting. By offering a virtual space for negotiation, mediation, and arbitration, ODR aims to make the justice system more accessible, cost-effective, and time-efficient.It is considered as one of the most convenient as parties need not to travel for physical hearings. This is particularly relevant in a diverse and populous country like India, where geographical barriers, resource constraints, and the digital divide pose significant challenges to ensuring equitable access to justice. ODR in 2020 has been a huge success in India.[2]For instance, during the lockdown phase in 2020, one of the ODR platforms helped the State Legal Services Authority to settle more than 60,000 cases out of 1,00,000 filed cases worth more than 47 Billion INR.[3] Recently in August 2022, NALSA solved 7.4 million cases in India.[4]The adoption of ODR in India, however, is not without its complexities. While the benefits are clear, such as reducing the burden on courts and providing a faster resolution process, there are also substantial concerns. These

1 Times of India, January 16, 2023 retrieved from https://timesofindia.indiatimes.com/city/kolkata/72-years-on-indias-oldest-pending-case-finally-settled/articleshow/97012986.cms(last visited on 24th August 2024).

2 Online Lok Adalat, SAMA retrieved from https://www.v1.sama.live/lokadalat.php visited on 24th August 2024.

3 *Ibid*.

4 'Over 7.4 mn cases settled during third National Lok Adalat today: NALSA', Business Standard 13 August, 2022retrieved from https://www.business-standard.com/article/current-affairs/over-7-4-mn-cases-settled-during-third-national-lok-adalat-today-nalsa-122081301057_1.html(last visited on 21.8.2024).

include issues related to digital literacy, data security, and the potential for unequal access to justice due to the existing digital divide. Moreover, the legal and ethical implications of resolving disputes online, particularly in terms of maintaining fairness, transparency, and adherence to legal norms, require careful consideration.This paper seeks to explore the dual nature of ODR as both a boon and a challenge for the future of justice in India. It will analyze the current state of ODR in the country, assess its potential benefits and drawbacks, and consider the necessary steps to address the challenges that may hinder its effectiveness. By examining these factors, the paper aims to provide a comprehensive understanding of whether ODR can truly serve as a transformative tool for justice in India, or whether its implementation may exacerbate existing inequalities and create new hurdles in the pursuit of fair and accessible dispute resolution.

**MEANING OF ODR**

Online Dispute Resolution (ODR) refers to the use of digital platforms and technology to facilitate the resolution of disputes between parties without the need for physical meetings or traditional court proceedings. It is an innovative approach that integrates alternative dispute resolution (ADR) methods—such as mediation, arbitration, and negotiation—with modern information and communication technologies (ICT). ODR is essentially an extension of ADR into the online realm. It allows parties to resolve conflicts through digital tools, such as video conferencing, chat applications, and online document sharing. The primary goal of ODR is to offer a more accessible, efficient, and cost-effective means of resolving disputes, particularly for cases that may not require the formalities and expenses associated with traditional litigation.

**THE ORIGIN OF ODR**

The origins of ODR can be traced back to the mid-1990s, coinciding with the rise of e-commerce and the internet's expansion beyond academic and military applications. Initially, the internet was a limited environment, primarily used by government organizations and academic institutions, which restricted the emergence of online disputes. However, as commercial online services like CompuServe and AOL began to flourish, so did the potential for disputes arising from online interactions.

A pivotal moment in the development of ODR occurred in 1999 when eBay launched its internal system for resolving disputes between buyers and sellers. This system allowed users to submit complaints that were mediated by experienced professionals, marking one of the first large-scale implementations of ODR. By 2010, eBay was handling over 60 million disputes annually through its ODR platform, demonstrating its effectiveness and capacity to manage online conflicts efficiently.

**NEED FOR ONLINE DISPUTE RESOLUTION**

The need for Online Dispute Resolution (ODR) in India is underscored by several pressing factors. Firstly, the Indian judiciary is grappling with an overwhelming backlog of over 4.7 crore pending cases, leading to significant delays in justice that erode public confidence in the legal system. During Covid-19 too, period from 2020-2022, India witnessed economic crisis. But at the same time digital economy and e- commerce sectors flourished. Commercial companies started online work which led to the evolution and need of ODR.[5]

ODR presents an efficient alternative, enabling quicker resolutions outside the traditional court framework. Additionally, the rapid growth of digital transactions—projected to reach 700 million online users by 2030—has resulted in an increase in disputes that require timely resolution. ODR effectively addresses this challenge by providing a convenient platform for resolving disputes arising from e-commerce and other online interactions. Moreover, ODR enhances access to justice for individuals in remote or underprivileged communities who face barriers such as high travel costs and lack of transportation. It also offers a cost-effective solution, reducing the financial burden associated with traditional litigation. Lastly, ODR's flexibility and informality make it easier for parties to engage in dispute resolution without the rigidities of formal court proceedings, thereby fostering a more user-friendly environment for conflict resolution.

**5** Abhilasha Vij, "*Arbitrator-Robot: Is A(I)DR the future?*" 39 ASA Bulletin 1/2021 (March)*available at*https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3808956(Last visited on 19.8.2024).

## IMPORTANCE OF ONLINE DISPUTE RESOLUTION

The significance and importance of Online Dispute Resolution (ODR) are profound, particularly in the context of modern legal systems and the increasing complexity of digital interactions. ODR addresses the pressing need for efficient dispute resolution mechanisms in a world where traditional court systems are often overburdened with lengthy backlogs and delays. By leveraging technology, ODR offers a faster, more cost-effective alternative that enhances access to justice for individuals who may face barriers in conventional legal settings. This is especially crucial in a diverse country like India, where geographical and economic disparities can hinder access to legal recourse.Moreover, ODR promotes legal health by increasing awareness of rights and available remedies, empowering individuals to make informed decisions and potentially avoid disputes altogether. It fosters a more collaborative approach to conflict resolution, as ODR processes such as mediation and negotiation are typically less adversarial than traditional litigation. Additionally, ODR's flexibility allows parties to resolve disputes at their convenience, eliminating the need for travel and accommodating varying schedules. As e-commerce and online transactions continue to grow, ODR becomes increasingly relevant, providing a practical solution for resolving disputes arising in the digital marketplace. Ultimately, ODR represents a significant advancement in the pursuit of timely, equitable, and accessible justice, aligning with the broader goals of improving the legal landscape in the 21$^{st}$Century.

## KEY PHASES OF ODR DEVELOPMENT

Broadly, ODR's development across the world can be divided into three phases, with each phase benefiting from the subsequent innovations in ICT.

I. First Phase: e-Bay's Experiment / Initial Experiments (Mid-1990s)

ODR began in the mid-1990s with academic initiatives exploring how technology could facilitate dispute resolution. The initiative was launched in University of Massachusetts and University of Maryland.[6]The launch of eBay's resolution system in 1999 marked a

6 Mohamed Abdel Wahab, Ethan Katsh, Daniel Rainey (eds), "*Online Dispute Resolution Theory and Practice*", A treatise on Technology and

pivotal moment, demonstrating the practical application of ODR for resolving disputes between buyers and sellers.The number of disputes processed by eBay's ODR platform increased steadily starting in 2010 and peaked at 60 million annually at that point.[7]

II. Second Phase: Growth of ODR Start-ups (Late 1990s to Early 2000s)

Following eBay's success, numerous start-ups emerged, providing specialized ODR services for various types of disputes.The proliferation of platforms such as Modria and Cybersettle was fueled by the increasing volume of online transactions and advancements in technology.This phase saw the development of user-friendly interfaces and secure communication tools, making ODR more accessible to a broader audience.The approach's goal was to make it easier for parties to agree on the maximum amount that could be settled with the other party. Innovation flourished throughout this time, but those that couldn't come up with fresh ideas went out of style.

III. Third Phase: Integration into Judicial Systems (2000s Onwards)

In this phase, many courts and governments began to embrace ODR after few Private ODR platforms got success.Governments all across the world have since adopted ODR initiatives for effective conflict settlement. For the consumer settlement issues ,Consumidor.gov was created in Brazil[8] and the European Online Dispute Resolution Platform in the European Union.[9]Various jurisdictions implemented ODR programs for small claims and family disputes, supported by legislative frameworks to ensure enforceability and protect partiesrights.The

Dispute Resolution, *available at*https://conferences.law.stanford.edu/codr2013/wp-content/uploads/sites/9/2016/09/Katsh-Wahab-ODR-A-Lok-at-History-Ch.1.pdf visited on 24th August 2024.

7 Designing the Future of Dispute Resolution,"*THE ODR POLICY PLAN FOR INDIA*" The NITI Aayog Expert Committee on ODR, October 2021 retrieved from https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf visited on 22.8.2024.

8 Luciana Oliveira Militão, "*Consumer Claims, on-line Dispute Resolution and Innovation in the Public Administration: A Case Study of the Consumidor.gov Platform in Brazil During 2014-2019*" August 2020.

9 Online Dispute Resolution, European Union, *available at*https://ec.europa.eu/consumers/odr/main/?event=main.home2.show last visited on 22.8.2024.

Supreme Court of India has played a crucial role in legitimizing ODR, affirming the validity of electronic communication and remote testimony in several landmark cases.

**ODR PLATFORMS IN INDIA**

Online Dispute Resolution (ODR) in India is gaining traction as a viable alternative to traditional dispute resolution methods. Several platforms have emerged, providing various services tailored to the unique needs of different sectors. In India, several government initiatives and platforms have been established to promote Online Dispute Resolution (ODR) as a means to enhance access to justice and streamline dispute resolution processes which are as follows:

I. National Centre for Dispute Resolution (NCDR)

Established by the Ministry of Law and Justice, the NCDR aims to promote alternative dispute resolution mechanisms, including ODR, to facilitate efficient resolution of disputes.

II. Online Consumer Mediation Centre (OCMC)

Set up at the National Law School of India University (NLSIU), Bengaluru, under the Ministry of Consumer Affairs in 2016, the OCMC provides a state-of-the-art infrastructure for resolving consumer disputes through both physical and online mediation.

III. Digital India Initiative:

As part of the broader Digital India program, ODR is recognized as a key component aimed at transforming India into a digitally empowered society, enhancing the accessibility and efficiency of justice delivery.

IV. SAMADHAAN Portal

Launched by the Ministry of Micro, Small and Medium Enterprises (MSME) in 2018, this portal addresses payment disputes involving micro and small enterprises, facilitating quick and efficient resolution through ODR mechanisms.

V. e-Courts Integrated Mission Mode Project

This project aims to computerize district and subordinate courts across India, improving access to justice through technology and integrating ODR processes into the judicial framework.

VI. e-Lok Adalat

During the COVID-19 pandemic, the Chhattisgarh state high court organized the nation's first state-level e-Lok Adalat, resolving cases

through mutual agreement via video conferencing, showcasing the potential of ODR in judicial settings.

VII. NITI Aayog's ODR Policy Plan

NITI Aayog released a report titled "Designing the Future of Dispute Resolution: The ODR Policy Plan for India," which outlines a comprehensive strategy for mainstreaming ODR in India. The report emphasizes the need for digital literacy, improved infrastructure, and regulatory frameworks to support ODR initiatives.

VIII. Mediation Bill, 2021

The proposed Mediation Bill aims to provide a legal framework for online mediation in India, facilitating the adoption of ODR processes and ensuring that they are conducted according to established standards.

These government initiatives reflect a concerted effort to integrate ODR into the Indian legal system, addressing the challenges of access to justice and the backlog of cases in traditional courts. By leveraging technology, these platforms aim to provide timely, cost-effective, and efficient dispute resolution options for citizens.

IX.Presolv360

Presolv360 is one of India's leading ODR platforms, offering services for resolving commercial disputes, especially in sectors like banking, real estate, and insurance.[10] It provides a 21st century solution to uproot such modern-day challenges. It'sa platform that puts into practice a unique approach to resolve commercial disputes at virtually zero cost. This is possible by blending technology, human expertise and innovation to provide a quick, effective and enforceable outcome.[11]

**X.** SAMA

Sama is a popular ODR platform that focuses on resolving disputes through mediation and arbitration. It caters to various sectors, including e-commerce, consumer disputes, and family law. SAMA has Integrated with government initiatives like the Lok Adalat and has partnered with several state legal services authorities to provide online mediation for cases.[12]

XI.CADRE (Centre for Alternative Dispute Resolution Excellence)

10 Widely used by financial institutions for resolving loan-related disputes.
11 AI-driven analytics for case management.
12 It also has multi-language support to cater to India's diverse population.

CADRE is an ODR platform that provides Customizable dispute resolution processes services for mediation, conciliation, and arbitration. It is particularly focused on addressing commercial and consumer disputes. Also used by, businesses to resolve disputes related to contracts, consumer grievances, and other commercial issues. It too collaborateswith legal experts and institutions.

**CHALLENGES IN ADOPTION OF ODR**

Even while ODR has a great deal of promise to facilitate effective and efficient conflict settlement, there are a number of obstacles to overcome before it can fully integrate into the mainstream dispute resolution ecosystem. A number of elements must come together for ODR to be implemented successfully, including the availability of trustworthy and secure technological tools, digital infrastructure to support usage, parties' openness to trying a new approach to dispute resolution, and the cooperation and support of the legal community, government, and judiciary to ensure that agreements and awards are upheld. To enable the widespread adoption of ODR, the interests and motivations for each ofthe various players participating in the process must be taken into account and addressed. The adoption of Online Dispute Resolution (ODR) faces several significant challenges, categorized into structural, behavioral, and operational issues.[13]

A. Structural Challenges

1. Digital Infrastructure: A robust technological framework is essential for ODR, including widespread access to computers, smartphones, and reliable internet connectivity. In India, rural internet penetration is only 32.24%, compared to 99.12% in urban areas, which limits access for many potential users.[14]

2. Digital Literacy: There is a considerable digital literacy gap, with only 38% of households in India being digitally literate. This discrepancy is more pronounced in rural areas, where only 25% are digitally literate compared to 61% in urban settings. This divide hampers

13 "*Designing the Future of Dispute Resolution: The ODR Policy Plan for India*", The NITI Aayog Expert Committee on ODR October 2020.

14 Rahul Kumar Gaur, "*Tech-Driven Justice: Unraveling The Dynamics Of Online Dispute Resolution*" 9 June 2024.

the effective use of ODR systems, particularly among marginalized groups.[15]

3. Digital Divide: The gender divide is also a concern, as women constitute only one-third of internet users in India, with rural women representing an even smaller percentage. This inequality exacerbates existing disparities in access to justice.[16]

B. Behavioral Challenges

1. Lack of Awareness: Many potential users are unaware of ODR and its benefits, leading to low confidence in its processes. This lack of awareness restricts the application of ODR in sectors like MSMEs and consumer disputes.[17]

2. Trust Issues: There is a general skepticism towards ODR, stemming from concerns about technology reliability and the enforceability of outcomes. This mistrust can hinder the adoption of ODR solutions.[18]

3. Legal Culture: In countries where traditional court systems are deeply ingrained, introducing ODR can be challenging. Many individuals prefer conventional methods, which complicates the transition to alternative dispute resolution (ADR) mechanisms.[19]

C. Operational Challenges

1. Privacy and Confidentiality: The reliance on technology raises concerns about data security, including risks of online impersonation and breaches of confidentiality. Ensuring that sensitive information remains secure during the ODR process is crucial.[20]

2. Enforcement of Outcomes: There is uncertainty regarding the enforcement of ODR agreements, as existing legal frameworks may not adequately address mediation outcomes that are not court-initiated. This

15 DattopantThengadi, National Board for Workers Education & Development Ministry of Labour& Employment, Govt. of India, available at https://dtnbwed.cbwe.gov.in/images/upload/Digital-Literacy_3ZNK.pdf visited on 26.8.2024.

16 Amy Antonio & David Tuffley, **"***The Gender Digital Divide in Developing Countries*" ResearchGate October 2014.

17 Umang Yadav,"*Challenges and Issues in ODR*", VIA MEDIATION AND ARBITRATION CENTRE.

18 *Supra* Note 13

19 *Supra* Note 17

20 Ethical Principles for ODR Initiative available at https://odr.info/ethics-and-odr/ last visited on 20.8.2024.

creates barriers to the legitimacy and binding nature of ODR resolutions.[21]

3. Implementation Issues: Resistance from traditional dispute resolution mechanisms and the need for continuous technological updates can impede the effective implementation of ODR systems. Additionally, the lack of trained mediators further complicates the situation.[22]

Addressing these challenges requires concerted efforts from the government, private sector, and civil society to enhance digital infrastructure, improve digital literacy, and build trust in ODR processes.

**CONCLUSION**

Online Dispute Resolution represents a significant advancement in the field of dispute resolution, addressing the pressing needs of modern society while offering numerous benefits. Its ability to streamline processes, enhance accessibility, and leverage technology makes ODR a vital component of the future justice system in India and beyond. As the legal landscape continues to evolve, embracing ODR will be crucial for ensuring timely and equitable access to justice for all parties involved. The evolution of Online Dispute Resolution reflects the broader changes in communication, commerce, and legal practice brought about by the internet. From its initial experiments in the mid-1990s to its current integration into formal judicial systems, ODR has become a vital tool for resolving disputes efficiently and effectively. As technology continues to advance, ODR is likely to play an increasingly prominent role in both private and public dispute resolution processes, ultimately contributing to a more equitable and accessible justice system.The investigation into Online Dispute Resolution (ODR) as a transformative mechanism for the Indian legal system reveals both promising opportunities and significant challenges. This research has highlighted how ODR can serve as a vital tool in addressing the overwhelming backlog of cases in traditional courts, thereby enhancing access to justice for diverse populations across the country. By leveraging technology, ODR offers a more efficient,

21 ODR, The Future of Dispute Resolution In India, Vidhi Centre for Legal Policy Report.

22 Ayelet Sela, "*The effect of Online Technologies on Design: Antecedents, Current Trends and Future Directions*" January 2017 Research Gate.

cost-effective, and user-friendly alternative to conventional dispute resolution methods, which is particularly crucial in a nation marked by vast geographical and socio-economic disparities.

However, the path to successful ODR implementation is fraught with obstacles that must be systematically addressed. The challenges identified include inadequate digital infrastructure, low levels of digital literacy, and a lack of awareness and trust in ODR processes. Additionally, operational concerns regarding data security and the enforceability of ODR outcomes pose significant hurdles that could undermine its effectiveness.

To ensure that ODR fulfills its potential as a cornerstone of accessible and equitable justice in India, a multi-pronged strategy is essential. This strategy should focus on enhancing digital infrastructure, promoting digital literacy initiatives, and fostering greater awareness among potential users about the benefits and workings of ODR. Furthermore, collaboration among government bodies, the legal community, and private sector stakeholders is crucial to create a supportive ecosystem that encourages the adoption of ODR.

While ODR represents a promising avenue for revolutionizing justice delivery in India, its success will depend on overcoming the identified challenges through concerted efforts and strategic planning. By addressing these issues, ODR can indeed become a key player in shaping a more responsive and inclusive legal landscape, ultimately contributing to the realization of timely and equitable justice for all citizens.

# The switch to Sustainable and Green Arbitration: The uncharted road towards an environmental friendly Arbitration in India - Challenges and Prospects.

**Ankit Anand***
**Prof. (Dr.) Ishita Chatterjee****

**Abstract**

*As environmental concerns continue to escalate globally, arbitration is embracing a new approach known as "Green Arbitration" to align dispute resolution processes with the principles of environmental sustainability. Green Arbitration encompasses a range of practices to minimise the environmental impact of arbitration proceedings while promoting ecological consciousness and sustainable development and has gained recognition globally. By integrating sustainability considerations into arbitration procedures, Green Arbitration seeks to reduce the carbon footprint associated with hearings, facilitate the resolution of environmental disputes, and promote harmonious coexistence between economic growth and environmental preservation. It raises awareness about the interplay between legal mechanisms and environmental issues. It allows arbitrators, parties, and legal professionals to actively engage in discussions surrounding environmental justice and preserving natural resources. This paper explores the concept of Green Arbitration and its significance in addressing the environmental challenges posed by traditional dispute resolution mechanisms. It further focuses on the specific context of India and explores the challenges and prospects associated with implementing Green Arbitration practices in the country.*

* Author - Research Scholar, School of Law, SRM Institute of Science and Technology, Kattankulathur (KTR), SRM Nagar, Chengalpattu District, Tamil Nadu, Pin Code- 603 203. Email: aa1424@srmist.edu.in, ankitanandcnlu@gmail.com

** Co-Author – Professor of Law, School of Law, SRM Institute of Science and Technology, Kattankulathur (KTR), SRM Nagar, Chengalpattu District, Tamil Nadu, Pin Code- 603 203. Email: ishitac1@srmist.edu.in

***Keywords:*** *Green Arbitration, Green Protocol, Green Pledge, Sustainable Arbitration, Carbon Footprint, Environmental Sustainability.*

## Introduction

There has been a growing global consciousness regarding environmental preservation and sustainability in recent years. As societies recognise the pressing need to address environmental challenges, various sectors, including the legal field, are actively engaging in efforts to promote environmentally friendly practices.[1] One significant development in this regard is the emergence of green arbitration, a specialised alternative dispute resolution that seeks to resolve disputes while prioritising ecological concerns. The experts and stakeholders of the legal fields are actively exploring ways to adopt practices that can reduce carbon emissions and mitigate environmental harm during the arbitration process.[2] The environment and natural resources significantly influence our cognitive functioning in the present circumstances. Organisations are taking steps such as Corporate Social Responsibility (CSR), Sustainable Development Goals (SDGs), and ESG (economic, social, and governance) to promote environmental protection. Even the judiciary has implemented specific measures to minimise its carbon footprint.[3]

Organisations and institutions worldwide have played a crucial role in spearheading the promotion and adoption of green arbitration practices. These organisations have dedicatedly integrated environmental considerations into the arbitration process, driven by recognising the importance of addressing environmental disputes efficiently and

1 Jeffrey D Sachs, *From millennium development goals to sustainable development goals*, The lancet 379 (9832), 2206-2211, (2012).

2 Abdul Haseeb Ansari, Muhamad Hassan Bin Ahmad, & Sodiq Omoola, *Alternative Dispute Resolution in Environmental and Natural Resource Disputes,* JILI 59, 26-56, (2017).

3 Amr ElAlfy, Nicholas Palaschuk, Dina El-Bassiouny, Jeffrey Wilson, & Olaf Weber, *Scoping the evolution of corporate social responsibility (CSR) research in the sustainable development goals (SDGs) era*, Sustainability 12(14), 5544, (2020).

sustainably. Businesses are increasingly committing to achieve "net-zero" emissions and reassessing their operations in response to a regulatory landscape emphasising environmental, social, and governance responsibilities. By doing so, they strive to provide a more balanced and holistic approach to resolving disputes while minimising the ecological impact of such proceedings. However, there needs to be more discussion about climate change within arbitration proceedings in India.

Consequently, sustainable arbitration practices that could contribute to reducing our collective carbon footprint still need to be included. Several factors contribute to this carbon footprint, including printing lengthy submissions, extensive travel by witnesses, experts, advocates, and the arbitral panel, as well as the use of disposable coffee cups and printing out large bundles of documents.[4] We often overlook the long-term consequences due to our inclination to prioritise the present. We must recognise that our actions will have far-reaching consequences for future generations.

Moreover, the Supreme Courts of various countries have demonstrated a proactive stance in advancing green arbitration principles. The Supreme Court of India has recently implemented changes in the case filing procedure, including using A4 size papers and reducing the number of copies required from 4 to 2.[5] These highest judicial bodies have acknowledged the importance of environmental protection and have taken steps to facilitate the integration of environmental considerations into the arbitration process. Stakeholders must minimise their carbon footprint, guided by the principles of raising awareness. Previously, there was a lack of emphasis on sustainable arbitration practices. However, significant changes occurred when the COVID-19 pandemic impacted the world. The short-term developments related to quarantine compelled participants to adopt technology more

4 Karthik Nagarajan & James J. East, SALIENT CONSIDERATIONS FOR REMOTE INTERNATIONAL ARBITRATION HEARINGS IN THE IMPACT OF COVID ON INTERNATIONAL DISPUTES 100-121 (2022).

5 SUPREME COURT OF INDIA available at - https://main.sci.gov.in/pdf/Circular_filing.pdf (Last visited October 13, 2023).

thoughtfully and deliberately.[6] COVID-19 unintentionally lowered emissions and made it easier for many individuals to achieve carbon neutrality by reducing global travel. Considering the impact of climate change on people's lives, the arbitration community needs to encourage and promote greener practices. It is also crucial to acknowledge the efforts of those already working towards sustainability and achieving net zero carbon emissions.

Furthermore, a "green pledge" has gained traction as a voluntary commitment by arbitration practitioners, institutions, and parties involved in disputes to adopt environmentally conscious practices.[7] This pledge reflects a collective effort to minimise the carbon footprint of arbitration proceedings and promote sustainable behaviours in the field. By embracing the green pledge, stakeholders aim to reduce the environmental impact of arbitration, encourage the use of alternative dispute resolution mechanisms, and foster a more environmentally sustainable approach to resolving conflicts.

This paper explores the concept of green arbitration and green pledge. It further analyses the environmental impact of arbitration, the international framework for implementing green protocols, and the challenges associated with implementing a green protocol for arbitration in India. By examining these aspects, we highlight the growing importance of environmentally friendly dispute resolution and its potential to contribute to a greener and more sustainable future.

---

6 Janna Anderson, Lee Rainie, & Emily A. Vogels. *Experts say the 'new normal' in 2025 will be far more tech-driven, presenting more big challenges,* PRC (2021) available at https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2021/02/PI_2021.02.18_New-Normal-2025_FINAL.pdf (Last visited October 20, 2024).

7 Maxi Scherer, Niuscha Bassiri & Mohamed S. Abdel Wahab, *International arbitration and the COVID-19 revolution,.*KLI (October 8, 2020) available at https://arbitrationblog.kluwerarbitration.com/2020/10/08/international-arbitration-and-the-covid-19-revolution-part-1-of-2/ (Last visited October 19, 2024).

**The ecological ramifications of Arbitration**

In the context of international arbitration, particularly in the construction and energy sectors, efforts have been made to address sustainability and climate change concerns. Disputes related to climate change involve parties from various industries and states.[8] However, it is crucial to recognise that the arbitral process itself, despite aiming to address environmental issues, also contributes to environmental degradation. The traditional reliance on paper within the legal profession exacerbates the environmental impact.[9] Starting from law school, the use of textbooks, exam papers, and related materials continues into legal practice. Large quantities of paper are consumed for legal documentation throughout arbitration proceedings, including pleadings, petitions, affidavits, and other relevant documents, often spanning hundreds or thousands of pages.

The Steering Committee, with the support of Dechert LLP, conducted a study to assess the environmental impact of international arbitration. The study focused on medium-sized international arbitrations valued at around $30-50 million and specifically examined printed documents submitted to the arbitral tribunal, excluding drafts and other printed materials.[10] The findings of the study were concerning. It revealed that a single medium-sized international arbitration has a total carbon footprint of 418,531.02 kg $CO_2$e.[11] It is equivalent to four times the number of trees in Hyde Park in London or all the trees in Central Park in New York. Rectifying the environmental impact caused by a single medium-sized international arbitration would require almost

8 Kyla Tienhaara, *Regulatory chill in a warming world: the threat to climate policy posed by Investor-State Dispute Settlement,* TEL 7(2), 229-250, (2018).

9 Robert V. Percival, Christopher H. Schroeder, Alan S. Miller & James P. Leape, ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY (2021).

10 Lucy Greenwood, ARBITRATION AND CLIMATE CHANGE: SUSTAINABLE AND DIVERSE POLICY AND PRACTICE IN DIVERSITY IN INTERNATIONAL ARBITRATION 276-288 (2022).

11 Lucy Greenwood, *The Canary Is Dead: Arbitration and Climate Change,* JIA 38(3), (2021).

20,000 trees.[12] The cumulative effect on the environment is a significant concern considering the frequency of international arbitrations occurring daily.

## The Green Pledge

The Green Pledge represents a commitment to implementing eco-friendly practices within the arbitration field.[13] Over 600 individuals and organizations involved in arbitration, such as practitioners, law firms, arbitrators, arbitration service providers, and corporations, have endorsed this initiative. The primary principles of the Green Pledge include the following:[14]

1. One way to decrease the dependence on paper-based interactions is to promote and encourage electronic communication and submissions.

2. To minimize the need for unnecessary document printing during hearings, it is recommended to advocate for adopting electronic bundles.

3. Videoconferencing facilities can be a practical substitute for travel, especially for witness interviews and cross-examinations. Thus, it is vital to support and prioritise their use.

4. It is preferable to select suppliers and service providers who demonstrate their dedication to minimizing their environmental impact.

5. Reducing unnecessary travel and taking measures to offset the carbon emissions associated with arbitration-related journeys is essential.

12 Lucy Greenwood, *Viewing our World through a Different Lens: Environmental and Social Considerations in International Arbitration,* GELS 3(2) 159-178 (2022).

13 The Green Pledge, campaign for Greener Arbitrations, available at https://www.greenerarbitrations.com/sign-green-pledge#:~:text=The%20Green%20Pledge&text=The%20Campaign%20addresses%20the%20need,carbon%20footprint%20when%20resolving%20disputes. (Last visited October 10, 2024).

14 The Campaign for Greener Arbitrations: Encouraging Sustainable Practices in International Arbitration available at https://blog.jusmundi.com/the-campaign-for-greener-arbitrations-encouraging-sustainable-practices-in-international-arbitration/ (Last visited October 01, 2024).

**The International Framework for the Implementation of Green Protocols**

The Green Pledge Guidelines offer a basic overview of adopting sustainable practices and establishing fundamental principles. In contrast, the Green Protocol provides a comprehensive understanding of the specific methods to be implemented by Parties, arbitrators, institutions, and law firms throughout the arbitral process. The Working Committee published the Green Protocol on April 22, 2021, which was formed in 2020 and consists of arbitration practitioners from various international law firms and arbitral institutions such as the New York International Arbitration Centre (NYIAC), Hong Kong International Arbitration Centre (HKIAC), and the International Chamber of Commerce (ICC) UK Energy & Environment Committee.[15] The Protocol encompasses the following Green Protocols:

1. The Green Protocol for Law Firms, Chambers, and Legal Service Providers Engaged in Arbitration.
2. The Green Protocol for Arbitrators.
3. The Green Protocol for Arbitral Institutions.
4. The Green Protocol for Arbitration Conferences
5. The Green Protocol for Arbitration Hearing Venues.

**The Green Protocol for Law Firms, Chambers, and Legal Service Providers in Arbitration**

The Green Protocol for Law Firms, Chambers, and Legal Service Providers in Arbitration offers a comprehensive roadmap for embracing sustainability within the legal sector.[16] It begins with a firm-wide commitment, appointing passionate "Green Ambassadors" to spearhead environmental policies and initiatives. These champions will guide the organization in adopting eco-conscious practices, starting with a focus on prioritising clean and renewable energy sources and collaborating

15 The Green Protocols, Campaign for Greener Arbitrations, available at https://www.greenerarbitrations.com/green-protocols (Last visited October 02, 2024).

16 The Green Protocol for Law Firms, Chambers, and Legal Service Providers in Arbitration, available at https://www.greenerarbitrations.com/green-protocols/law-firms-chambers-legal-service-providers (Last visited October 03, 2024).

with providers committed to ESG principles. Efficiency measures are paramount, with a push to minimise energy consumption through strategies like LED lighting, efficient heating and cooling systems, and conscientious device usage to reduce carbon footprints, including optimising email practices.

Digital transformation takes centre stage, advocating for the adoption of digital tools for document management, communication, and collaboration. This shift reduces paper usage significantly, emphasising electronic case files and digital communication channels. Recycling and waste reduction efforts are bolstered, with clear directives on proper disposal of materials and responsible recycling practices. Single-use plastics are phased out in favour of reusable or compostable alternatives, aligning with broader sustainability goals. Collaboration with environmentally conscious partners extends to all facets of operations, from catering to courier services, ensuring a holistic approach to sustainability. Conscious travel policies encourage alternatives like virtual conferencing and remote work, minimising the environmental impact of commuting. Employee engagement is key, with incentives for greener behaviours and opportunities for volunteerism with sustainability organizations. Social responsibility is integrated into the firm's culture, with events and initiatives aimed at educating and inspiring environmentally friendly practices. Carbon neutrality is pursued through a combination of sustainable measures and offsetting strategies, aligning with accredited schemes that meet high sustainability standards. Transparency is paramount, with regular reporting on progress, achievements, and cost savings related to sustainability initiatives. Participation in green certification programs further underscores the organization's commitment to environmental stewardship.[17] By embracing the Green Protocol, legal professionals can not only mitigate their environmental footprint but also lead by example in promoting sustainable practices across their industry.

17 Greenwood, L., 2022. Viewing our World through a Different Lens: Environmental and Social Considerations in International Arbitration. *Global Energy Law and Sustainability*, *3*(2), pp.159-178.

### The Green Protocol for Arbitrators

The Green Protocol for Arbitrators offers a roadmap for reducing the environmental impact of arbitration proceedings. It empowers arbitrators to embrace sustainability through a series of practical measures tailored to their needs. Central to the protocol is the reduction of paper usage, advocating for electronic communication, digital document annotation, and maintaining electronic case files. Sustainable practices for printing, including recycled paper and eco-friendly ink, are encouraged alongside proper disposal methods. Sustainability is woven into the fabric of arbitral proceedings, with arbitrators urged to share sustainability protocols with co-arbitrators and parties, integrating them into procedural orders. Embracing technology platforms for receiving and organising materials, as well as utilising audio or video conferencing for case management conferences and hearings, is highlighted to minimize travel and paper waste.[18] During hearings, emphasis is placed on electronic bundles and remote submissions to reduce reliance on paper and minimize travel. Energy efficiency is prioritised in arbitrators' workspaces, with recommendations for clean energy sources, LED lighting, and energy-saving appliances. Recycling initiatives, including proper disposal of electronic equipment and furniture, are promoted to minimize waste. Responsible travel practices are encouraged, with arbitrators urged to minimize unnecessary travel and opt for low-carbon emission options when feasible. Offsetting carbon emissions from unavoidable travel is suggested to mitigate environmental impact, aligning with accredited schemes that adhere to rigorous sustainability criteria.[19] By embracing the Green Protocol, arbitrators can play a vital role in fostering sustainable practices within the arbitration community while minimizing their environmental footprint.

18 Snell, P. and Lace, M., 2023. How "Green" Have International Arbitrations Become? Reflections on Arbitral Practice Post-Pandemic. *Dispute Resolution Magazine*, *29*(2), pp.24-29.

19 McIlwrath, M. and Giachetti, F.Z., 2021. Changing the World, One Procedural Threat at a Time: De-carbonising Arbitration through Procedural Efficiency. *BCDR International Arbitration Review*, *8*(1).

**The Green Protocol for Arbitration Conferences**

Envision an arbitration conference where sustainability is not merely a concept but a guiding ethos shaping every facet of the event. The Green Protocol for Arbitration Conferences offers a meticulous blueprint for organizers to elevate their gatherings into eco-conscious, low-impact affairs. It is not merely a matter of compliance; it is about effecting tangible change in our environmental stewardship. The protocol heralds the inauguration of a green era, urging organizers to wholeheartedly embrace environmentally responsible practices, thereby positioning the conference as a beacon of sustainability, setting the stage for a conference that leaves a positive mark on the planet. Virtual conferences emerge as heroes, offering a sustainable alternative to traditional face-to-face gatherings. By leveraging virtual platforms, organizers can slash carbon emissions while still delivering impactful conference experiences.[20] Venue selection becomes a strategic eco-mission, with organizers seeking out spaces adorned with sustainability certifications or committed to environmental stewardship. Even if a venue falls short on green credentials, organizers step in as sustainability superheroes, working hand in hand with venues to implement greener strategies, from waste reduction to energy efficiency and sustainable catering. It is about turning every corner of the conference green, from registration to the last goodbye. Digital becomes the new norm, with electronic registration, digital payments, and paperless distribution of materials leading the charge. Gone are the days of mountains of paper cluttering up conference rooms; instead, eco-friendly name badges and reusable lanyards take centre stage. Energy efficiency takes the spotlight, with organizers championing venues equipped with LED lighting, energy-saving systems, and eco-friendly amenities. Recycling becomes second nature, with proper disposal of everything from plastic bags to outdated electronic equipment. Single-use plastics are out, replaced by sustainable alternatives that keep waste to a minimum. It is not just about

20 Gupta, A. and Bajpai, A., 2023. Green dispute resolution: A sustainable way of resolving disputes. In *Sustainable Boardrooms: Democratising Governance and Technology for Society and Economy* (pp. 155-173). Singapore: Springer Nature Singapore.

the conference itself but the entire ecosystem surrounding it. Partnerships with "green" organizations ensure that every aspect of the event, from catering to cleaning, aligns with sustainability goals. Even travel gets a green makeover, with organizers promoting virtual attendance and eco-friendly transportation options. Feedback goes digital, sparing countless sheets of paper from meeting their fate in the recycling bin. And to top it all off, organizers commit to offsetting any remaining carbon emissions, ensuring that the conference's environmental impact is neutralized. It is a comprehensive approach that leaves no stone unturned in the quest for sustainability. The Green Protocol is not just a set of guidelines; it is a call to action for organizers to rethink the way they plan and execute arbitration conferences. It is about setting a new standard for sustainability in the legal community and beyond.

**The Green Protocol for Arbitral Hearing Venues**

In the realm of arbitration, where every detail matters, the Green Protocol for Arbitral Hearing Venues emerges as a beacon of sustainability, offering a comprehensive framework to minimize the environmental impact of arbitration facilities and hearing centres. This protocol is not just a set of guidelines; it is a manifesto for change, empowering facilitators to embrace eco-conscious practices in every aspect of their operations. At its core lies a commitment to harnessing the power of green energy, advocating for the adoption of clean and renewable energy sources to power arbitration venues. Moreover, facilitators are urged to partner with energy providers that share robust Environmental, Social, and Governance (ESG) credentials, ensuring a holistic approach to sustainability. Efforts to reduce energy consumption and improve efficiency take centre stage, with facilitators employing a myriad of strategies, from LED lighting and natural light utilization to smart power strips and energy-efficient hand dryers. The conduct of proceedings undergoes a digital transformation, with electronic communication and audio/video conferencing emerging as preferred modes of interaction among facilitators, parties, and tribunals. Technology becomes a pivotal ally in presenting evidence during hearings, further reducing the reliance on paper and printing.

The protocol advocates for a significant reduction in paper usage, prioritizing digital options for hearings and conferences. Encouraging alternatives like laptops and tablets for note-taking and document review, along with updating mailing lists and implementing digital funding transfers, ensures a seamless transition to a paperless environment. Recycling initiatives are championed, with facilitators providing recycling bins and collaborating with building managers to explore recycling options for unused files and electronic equipment. The protocol also underscores the importance of minimizing single-use items and plastic, urging facilitators to seek alternatives and collaborate with canteens and restaurants to eliminate or reduce plastic usage. Partnering with "green" organizations becomes imperative, with a focus on sustainable catering practices, environmentally friendly courier services, and local service providers who adhere to sustainability measures.[21]

Travel, a significant contributor to carbon emissions, undergoes a sustainable makeover, with facilitators leveraging technology to minimize travel through virtual attendance options and recommending eco-friendly transport and accommodation facilities.[22] And to top it off, facilitators commit to offsetting any remaining carbon emissions, ensuring that their endeavours leave a positive environmental legacy. The Green Protocol is not just about conducting hearings; it is about conducting them responsibly, with an unwavering commitment to preserving our planet for generations to come.

**The Green Protocol for Arbitral Institutions**

The Green Protocol for Arbitral Hearing Venues presents a comprehensive blueprint for minimizing the environmental footprint of arbitration facilities and hearing centres.[23] This protocol is not just a

21 Laufer, H. and Stan, A., 2022. Environmental Sustainability Endeavours in International Arbitration: The Green Protocols. *Rom. Arb. J.*, *16*, p.91.

22 Bizikova, L., 2022. On Route to Climate Justice: The Greta Effect on International Commercial Arbitration. *Journal of International Arbitration*, *39*(1).

23 Miles, W. and Lawry-White, M., 2019. Arbitral institutions and the enforcement of climate change obligations for the benefit of all stakeholders: The role of ICSID. *ICSID Review-Foreign Investment Law Journal*, *34*(1), pp.1-31.

guideline; it is a call to action for facilitators to embrace sustainability measures that make a tangible difference. At its core lies a commitment to harnessing clean and renewable energy sources, coupled with a discerning selection of energy providers with strong environmental credentials. Energy conservation takes centre stage, advocating for the adoption of LED lights, energy-efficient appliances, and smart power strips to reduce consumption and improve efficiency. Communication is streamlined through electronic means or audio/video conferencing, minimizing the need for paper usage and travel. Embracing digital platforms for evidence display further reduces reliance on hard-copy documents. Recycling initiatives are championed, with facilitators promoting proper disposal practices and providing recycling bins throughout hearing venues.[24] Single-use plastics are phased out in favour of sustainable alternatives, with canteens and restaurants briefed on waste reduction efforts.

Collaboration with "green" organizations ensures that sustainability permeates every aspect of arbitration proceedings, from catering to waste management. Prioritizing locally sourced supplies and minimizing food waste are integral components of this partnership. Responsible travel practices are encouraged, with virtual hearing services and local vendors highlighted as alternatives to mitigate carbon emissions. Lastly, facilitators commit to implementing sustainability measures and offsetting any remaining carbon emissions. This holistic approach underscores a collective effort to create a more eco-conscious arbitration landscape, setting a precedent for responsible environmental stewardship within the legal community and beyond.

**Promoting Sustainable Development via Eco-Friendly Arbitration**

The international arbitration community aims to align arbitration practice with sustainable development goals, specifically in climate

24 Wilske, S. and Heubach, A., 2023. The Global Goals of ESG (Environmental, Social and Governance)—Are Arbitral Institutions Doing Their Part (at Least, with Respect to the Environmental Pillar)?. *Contemporary Asia Arbitration Journal*, *16*(1), pp.1-30.

change mitigation and responsible resource utilization.[25] Proposed protocols show potential in achieving this alignment. The United Nations' Sustainable Development Goals (SDGs), established in 2015, are widely recognized as a comprehensive approach to addressing global social and environmental challenges.[26] The SDGs emphasize the importance of democracy, good governance, and the rule of law for sustainable development. They encompass economic growth, social development, environmental protection, and poverty eradication.[27] Governance involves decision-making processes, dispute resolution, and coordination of resource usage.[28] The structural aspect focuses on organizing and managing these operations.

Conflict resolution is crucial for achieving sustainable development.[29] The sustainable development agenda emphasizes the need for an integrated approach to addressing environmental and social challenges.[30] The Organisation for Economic Co-operation and Development OECD promotes this approach, highlighting the interconnectedness of the Sustainable Development Goals (SDGs).[31] Integrated decision-making, considering environmental, social, and

25 Valentina Vadi, *Beyond known worlds: climate change governance by arbitral tribunals,* VJTL 48, 1285 (2015).

26 Leal Filho, Walter, et al., Using the Sustainable Development Goals Towards a Better Understanding of Sustainability Challenges, 26 Int'l J. Sustainable Dev. & World Ecology 179 (2019).

27 Joseph Atsu Ayee, *Reflections on some dynamics of development: good governance and the sustainable development goals,* GSS 13(2), 1 (2016).

28 W. Robert Lovan, Michael Murray & Ron Shaffer, PARTICIPATORY GOVERNANCE: PLANNING, CONFLICT MEDIATION AND PUBLIC DECISION-MAKING IN CIVIL SOCIETY, (2017).

29 Bitterman, M., Velasco, V.L. & Wright, F., Using Strategic Sustainable Development as an Approach to Conflict Resolution, 6 Progress in Indus. Ecology: An Int'l J. 314 (2009).

30 Joyeeta Gupta & Courtney Vegelin. *Sustainable development goals and inclusive development,* IEAPLE 16, 433-448, (2016).

31 Rahman, M.M., Impact of Taxes on the 2030 Agenda for Sustainable Development: Evidence from Organization for Economic Co-operation and Development (OECD) Countries, 4 Reg'l Sustainability 235, 235-48 (2023).

economic factors, is a crucial principle of sustainable development.[32] Sustainable Development requires considering the environmental aspect along with economic, social, and governance factors. Protecting the environment is crucial for sustainable economic growth because it provides essential services like carbon sequestration, water purification, flood risk management, and nutrient cycling.[33] The concept of sustainable development emphasizes the importance of balancing economic growth, social well-being, and environmental protection. It calls for a holistic approach to development that considers the long-term impacts and interconnections between various aspects of human life and the planet.[34]Achieving sustainable development requires collaboration and collective action from governments, businesses, communities, and individuals to address global challenges and ensure a better future for all.[35] Corporations should follow ESG frameworks to promote sustainability locally and nationally. ESG reporting should be encouraged to track economic, environmental, and social impacts. Businesses investing in different sectors should consider ESG requirements under SDGs. Governments and policymakers should support businesses in transitioning to sustainable models through incentives. Non-financial reporting on ESG should become the standard for enforcing principles like the "Polluter Pays Principle."[36] Reliable and non-manipulated information is crucial for ESG integration. The ultimate goal should be to achieve tangible and verifiable positive results in integrating ESG factors into investment decisions.

---

32 Lehtonen, Markku, *The environmental–social interface of sustainable development: capabilities, social capital, institutions,* EE 49(2) 199-214, (2004).

33 Katrina Brown & Esteve Corbera, *Exploring equity and sustainable development in the new carbon economy,* CP 3 S41-S56, (2003).

34 R. Warren Flint & R. Warren Flint, BASICS OF SUSTAINABLE DEVELOPMENT." PRACTICE OF SUSTAINABLE COMMUNITY DEVELOPMENT: A PARTICIPATORY FRAMEWORK FOR CHANGE 25-54 (2013).

35 Lichia Yiu, Raymond Saner & Roland Bardy, *Collective action on public goods for sustainable development: ethics in action.* IV BEL (2020).

36 Susanne Arvidsson & John Dumay, *Corporate ESG reporting quantity, quality and performance: Where to now for environmental policy and practice?,* BSE 31(3) 1091-1110 (2022).

To support their sustainability strategy, businesses should embrace technology and innovation in various aspects, including engineering, product development, management structures, and entrepreneurship. Technology can enable doing more with less, overcoming ecological limitations, and alleviating political and economic pressures.[37]Innovative governance approaches integrating economic, social, and sustainable development principles at multiple levels are necessary to address global challenges and achieve the 2030 Agenda on Sustainable Development Goals.[38] Using "green" arbitration rules can reduce costs and benefit the environment. These protocols promote actions that save money and help businesses achieve their net-zero goals.[39] They encourage online interactions, videoconferencing, and electronic documents instead of in-person meetings and paper-based materials. Contract management can help businesses mitigate ESG risks, especially in supply chains. The Covid-19 pandemic has prompted companies to evaluate their supply chains and incorporate ESG principles into their contracts. It includes aligning with internal ESG goals, legal requirements, and addressing discrepancies across countries.[40] Businesses can bridge jurisdictional differences and promote sustainability by implementing contractual terms that enforce ESG standards.[41] Courts have primarily resolved ESG

37 Wadid Lamine, Sarfraz Mian, Alain Fayolle, Mike Wright, Magnus Klofsten & Henry Etzkowitz, *Technology business incubation mechanisms and sustainable regional development,* TJTT 43 1121- 1141 (2018).

38 Sabine Weiland, Thomas Hickmann, Markus Lederer, Jens Marquardt & Sandra Schwindenhammer, *The 2030 agenda for sustainable development: transformative change through the sustainable development goals?* PG 9 (1) 90-95 (2021).

39 Kariuki Muigua, *Green Arbitration: Aligning Arbitration with Sustainable Development,* (2023) available at http://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf (Last visited September 23, 2024).

40 Nelson Goh, *ESG and investment arbitration: a future with cleaner foreign investment?,* TJWELB 15 (6) 485-501 (2022).

41 Mahmoud Sameh Wahba Mohieldin,, Maria Alejandra Gonzalez-Perez & Miral Shehata, *How Businesses Can Accelerate and Scale-Up SDG Implementation by Incorporating ESG into Their Strategies,* in BUSINESS, GOVERNMENT AND THE SDGS: THE ROLE OF PUBLIC-PRIVATE

disputes. However, with the rise of ESG-related contract clauses and their inclusion in international investment treaties, commercial and investor-state arbitration is expected to play a more significant role in ESG dispute resolution.[42] The international arbitration community should address environmental concerns in international disputes and within their practices to remain relevant.

Travel, particularly business class air travel, is linked to approximately 93% of emissions, with business class consuming more energy than economy class.[43] Eliminating hard copy submissions and reducing long-distance flights for arbitration could significantly reduce carbon emissions. Stakeholders in arbitration should be mindful of lowering emissions due to the increasing focus on ESG issues.[44] The arbitration practitioners should consider implementing Green Protocols provisions, considering various factors such as procedural rules, laws, costs, accessibility, diversity, cultural expectations, and cybersecurity. Additionally, individuals and law firms should commit to the principles of the Green Pledge.[45] There is a need for action rather than mere words in addressing climate change. Green arbitration not only helps mitigate climate change but also has the potential to increase profitability by reducing costs. The Green Protocols emphasise adopting clean energy, minimizing long-haul travel, and reducing waste. Arbitration stakeholders can start by reviewing relevant Protocols to initiate change. Adopting green arbitration is a valuable practice shift that should be

---

ENGAGEMENT IN BUILDING A SUSTAINABLE FUTURE 65-104. (Springer International Publishing, ed. 2022).

42 Roopali Garg & Gurjant Singh Cheema, *The Role of International Arbitration in the Rise of ESG Disputes,* SA 32 255 (2023).

43 Climate Action Accelerator, Economy Class Tickets Only, https://climateactionaccelerator.org/solutions/economy_class_tickets_only/#:~:text=Flying%20business%20class%20produces%203,more%20fuel%2Defficient%20economy%20seats (last visited Oct. 17, 2024).

44 *Supra* note 42

45 The Campaign for Greener Arbitration's Green Protocols: Actions Not Words, available at https://arbitrationblog.kluwerarbitration.com/2021/04/22/the-campaign-for-greener-arbitrations-green-protocols-actions-not-words/ (Last visited September 22, 2024).

embraced worldwide in domestic and international arbitration, aligning with implementing the SDGs.

**Challenges associated with the Implementation of Green Protocol for Arbitration in India**

Incorporating the Green Protocol for arbitration in India is possible, but there may be some challenges and difficulties. Here are a few potential hurdles:

1. **Lack of Awareness and Mindset:** One of the main challenges is the need for more awareness and understanding of green arbitration practices among stakeholders in India. Adopting green arbitration practices in India requires a shift in mindset and increased awareness among stakeholders.[46] Many arbitrators, parties, and arbitration institutions may need to become more familiar with green arbitration or its potential benefits. Creating comprehensive awareness campaigns, conducting training programs, and organising educational initiatives are necessary to promote understanding and encourage the adoption of green protocols.

2. **Resistance to Change:** Introducing a new practice often faces resistance, and resistance to change is a pervasive obstacle when introducing new practices, especially if they require adjustments to established processes and routines. Stakeholders in the Indian arbitration community may be hesitant to embrace green protocols due to concerns about additional costs, unfamiliarity with sustainable technologies, or a preference for traditional methods.[47] Clear communication about green arbitration's advantages, cost savings, and long-term benefits can alleviate these concerns.

46 Sharma, M., 2022. Integrating, Reconciling, and Prioritising Climate Aspirations in Investor-State Arbitration for a Sustainable Future: The Role of Different Players. *The Journal of World Investment & Trade*, *23*(5-6), pp.746-777.

47 Rajput, A., 2023. Climate Justice and The Greening of Investment Arbitration. In *Netherlands Yearbook of International Law 2021: A Greener International Law—International Legal Responses to the Global Environmental Crisis* (pp. 161-189). The Hague: TMC Asser Press.

3. **Infrastructure Limitations:** Implementing green protocols in arbitration requires suitable infrastructure and resources. India's infrastructure may need to be improved to implement green arbitration protocols. Energy-efficient buildings, renewable energy sources, waste management systems, and other green infrastructure elements may not be readily available or accessible in all regions. Upgrading existing facilities and investing in sustainable infrastructure may be necessary but can require significant investments and time.

4. **Regulatory Framework:** While India has taken steps to promote sustainability, the current regulatory framework may need to address green arbitration protocols explicitly. The absence of such clear guidelines and regulations related to green practices in arbitration can create uncertainty for stakeholders and make it challenging to incorporate sustainability measures effectively.[48] Developing clear & specific guidelines and incorporating green arbitration principles into relevant laws or regulations would provide a solid foundation for adopting the Green Protocol.

5. **Technological Readiness:** Green arbitration often relies on technology and digital solutions to reduce paper usage and minimize travel. However, technological readiness and digital infrastructure may be challenging in some remote parts of India. Ensuring reliable internet connectivity, robust virtual hearing platforms, and effective digital document management systems is crucial for successfully implementing green protocols.[49] Addressing these technological gaps may require investment in infrastructure and widespread access to technology.

6. **Cost Considerations:** Incorporating green arbitration protocols may involve initial costs, such as investing in energy-efficient

48 Baltag, C., Joshi, R. and Duggal, K., 2023. Recent trends in investment arbitration on the right to regulate, environment, health and corporate social responsibility: too much or too little?. *ICSID Review-Foreign Investment Law Journal*, *38*(2), pp.381-421.

49 Sonowal, P., 2021. Online Dispute Resolution (ODR)-The Need of the Hour and Cure for Justice Delayed is Justice Denied.

technologies, infrastructure upgrades, and training programs.[50] Some stakeholders may be concerned about the financial implications of adopting sustainable practices. Demonstrating the long-term cost savings, efficiency gains, and reputational benefits can help alleviate these concerns and encourage wider acceptance.

7. **Cultural Factors and Mindset Shift:** India has a diverse cultural landscape with various practices and traditions that may influence the adoption of green protocols. Traditional preferences, resistance to change, and cultural attitudes towards sustainability can pose challenges.[51] Overcoming these barriers requires targeted education and engagement with stakeholders at various levels. It is essential to emphasise the alignment of green practices with India's cultural values of environmental stewardship and highlight the positive impact on the local community and future generations.

While incorporating the Green Protocol for arbitration in India may present challenges but these difficulties are manageable. Addressing these difficulties through awareness campaigns, regulatory initiatives, infrastructure development, technological advancements, and cultural engagement, incorporating the Green Protocol for arbitration in India is more feasible. Collaboration among arbitration institutions, legal professionals, policymakers, and stakeholders is crucial to navigating these challenges and creating an environment conducive to sustainable arbitration practices.

**Conclusion**

The concept of green arbitration, encompassing electronic correspondence, reduced printing, videoconferencing, eco-friendly suppliers, and carbon offsetting, is gaining traction globally. It aligns with the broader sustainability goal and requires all stakeholders' collective efforts. Lawyers and arbitrators are responsible for self-

50 Bhattacharya, S., Koshy, A. and Mariah Pinheiro, K., 2022. Tracking the Environment in Investment Arbitration: The World and India. *Global Energy Law and Sustainability*, *3*(2), pp.179-205.

51 Brillat-Capello, W., Canet, L., Lemaire, G.C., Mullina, Y., Partida, S., Tulip, S. and Alekhin, S., 2020. Paperless Arbitration: The New Trend?. *IJODR*, *7*, p.184.

regulating and contributing to environmental conservation. While adopting sustainable practices in international arbitration may face initial resistance, there is room for development and progress. The collaboration of arbitration practitioners, parties, third-party funders, arbitral institutions, and law firms worldwide can pave the way for sustainable international arbitration. The hope is that environmental sustainability will become a fundamental aspect of arbitration. Efforts are underway to reduce carbon emissions and promote greener arbitration practices. Institutions must adhere to legal frameworks and guidelines aimed at combating climate change. Parties are advised to proactively consider conflict resolution strategies that mitigate environmental impact, even after disputes arise. The COVID-19 pandemic has demonstrated the feasibility and advantages of adopting sustainable and efficient methods in arbitration, leveraging technological advancements.[52] It is essential to raise awareness about best practices in arbitration to minimize carbon footprint, while the ultimate responsibility lies with the parties involved. Furthermore, arbitration practitioners are encouraged to incorporate relevant aspects of the Green Protocols into their practice. It includes considering procedural rules, laws, implementation costs, electronic resources, diversity, cultural expectations, and cybersecurity. Additionally, It is the need of the hour to urge individuals and law firms to commit to the general principles of the Green Pledge, emphasizing the need for action in addressing climate change. In conclusion, the feasibility of implementing green arbitration practices in India holds great promise. With the growing global focus on sustainability and environmental consciousness, the Indian arbitration community has the opportunity to lead by example and contribute significantly to mitigating climate change. While challenges and resistance may exist initially, the potential benefits, such as reduced costs, increased efficiency, and safeguarding of future generations' interests, make adopting greener procedures worthwhile. By embracing

52 Crina Baltag & Ylli Dautaj, *Investors, states, and arbitrators in the crosshairs of international investment law and environmental protection,* BRPIILA 3 (1) 1-77 (2020).

the principles of the Green Protocols and the Green Pledge and leveraging technological advancements, India can establish itself as a pioneer in sustainable arbitration practices. The concerted efforts of arbitration practitioners, parties, institutions, and the legal community are vital in realizing the vision of greener and more environmentally conscious dispute resolution mechanism in India.

# Greater Participation Strengthens the Democracy: An Analysis of Indian Perspective

**Dr. Riyaz Ahmad Mir***

***Abstract***

*The concept of democracy is more than 2500 years old having first appeared in Athens in the 5th century BC. Democracy is of Greek origin and derived from the word 'democratic'. It combines two Greek words, 'demos' meaning people, and 'kratos' meaning power. Hence, democracy stands for rule by the people, giving true legitimacy to the government. Democracy has increasingly been viewed as a form of good governance. Democracy can also be understood as a (project) of democratization. This interpretation recognizes that, in practice, democracy falls short of the ideal in several ways. Even though where a demos is recognized as such by its members, some members will be more powerful than others, some will participate more effectively than others, and some will not recognize the authority of decisions made by that demo. Such shortfall gives rise to what is known as a 'democratic deficit', where decisions made do not reflect the will of the demos as a body of equals, and where, consequently, members may not consider themselves as equally obliged to comply. Where the decisions reflect, for example, the opinion of a more powerful minority, they may be regarded as less legitimate by the less powerful majority. In the last couple of decades, democracy has become the dominant problem-solving model of governance or its institutions worldwide. However, there is a sense of crisis and instability in the political landscape, at this juncture, concerning democracy and its ideals. It can be gleaned from the rise of populist regimes across the globe, which have undermined the foundations of democracy, the role of institutions, the nature of politics, and people. Democracy is often seen as a revolutionary and modernizing force. However, it did not seem to be playing the same revolutionary*

* *Assistant Professor (Political Science) Sant Baba Bhag Singh University Jalandhar, Punjab*

*role that was once envisaged. Similarly, India inherited it merely on an instrumental basis; it has been reduced to just elections and figures of votes and calculation while ignoring its emancipatory role in vibrant polity. The paper attmepts to focus on means of strengthening democracy in India andfind measures for more participation in the electoral process of India.*

***Keywords:*** *Democracy, Constitution of India, Right to vote, Elected Representatives,Political institutions, Representation, Governance, Mass Media,Electoral Literacy Club.etc*

## *Introduction:*

The success of Democracy in india defines many prevailing theories that stipulate Preconditions for Democracy.india is not an industrilezed, developed economic,indian businessmen and middle classes to not fully control the country's Politics, india is anything but ethically homogenous and india would probably rank low on number of attributes of "civil culture". [1]Indian democracy is thus best understood by Focusing, not mainly on its Socioeconomic determintents but on how power distribution in that society is negotiated and renegotiated.A concern with that process of power negotiation in truns draw attention to such factors as leadership startegetics, the design of political institution and the political role of diverse social groups or in short to the interaction of the state and society.[2]After more than seven decades of perodic elections in which all political offices are contested ,and in which all adults are qualified to vote,there is a little dobut that democracy in india has taken it roots.Moreover india enjoy free and lively media, freedom of assembly and association and considerable scope to express political dissent and protest.Democracy has increasingly been viewed as a form of good governance that paves the

1 Avritzer, L. "*Democracy and the public space in Latin America*"(2002) Princeton, NJ:Princeton University Press 2002,

2 Kohli, A. Democracy and Discontent: India's Growing Crisis of Governability. Cambridge: Cambridge University Pre(1990)

way for arriving at decisions among a group of individuals organized as a polity. [3]The essential value of democracy lies in its moral superiority over any other way of arriving at decisions that take every citizen's interest into account and are equally binding on everyone. The core principles that underpin and justify democracy in this sense are twofold. First, the individuals are autonomous rational beings who are capable of deciding what is good for them. Second, all individuals should have an equal say in the determination of collective decisions, which affects them all equally.Democracy can also be understood as a (*project)* of democratization. This interpretation recognizes that, in practice, democracy falls short of the ideal in several ways. Even though where a demos is recognized as such by its members, some members will be more powerful than others, some will participate more effectively than others, and some will not recognize the authority of decisions made by that demos. Such shortfall gives rise to what is known as a 'democratic deficit', where decisions made do not reflect the will of the demos as a body of equals, and where, consequently, members may not consider themselves as equally obliged to comply. Where the decisions reflect, for example, the opinion of a more powerful minority, they may be regarded as less legitimate by the less powerful majority.[4]

Democracy could be well understood by two different views – procedural (minimalist) and substantive (maximalist). The procedural dimension merely focuses on procedures or means in place to attain democracy. It argues that regular competitive elections based on universal adult franchise and plural political participation would produce a democratically elected government.[5] In his 1942 book, *Capitalism, Socialism and Democracy, Joseph Schumpeter* has said that democracy is an "institutional arrangement for arriving at political decisions in

3 Kaviraj, S. "*The Enchantment of Democracy and India: Politics and Ideas" 2011*Orient Blackswan.

4 Sheth, D.L. & Nandy, A. (1996). *The Multiverse of Democracy: Essays in Honour of Rajni Kothari.*Sage Publications

5 J.S.Mill "The Representative Government" Oxford UK: Basil Blackwell. (1948/1864)

which individuals acquire the power to decide using a competitivestruggle for the people's vote". Huntington has also echoed similar views saying, "The central procedure of democracy is the selection of leaders through competitive elections by the people they govern." However, people are perceived as passive beyond electoral participation in a minimalist view and thus are governedby their representatives. This view does not focus on liberty and freedom as itemphasizes how to elect a democratic government. In the absence of checks andbalances in the system, the elected leaders could manipulate procedures andpower for their benefit leading to concealed authoritarianism. Thegovernment could work for the elites who hold power instead of the people whoshould hold ultimate authority in a democratic set up. *Terry Karl* has pointed out that a minimalist view couldalso lead to a '*fallacy of electoralism*', a situation where the electoral process isgiven priority over other dimensions of democracy. *Fareed Zakaria* calls it'illiberal democracy', a case where governments are democratically elected butignore constitutional limits on their power and deprive their citizens of basicrights and freedoms.[6]

Mouffe's framework tries to put an onus on the neoliberal forces to understand the problem of democracy, while in the case of India, neoliberal forces have not been able to permeate Indian society to a large extent. A large number of the Indian population still depend on agriculture for their livelihood; the manufacturing sector's contribution to GDP lags far behind the service sector, making it problematic to claim that India is an entirely industrialized society. One can enumerate various sociological analyses about social relations in a society where caste and group identities override other identities. The populist discourse based on group identity is undoubtedly evident these days and is particularly significant in the current mobilization of the nationalist discourse—the case of Hindutva populism, which partially can be

6 Kothari, R. 'Representative institutions under threat', in J. Manor and P. Lyon (eds), Transfer and Transfomation: Political Institutions in the New Commonwea1th. Leicester: Leciester University Press, 1983.

understood by Mouffe's framework. [7]There is a sense of loss and political voidness created based on religious identity by the political community and captured by the right-wing party. The reason behind the assertion of identity is the lack of political channels to solve the religious fundamentalism and the politics practiced by the Congress party and followed zealously by the Left and Lohiaites. Their disregard for the Hindu identity has led to a large gap that the Modi-led BJP has effectively filled.[8] Similarly, the Levitsky and Ziblatt framework, which emphasizes norms for defining democracy such as institutional forbearance and mutual toleration, becomes a problematic category in the context of post-colonial societies. It does not mean that democracies in post-colonial societies do not need these normative values to sustain their democratic framework without these preconditions. Indeed, Indian democracy has proved that democracy can still thrive in its peculiar way without having its preconditions.[9] However, the larger question is what would be the meaning of these normative ideals in a post-colonial society such as India, one of the most diverse and complex societies.Under direct democracy, people participate directly in the decision-making processes of the demos. Under representative democracy, however, the demos elect people to make decisions on their behalf. Here a second democratic principle appears, whereby the demos must be able to hold their representatives to account for their actions. and ensure that they always act in thepeople's best interests – the principle of *popular control*. Representative democracy,therefore, seems to require less participation (at the minimum, only the act of voting), but the people need to do more than vote to hold their representatives to account.[10]

---

7 Barber, Benjamin R. "*Strong Democracy: Participatory Politics for a New Age*" Berke University of California Press(1984).

8 Abbas, Hovyeda and Ranjay Kumar "*Political Theory*"New Delhi:Pearson (2012)

9 PM Bakshi. "The Constitution of India with selective comments" New Delhi: Universal Law Publishing Co. Pvt. Ltd, 1999

10 Beteille Andre " Democracy and its Institutions" New Delhi: Oxford University, 2012.

**Indian Democracy**

Indias 'transation' of democracy in the 1940's to understudied and ought to be further researched. Historian have left such issues to political scientist and the later often do not concern themselves with the 'past' the doman of historians. Based on limted study, one argument in the relevant literature suggest that indian democracy is mainly a legacy of british colonialism .In the last couple of decades, democracy has become the dominant problem-solving model of governance or its institutions worldwide. However, there is a sense of crisis and instability in the political landscape, at this juncture, concerning democracy and its ideals. It can be gleaned from the rise of populist regimes across the globe, which have undermined the foundations of democracy, the role of institutions, the nature of politics, and people.[11] Democracy is often seen as a revolutionary and modernizing force. However, it did not seem to be playing the same revolutionary role that was once envisaged. Similarly, India inherited it merely on an instrumental basis; it has been reduced to just elections and figures of votes and calculation while ignoring its emancipatory role in vibrant polity. The inconsistencies of democracies across the globe force us to rethink and ponder upon it and its constituents afresh. The conceptual constituent could be traced back to modernity from where it draws its strength, and to look critically at democracy as a concept in the Indian context, it would be essential to look at modernity and its colonial past. India adopted the principles of these two revolutions into the theory and practice of our democracy without accompanying the industrial revolution and societal churning. The consequent result is the present political development of nationalism andauthoritarian populism.[12]

India has a long and complex history of democracy, dating back to ancient times when councils of elders were responsible for decision-making in various kingdoms and republics. However, modern

11 M R Biju. "Dynamics of Modern Democracy: Indian Experience" New Delhi; Kaniska Publishers, 2009

12 B L Fadia. "Indian Government and Politics" Agra: Satyabhawan Publications, 2007.

democracy in India began with the country's independence from British rule in 1947.The Constitution of India, adopted in 1950, established a democraticgovernment with a federal structure and a parliamentary system.[13] The democratic system in India is based on the principles of federalism, parliamentary democracy, and a multi-party system. The country has a constitution that lays down the framework for the functioning of the government and the distribution of powers between the central government and the state governments. The central government in India consists of three branches: the legislative branch, the executive branch, and the judiciary. The legislative branch is made up of the Lok Sabha (the lower house of parliament) and the Rajya Sabha (the upper house of parliament), which are responsible for making laws and overseeing the functioning of the government.[14] The executive branch is headed by the Prime Minister, who is responsible for implementing the laws passed by the legislature, and is assisted by a council of ministers. The judiciary consists of the Supreme Court, high courts, and subordinate courts, which are responsible for interpreting the Constitution and enforcing the law.[15]

**How to StrengthenDemocracyin india**

In the present era of india , participation has been considered as most important symbol and foundational concept of democracy. If people are allowed to process , only then a political system can be described as democratic and for participation voting right has been considered as most effective way to participate in goverance of the nation.when citizens collectively elect its representatives is that citizen has right to participate of goverance of the country and they exercised it through the representatives.A strong democracy relies on a democratic community that is constructed and controlled byan active citizenry,

13 Jayal Niraja Goapal. " Democracy in India" New Delhi: Oxford University, 2007

14 Chatterjee, P. and Mallik, A. 'Indian democracy and bourgeois reaction', in P. Chatterjee (ed.), A Possible India: Essays in Political Criticism, New Delhi: Oxford University Press, (1997)

15 Appadorai, A. "The Substance of Politics" New Delhi, India: Oxford University Press. (2006).

which educates its members in the art of citizenship and inspires a senseof civic responsibility.Involvement in the community is the means by which citizens transform their private interestsinto a conception of the common good.The crucial terms in this strong formulation of democracy are activity, process, self-legislation,creation, and transformation. Democratic values: Liberty, equality, social justice. The community grows out of participationand at the same time makes participation possible; civic activity educates individuals on how tothink publicly as citizens even as citizenship informs civic activity with the required sense ofpublicness and justice.A strong democracy is the politics of amateurs, where every man is compelled to encounterevery other man without the intermediary of expertise.[16]Voting can be described as fundamental concept in entire den,ocratic processs.it as mentioned above ,is a mean to participate in democratic process.voting can be described as a foundation of democracy. It can be said that voting makes a system as democractic voting has been considered as so sacrosanct in moder era of democracy that it has been acacepted not only as a mere means to participate but also as a human rights.A strong democracy is forcing us to think in common and act in common.[17]The citizen is by definition a we-thinker, and to think in terms of collectivity is always to transform howinterests are perceived and goods defined.In strong democracies, participation is a way of defining the self, just as citizenship is away of living.[18] Supporting civil society and grassroots movements calling for democracy. Peaceful protest movements calling for reform can spur long-term democratic change, but face greater odds without international support. Democratic governments should provide vocal, public support for grassroots pro-democracy movements, and respond to any violent crackdowns by authorities with targeted sanctions, reduced or conditioned foreign assistance, and public condemnation.Strengthen

16 N S Gehlot"New Challenges to Indian Politics" New Delhi: Deep and Deep Publications, 2002

17 Kashyap Subhash. "Our Parliament" New Delhi: National Book Trust, 2008.

18 Brass, P. RThe Politics of India Since Independence, 2nd edn. Cambridge: Cambridge University Press. (1994)

public support for democratic principles by investing in civic education.[19] To protect freedom domestically and build support for a foreign policy that protects democratic rights and values abroad, it is essential to foster a stronger public understanding of democratic principles, especially among young people. In the india, new legislation could require each state to develop basic content and benchmarks of achievement for civic education, including instruction on the fundamental tenets of indian democracy. In the absence of new legislation, the indian Department of Education should, to the extent possible, make funding available to states for civic education that focuses on democratic principles.[20]

**Judicial Approach regarding strengthing of democracy**

At the core of India's electoral democracy lies the fundamental right to vote, enshrined in the Constitution. Over time, the judiciary has steadfastly upheld and safeguarded this right through various legal pronouncements. *In the landmark 1977 case of Mohinder Singh Gill v. The Chief Election Commissioner, the Supreme Court of India unequivocally affirmed that the right to vote is sacrosanct and any arbitrary deprivation of this right is unconstitutional*[21].The crux of this case revolved around assessing the constitutional validity of electoral laws that might encroach upon the fundamental right to vote. Electoral Reforms and Transparency: Ensuring transparency and accountability in the electoral process has been an ongoing endeavour, guided by judicial interventions aimed at curbing malpractices and fostering electoral integrity. *The 2002 case of Association for Democratic Reforms v. Union of India marked a significant milestone in this journey*.[22]This case

19 Jenkins, R. 'The NDA and the politics of economic reform', in Adeney K. Adeney and L. Saez (eds), Coalition Politics and Hindu Nationalism. Routledge, London: Routledge, (2005)

20 Meetu "Strengthening Democracy and Good Governance in IndiaCrescent Publishing Corporation, 2016

21 Mohinder Singh Gill And Anr. vs Chief Election Commissioner And Ors. on 25 April, 1977

22 Association For Democratics Reforms vs Union Of India on 15 February, 2024

presented the challenge of reconciling the right to privacy of political candidates with the public's right to information, necessitating a delicate balance between transparency in electoral processes and individual privacy rights.Safeguarding Electoral Rights and Freedoms: Preserving electoral rights and freedoms is paramount for the integrity of the electoral process. Legal judgments have been instrumental in protecting these rights and holding authorities accountable for any infringements. *The 2015 case of Mohd. Sattar v. State of Rajasthan serves as a poignant example.*The judgment reaffirmed the principle of universal suffrage, ensuring that every citizen's voice is heard.[23]

**Finding and Conclusion:**

We are always looking forward to achieving the aim of building a strong democracy through greater synergy with the following different methods and ways:

1.**Ensuring Institutional Spirit and Functionality:**Having institutionswithout the spirit and functionality for which they are created results in redundancy and backwardness. Keeping this in view, we must ensure that all the important institutions create a healthy atmosphere in which the essence of democracy can thrive.[24]For example, theSupreme Court, the Election Commission of India, the opposition, the Civil groups and pressure groupsplay their role in strengthening democracy in India. These institutionsshould come forward and deliver on the promise for which they are created. They should ensure the greater participation of people in elections by conducting mass awareness programs and promoting a healthy atmosphere for campaigning.[25]

2.**Recall:**In the present time 19 states allow recall elections where citizens can remove an elected official at any time if he fails to deliver on the aspirations of his people. This method should apply to those

23 Zakir Mohammed S/O Shri Mohammed Sattar vs State Of Rajasthan on 1 December, 2022

24 Kamal K. L. Democratic Politics in India. New Delhi: Sangam Books. (1982)

25 Yogendra Yadav "Making Sense Of Indian Democracy: Theory as Practice orient black swan 2020.

candidates who never visited their constituency after winning elections. [26]

3.**Giving voice to women:** Women's voice in decision-making is critical for the development of all. When women have a say in private and public affairs, the collective decisions reflect their needs, and often the needs of their families and communities.[27]In our country, menaregiventhe right to vote, and their aspirations are given more importance thanwomen'saspirations.To build a strong democracy in India, we should eliminate this practice and giveequal space to women. In a recent development by the Current governmentunder the leadership of Shri Narinder Modi Prime, a historic bill was introduced in the parliamentunderthe 128 Constitutional Amendment Act in September 2023 giving 33% reservation to women in Lok Sabha and state legislative assemblies.[28]

4.**Many of us are politically uneducated:**To strengthen the democracy in India we need political pluralization so that the youth of Indiado not feel excluded and think that politics is bad, rather we should showthem the way how politics is the only way forward for their betterment. It is the politicians of India who decide whom to give (Poli drops) curriculum in school, public policyeconomy etc.,everything is decided by politicians. We need maximum political education to get a better percentage of votes.

5. **Electoral literacy club:** Electoral literacy clubs are being set up in the country to promote electoral literacy in all age groups of Indian citizens through engaging and interesting activities and hands-on experience but in an apolitical, neutral and non-partisan manner, as we know that there are numerous colleges in India that do not have ELC.

26 Veena Kukreja and Mahendra Pradsad singh " Democracy, Development and Discontent in South Asia"SAGE Publications India Pvt Ltd 2008

27 Austin, G. Working a Democratic Constitution: The Indian Experience. New Delhi: Oxford University Press(1999)

28 Mitra, S. K. Power, Protest and Participation: Local Elites and the Politics of Development in India. London: Routledge(1992)

The election commission should also conduct surprise visits to different colleges and universitiesregarding the activities of ELC.

6. **Voter's Awareness Nukkad Natak and Street Play:** To Strengthen democracy in India every state government should spread awareness among people about the importance of votes and elections through Nukkad Natak/Street Plays.[29]

**Conclusion**

one almost every country surveyed, changes to politicians are the most commonly mentioned way to improve democracy. People broadly call for three types of improvements: better represntation increased competence and a higher level of responsiveness . They also call for politicians to be less corrupt or less influenced by special interests.People want Politicans who are more responsive to their needs and who are more competent and honest, among other factors. People also focus on questions of descriptive representation the importance of having politicians with certain characteristics such as a specific race, religion or gender and other way to think about what people believe will help improve their democracy is to focus on three themes: basic needs that can be addressed, improvements to the system and complete overhauls of the system.[30]

29 Morris-Jones, W. HThe Government and Politics of India, 3rd edn. London: Hutchinson. . (1971)

30 Mitra, S. and Singh, V. B. "Democracy and Social Change in India: A Cross Sectional Analysis of the Indian Electorate. New Delhi: Sage (1999)

# Impact of US Agricultural Policies on the Sustainability and Resilience of India's Food Systems amid Environmental and Geopolitical Challenges

***Aejas Naik*,***
***Dr. Vinayak Pandey****

## ***Abstract***

*India's agricultural policies, focused on food security, have been challenged by U.S. dominance in global markets since economic liberalization in 1991. U.S. farmers benefit from subsidies and advanced technology, making their products cheaper and creating unfair competition for Indian farmers, especially in crops like rice and cotton. This dominance affects India's agricultural economy and food security, as U.S. export controls prioritize domestic needs during global crises, leading to price spikes in essential commodities. The study examines how U.S. agricultural policies including subsidies, export controls, and strict trade regulations impact India's farmers, rural livelihoods, and food systems. It highlights the long-term effects on India's food sovereignty and agricultural sustainability. To address these challenges, the study proposes policy reforms, investment in technology, and diversification to strengthen India's resilience and competitiveness in global markets, balancing local agricultural needs with international trade complexities.*

***Keywords:*** *Food Security, Resilience, Sustainability, Policy impact, Subsidies, Regulations.*

---

* Corresponding Author, Department of Law, Galgotias University, Greater Noida, India. email: aejas.naik@gmail.com, Orchid: 0009-0009-3221-8163

** Associate Professor, Department of Law, Galgotias University, Greater Noida, India.

## Introduction

International agricultural trade encompasses a broad range of legal considerations, including international agreements, national trade regulations, and overarching policy decisions at both global and domestic levels. These legal frameworks collectively shape how agricultural products are traded worldwide (National Agricultural Law Center, n.d.)[1]. Despite accounting for a modest proportion of global exports, agricultural commodities are highly volatile. They draw significant political attention due to the agriculture sector's complex regulation frameworks. These agricultural commodities are particularly vulnerable to global economic movements, as changing national policies cause significant imbalances in agricultural commerce. The dichotomy in agriculture prices is due to the tariffs, subsidies, and other trade-distorting policies of the developed countries to protect their farmers. This is enhanced by Structural adjustment programs (SAPs) which are economic policies imposed on developing countries by financial institutions like the International Monetary Fund (IMF) and the World Bank, primarily as conditions for receiving loans. The structural adjustment programs imposed by these global financial institutions are influenced by developed countries to force developing and least developing countries to withdraw agricultural support. As a result, large agri-business corporations from developed countries control over agricultural production and trade. These large transnational firms are increasingly dominating the market, frequently at the expense of small-scale farmers in developing countries, exacerbating income disparity and market instability (Mousseau & Mittal, 2023)[2].

1 National Agricultural Law Center, University of Arkansas System Division of Agriculture, *Overview of International Trade in Agriculture*, available at: https://nationalaglawcenter.org/overview/international-trade/ ).

2 F. Mousseau and A. Mittal, *Inequity in International Agricultural Trade: The Marginalization of Developing Countries and Their Small Farmers*, Oakland Institute, available at: https://www.oaklandinstitute.org/inequity-international-agricultural-trade ).

The U.S. Department of Agriculture's Foreign Agricultural Service (2023)[3] states that the United States is a leading global agricultural exporter. Its exports account for a significant share of the country's total agricultural output, making up 20% annually. USDA FAS have a crucial role in shaping international trade frameworks, reflecting USA national interests and policies to augment its market influence. This dominance brings complex problems, especially in international trade law, and affects India's food systems. For India, where nearly half the workforce is in agriculture and a big part of the GDP, this U.S. dominance threatens food security, sustainability, and the ability to handle climate change and geopolitical changes. The present study looks into how U.S. farming practices affect India's trade and hurt efforts to be self-sufficient in agriculture, environmental sustainability, and fairness in rural development. The existing studies often focus on the immediate impacts of U.S. pastoral policies. However, there's a significant gap in understanding their broader, long-term consequences on India's agricultural systems. This study addresses the complex interplay between U.S. farming policies and India's food systems within the context of global trade regulations. U.S. policies, including large agrarian subsidies and tariff protections, often distort global agricultural prices (Amaglobeli et al., 2024).[4] This makes it difficult for Indian farmers to compete internationally.

**U.S. Agricultural Hegemony in International Trade**

The United States established dominance in international agricultural trade in the post-World War II era, with the introduction of the General Agreement on Tariffs and Trade (GATT) in 1947 (USDA

3 U.S. Department of Agriculture's Foreign Agricultural Service, *USDA's Foreign Agricultural Service: An Overview*, available at: https://crsreports.congress.gov/product/pdf/R/R47836 ).

4 D. Amaglobeli, T. Benson and T. Mogues, "Agricultural Producer Subsidies: Navigating Challenges and Policy Considerations", *IMF Notes*, 2024(002), A001 (2024), available at: https://doi.org/10.5089/9798400285950.068.A001).

ERS, 2024)[5]. This agreement laid the foundation for global trade rules, allowing the U.S. to leverage its agricultural surplus for comprehensive economic and political gain. The Marshall Plan too made the U.S. a major supplier of food to a recovering Europe after the war. During this period, the U. S. government adopted policies such as subsidies, and trade restrictions that were aimed at providing food security in the U. S. and also encouraged U. S farmers to remain competitive in the international markets (The National WWII Museum, 2022)[6]. The U.S. agricultural sector benefits from economies of scale, technological innovations, and government-backed subsidies, enabling it to produce agricultural goods at lower costs compared to other developing countries. This advantage in global markets influences international food prices and availability, leading to both benefits and challenges for developing countries like India. While U.S. exports provide affordable food products to these countries, they also risk undermining local agricultural sectors by creating dependency and economic vulnerability (Brookings, 2023)[7].

Programs like Public Law 480 (Food for Peace), introduced in 1954, allowed the U.S. to use food aid as a diplomatic tool, exporting surplus agricultural products to developing nations. This policy not only provided food security for recipient countries but also fostered political alliances during the Cold War era, further entrenching U.S. dominance in global trade networks (Knock, 2000)[8]. A key factor in maintaining

5 USDA Economic Research Service (ERS), *A Short History of U.S. Agricultural Trade Negotiations*, available at: https://www.ers.usda.gov/webdocs/publications/41764/54005_ages892 3a.pdf?v=0 ).

6 The National WWII Museum, *Overview of World War II*, available at: https://www.nationalww2museum.org ).

7 Brookings, *The WTO's Decision to End Agricultural Export Subsidies is Good News for Farmers and Consumers*, available at: https://www.brookings.edu/articles/the-wtos-decision-to-end-agricultural-export-subsidies-is-good-news-for-farmers-and-consumers/ ).

8 T. J. Knock, "Feeding the World and Thwarting Communists", in D. F. Schmitz & T. C. Jespersen (eds.), *Architects of the American Century: Individuals and Institutions in Twentieth-Century U.S. Foreign Policymaking*, Imprint Publications (2000).

U.S. agricultural hegemony has been its extensive system of agricultural subsidies. Programs such as the Farm Bill, which originated in the 1930s and has been updated regularly, provide financial support to U.S. farmers, including direct payments, crop insurance, and conservation programs. These subsidies artificially lower the cost of U.S. agricultural products, making them more competitive in global markets (World Bank, 2023)[9]. Furthermore, U.S. export credit programs and food aid initiatives have enabled the country to maintain a strong presence in key markets. The U.S. promote the liberalization of agricultural trade globally. However, domestically, the U.S. often keeps protectionist policies restricting imports to safeguards its farmers. These policies allow the U.S. to set the rules of global trade. This often hurts developing countries, as their agricultural sectors struggle to compete with heavily subsidized U.S. products (Sen, 2003)[10].

**Impact of U.S. Agricultural Policies on India**

India's agricultural policies have traditionally focused on domestic food security and self-sufficiency. However, the economic liberalization of 1991 opened India's agricultural sector to global markets, leading to increased competition with U.S. agricultural exports (Sen & Ghosh, 2017)[11]. For instance, Indian rice and cotton exports frequently compete with U.S. farmers. Furthermore, U.S. agricultural dominance often dictates global food prices, affecting the ability of countries like India to ensure food security for their populations. U.S. farmers, particularly those growing staple crops such as corn, wheat, and soybeans, receive

9 World Bank, *Agricultural Tariffs or Subsidies: Which Are More Important for Developing Economies?*, available at: https://documents.worldbank.org/curated/en/161961468339876983/pdf/774680JRN020040Tariffs0or0Subsidies.pdf ).

10 Sen, G. (2003). The United States and the GATT/WTO system. In R. Foot, S. N. MacFarlane, & M. Mastanduno (Eds.), *US hegemony and international organizations: The United States and multilateral institutions*. Oxford University Press. https://doi.org/10.1093/0199261431.003.0006

11 A. Sen & J. Ghosh, "Indian Agriculture After Liberalisation", *The Bangladesh Development Studies*, 40A(1 & 2): 53–71, available at: https://www.jstor.org/stable/26572744 ).

billions of dollars in government support, allowing them to export these products at prices below global market rates. This has a direct impact on India's agricultural economy, particularly in commodities where Indian farmers are already struggling due to lower productivity and limited access to technology. As a result, India faces heightened pressure to import cheaper U.S. goods, which not only undermines local agriculture but also puts food security at risk by increasing dependency on external markets (Chaturvedi, 2018)[12]. Moreover, U.S. trade practices, such as the imposition of tariffs and agricultural export controls, exacerbate the challenges for India's agricultural sector. For example, tariff barriers on Indian exports, combined with export subsidies for U.S. producers, create an uneven field. Indian farmers, who receive limited government support compared to their U.S. counterparts, are unable to compete with the flood of subsidized American produce in both domestic and international markets. This results in depressed farm incomes and increased vulnerability for Indian farmers, many of whom are smallholders with limited resources (Policy Circle, 2023)[13].

**Long-term effects on India's food security**

Several key trade agreements and policies between the US and India significantly influence the availability and pricing of food commodities in India. These agreements include the Generalized System of Preferences (GSP), which previously allowed India to export certain products duty-free to the US, including agricultural goods. The U.S.'s decision to suspend GSP benefits in 2019 impacted India's agricultural exports, thereby affecting domestic markets (Chauhan, 2020)[14]. Changes in GSP status can alter the competitiveness of Indian agricultural exports, influencing local prices and availability. Additionally, ongoing

12 S. Chaturvedi, "India's Approach to Multilateralism and Evolving Global Order", *Indian Foreign Affairs Journal*, 13(2): 128–135, available at: http://www.jstor.org/stable/45341123 ).

13 Policy Circle, *Non-tariff Barriers Weigh on India's $1 Trillion Exports Goal*, available at: https://www.policycircle.org/economy/tariff-non-tariff-barriers-ntbs/ ).

14 S. Chauhan, *Understanding the Impact of GSP Withdrawal on India's Top Exports to the U.S.*, ORF, available at: https://www.wita.org/wp-content/uploads/2020/09/ORF-GSP-Withdrawal.pdf ).

negotiations under the Trade Policy Forum (TPF) aim to address trade barriers and enhance investment opportunities between the U.S. and India, focusing on agricultural tariffs and non-tariff barriers. Finalized terms under the TPF could significantly impact the import and export of food commodities, thereby affecting local market dynamics and pricing structures (The Office of the United States Trade Representative (USTR), 2024)[15]. Other policies such as the Trade Facilitation and Trade Enforcement Act 2015 (TFTEA) enhance US trade law enforcement, including agricultural trade, potentially creating additional barriers for Indian agricultural exports to the US market (Jha & Bathla, 2021)[16].

For India, the TFTEA impacts trade relations by increasing scrutiny towards intellectual property rights (IPR) and trade practices. This affects India's ability to develop policies suited to its developmental needs (Trading Charges, 2021)[17]. Moreover, the U.S insistence on stronger Intellectual Property Rights (IPR) protections, particularly related to agricultural biotechnology, can increase costs for Indian farmers using patented seeds, affecting production expenses and food commodity prices. Compliance with strict US Sanitary and Phytosanitary (SPS) measures on agricultural imports poses significant challenges. Non-compliance can lead to increased export costs, affecting the pricing and availability of Indian food commodities both domestically and internationally. This adds

15 Office of the United States Trade Representative (USTR), *Joint Statement: United States-India Trade Policy Forum*, available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/january/joint-statement-united-states-india-trade-policy-forum ).

16 Jha, A., & Bathla, S. (2021). Non-tariff Measures and India's Agricultural Exports: The Case of India-ASEAN Trade Agreement. In R. Sudesh Ratna, S.K. Sharma, R. Kumar, & A. Dobhal (Eds.), *Indian Agriculture Under the Shadows of WTO and F TAs*. India Studies in Business and Economics. Springer, Singapore. https://doi.org/10.1007/978-981-33-6854-5_6.

17 Trading Charges, *Trade Facilitation Act and Its Impact on IP Policy in India*, *The Hindu*, available at: https://www.thehindu.com/opinion/op-ed/Trade-Facilitation-Act-and-its-impact-on-IP-policy-in-India/article56841656.ece )..

a layer of complexity for Indian exporters navigating international markets (Henson & Loader, 2001)[18].

**US Agricultural exports into India**

According to the Office of the Chief Economic Adviser, Ministry of Finance, Government of India (2023)[19], India's trade basket is highly responsive to global GDP and relative price fluctuations. An analysis of trade elasticities from 1991 to 2022 shows that a 1% increase in world GDP corresponds with a 4.92% rise in India's exports, while a 1% increase in relative prices results in a 1.15% decline in exports. The impact of US agricultural exports, particularly soybeans, corn, and wheat, on India's domestic agriculture and food prices is significant and complex. These exports, often subsidized and produced on a large scale, enter the Indian market at competitive prices that can undercut locally produced goods. This competitive pressure affects India's marginal farmers, who may struggle to match the lower prices due to higher production costs and limited mechanization.

As a result, increased imports of US agricultural products can lead to fluctuations in domestic prices of soybeans, corn, and wheat in India, potentially reducing profitability for local farmers and impacting their incomes. Moreover, the subsidized US products can distort local agricultural markets, discouraging investment in domestic farming and posing challenges to long-term food security and agricultural sustainability (Lal et al., 2023)[20]. Indian agricultural policies, including tariffs and

18 S. Henson & R. Loader, "Barriers to Agricultural Exports from Developing Countries: The Role of Sanitary and Phytosanitary Requirements", *World Development*, 29(1): 85-102, available at: https://doi.org/10.1016/S0305-750X(00)00085-1 ).

19 Office of the Chief Economic Adviser, Ministry of Finance, Government of India, *Riding a New Wave of Change—India's Evolving Export Basket*, available at: https://dea.gov.in/sites/default/files/Final-Collection%20of%20essays_OoCEA_compressed.pdf ).

20 P. Lal et al., "Effects of Agricultural Subsidies on Farm Household Decisions: A Separable Household Model Approach", *Frontiers in Sustainable Food Systems*, 7, available at: https://doi.org/10.3389/fsufs.2023.1295704 ).

import regulations, have a crucial role in mitigating these impacts by protecting domestic farmers from cheaper imports and stabilizing local markets. However, reliance on imported agricultural products raises concerns about India's food security, exposing the country to price volatility and supply disruptions from global markets.

**Trade Tensions Between the U.S. and India**

India has pushed back, citing the need to shield its agricultural sector, which comprises a large portion of its workforce, from being overwhelmed by heavily subsidized U.S. agricultural products (Ayres, 2020)[21]. Between January and October 2023, U.S. exports to India exceeded USD 1.7 billion (Ministry of Commerce & Industry, 2023)[22]. In February 2023, India significantly reduced its pecan tariff by 70 percent (from 100 percent to 30 percent) on imports (USDA Foreign Agricultural Service, 2023)[23]. India's tariff reductions have strengthened the agribusiness trade relationship between the United States and India, benefiting farmers and food producers. (United States Trade Representative, 2023)[24].

In India, challenges related to soil degradation, water resource management, and the well-being of rural farming communities are exacerbated by the pressures of competing in global markets dominated

21 Alyssa Ayres, *A field guide to U.S.-India trade tensions*, Council on Foreign Relations, February 13, 2020, available at: https://www.cfr.org/article/field-guide-us-india-trade-tensions .

22 Ministry of Commerce & Industry, *Press Information Bureau*, November 5, 2023, available at: https://pib.gov.in/PressReleasePage.aspx?PRID=1977061 .

23 USDA Foreign Agricultural Service, *India: India reduces import duty tariff levied on pecans—cracking open the door for the American nut*, 2023, available at: https://fas.usda.gov/data/india-india-reduces-import-duty-tariff-levied-pecans-cracking-open-door-american-nut .

24 United States Trade Representative (USTR), *United States announces major resolution on key trade issues with India*, 2023, available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/united-states-announces-major-resolution-key-trade-issues-india .

by U.S. agricultural exports (Antle & Ray, 2020)[25]. The dominance of U.S. agricultural exports often promotes monoculture farming in India, where a single crop is grown extensively to meet global market demands. This shift to monoculture reduces agricultural biodiversity, which is critical for maintaining the resilience of ecosystems and mitigating the risks of pest outbreaks or crop failures (John, 2021)[26]. The export of crops grown through these unsustainable practices leaves a significant environmental footprint, including deforestation, water depletion, and pollution from fertilizers and pesticides (Saghaian, Mohammadi, & Mohammadi, 2022)[27]. In India, these global trade practices exacerbate local environmental issues, including the over-extraction of groundwater, loss of soil fertility, and increased vulnerability to climate change impacts. The environmental toll of this shift is becoming evident in India, where the Green Revolution's focus on high-input, high-output agriculture has strained ecosystems, further aggravated by the global trade system dominated by developed countries (Meetei, 2024)[28].

**India's Agriculture Sector in the Global Context**

India's agricultural framework has transformed from its roots in subsistence farming to its integration into the global agricultural economy. Historically, Indian agriculture was based on small-scale, subsistence farming, where local communities cultivated diverse crops to meet their food, and livelihood needs to support biodiversity. However, this

25 J.M. Antle & S. Ray, *Challenges of sustainable agriculture in developing countries*, in *Sustainable Agricultural Development* (Palgrave Studies in Agricultural Economics and Food Policy, Palgrave Macmillan 2020), available at: https://doi.org/10.1007/978-3-030-34599-0_4 .

26 John, J., *Monoculture could worsen vulnerability to climate change*, Food Tank, February 9, 2021, available at: https://foodtank.com/news/2021/02/monoculture-could-worsen-vulnerability-to-climate-change/ .

27 S. Saghaian, H. Mohammadi & M. Mohammadi, *The effects of agricultural product exports on environmental quality*, 14 Sustainability 13857 (2022), available at: https://doi.org/10.3390/su142113857 .

28 A. T. Meetei, *Water scarcity and public health concerns in rural India: A case study of Nongpok Sekmai and surrounding villages*, 4 Discover Water 80 (2024), available at: https://doi.org/10.1007/s43832-024-00145-2 .

subsistence model began to shift in the mid-20th century, particularly with the advent of the Green Revolution in the 1960s and 1970s. The Green Revolution introduced high-yielding varieties (HYVs) of crops, chemical fertilizers, and modern irrigation techniques, increasing agricultural productivity in India. While the Green Revolution improved food security by boosting grain production, particularly in wheat and rice, it also led to the commercialization of Indian agriculture, focusing on a few staple crops (Hans & Prabhu, 2024)[29].

India's agriculture has traditionally been diverse, with a focus on mixed farming, crop rotation, and sustainable methods, which rely on indigenous seeds and natural fertilizers. However, the colonial era disrupted these practices, prioritizing cash crops for export, which led to food shortages and famines (Sharma et al., 2023)[30]. India's agricultural sector remains a vital pillar of its economy, contributing around 17-18% to the national GDP and employing roughly 50% of the workforce. It has a critical role in ensuring food security by producing significant quantities of rice, wheat, pulses, fruits, and vegetables (Gupta & Kannan, 2024)[31]. Despite its importance, the sector faces persistent challenges, including fragmented landholdings, outdated farming techniques, reliance on monsoon rains, and limited adoption of modern technologies.

**Impact of Economic Liberalization on Agriculture**

Prior to 1991, India's agricultural policies were driven by the need for food security and self-sufficiency. The government has a key role in managing agricultural production and trade through interventions like

29 Hans, V. B., & Prabhu, S. (2024). Revisiting the Green Revolution in India: Assessing Achievements, Challenges, and Future Prospects. Available at SSRN: https://ssrn.com/abstract=4814723 or http://dx.doi.org/10.2139/ssrn.4814723.

30 V.B. Hans & S. Prabhu, *Revisiting the green revolution in India: Assessing achievements, challenges, and future prospects*, 2024, available at SSRN: https://ssrn.com/abstract=4814723 or available at: http://dx.doi.org/10.2139/ssrn.4814723 .

31 N. Gupta & E. Kannan, *Agricultural growth and crop diversification in India: A state-level analysis*, Journal of Social and Economic Development (2024), available at: https://doi.org/10.1007/s40847-023-00311-7 .

minimum support prices (MSP) and subsidized inputs, ensuring stable food grain supply for the population. However, the liberalization reforms of 1991 shifted the focus toward integrating India's agriculture into the global economy. This involved reducing trade barriers, promoting private investment, and facilitating foreign trade in agriculture. As a result, India became a significant exporter of agricultural products such as rice, tea, spices, and cotton. These reforms aimed to integrate Indian agriculture into the global economy by promoting private investment, allowing foreign direct investment (FDI) in the sector, and encouraging the cultivation of export-oriented high-value crops such as fruits, vegetables, and floriculture (Bhalla & Singh, 2024)[32].

Smallholder farmers, who form the majority of the farming workforce, often struggle to compete with heavily subsidized agricultural exports from developed countries, including the U.S. This competition has had adverse effects on domestic farm incomes and has led to increased economic disparities between regions (Dhillon & Moncur, 2023)[33]. As global demand for certain crops increased, many small-scale farmers transitioned from subsistence farming to commercial production, often incurring debts to finance the purchase of seeds, fertilizers, and machinery. The high cost of inputs, coupled with fluctuating market prices for their produce, pushed many farmers into cycles of indebtedness. This situation has contributed to a crisis in rural India, where farmer suicides have been attributed, in part, to the financial pressures stemming from the post-liberalization agricultural economy (Ramakumar, 2022)[34].

32 G. S. Bhalla & G. Singh, *Economic liberalisation and Indian agriculture: A statewise analysis*, 45 Journal of Economic Studies 123 (2024), available at: https://doi.org/10.1007/s40847-023-00311-7 .

33 R. Dhillon & Q. Moncur, *Small-scale farming: A review of challenges and potential opportunities offered by technological advancements*, 15 Sustainability 15478 (2023), available at: https://doi.org/10.3390/su152115478 .

34 R. Ramakumar (Ed.), *Distress in the fields: Indian agriculture after economic liberalization*, Tulika Books (2022), available at: https://doi.org/10.1111/joac.12557 .

**Relevant Regulatory Laws**

India's legal framework governing food imports and exports is comprehensive, shaped by a combination of international obligations, domestic trade regulations, food safety laws, and sector-specific policies (Chandra & Jhawar)[35]. At the core of this framework is the Foreign Trade (Development and Regulation) Act, 1992 (FTDR Act), which governs the import and export of goods, including agricultural products. The FTDR Act empowers the government to impose trade restrictions, tariffs, and other controls to protect domestic interests and ensure compliance with international trade obligations such as those under the World Trade Organization (WTO). It also facilitates the issuance of licenses through the Director General of Foreign Trade (DGFT), playing a pivotal role in regulating agricultural commodities in line with international standards (India, Foreign Trade (Development and Regulation) Act, 1992)[36]. To ensure the safety of food products entering India, the Food Safety and Standards Act, 2006 consolidates food safety laws and establishes the Food Safety and Standards Authority of India (FSSAI). The FSSAI enforces stringent food safety standards on imports, protecting domestic consumers and setting high-quality benchmarks for foreign exporters. Non-compliance with the regulations can lead to severe penalties, safeguarding India's food supply chain from substandard or unsafe products (FSSAI, 2017)[37].

The Customs Act, 1962 also plays a vital role in agricultural trade, governing the legal framework for imposing duties on imports and

35 Jayshree Navin Chandra and Anisha Jhawar, "Explained: Legal Framework for Import of Food and Packaged Food Products in India," *Zeus Law Associates*, available at: https://zeus.firm.in/explained-legal-framework-for-import-of-food-and-packaged-food-products-in-india/

36 India, *Foreign Trade (Development and Regulation) Act*, 1992, available at https://www.customsandforeigntrade.com/wp-content/uploads/2020/customs/The%20Foreign%20Trade%20(Development%20and%20Regulation)%20Act,%201992.pdf.

37 Food Safety and Standards Authority of India (FSSAI), *Food Safety and Standards (Import) Regulations, 2017*, available at: https://fssai.gov.in/upload/uploadfiles/files/Compendium_Food_Import_Regulations_26_04_2018.pdf

exports. The Customs Act also allows for the imposition of anti-dumping duties to shield local farmers from unfairly priced foreign agricultural products, thus ensuring the domestic agricultural sector's stability. In promoting Indian agricultural exports, the Agricultural and Processed Food Products Export Development Authority Act, 1985 (APEDA Act) is essential. It established the Agricultural and Processed Food Products Export Development Authority (APEDA), tasked with promoting agricultural exports by ensuring they meet international quality and safety standards. APEDA provides financial assistance, research, and marketing support, helping Indian farmers and exporters compete in global markets (APEDA Act, 1985)[38]. This support is critical for navigating the complexities of international trade and for maintaining India's competitive edge in agricultural exports.

The Essential Commodities Act, 1955 also plays a significant role in regulating the supply and distribution of essential agricultural commodities. This Act allows the government to impose export restrictions to prioritize domestic needs, particularly during crises. By controlling prices and preventing hoarding, the government ensures food security and stabilizes the domestic market (Essential Commodities Act, 1955)[39]. To meet international standards, the Export (Quality Control and Inspection) Act, 1963 mandates inspections and certifications for agricultural products before export, ensuring that India's agricultural exports adhere to global safety and quality benchmarks. This legal framework protects India's reputation as a reliable exporter and supports the country's growing agricultural export sector. Additionally, the Plant Quarantine (Regulation of Import into India) Order, 2003 enforces strict quarantine measures to prevent the entry of harmful pests and diseases through imported agricultural products. These biosecurity measures protect India's agricultural sector but can complicate trade with countries

38 Agricultural and Processed Food Products Export Development Authority Act, 1985, available at: https://commerce.gov.in/wp-content/uploads/2021/06/APEDA-Act.pdf.

39 Essential Commodities Act, 1955, available at: https://www.indiacode.nic.in/bitstream/123456789/7053/1/essential_commodities_act_1955.pdf

that have less rigorous phytosanitary standards (Directorate of Plant Protection, 2003)[40]. Complementary laws, such as the Patents Act, 1970 and the Seeds Act, 1966, ensure the protection of intellectual property in agricultural biotechnology and regulate the quality of seeds used in agriculture, respectively. The Warehousing (Development and Regulation) Act, 2007 also supports agricultural trade by ensuring adequate infrastructure for storing agricultural products, mitigating risks from global trade fluctuations.

Environmental regulations, such as the Environment Protection Act, 1986, play a crucial role in agricultural activities that may cause environmental harm, such as the use of pesticides and water management practices. The National Mission for Sustainable Agriculture (NMSA), part of the National Action Plan on Climate Change (NAPCC), promotes sustainable agricultural practices by focusing on water efficiency, soil health, and climate-resilient farming techniques (Ministry of Environment, 2024)[41]. The Biodiversity Act, 2002 also intersects with agricultural practices by encouraging the conservation of biological diversity, including agricultural biodiversity.

**International Trade Agreements:**

India's commitments under international trade agreements, particularly the World Trade Organization's Agreement on Agriculture (AoA), significantly influence its food import and export policies. Under Agriculture (AoA), India had to reduce tariffs and subsidies, opening its agricultural markets to international participants. However, India has consistently advocated for special and differential treatment for developing countries, highlighting the need to protect its large population

40 Directorate of Plant Protection, Quarantine & Storage, *Plant Quarantine (Regulation of Import into India) Order, 2003*, available at: https://www.ppqs.gov.in/plant-quarantine-order-2003-consolidated-version-and-amendments

41 Ministry of Environment, Forest and Climate Change, *National Mission for Sustainable Agriculture (NMSA)*, available at: https://nmsa.dac.gov.in/

of smallholder farmers (Dhar, 2023)[42]. India has frequently pushed for reforms in global trade rules to ensure that its agricultural policies, including subsidies and public stockholding programs, are recognized as vital for ensuring food security and rural development (Times of India, 2023)[43]. India's consistent stance in WTO negotiations reflects its commitment to maintaining policy space for supporting its smallholder farmers, who constitute the backbone of the country's agricultural economy (Priyadarshi, 2024)[44].

Additionally, India's participation in regional trade agreements, such as the South Asian Free Trade Area (SAFTA) and the Association of Southeast Asian Nations (ASEAN) have reduced trade barriers and opened up new markets for Indian agricultural exports, particularly for staples like rice, wheat, and sugar, as well as high-value products like spices and horticulture (Economic and Political Weekly, 2024)[45]. In global forums, India has advocated for greater flexibility in implementing food security programs, such as the Public Distribution System (PDS), which provides subsidized food to millions of its citizens. This advocacy highlights India's focus on ensuring that international trade rules do not compromise the country's ability to meet its domestic food security objectives (Ritchie & Reay, 2024)[46]. India remains committed to policies

42 B. Dhar, *WTO agreement on agriculture: Worsening India's agrarian crisis*, 71 Indian Economic Journal 152 (2023), available at: https://doi.org/10.1177/00194662221146638.

43 *India for special treatment to developing nations at WTO*, Times of India, 2023, available at: https://timesofindia.indiatimes.com/business/india-business/india-for-special-treatment-to-developing-nations-at-wto/articleshow/87920664.cms.

44 S. Priyadarshi, *India's quest for an inclusive international order*, Hindustan Times, 2024, available at: https://www.hindustantimes.com/ht-insight/international-affairs/indias-quest-for-an-inclusive-international-order-101729084235437.html.

45 *India's free trade agreements and the political economy of deep integration*, Economic and Political Weekly, 2024, available at: https://www.epw.in/journal/2024/40/special-articles/indias-free-trade-agreements-and-political-economy.html(last visited October 22, 2024.

46 H. Ritchie & D. Reay, *Sustainable food security in India—Domestic production and macronutrient availability*, PLOS ONE (2024), available at: https://doi.org/10.1371/journal.pone.0193766.

that protect its farmers, ensure food security, and promote rural livelihoods in the face of growing global competition (The Hindu Business Line, 2021)[47]. The Indian government consistently advocates for Special and Differential Treatment (SDT) provisions that allow developing countries greater flexibility in implementing agricultural policies to protect domestic interests. This ensures that India's global trade commitments do not undermine its efforts to support food security and rural livelihoods (Hoda, 2021)[48].

**Domestic Indian Policies**

The National Food Security Act, 2013 (NFSA) is a key policy that guarantees subsidized food grains to two-thirds of India's population, one of the world's largest food distribution programs. This large-scale intervention has implications for international trade, as it requires balancing domestic food security needs with WTO rules on public stockholding . Additionally, programs like the Pradhan Mantri Kisan Samman Nidhi (PM-KISAN) offer direct income support to small and marginal farmers, helping to mitigate the financial risks posed by global market fluctuations (Ministry of Agriculture & Farmers Welfare, 2023)[49]. India's emphasis on sustainable agriculture and organic farming reflects its strategy to enhance domestic agricultural resilience while remaining competitive in global markets. Through the adoption of indigenous agricultural techniques and crop diversification, India is working toward reducing reliance on global markets for essential commodities (Gupta et al., 2021)[50]. In conclusion, India's legal framework governing

47 *India finally accepts G-33 proposal on MSP doles*, The Hindu Business Line, 2021, available at: https://www.thehindubusinessline.com/news/wto-india-finally-accepts-g-33-proposal-on-msp-doles/article36523523.ece.

48 A. Hoda, *WTO reform: Issues in special and differential treatment (S&D)*, Indian Council for Research on International Economic Relations (ICRIER), Working Paper, No. 406, 2021, available at: https://hdl.handle.net/10419/267926.

49 Ministry of Agriculture & Farmers Welfare, *Press Information Bureau*, August 8, 2023, available at: https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1946816..

50 N. Gupta, S. Pradhan, A. Jain & N. Patel, *Sustainable agriculture in India 2021: What we know and how to scale up*, Council on Energy,

agricultural imports and exports is shaped by a combination of domestic laws, international trade commitments, and environmental considerations. The framework ensures that India can protect its domestic agricultural sector, comply with global trade rules, and meet the food security needs of its vast population (NAAS, 2024)[51]. Balancing these diverse objectives remains a challenge, especially as India navigates the complexities of international trade, climate change, and global competition. Nonetheless, India's commitment to supporting its agricultural sector, ensuring food security, and maintaining its global trade commitments remains steadfast.

The dominance of U.S. agricultural exports, driven by its subsidy-laden and technology-intensive farming, undermines India's efforts to maintain food sovereignty. Further the reliance on cheap imports from the U.S. risks displacing local farmers and weakening India's agricultural resilience. Furthermore, the environmental practices promoted by U.S. agricultural models, such as monoculture and heavy use of synthetic fertilizers, contribute to environmental degradation, impacting India's long-term agricultural sustainability. The power imbalance created by U.S. hegemony in global agricultural trade constrains India's ability to develop self-sufficient, sustainable farming practices that align with its local needs and agroecological conditions Amaglobeli et al., 2024) , (Nageswaran, 2024)[52].

Current research often focuses on the economic aspects of U.S.-India agricultural trade but lacks in-depth analyses of how U.S. agricultural policies indirectly influence India's environmental sustainability and rural livelihoods. There is insufficient exploration of how U.S. dominance in global trade bodies like the WTO shapes the policy landscape in

---

Environment and Water (CEEW), 2021, available at: https://www.ceew.in/publications/sustainable-agriculture-india..

51 NAAS, *WTO and Indian Agriculture*, available at: https://naas.org.in/Policy%20Papers/policy%20102.pdf.

52 V. A. Nageswaran, *The Indian economy – A review*, Ministry of Finance, Government of India, 2024, availableat: https://dea.gov.in/sites/default/files/The%20Indian%20Economy%20-%20A%20Review_Jan%.

developing countries like India. Policymakers have not fully addressed the long-term consequences of increased dependence on imported food and agricultural inputs, that threaten India's food security.

**Case Law Analysis**

Key cases involving the U.S. and India in the agricultural trade sector underscore the tension between domestic policies and global trade rules. The World Trade Organization (WTO) has been central in resolving disputes, particularly on subsidies and market access, setting precedents for future trade negotiations (UNCTAD, 2012[53]; (UNCTAD, 2012; Linscott & Sindelar, 2021[54]Linscott & Sindelar, 2021). These cases help inform policy and enforcement within both nations (Kucik & Puig, 2020)[55].

***Export Related Measures (DS541):***

This WTO dispute, initiated by the U.S. in 2018, targeted India's export incentives under the Merchandise Exports from India Scheme (MEIS), alleging violations of the Subsidies and Countervailing Measures (SCM) Agreement (Directorate General of Foreign Trade, 2023)[56].. The WTO ruled against India, mandating it to withdraw the scheme. India replaced MEIS with the Remission of Duties and Taxes on Export Products (RoDTEP) to comply with WTO rules, highlighting

53 UNCTAD, *Non-Tariff Measures to Trade: Economic and Policy Issues for Developing Countries*, Developing Countries in International Trade Studies, 2012, available at https://unctad.org/system/files/official-document/ditctab20121_en.pdf.

54 M. Linscott & S. Sindelar, *The Hard Work Ahead in Improving US-India Agricultural Trade*, Atlantic Council, 2021, available at https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/the-hard-work-ahead-in-improving-us-india-agricultural-trade/.

55 J. Kucik & S. Puig, *Extending Trade Law Precedent*, Arizona Legal Studies Discussion Paper No. 20-41, 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3710289.

56 Directorate General of Foreign Trade, *Merchandise Exports from India Scheme (MEIS) and Export Oriented Units (EOU) Scheme*, Ministry of Commerce and Industry, Government of India, 2023, available at https://www.dgft.gov.in/CP/?opt=meis.

the ongoing challenge of balancing domestic export policies with international obligations (World Trade Organization [WTO], 2019)[57].

***United States Trade Representative (USTR) Withdrawal of GSP Benefits (2019):***

India's restrictive dairy import policies, based on health certificates aligned with religious standards, led the U.S. to withdraw Generalized System of Preferences (GSP) benefits in 2019. These barriers have prevented U.S. dairy products from accessing the Indian market, influencing trade relations between the two countries (United States Dairy Export Council, 2021)[58].

***Ban on non-basmati white rice exports by India:***

India's ban on non-basmati white rice exports to curb domestic inflation raised global food security concerns, particularly in Africa. This move impacted global rice prices, exacerbating existing inflationary pressures caused by the COVID-19 pandemic and the Russia-Ukraine conflict (BBC News, 2023[59]; AfricaRice, 2023[60]). In summary, these cases reflect the complexities in balancing trade rules with domestic agricultural interests. India must navigate WTO legal frameworks, counter U.S. subsidies that distort global markets, and manage its own trade policies to ensure food security while honoring international obligations.

57 World Trade Organization, *India – Export Related Measures: Summary of Key Findings (DS541)*, 2019, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds541sum_e.pdf.

58 United States Dairy Export Council, *India: Eliminating Unwarranted Barriers to Dairy*, 2021, available at https://www.usdec.org/assets/Documents/Briefing%20Paper%20-%20India%20Issues%20%28One%20Pager%29%206.29.2021.pdf.

59 BBC News, *Why India's Rice Ban Could Trigger a Global Food Crisis*, 2023, available at https://www.bbc.com/news/world-asia-india-66360064.

60 AfricaRice, *Ban on Export of Non-Basmati Rice by India: Policy Options to Transform Rice-Based Agri-Food Systems*, 2023, available at https://www.africarice.org/post/ban-on-export-of-non-basmati-rice-by-india-policy-options-to-transform-rice-based-agri-food-systems.

## Conclusion

This research contributes to global trade and food security debates by offering valuable insights for policymakers and trade negotiators, especially from developing nations challenging unfair practices (Dhillon & Moncur, 2023). It examines the environmental impact of U.S. agricultural dominance on sustainability and provides evidence-based recommendations (Ramakumar, 2022). The study underscores the complex ties between U.S. market power, international trade law, and global agricultural practices (Priyadarshi, 2024). The research highlights the profound and multifaceted impacts of U.S. agricultural policies on India's food systems, towards food security, agricultural sustainability, and resilience (Gupta & Kannan, 2024). The findings demonstrate that U.S. subsidies, trade policies, and practices within organizations like the World Trade Organization (WTO) significantly disrupt India's agricultural competitiveness (Bhalla & Singh, 2024). In sectors like cotton, dairy, and rice, U.S. agricultural hegemony has created uneven fields, contributing to income instability and environmental degradation in India (Dhillon & Moncur, 2023). The analysis also reveals gaps in the existing research concerning the long-term socio-economic and conservational consequences of these policies on India's rural communities (Ramakumar, 2022). The study underscores that India’s food systems are increasingly vulnerable to global trade dynamics, where U.S. policies, such as subsidies and protectionist measures, affect India's ability to maintain self-sufficiency and sustainable agricultural practices (Dhar, 2023). Furthermore, the research highlights the critical legal disputes at international forums, such as the WTO, that further complicate the agricultural trade relationship between the U.S. and India (Times of India, 2023).

To enhance the sustainability and resilience of India's food systems, India should strengthen domestic subsidies, particularly for small-scale farmers, to counter the competitive edge provided by U.S. subsidies. This can focus on improving productivity, encouraging sustainable practices, and enhancing access to technology and finance (Priyadarshi, 2024). Further diversifying export markets and promoting value-added

products will help reduce dependency on U.S.-dominated markets, allowing India to compete globally (Economic and Political Weekly, 2024). Investing in sustainable agriculture, including organic and regenerative farming, is crucial for long-term productivity and environmental protection (Ritchie & Reay, 2024). Additionally, India must actively engage in WTO trade negotiations to address the impact of U.S. subsidies and resolve disputes diplomatically while ensuring food security (The Hindu Business Line, 2021). Finally, fostering public-private partnerships can modernize India's agricultural infrastructure, including irrigation, storage, and supply chain systems, driving growth and efficiency (Hoda, 2021). Further research is needed to examine the socio-economic impacts of U.S. agricultural hegemony on specific rural communities in India, with a focus on gender, caste, and regional disparities (Ministry of Agriculture & Farmers Welfare, 2023). Additionally, exploring the environmental consequences of U.S. agricultural policies on India's soil, water, and biodiversity would provide valuable insights into the sustainability of India's agricultural sector (Gupta et al., 2021). Potential reforms for both the U.S. and Indian agricultural sectors include revisiting U.S. agricultural subsidy structures, particularly those that distort global markets, and aligning them with fair trade practices (Nageswaran, 2024). For India, reforms should focus on creating a more adaptive and resilient food system that can withstand external shocks, such as global price fluctuations and climate change (UNCTAD, 2012). The present study sets the stage for further exploration into how international trade law, sustainability initiatives, and domestic policy reforms can align to create a more equitable and resilient global agricultural system (Linscott & Sindelar, 2021).

# A Comparative Study of Legislative Framework on Senior Citizens in India, UK And Japan

**Sarbani Bhowmik***

**Dr. Bhupal Bhattacharya****

## Abstract

*Senior citizens are mostly vulnerable to harsh working conditions and physical inability which often leads them to take retirement with the intention of living a relaxed life. However, financial requirements are integral at any point in time. They areoften dependent on financial securities like pensions or several financial schemes designed by the government. Moreover, the health situation frequently deteriorates their condition further. It cannot be denied that healthcare is expensive and without financial security, it is difficult to get the anticipated lifestyle during old age. Due to their physical inability, senior citizens also struggle to protect their property. Sometimes, they are the victim of domestic violence and abuse. Poor financial status can often bring disrespect, neglect, abandonment and abuse even by the family members. Hence, every nation tries to develop legal assistance in order to help this vulnerable community. Furthermore, it has also been argued that despite being financially stable, the chances of robbery and caregivers or family members' intention to benefit from the property of the senior citizens can cause serious violations to their basic human rights. Hence, it can be stated if there is no proper legislative framework designed to help senior citizens, even their fundamental human rights can be snatched. This paper tries to address the legislative framework of India, UK and Japan to analyse the good practices adopted by these nations for the effective protection of their senior citizens and thereafter lay down a comparative study to note the differences in their legislative framework which can be effective in future policy formation.*

---

* Research Scholar, Raiganj University & Assistant Professor, Amity University Kolkata

** Assistant Professor, Raiganj University, West Bengal

**Keywords**: Senior Citizens, India, UK, Japan, Legislative Framework, Aging

## Introduction

The discussed nations in this paper are the UK, Japan and India. All these nations have vibrant democracies with regular elections, thriving liberal media and electoral freedom. Though UK and Japan have a constitutional monarchy, monarchs in these nations are guided by the Constitution and therefore, their role, power and authority are defined by the Constitution. They are presented as the ceremonial leader of the nation whereas the legislature is assigned with the highest political power. India on the other hand does not recognise constitutional monarchy but the parliament and the state legislature are the main contributors to legal framework development. The country has a President as the nominal head of the executive who signs the Bills to be considered as an Act. Nevertheless, the legislative frameworks in these nations are designed to offer an ultimate guide to the decision-making process of government, organisations and the individuals of the nation. Each nation has a different approach to dealing with their issues and their planning is aligned with the beliefs and societal norms in their respective nations. Accordingly, these nations have addressed the concerns of their senior citizens with significant care reflecting commitment to offer legal immunity to them in their best possible ways.[1]Demographic change is a not unprecedented event. People age as aging in inevitable and thus there is profound evidence of aging population. With the development of science and technology in the contemporary era, life expectancy has increased significantly which has notably shown an increase in the aging population.[2]Data of 2005 shows that there are around 600 million senior citizens over the age of 60

1 Jack A. Goldstone and Larry Diamond, "Demography and the Future of Democracy" 18(3), *Cambridge Core* (2020)

2 D.E. Bloom and D.L. Luca, "The Global Demography of Aging: Facts, Explanations, Future" 1, *Elsevier*, 3-56 (2016)

years.[3] Although, term 'senior citizens' has been defined differently in different jurisdictions, commonly senior citizens are referred as those persons who are above 60 years of age as in India.[4] However, there are countries who consider persons as senior citizens who are above the age of 65 years like in United States and there are countries who confers the status of senior citizen once the person hits the age of 64 years like in Australia.[5] The definition varies based on life expectancy, health conditions, population, social circumstances and climatic conditions as well. Likewise, the age of status of senior citizens is different from the age of retirement. Like in India, senior citizens are defined as persons above 60 years of age, but the age of retirement varies from 60 to 65 years. Similarly, in China the age of retirement for men will be increased from 60 years to 63 years from January 2025[6] and in Japan the age of retirement is 65 years whereas in UK it is 66 years for both men and women[7]. Thus, there is no consensus upon a uniform definition of senior citizens. However, it cannot be denied that be it in any jurisdiction, the senior citizens require special care and attention owing to their vulnerability caused due to age. Therefore, enforcing a dedicated legislative framework is paramount for the effective protection of their privileges and prosperity.

---

3 Akshita Saran, "The Protection and Welfare of Senior Citizens: A Comparative Study of Laws in India and Other Federal States" 4(5) *International Journal of Law Management & Humanities*, 1978-1991, (2021)

4 National Policy for Senior Citizens, 2011

5 "At What Age Are You Considered A Senior Citizen?" Available at https://www.springhills.com/resources/at-what-age-are-you-considered-a-senior-citizen (last visited on 6/11/2024)

6 Farah Master, "China approves plan to raise retirement age from January 2025" *Reuters,* Available at https://www.reuters.com/world/china/chinas-legislature-approves-draft-proposal-raise-retirement-age-2024-09-13/#:~:text=The%20state%2Drun%20Chinese%20Academy,65%20and%2063%20years%2C%20respectively. (last visited on 06/11/2024)

7 "Retirement Age Raised to 65– Promoting Active Engagement of a Diverse Workforce", Available at https://www.mes.co.jp/english/press/2024/0409_002419.html (last visited on 6/11/2024)

The paper is based upon doctrinal research which attempts to de-code the legal system of these nations that intend the management of the elderly care. The rationale behind choosing these nations is to untangle the complex management of the ageing population in India in light of the established legislative frameworks of these nations namely UK, on one hand, as India shares her history with this nation and is popularly considered as a common law nation and on the other hand is Japan, as Japan has been recorded as a nation having the highest aging population density.[8]Embarking on the comparative study will decipher the best practices adopted by these nations addressing their aging society. This will provide a better insight into the comprehensive intersection of aging population and role of law therein which would act as a guiding light in fostering further development of legal system in India.

**Legislative Framework for Senior Citizens in UK**

UK has an uncodified Constitution which is often referred as unwritten Constitution as the nation does not have a single written document as normally found in US or India. The UK Constitution is a collection of regulations and decisions that establishes organizations which regulates the relationship between the State and the individuals.[9] Therefore, the norms or the laws are not codified into one single written document instead the Constitution encompasses a bundle of landmark statutes like Bill of Rights, 1689 and other unwritten constitutional practices derived from conventions,legal maxims and other doctrines of law. Thus, the rights and privileges of the senior citizens in UK are covered by different statutes particularly addressing to their healthcare, pension schemes, social care and protection against discrimination.[10]

8 Kelly Ng, "Japan population: One in 10 people now aged 80 or older" *BBC,* Available at https://www.bbc.com/news/world-asia-66850943 (last visited on 6/11/2024)

9 The UK Constitution: A summary, with options for reform, available at: https://www.parliament.uk/globalassets/documents/commons-committees/political-and-constitutional-reform/The-UK-Constitution.pdf(last visited on 6/11/2024)

10 United Kingdom Legal Research Guide, available at https://guides.ll.georgetown.edu/c.php?g=365741&p=2471214 (last visited on 6/11/2024)

The Equality Act, 2010 seeks to eradicate socio-economic inequalities. It aims to provide protection against age-based discrimination particularly at areas of employment, pension schemes, education, higher opportunities and accessibility towards goods and services.[11]

The Supreme Court in its various decisions have pointed out the manner how one should treat the vulnerable citizens of the nation. This has radically changed the ways to treat the senior citizens of the nation where they are guaranteed with their due freedom and liberty. In P vs. Cheshire West and Chester Council, UKSC 19 [2014],[12] the key factors of liberty were clearly outlined stating that a person who is been kept under continuous control or supervision and is not let free to leave the placement shall be considered as deprivation of their liberty. Again, in R vs. Bridge, 2012 the Court approved the approach of presenting the evidence in such manner so as to present before the judge the seriousness of the offence by reflecting how deliberately the victim are targeted for his or her vulnerability so that it becomes easier for the judge to award more serious sentences in such cases.[13]

Mental Capacity Act, 2005tries to protect the interests of the impaired senior citizens. As per Section 2, a person is said to have lack of capacity if such person is disabled to form decisions due to an impairment or disturbance in brain. The unique feature of the Act prescribes to do an act on behalf of a person who lacks the mental capacity in his or her best interest without causing much restrictions on his or her rights and freedom. The Court of Protection shall have the power to appoint deputies who shall act for the best interests of the

11 Equality Act 2010, available https://www.legislation.gov.uk/ukpga/2010/15/contents (last visited on 6/11/2024)

12 Case ID UKSC 2012/0068, available at https://www.supremecourt.uk/cases/uksc-2012-0068.html (last visited on 6/11/2024)

13 Case ID EWCA Crim 2270. available at https://www.cps.gov.uk/legal-guidance/older-people-prosecuting-crimes-against (last visited on 6/11/2024)

person not having mental capacity in matters related to their finance, health and welfare. The Act is designed in such a way that it can provide the maximum support and wellbeing to the mentally impaired senior citizens. The Act also prescribes for the punishment for those who wilfully ill-treats and neglects the mentally incapacitated senior citizens which may extend to imprisonment upto five years or fine or both.[14]

Care Act 2014 prescribes for new responsibilities of the local authorities which is to arrange care giving services to the elderly citizens of the nation. The local authorities are entrusted with the role to ensure that the senior citizens residing in their locality can receive services that can avoid serious harms or delays in their care which they are entitled to get for their wellbeing. Moreover, the local authorities must make sure that the senior citizens are given provisions to select high and appropriate quality of services. The local authorities must take care of the wholesome wellbeing of the senior citizens like physical and mental health, protection against ill-treatment or neglect, participation in recreational activities, educational opportunities and participation in work, comfortable living accommodation and uphold of personal dignity. Moreover, while cratering the needs of the senior citizens, the local authorities must pay attention to their individual wishes, views and feelings. In other words, while ensuring the care to the senior citizens regards are given to all circumstances of the individual. The local authorities can meet the needs of the senior citizens either by providing the services directly to them or by arranging a person who can provide such service or by making payment directly so that the care can be restored.[15]

**Legislative Framework for Senior Citizens in Japan**

The Japanese Constitution under Article 12 says that all the citizens of Japan are guaranteed with the rights and the freedoms as prescribed in

14 Mental Capacity Act, 20025, available at https://www.legislation.gov.uk/ukpga/2005/9/contents(last visited on 7/11/2024)

15 Care Act 2014 , available at https://www.legislation.gov.uk/ukpga/2014/23/contents (last visited on 7/11/2024)

their Constitution and the constant endeavour of the citizens shall thrive to maintain the same. Therefore, right to life and liberty, equality under law, freedom of thought and conscience, freedom of speech and expression are guaranteed to the citizens of Japan irrespective of their age.[16]

The legislative framework for safeguarding the rights and welfare of senior citizens can be traced in Japan as early as in 1963 under the Act on Social Welfare of the Elderly.The Act earmarks 15th September as the senior citizen's day in their nation. The Act specifically applies to the citizens who are 65 years of age and above. Article 1 of the Act clearly sets out the objective of the Act, which is two folded, firstly to ensure implementation of measures necessary for the maintenance of the mental and physical health of the senior citizens and secondly, to stabilize the livelihood of the senior citizens so that their complete welfare can be warranted. The Act emphasizes on the freedom of the senior citizens to engage themselves in social activities as well as in suitable works.[17] The Act clearly highlights the duty of the State and the local authorities or municipalities to pay due consideration for the enhancement of the welfare of the senior citizens. Special care such as in-home nursing or services are provided to the senior citizens suffering from dementia. Apart from that, themunicipalities have been entrusted with the duty of developing a system which is suited to the existing circumstances of that region. Based on such circumstances services such as home care support, nursing homes, community-based services, elderly day care centers, intensive care homes, long-term preventive care support, short term inpatient admission, small group home and other support systems shall be designed for the wellbeing of the senior citizens suffering from

16 The Constitution of Japan, available at https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html#:~:text=Article%2012.,them%20for%20the%20public%20welfare. (last visited on 7/11/2024)

17 Act on Social Welfare for the Elderly, available at https://www.japaneselawtranslation.go.jp/en/laws/view/3930/en (last visited on 7//11/2024)

mental and physical disability or as the case may be.[18] The local government must ensure active participation of the senior citizens in recreational events, educational seminars and other projects organized by them for their mental and physical well-being.[19]

Social Welfare Act, 1951 aims to improve social welfare by protecting the interests of the local communities. This is achieved through the effective implementation of sound development services designed to promote social welfare services. These services are also known as community welfare under this Act. The Act provides for the establishment of low-cost nursing homes, intensive nursing home and ordinary nursing homes for the care of senior citizens. Besides it also prescribes for the services such as in-home care, daycare, multi-functional long-term care, short inpatient care long term care support and other welfare centers for the elderly care[20].

Long-Term Care Insurance Act, 1997 provides insurance benefits to those who needs long term care or support system. The Act says that it also the obligation of the citizens to be aware of his or her mental and physical health and they must ensure their wellbeing as they age. Thereby, as per the principles of cooperation and solidarity, the citizens must bear equal expenses that are required for long term care by mandatorily investing in Long-Term Care Insurance. Apart from them, the national government must also undertake the responsibility in providing the other half of the share for the effective implementation of

18 Shuichi Nakamura, "Japan's Welfare for the Elderly—Past, Present, and Future", Available at https://ahwin.org/japans-welfare-for-the-elderly-past-present-and-future/#:~:text=The%20Act%20on%20Social%20Welfare%20for%20the%20Elderly%20continued%20to,provide%20for%20those%20elderly%20people (last visited on 7/11/2024)

19 Yoshiko Someya and Cullen T. Hayashida, "The Past, Present and Future Direction of Government-Supported Active Aging Initiatives in Japan: A Work in Progress" 11(2), *MDPI*, 65 (2022) Available at https://doi.org/10.3390/socsci11020065 (last visited on 7/11/2024)

20 Social Welfare Act, 1951, available at https://www.japaneselawtranslation.go.jp/en/laws/view/3813/en#:~:text=Article%201The%20purpose%20of,communities%20(hereinafter%20referred%20to%20as (last visited on 7/11/2024)

the Insured Long-Term Care Project. The national government shall also ensure the foundation of system of providing public aid services, medical services and other necessary services for the effective realization of Long-Term Care Projects.[21]

The Health and Medical Services Act for the Aged too played a significant role in providing long term care to the elderly people in Japan. The Act imposed the sharing of medical expenses among all the medical insurance system as well as consistent medical check-ups for the elderly by the municipalities to prevent rehabilitation. This has typically lessened the burden of medical expenses for those who are seventy years and above. The Act was revised in 1991 which introduced the concept of visiting nursing home for elderly care.[22]

In case no. 2018 (Ju) 1730, the Court of Japan invoked the doctrine of subrogation stating that an association who has paid for the medical care of the senior citizens under the Act on Assurance of Medical Care for Elderly People shall have the right to claim compensation or damagesfrom the third party who has committed the tort for which the payment of such benefit has arisen.[23]

**Legislative Framework for Senior Citizens in India**

Article 21 of the Indian Constitution guarantees all citizens of India the right to live with dignity, similarly, Article 14 guarantees equality before law and equal protection of law and Article 19 guarantees freedom of speech and expression, freedom to choose residence within the territory of the nation, form associations and assembly peacefully. However, Article 41 has express mention of old age which states that the State shall make effective provisions within its economic capacity for

21 Long-Term Care Insurance Act, 1997, available at https://www.japaneselawtranslation.go.jp/en/laws/view/3807/en (last visited on 7/11/2024)

22 "Welfare for the Elderly",*National Institute of Population and Social Security Award*, Available at https://www.ipss.go.jp/s-info/e/ssj2014/005.html#:~:text=The%20Health%20and%20Medical%20Service,aged%20over%2040%20years%20old. (last visited on 7/11/2024)

23 2018 (Ju) 1730, Available at https://www.courts.go.jp/app/hanrei_en/detail?id=1681(last visited on 7/11/2024)

securing the right to education, right to work and public assistance in case of old age. Furthermore, under Article 46 it aims to promote the educationally and economically weaker section of the society and protect them against all forms of social injustice and exploitations.[24]

The personal laws of country enshrine the rich traditions and ethics embedded in the roots of the Indian society. The Hindu Adoptions and Maintenance Act, 1956, highlights the duty of a Hindu during his or her entire lifetime to maintain his or her infirm aged parents who are unable to maintain themselves out of their own property or earnings.[25] Similarly, under Muslim law a son is duty bound to maintain his mother during his entire lifetime irrespective of her age and earnings and is liable to maintain his father only if he is infirm and is unable to maintain himself out of his earnings. Muslim law further talks about the maintenance of grandparents and distant relatives if they are incapable of maintaining themselves and such person has sufficient means to maintain to them.[26]

Section 144 of Bharatiya Nagarik SurakshaSanhita, 2024 states that if a person has sufficient means and still refuses to neglect his parents who are unable to maintain themselves then the Magistrate not below the rank of first class, upon sufficient proof, may direct such person to pay a monthly allowance to the parents at such rate which the Magistrate thinks fit and proper. [27]

India has a dedicated legislation on the wellbeing of the senior citizens. Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted to provide effective protection to the senior citizens of the nation. Section 7 of the Act prescribes the establishment of Tribunal within each sub-divisions for hearing cases under this Act with the

24 The Constitution of India
25 Hindu Adoptions and Maintenance Act, 1956, S.20
26 Furqan Ahmad, "Muslim Law", L, *Annual Survey of Indian Law,* 915 (2014) Available at http://14.139.60.116:8080/jspui/bitstream/123456789/9094/3/028_Muslim%20Law%20%28901-970%29.pdf (last visited on 7/11/2024)
27 Bharatiya Nagarik Suraksha Sanhita, 2024, s.144

objective of speedy disposal of the case.[28] The application filed under Section 5 of this Act must be disposed off within a period of ninety days.[29]Section 4 of the Act says that if any senior citizen is unable to maintain himself or herself out of his own property or earning then he or she may make an application to Tribunal for claiming maintenance from his or her children, not being minors, or from relatives as defined under Section 2(g) in cases where such senior citizen does not have any children.[30]The Tribunal may direct the children or relative to pay a monthly allowance which must not exceed ten thousand rupees.[31] As per Section 13 of the Act, when an order is passed against the children or the relatives, they must submit the amount within thirty days from the date of order as prescribed by the Tribunal.[32]

The Chapter III of the Act prescribes for the establishment of oldage home in each district for the indigent senior citizens having not less than one hundred and fifty capacities.[33]And Chapter IV tries to ensure their medical care by directing the State Government to earmark geriatric facilities at Government hospitals or State funded hospitals by providing separate beds and queues for the senior citizens. There must be a presence of a medical officer in every district who specializes in geriatric care.[34] Chapter V of the Act furthermore strengthens the social security of the senior citizens by extending protection to their life and property. Section 21 of the Act says that the provisions of the Act must be widely publicized through social media at regular intervals and the government officers must be duly sensitized on the issues relating to the senior citizens.[35] Section 23 of the Act empowers the senior citizens to declare any transfer of property as void if such transfer has been made by a senior citizen in contemplation that the transferee would provide

28 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.7
29 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.5
30 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.4
31 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.9
32 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.13
33 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.19
34 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.20
35 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.21

him or her the basic necessities of survival and later after the transfer of the property denies providing the same[36]. Section 24 of the Act prescribes punishment for those who leaves the senior citizens at places with an intension of abandoning them completely. Such persons shall be punishable with fine which may extend to five thousand rupees or imprisonment which may extend to three months or both.[37]

In H.S. Subramanya vs. H.S. Lakshmi[38], the maintenance tribunal directed all the three sons of the widow to pay maintenance amount at the rate of three thousand rupees every month under Section 9 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The deceased husband had bequeathed his house in the favour of his three sons with a condition that they would maintain their parents. The first two sons contributed to her maintenance however the third son did not. Thereby, the two sons stopped paying their mother the maintenance alleging that the youngest sons would take away the amount paid by them. To this the Court strictly reminded of the responsibility of the children to maintain their parents for their subsistence who are unable to maintain themselves.

In Santosh Surendra Patil vs. Surendra Narasgopnda[39]and Sunny Paul & Anr. Vs. State NCT of Delhi & Ors[40], the High Court the Court upheld the welfare of the senior citizens by guaranteeing them their right to peaceful residence in cases they are subjected to harassment by their children. Under Section 23 of the Act, the Tribunal can pass eviction order to the children who cause mental or physical assaults to their parents. The Act reminds the moral and legal duty of the children as well as the State to ensure the complete protection of the senior citizens in their old age.[41]

36 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.23
37 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.24
38 H.S. Subramanya vs. H.S. Lakshmi, AIR 2015 (NOC) 465 (KAR.), 2015 (1) AKR 270
39 Santosh Surendra Patil vs. Surendra Narasgopnda& Ors (2017 All MR (Cri) 4065
40 Sunny Paul & Anr. Vs. State NCT of Delhi & OrsAIRONLINE 2018 DEL 1777
41 Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s.23

**Conclusion**

From the above analysis, it can be concluded that Japan has undoubtedly adopted the best practices for the welfare of their citizens. Although, Indian Constitution has direct mention on the age-based care unlike the UK and Japanese Constitution, Japan in its subsequent Acts have left notable impression on the welfare of the senior citizens. Japan has visioned a long-term plan for upholding the integrity and care of the senior citizens. The mandatory investment in insurance plan by the citizens have lessened the burden of upon the nation's economy to bear the expenses for the welfare of the senior citizens. In fact, they have stricken a perfect balance on the expenses borne by the stakeholders and the care they will thrive at old age. In UK as well the burden is more on the local authorities to bear the expenses of the welfare of the senior citizens. On the other hand, the primary responsibility of maintaining the senior citizens has been shifted on the shoulders of the children to maintain their parents. Although, it can be argued as a noble vision on ethical grounds but practically the root cause of major problems faced by the senior citizens arises from there because as they become dependent on their children, they start feeling the lack of freedom and dignity in their lives. Thus, for the empowerment of the senior citizens self-autonomy is particularly important. Another, best practices adopted by UK and Japan is the application of collaborative effort of the society in care giving services to the senior citizens. In India, the system of regular review of the status of the senior citizens by local authorities are absent whereas in Japan and UK a substantial role is played by the local authorities and the municipalities in finding out the status of the senior citizens in their area and thereafter apply effective remedy for their wellbeing. Having said that, the Apex Court in Ashwani Kumar vs. Union of India [42]had pointed out that social justice proudly forms a part in the Preamble of our Constitution signifying significance of form of justice in India. And accordingly, Article 39 it clearly states that no

42 Ashwani Kumar vs. Union of India, AIRONLINE 2019 SC 1002, (2019) 7 MAD LJ 81, (2019) 12 SCALE 125, (2019) 6 ALL WC 6156

person suffering economic necessity must be subjected to abuse by engaging them in avocation not suited to their age.[43] Moreover, Article 41 requires public assistance during old age. This clearly shows that the framers of the Constitution were thoughtful on the protection of the rights of the senior citizens in India and therefore we find direct mention on the protection of the aged citizens.[44] And on the other hand, the Constitution of UK and Japan do not have any direct mention on the protection of their aged population. However, Japan celebrates National Senior Citizen Day on every third Monday of the month of September, celebrating the contribution and significance of the aged population in their nation[45]. Unfortunately, the same celebration in lacking both UK and India which is desirous in recognition of contributions made by the elderly population.

43 The Constitution of India
44 The Constitution of India
45 Japan Senior Citizen's Council, "The Japanese Declaration of Human Rights of Older Persons", (2020) Available at http://www.nihonkouren.jp/pdf/pamphlet_eng.pdf (last visited on 7/11/2024)

# Exploring the Impact of False Charge of Rape on Human Rights: A Comprehensive Analysis

**Dr. Shahnawaz Sadiq***

*Abstract*

*This research paper delves into the intricate intersection of false charges of offenses particularly with regard to rape and human rights, aiming to provide a thorough examination of the legal and ethical dimensions surrounding this critical issue. False accusations of criminal activities can have profound consequences not only on the accused individuals but also on the broader human rights landscape. Rape is not only heinous crime, it also carries a social stigma not only for the victim but also for accused. Apart from violating right to life, liberty, reputation, the false accusation of rape have a deep psychological distress leading to anxiety, depression of the accused and in some cases suicidal thoughts. The accusation can affect the professional life causing loss to business. Loss of trust from family and society creates a sense of isolation and hopelessness. False accusation of offenses in general and of rape in particular violates right to life, liberty, livelihood, reputation and also impacts the overall administration of justice. This study seeks to unravel the complexities inherent in such cases, shedding light on the multifaceted impact on legal systems, individual liberties, and societal trust.*

***Key words:*** *False charge, Human Rights, Administration of justice,*

* Assistant Professor, School of Law, Lovely Professional University, Punjab.

## Introduction:

False charge of offenses can be defined as a situation in which an individual intentionally provides inaccurate or concocted statements or accusations against another person. This is frequently done with the aim of causing harm, pursuing personal advantages, or manipulating legal processes. False charge of offence not only leads to the violation of basic human rights and liberties of the accused but also erodes the public trust in the criminal justice system and ultimately to the broader concept of justice. The primary object of any legal system is to protect the innocent and punish the guilty, so that the justice may be done and order may be maintained in the society. The legal system in general and the criminal justice system in particular are meant for the protection of human rights. The core issue with the false charge lies in the violation of rights of the accused person. Accused person in a false charge is denied the right of fair trial and violating his right to life, liberty, privacy, dignity and physical safety, in short, the violation of his human rights. Individuals accused of rape face intense social exclusion, more so than those accused of other crimes. This exclusion extends beyond general societal interactions to include estrangement from family members. The psychological effect on a person falsely accused of rape is profound, often leading to attempted or actual suicide. This research paper aims to explore the impact of false charges on human rights, with a specific focus on false rape accusations. It will investigate the reasons behind the filing of false rape charges and the implications thereof.

**False charge:**

A false charge of offenses occurs when an individual deliberately makes an untrue and unfounded accusation by providing a false statement against another person. Section 248[1] of the Bharatiya Nyaya Sanhita (Penal Code of India) while declaring false charge as an offence says that, "who ever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing

1 Bharatiya Nyaya Sanhita-2023.Bharatiya Nyaya Sanhita 2023 replaced the Indian Penal Code-1860.

that there is no just or lawful ground for such proceeding or charge against that person shall be punished…".

False charge of an offence occurs when a person puts the criminal law in motion by making false initial allegation against any other person.The Supreme Court of India in *Santokh Singh &Ors. v. IzharHussan&Anr*[2]while commenting on section 211 of Indian Penal Code (corresponding section in new code is 248) said that, The term "false charge" should not be interpreted as providing false evidence as a prosecution witness during a criminal trial. Instead, it refers to the initial accusation that triggers the criminal investigation. The phrase "falsely charges" must be understood in conjunction with "institution of criminal proceedings." Both terms have similar meanings and should be interpreted together, as they inform and enrich each other's definitions. They appear to be used in a technical sense, consistent with established concepts in criminal law.

The Supreme Court of India in Himanshu Kumar v. State of Chhatisgarh3while reiterating the view held in Santokh Singh case held that the expression 'falsely charges' in section 211 of Indian Penal Code (corresponding section in new code is 248), refers to the initial accusation that triggers the criminal investigation, rather than the act of providing false testimony during the trial itself. A false charge must be made initially to someone in a position of authority—such as a police officer or an official capable of initiating appropriate legal action against the accused. Essentially, the false accusation should be documented in a complaint or a report of a cognizable offense. For a statement to qualify as a "charge," it must be made with the intent to activate the criminal justice process.

From the above cases the essentials of false charge can be summarized as:

I. The term "falsely charge" specifically relates to the initial act of accusing, directing the machinery of criminal investigation.

2 (1973) 2 SCC 406
3 (2023) 12 SCC 592

II. The false charge must be conveyed to a person in authority, capable of initiating punitive measures.

III. This accusation can be in the form of a complaint or a report of offense made to a police officer or a relevant authority.

IV. For it to qualify as a "charge," the statement must be made with the intent of triggering criminal proceedings.

The object of having "false charge" as offence is to deter the individuals so as to refrain them from filing unfounded cases against individuals driven by malice, revenge, or similar motives, without any just or lawful basis for such charges.

False charge of rape is a species of the false charge where an untrue allegation of rape areleveled against any person for any reason whatsoever. The false allegation of rape is different from the unfounded rape cases. The distinction between false allegations of rape and unfounded rape cases is important. Unfounded rape cases occur when factors such as delayed reporting to the police, insufficient evidence, lack of witness cooperation, or inconsistencies in the victim's account prevent authorities from making an arrest or securing a conviction. In contrast, a false allegation of rape involves reporting an incident of rape to the authorities that never actually occurred. So, the false allegation of rape would not include an incident where the authorities were unable to substantiate or corroborate a sexual offence due to any reason.

Different legal systems have differently dealt with the problem of false rape charges. Some countries have made false rape charges as distinct offence. Kenya has a law that specifically criminalizes false allegations of sexual offence. It says that, any person who makes false allegations of sexual offence against another person shall be liable to same punishment as the sexual offence complained of.[4] The punishment for rape under Kenya law is not less than 10 years but which may extend to imprisonment for life[5] and as per section 38, same punishment will be provided to anyone who accuses someone of false rape.

4 Section 38, Sexual Offences Act, 2006.
5 Section 3, Sexual Offences Act, 2006

Botswana in 2021 amended the panel law and made false charge of sexual offence as a separate offence. It provides that a person who knowingly makes false or misleading allegations of sexual offence against another person shall be liable to imprisoned for not more than 5 years.[6] In certain countries, there isn't a specific offence for false rape allegations, instead, such cases are addressed under the broader category of making a false charge. E.g. in India the false rape charge is punishable under section 248 of Bharatiya Nyaya Sanhita-2023 which says that "Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person" shall be punished. Further in some countries the false charge of rape may be dealt under the offence of perverting the course of justice which is a common law offence and carries sentence up-to life imprisonment e.g. United Kingdom. In *R v Beale*,[7] The accused in question repeatedly leveled false accusations of rape, which ultimately led to a legal investigation. As a result, she was convicted on three counts of perjury for lying under oath, as well as four counts of perverting the course of justice, indicating an intentional effort to disrupt the legal process.

**Factors leading to false accusation in rape cases:**

Rape remains one of the most intrusive offence and is most brutal violation of the dignity and person-hood of the victim. Not only is rape the most heinous and brutal offence which traumatizes the victim, it also carries a social stigma. Apart from the stigma attached to rape, the possibility of false accusation of rape cannot be ruled out and false charge of rape is made. The reasons for filing false charge can be numerous and can be divided into two categories-

Firstly, are those where unintentionally, a person gets framed into a false case e.g. being at the wrong place at wrong time. If any crime is

6 Section 168B, Penal Code
7 [2019] EWCA Crim 665

committed and you are by chance near to the spot of crime, your presence may make you automatically suspect and you may be framed for that crime. The other may be the mistaken identity, as the police generally relies on the statement of the witnesses and if any person has been mistakenly identified by any witness as a suspect then he may be charged for that offence. All these cases do not qualify to be an offence of false charge under any legal system. False charge as an offence must be made intentionally or knowingly in order to cause injury to the person against whom it is made. Section 248 of the Bharatiya Nyaya Sanhita (false rape charge is punished under this section as false charge of offence), lays down intention or knowledge on the part of the person instituting false charge as an essential ingredient of the offence of false charge. Section 168-B of the Penal Code Botswana provides that if any person makes knowingly false and misleading allegation against other to the effect that he has committed a sexual offence, commits offence under this section. In Botswana, it is an offense to knowingly make false and misleading allegations that someone has committed a sexual offense.Therefore, an innocent or mistaken false allegation is not considered a criminal offense.

Second categories of reasons are those where any persons is, intentionally or knowingly implicated for any crime he has not committed. This is what in law is known as false charge and is punishable. There may be number of reasons for framing a person in a false rape case. Eugene J. Kanin conducted a study titled as, "False rape allegations"[8] and cites three motive for the filing of the false rape cases. The three motives as per Kanin are Alibi, Revenge and Attention / Sympathy seeking. The alibi as a reason for filing false rape case is to cover up other behavior. E.g. a woman may file a false rape case against a person with whom she is in adultery in order to cover the behavior of adultery with him. In revenge case, according to Kanin the allegation is used to retaliate. In an infamous case a middle age woman filed a FIR

8 Kanin, E. J. (1994). False rape allegations. *Archives of Sexual Behavior, 23,* 81–92. Available at https://www.falserapetimeline.org/false-rape-1291.pdf visited on 2nd of march 2024

against her husband for making their daughter pregnant. She filed false lab. reports as proof and the case went for 6 years. After 6 years it was found that the case was false and the main motive for filing the case was to take revenge from the husband.[9] The third motive as per Kanin is attention or sympathy seeking where the rape is generally disclosed to near relatives and caretakers so as to seek their sympathy or attention. A woman Jemma Beale, 25 years old made a series of false rape claims and sexual assault allegations by stating that she had been sexually assaulted by six men and raped by nine and all were strangers in four different incidents. The woman has been found guilty for perjury and of perverting the course of justice after her claims of rape and sexual assault was found baseless.[10] The three motives given by Kanin are the most cited reasons for filing the false rape case but the list is not exhausted, there are number of other reasons as well for filing the false rape case.

A person may be falsely charged for an offence by another person in order to grab his/her property. The false cases for this motive are generally instituted by the close relatives as it becomes easy for them to grab the property when the person concerned is in jail. A woman in Madya Pradesh state of India has been awarded 10 years imprisonment by the sessions court for filing a false rape case in order to grab his property.[11] A 45 year old, widow, filed a rape case in 2017 against her nephew-in-law, so that she could grab his property. In 2019 the trial court concluded that the complaint was false.

**Effects of false accusation on Human Rights:**

Human rights are the rights inherent to every individual, regardless of whether they are explicitly recognized in a state's fundamental laws. These rights are universal and apply to all people, irrespective of

9 https://timesofindia.indiatimes.com/city/chennai/woman-sentenced-to-5year-term-for-false-case-blaming-husband-for-daughters-pregnancy/articleshow/107503666.cms visited on 20th of march 2024

10 https://www.theguardian.com/society/2017/aug/24/woman-jailed-10-years-false-rape-claims-jemma-beale visited on 15/05/2024.

11 https://timesofindia.indiatimes.com/city/indore/woman-gets-10-yrs-ri-for-false-rape-complaint/articleshow/104387863.cms

nationality, religion, caste, or gender. When a person is falsely accused of wrongdoing, their human rights are violated, as such accusations can lead to unjust treatment, social stigma, and significant harm to their dignity and reputation.

**The Right to Life** is basic human right and is essential for the enjoyment of all other rights. Right to life with dignity is enshrined in many legal systems and international human rights instruments. Article 21 of Indian Constitution provides that: "No person shall be deprived of his life or personal liberty except according to procedure established by law"[12], Fifth Amendment of the American Constitution provides that no person shall be deprived of life, liberty, or property[13] and Section 1 of the Fourteenth Amendment of the American Constitution provides that, "State shall not deprive any person of life, liberty, or property, without due process of law" [14], Article 9 of the International Covenant on Civil and Political Rights[15] protects the liberty and security of a person. Any person who is falsely implicated in any case and subsequently arrested and imprisoned experiences direct curtailment and violation of his liberty.

There are number of instances where the accused who have been falsely charged of an offenses particularly of rape have tried to end their life by suicide and in most of the cases succeeded. The newspapers are full of stories which reflect, how a falsely accused person in rape cases has ended his life.

On August 9, 2022, The Times of India published a story titled "Gurugram: 'Framed in fake rape case, 30-year-old dies by suicide." According to the report, a 30-year-old transporter from the Farukhnagar area purportedly took his own life after being accused and "framed" in a

12 https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf visited and retrieved on 6th April 2024

13 https://constitution.congress.gov/constitution/amendment-5/ visited and retrieved on 6th April 2024

14 https://constitution.congress.gov/constitution/amendment-14/ visited and retrieved on 6th April 2024

15 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights visited and retrieved on 6th April 2024

false rape case by a family in Alwar, Rajasthan.[16] The deceased had lent 3 lakh ruppes to the accused and was demanding the same back from the accused. Instead of returning the same, the accused got a fake rape case registered against the deceased. Unable to bear the mental harassment, the deceased hanged himself from the tree inside the premises of a primary school.

"Nagpur man dies by suicide on Facebook Live over false rape accusations"[17] The deceased was a 36-year-old man who was involved in a relationship with a 19-year-old woman. Following her sudden disappearance from her home, her family expressed concerns and alleged that he was responsible for her vanishing. The deceased live-streamed his suicide on Facebook, during which he claimed that the girl's family had threatened him with false accusations of rape unless he paid them 500,000 rupees.

"UP BJP worker attempts suicide by consuming poison over false rape allegation"[18] A leader of the BJP KisanMorcha in Moradabad, Uttar Pradesh, attempted to take his own life by consuming poison, alleging that he had been assaulted and wrongfully accused in a false rape case.

**Right to Liberty**: The right to liberty as provided above is as important as right to life and that is the reason why right to liberty is mentioned along with right to life under different legal documents.

Even if a person accused of false charge is not imprisoned still he may face bail conditions, movement restrictions and other forms of restrictions curtailing his liberty. The offence of rape generally being a cognizable offence and accordingly whenever a person is accused of rape is arrested by the police and put behind the bars violating his liberty.

16 https://timesofindia.indiatimes.com/city/gurgaon/framed-in-fake-rape-case-30-yr-old-dies-by-suicide/articleshow/93442362.cms visited and retrieved on 1st of January 24

17 https://www.financialexpress.com/india-news/nagpur-man-dies-by-suicide-on-facebook-live-over-false-rape-accusations/3243195/ visited and retrieved on 3rd of January 2024

18 https://www.indiatoday.in/india/story/up-bjp-kisan-morcha-worker-consumes-poison-after-facebook-live-session-temple-rape-allegations-2414217-2023-07-31 visited and retrieved on 25th of January

**Illegal Trial:** Every individual accused of an offense has right to a fair trial which encompassing various rights such as being informed of the charges, right to speedy trial, the right to legal representation, the ability to cross-examine prosecution witnesses, and the right to present defense witnesses etc. If someone is subjected to a trial based on false charges, it can be asserted that not only his right to a fair trial is violated, but he is subjected to an illegal proceeding. The right to a fair trial is associated with those who are facing genuine charges, and subjecting someone to a trial based on false accusations goes beyond the mere denial of a fair trial. In essence, an illegal trial not only infringes, the right to fair trial but goes beyond that and subjects a person to illegal trial.

**Right to Livelihood:** The right to livelihood encompasses the ability to earn a living through lawful means and maintain a standard of living adequate for health and well-being. The livelihood, whether derived from employment, business, or occupation, is crucial for the effective exercise of other rights. The Supreme Court of India in*Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors*[19] determined that the right to life encompasses the right to livelihood, and the government cannot deprive an individual of their livelihood without adhering to due process of law. When an individual is accused of an offense, it often results in the loss or negative impact on his job, business, or occupation, he may be suspended or terminated from his jobs, especially in professions requiring a clean legal record. Defending oneself against charges can be financially draining, diverting resources away from basic living needs and being embroiled in legal battles often requires time away from work, leading to loss of income and financial instability. In cases where the accusations are genuine, the associated repercussions on employment or business may be deemed as necessary consequence. However, when the accusation is false and lead to job or business loss, it becomes a matter of community concern and violates the right to livelihood of the person concerned.

19 1985 SCC (3) 545

**Right to Reputation:** Right to reputation is right of a person to enjoy good opinion and is a part of himself like his body or limbs are. The importance of right to reputation can be understood by the fact that right to free speech is restricted in order to protect the reputation, as defamation being a civil or criminal wrong or both in almost all legal systems. Article 12 of Universal Declaration of Human Rights protects individuals against the attack on their honor and reputation[20] and Article 17 of International Covenant on Civil and Political Rights also safeguards the individuals from unlawful attack on honor and reputation[21]. False charge of offenses in general and of rape in particular leads to social ostracism, loss of community standing, and damage to personal relationships.

Individuals facing false charge are denied of fair trial, violation of privacy, dignity, threat to physical safety and as such violation of human rights. This situation can cause extreme psychological harm, which may lead to actions such as suicide and mental illness. Even after a person is absolved of all false charges, the psychological impact of facing an illegal trial remains there.In addition to the infringement of human rights, false charges detrimentally impact the overall administration of justice. The fabrication of charges results in a waste of time and financial resources of the state. The fact that investigative authorities and courts are already grappling with a significant backlog of cases, the false charges further overwhelms the system. As a consequence, the administration of justice becomes inefficient, as the legitimate cases that demand attention, time and consideration are often deprived of that. There is delay in genuine cases and as such justice delayed. Yet another consequence of false charge is that the genuine victims may be deterred to report the cases as they may feel that they may not be believed.

20 https://www.un.org/en/about-us/universal-declaration-of-human-rights visited and retrieved on 6th April 2024

21 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights visited and retrieved on 6th April 2024

In the case of *R v Eleanor Williams*,[22] the court emphasized that making false rape accusations is a serious offense that undermines the integrity of the justice system. The court highlighted that such allegations can significantly harm the administration of justice, as they create an environment of distrust. Furthermore, the court warned that the increasing prevalence of false accusations could discourage genuine victims from coming forward to report their experiences. This not only impacts the victims but also poses a risk of diminishing public confidence in legitimate claims, leading to a culture where serious allegations may be met with skepticism rather than the appropriate attention and support they deserve.

**Conclusion:**

In conclusion, it is evident that false accusations of offenses, particularly rape, significantly violate the human rights of the accused. Such accusations can tarnish a person's reputation, infringe on their privacy, and lead to violations of their life and liberty. Additionally, they can result in professional setbacks and cause profound psychological distress for those wrongfully accused.False charges not only harm individuals but also undermine the integrity and efficiency of the legal system, as public trust may diminish when people see the legal framework as susceptible to misuse. While protecting victims of sexual offenses is an essential and overarching goal of any legal system, it is equally important to ensure that individuals are safeguarded from the injustices that arise from false allegations. Balancing these two priorities is crucial to maintaining a fair and just legal environment where both victims and the accused receive the respect and protection they deserve.

22 https://www.judiciary.uk/wp-content/uploads/2023/03/R-v-Eleanor-Williams-sentencing.pdf visited and retrieved on 11th March 2024

# The Culture of 'Hijab': A Justiciable Freedom of Expression or Arbitrary Denial of Educational Rights of Muslim Women in India

**Dr. Amruta Das***
**Reetesh Kumar Jena****

***Abstract***

*Ideals of secularism in Indian democracy allow individuals to freely profess, practice, and propagate their religion without any fear of being discriminated against or barred from exercising the right to education. The cultural practice of wearing a hijab symbolizes an individual's freedom to choose one's religious belief. The practice of 'Hijab' is considered as a social fact. It is often questioned to be an "essential religious practice." But by no means could such expression of freedom be curtailed just in the name of protecting students from discrimination by disclosing any religious affiliations. In numerous instances, the judiciary demonstrated a balancing approach to uphold the validity of the 'Hijab' in the frame of constitutionality, public interest, and communal harmony. The paper intends to interpret different tests and review measures adopted in handling instances of conflict between religious practices and fundamental rights, and analyse 'hijab' as a barrier to access to education.*

**Keywords**: Hijab, Religious Practices, Essential, Education, Muslim, Constitution

---

* **Associate Professor,** SOA National Institute of Law,Siksha 'O' Anusandhan (Deemed to be University), Bhubaneswar, Odisha, IndiaEmail- amrutadas@soa.ac.in

** **Ph.D. Research Scholar,** SOA National Institute of Law,Siksha 'O' Anusandhan (Deemed to be University), Bhubaneswar. Email- reeteshjena94@gmail.comMob- (+91) 7008363971 Address- SNIL, SOA (Deemed to be University), Campus 4, Shampur, Kalinga Nagar, Khandagiri, Bhubaneswar, Odisha, India. Pin- 751003

## 1. Introduction

'Hijab' is an Arabic term that denotes covering, hiding, or closure. Its etymology can be traced back to the Arabic verb "Hajaba" which encompasses the concept of concealing. It is commonly understood as a headscarf worn by Muslim women and essentially forms a component of their everyday attire, which is typically intended to cover the body. At the same time, 'Hijab' carries great significance for the community as it symbolizes faith, modesty, privacy, and religious identity, rather than just being a piece of cloth. The concept of the Hijab is deeply rooted in Islamic teachings, their religion, culture, and traditions. Wearing a Hijab protects women from unwanted attention and serves as a form of empowerment, enabling them to assert their autonomy and challenge societal norms. It is an essential component of their cultural legacy and social living.

In Islamic teachings, beliefs hold that God commanded women to wear a Hijab to become mode stand to redirect the attention of men from the materialistic world towards the spiritual realm of God. Donning a Hijab and other outfits like the chador, burka, orniqab, is often misunderstood as a required Islamic custom. A Hijab may be referred to as a veil. Islam holds that it servesboth as ethical for women to cloth themselves and to safeguard their modesty. The historical proportion of the Hijab can be tracked down from the early phases of Islam and the teachings of the Quran and Hadith. The opening of the Hijab of the verses quoted from the Qur'an is as follows:

"*And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for the necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all*

*over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.)*" (al-Nur 24:31).[1]

Yet the practice of veiling, often referred to as Hijab is not among the five pillars of Islam. Additionally, both the Quran (the sacred book of Islam) and the Hadith (the customs or sayings of the Prophet)have ambiguity on appropriate attire.

Long before the emergence of Islam in the seventh century, the practice of veiling was already in existence. Conflicting interpretations of theHijab as a fabric and other types of veiling have developed over time and place. Even inthe twenty-firstcentury,some people consider the Muslim women who desire to wear a veil as uneducated, downtrodden, or politically radical. However,wearing a veil can bemarked off as an ideogram of devotion, cultural tradition, freedom of religion, or personal seclusion. The traditional significance of the Hijab enables women to be judged basedon their character and intellect rather than their physical appearance giving them a sense ofliberation and self-confidence. Wearing a Hijab appears to be more prevalent in the southern states of India.A majority of Muslim women wear a burqa covering their entire face. About 64 percent of women wear a burqa, 12 percentof women wear a niqab and 8 percent of women wear Hijab in India.[2]Prof. Leila Ahmed expresses the capacity of the Hijab which can be used to express protests against the opinions of the majority, to turn its wearers into a dissenting minority, expressing their heritage and values, and to challenge the injustices and inequalities of the society at large.[3]

1 FatmaYoldasand AdemUysal, "Determination of the Factors Affecting Hijab Clothing in the Relationship Between Fashion and Consumption", 14 *Journal of Academic Approaches*145 (2023).Doi: 10.54688/ayd.1268829.

2 "Religion In India: Tolerance And Segregation', *Pew Research Center*, June 29, 2021, available at <https://www.pewresearch.org/religion/2021/06/29/religious-clothing-and-personal-appearance/> (last visited on June 25, 2024).

3 Liela Ahmed, *A Quiet Revolution: The Veil's Resurgence, from the Middle East to America* (Yale University Press, New Haven, 2011).

## 2. Hijab: A Cultural and Religious Symbol

The practice of veiling has historical roots in ancientcivilizations, where it was common toconceal one's adornments and practice modestyacrossdiverse cultures. This headscarf worn by Muslim women carries a significant historical background and bears cultural significance across different regions and times. The Hijab represents a symbol of identity, modesty, and women empowerment for countless Muslim women around the globe, going beyond its religious obligation.

The cultural relevance of theHijab can be witnessed in different regions of the world. It is more than just a cloth; it is a practice that indicates personal beliefs and cultural traditions. In certain countries like Saudi Arabia and Iran, women wear the 'Abaya' or 'Chador', which are loose-fitting outer cloththat envelopes the whole body. In other regions, like Turkey and Indonesia,local traditions and customs are reflected in a headscarf, with various styles and materials.[4]Wearing the Hijab is a highly personal choice. The decision to wear the Hijab is rooted in an individual's religious belief and preference to adhere to Islamic principles.[5] The Hijab represents a woman's devotion to her religious faith and beliefs. It also expresses her determination to manifest modesty in her appearance within Islamic principles. Such a practice enables women to pompously affirm their agency, urging respect and acknowledgment for their religious convictions and cultural heritage. It continues to be a conservative symbol central to the identity of Muslim women. A strict interpretation of

4 "Exploring the History and Cultural Significance of the Hijab", *Medium,* June 1, 2023,available at <https://medium.com/@rawdatalhijab/exploring-the-history-and-cultural-significance-of-the-hijab-13f90f9d481a> (last visited on March 30, 2024).

5 "Why Do Muslims Wear Hijabs? (Cultural Practice)", *TAG VAULT*, November 18, 2023, available at <https://tagvault.org/blog/why-do-muslims-wear-hijabs/> (last visited on April 2, 2024).

Islamic law across many countries makes Hijab a mandatory norm in public places.

Simultaneously, the Hijab is no more confined to personal belief, but rather a larger dialogue of Human rights. In the recent past, a global surge of activism has been witnessed across various Universities by students over any particular version of religious expression or nationalism. Perception of the 'Hijab' or headscarf is associated either with free choice of culture or with compulsion and public intolerance. As the ambit of the Hijab is a matter of controversy on many fronts be it personal or public, it is investigated with caution.

**3. Hijab: A Constitutional and Legal Right**

The right to adequate clothing or the right to clothing is acknowledged as a basic human entitlement a cross numerous International Conventions and moreover, it serves as a part of the right to an adequate standard of living as sighted under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976. Further, this right is simultaneously recognized under Article 25 of the Universal Declaration of Human Rights (UDHR),1948.

Under the Indian Constitution, Article 21 outlines the provisionfor the protection of rights and personal liberty and expresses that, "*No person shall be deprived of his right to life or personal liberty except according to the procedure established by law*."Additionally, it is specifically established by the ruling in ***Justice K. S. Puttaswamy v. Union of India***[6], that decisions made in public, like one's religion or the clothes one decides to wearare part of one's basic right to privacy. The notion of privacy being a fundamental right includes decisional privacy. In concert with this, freedom of clothing or attire encompasses a core dimension of peculiarity. Furthermore, in ***NALSA v. Union of India***[7], the Apex Court settled the right to clothing of own option within the ambit

6 AIR 2017 SC 4161.
7 (2014) 5 SCC 438.

of the freedom of expression under Article 19(1)(a) by expanding its scope. Thus, forbidding someone from expressing their belief and style of dress infringes the fundamental rights warranted under Article 19(1), and Article 21. Since Sikh turbans, Christian crosses, and Hindu necklaces can be worn freely, the Hijab controversy raises concern about the right to equality ensured under Article 14 of the Indian Constitution.

Right to religion too weighs its significance in one's life and way of living. Every citizen is entitled to exercise and propagate one's faith; unless it does not intervene or degrade the religion of others. The liberty to exercise the faith of an individual is a fundamental prerogative guaranteed by the Indian constitution with reasonable restrictions. However, the history of instances of imposition of 'dress code' banning the practice of religious dictates like hijab, burka, niqab, scarfs, caps, bracelets/kada, kirpan, etc., and any kinds of badges, etc. remains a matter of public debate and judicial scrutiny from time to time. It is also closely associated with access to many freedoms and hence, a necessary discussion ofthe educational rights of individuals.

***a) Right to Religion and Right to Hijab:***

The Constitution of India outlines the provision for freedom of religion. Simultaneously, freedom of conscience and free profession, practice, and propagation of religion are warranted by Article 25 of the Constitution. In tune with this legislative intent, Article 26 secures the freedom to manage religious affairs, however subjectto health, morality, and public order. India being a secular nation embodies the principle of Universal brotherhood and respects all religions alike, and in its preamble vision under theforty-secondAmendment to secure it as a fundamental right. It asserts equal freedom to every religious community to uphold and promote their respective sacramental beliefs and faith. In ***S.R.***

***Bommai& Others* v. *Union of India & Others***,[8]the nine-Judges bench upheldthat,the practice of any religion is not prohibited under the Constitution, either in private or in public and therefore, it is the right of a Muslim woman to wear a 'Hijab' as a component of their cultural and religious custom.

Wearing 'Hijab'has always been an integral element of the identity of Muslim Women and is enumerated in their religious scriptures. In ***Shaheena& Another* v. *State of Karnataka & Others***[9], it was asserted that Verse 26 of Chapter 7, Verse 31 of Chapter 24, and Verse 59 of Chapter 33 of the Holy Quran have enough evidence that in the Islamic faith covering one's head with a headscarf is an integral aspect of their religious identity. Additionally, supporting claims would be validated through various landmark judgments of other High Courts.

***b) Right to Hijab vis-à-vis Right to Education:***

Access to education in India has been a privileged right for a few sections of society. In the patriarchal norms of society, the right to education is categorically denied to women. Education is like a lightened lamp in a dark room, and the mainstay of all-around development. Educational institutions are considered as the temples of learning that stand in the need for discipline to be kept alive between the teacher and the pupil. The primary aim of educational institutions must be to impart education to the pupils.[10]Even in the wake of modernization and liberalization, education for girls seems to be a distant dream in certain rural or underdeveloped areas and among backward communities.

In the twenty-first century too, the gender gap remains widely visible even in the presence offundamental right guaranteed under Article 21A securing free and compulsory education for children

8 AIR 1994 SC 1918.
9 Shaheena v. State of Karnataka, Writ Petition No. 3038 of 2022.
10 The Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717.

from 6 to 14 years.In ***Unni Krishan v. State of Andhra Pradesh***[11]**,** the Hon'ble Apex Courtcategorically held that *the right to free and compulsory education for children between theagesof 6 to 14 years is a fundamental right as stated in Article 21*. The proposition that, every student is entitled to the right to education without any form of prejudice can be emerged after conjoint reading of Article 21, Article 21A, and Article 15 of the Constitution of India. International Conventions also outline the provisions for the right to education as a basic entitlement.[12]It was commented in the Gopal Singh Committee, 1983 report that the Muslim minority can be classified as a backward community primarily due to their extremely low socio-economic status, dismal educational record, and high percentage of dropouts at the stage of elementary education, especially among Muslim Women.[13]Further, in the Sachar Committee's study of parameters of socio-economic development, education is the domain where the minority community is found to be lagging far behind due to lack of access to educational facilities, especially, higher education.[14] All India Survey on Higher Education, (2014-15) has reported that14 percent of India's Muslim population accounts for only 4.4 percent of students in higher education.[15]Moreover, education being the component of a nation's economic development and progress,the Apex Court in ***Mohini Jain v. State of Karnataka***[16] asserted the right to education as a core element of the right to live

11 (1993) 1 SCC 645.

12 The Universal Declaration of Human Rights, 1948, art. 26, also see The International Covenant on Economic, Social and Cultural Rights, art. 13 and art. 14.

13 AmitA.Pandya, *Muslim Indians Struggle for Inclusion*14 (STIMSON, Washington DC, 2010).

14 Government of India, "A Report on Social, Economic and Educational status of Muslim Community of India" (Ministry of Minority Affairs, November 2006).

15 Almas Ahmad, "Education, Citizenship and Democracy",*CSPS*, available at <https://cspsindia.org/education-citizenship-and-democracy>(last visited on August 17, 2024)

16 AIR 1992 SC 1858.

with dignity guaranteed under Article 21 which needs to be essentially made available for all persons even exceeding fourteen years such as pre-university education imparted in colleges and universities. Also, it cannot be denied that Indian society suffers from cultural dogmatism and dominance of patriarchal values across diverse religious communities which discriminates education over gender. Hence, further restrictions by educational institutions with regard to 'uniform' particularly on Muslim girls for whom getting to the school gates was never an easy task is adding more challenge to their lives. Education for girls still feels like a dream in certain rural areas and among backward communities.

The Hijab controversy emerged when there was a closing of gates to education, where six Muslim girls wearing the Hijab were denied entry into the classroom of the Government Pre-University College in Udupiin the state of Karnataka. They were further instructed to follow the guidelines provided by the college concerning that of uniform. This incident subsequently snowballed to other educational institutions in that state. The Karnataka Govt. declared for closing of educational institutions for three days to control the situation. By the end of February 2022, over sixty-four colleges situated in twenty-four districts across Karnataka closed the gates of their institutions to hundreds of students wearing the Hijab.[17]Such a discriminatory incident was also noticed earlier during the last decade in Bantwal, Mangalore, Moodbidri, and other districts, which either debarred or opposed Muslim women students donning the burqa or hijab.[18]This present matter in hand on 'Hijab' as a uniform in educational institutions is a concern of cultural and legitimate scrutiny.Earlier,Muslim women's freedom

17 "Closing the Gates to Education: Violation of Rights of Muslim Women Students in Karnataka", PUCL- Karnataka, February 4, 2023, available at <https://pucl.org/wp-content/uploads/2023/05/PUCL-K_Closing-the-Gates-to-Education_Feb42023.pdf>.

18 Fatima Juned, "Hijab-Ban, Right to Education and Question of Agency of Muslim Women", *SPRF*, March 31, 2022.

to choose a uniform in the form of the Hijab was justified in the earlier case of ***Nadha Raheem v. C.B.S.E.***[19], wherein the **Central Board of Secondary Education (**CBSE) prescribed a Dress code (half-sleeve kurta or salwar) for the competitive examinations of All India Pre-Medical (AIPMT)/Pre-Dental Examinationswas criticized by Muslim women to be prejudicial to their religious custom of wearing a headscarf and full sleeve dresses. However, the administration sought it appropriate to impose such measures to check ingenious methods of malpractice. Justice Chandran noted the reality of Indian culture but did not draw any observation or conclusion over the 'Hijab' being an essential component of religion or not.[20]The very next year,a similar issue gathered momentum before the Kerala High Court on the same AIPMT examination conducted by CBSE in ***Amnah Bint Basheer and Another*v. *CBSE, New Delhi & Another.***[21]Following its earlier precedent, this right of donning a Hijab was held to constitute "essential religious practice" and the judiciary upheld that,a woman's right to choose her attire based on religious injunctions is a fundamental right safeguarded under Article 25(1) of the Constitution of India, when such uniform is an essential component of their religious faith. However, it did not quash the CBSE Rule prescribing dress code in the AIPMT of 2016.[22]In the continuing saga of dilemma and neglect on this critical issue, the Apex Court was called out to settle the matter in 2018 involving a petition filed bythe minor female students of a school in

19 2015 SCC OnLine Ker 21660.

20 BhumikaIndulia, "To Wear or Not to Wear? Precedents On Dilemma Of Wearing 'Headscarf' From The Kerala High Court", *SCCTIMES*, February 16, 2022, available at <https://blog.scconline.gen.in/post/2022/02/16/to-wear-or-not-to-wear-precedents-on-dilemma-of-wearing-headscarf-from-the-kerala-high-court/> (last visited on March 5, 2024).

21 AIR 2016 Ker 115.

22 Paras Nath Singh, "Ban on Hijab Flies inthe Face of Legal Precedents", *THE LEAFLET*, February 6, 2022.

***Fathima's*case**. This case adopted a different approach to fundamental rights and as this case was factually varying from previous cases in terms of it being a private institution and no state interference was done, The Court observed that; *"if the dominant interest was not allowed to prevail, subservient interest would march over the dominant interest resulting in chaos."*Thus, all earlier precedents were overruled with the observation that, in a private institution, students cannot insist on a specific dress code.It was also attended with criticism that one isat liberty to adhereto his own notions and convictions regarding dress code. At the same time, the court is under obligation to weigh the conflicting Fundamental Rights and resolvethe issue accordingly, when a private entity is targeted by asserting such a right and when such entity possesses an equal right to manage and administer its institution[23].

There have been controversies and debates over recognizing the ambit of freedom of expressionguaranteed under Article 19(1)(a) involving individual liberty towards religious preferences**.** Often there is a dichotomy over understanding what liberty is and what entails the extent and scope of'freedom'.In light of the right to education and the right to religion, there seems no controversy as these rights are complementary and cohesive toeach other. But in a country like India, with multiple religious communities and diverse religious beliefs, politicaltensions and moral policingare often witnessed in some other form. Under these challenging circumstances, the basic human right to a dignified life with fair access to education is a justified claim for every individual.

*If Muslim girls with Hijab are not allowed into educational institutions, is their right to education not being veiled?*The answer to this question has been addressed in the complaint filed by girls from different public University colleges of Udupi. In a series of writ petitions filed against the Karnataka Government's

23 FathimaThasneem v. The State of Kerala, WP (C). No. 35293 of 2018.

Directive (datedFebruary 5, 2022), the Hon'ble High Court of Karnatakaaddressed underlying issues on 'the right to Hijab' in the case of ***Resham* v.*State of Karnataka.***[24]The verdict released on March 15, 2022, dismissed a challenge to the Government Order of February 5, 2022 which mandated uniform across Pre-University schools and colleges. The concerns raised were;

a) Whether or not,Hijab was an essential practice of Islam? and;

b) Whether or not, Hijab should be prohibited in educational institutions?

Addressing these issues, theCourtsuitably observed that, Hijab does not fall within '*an essential practice'* of Islam, but a cultural practice of Islam and the fundamentalfreedom of speech and expression warranted under Article 19(1)(a)of the Constitution of India was not transgressed by the banning on wearing a Hijab in public schools. The Hijab could be considered directory rather than mandatory, and therefore does not qualify to be an "*essential religious practice"* (ERP) in Islam which is indicative of the fact that, the choice to weara Hijab isbeyondthe domain offreedom to practice, propagate, and profess religion conferred under Article 25.[25]

The above verdict, however, undermined the petitioners' rights and a series of appeals were preferred before the Apex Court**.** The "Hijab Ban" case soon spiraled controversial and diametrically opposite views widening the scopetowards a desired precedent. In***AishatShifa** v. **The State of Karnataka,***[26]the two judges'bench had conflicting and opposing opinionswhich further added to the dilemma. A gamut of additional issues emerged

24 2022 SCC OnLineKar 315.

25 Gautam Bhatia, "Ends Over Means on Dhulia J.'s Circumvention of the Essential Religious Practices Test In the Hijab Case", *Constitutional Law and Philosophy*, August 2, 2024, available at <https://indconlawphil.wordpress.com/tag/essential-religious-practices-2/> (last visited on August 5, 2024).

26 2022 LiveLaw (SC) 842.

raging from a) the right to practice own religion, equality, right to access to education, right to speech, right to privacy including the right to dress with dignity; and b) interpretation of reasonable restrictions of fundamental rights.The Government Orderwhich stems from Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 was argued to be justified on the ground that there was only a prescription for a 'religion-neutral' uniform. It is not anti-minority, because the State governments run many welfare schemes in the interest of the community. Also, Article 30 of the Indian constitution does not intend to offer absolute terms and if needed needs regulation. Moreover, educational institutions need to be secular and cannot encourage religious symbols.

But, in determining the constitutionality of the order, the Apex Court preferred to adopt a balancing approach to settle this contentious issue of "essential religious practice" via the lens of any socio-cultural temperament as well as guaranteed constitutional rights.

***Application of test of "Essential Religious Practice" (ERP)***

The test of "*Whether all religious practices are integral to the religion*?" was once again mooted for interpretation in the current case, which has earlier been put to test for the first time in 1951 in***State ofBombay v. NarasuAppa Mali,***[27]wherein the judiciary observed that any issues having relevance to personal law or religion encompassing religious customs or practices shallnever be included within the realm of fundamental rights.Hence, the term "laws in force" as employed in Article 13 of the Indian Constitution excluded the personal laws by effectually suggesting that these laws of religion, etc. need not undergo any test of constitutionality i.e.fundamental rights[28]. Although the Court

27 AIR 1952 Bombay 84.

28 Murali Krishnan, "The beginning of the end of 67-year-old NarasuAppa Mali and atale of two judges", *Bar and Bench*, September 28, 2018, available at <https://www.barandbench.com/columns/end-67-year-old-

refrained from making any strong suggestion, in the landmark judgment in ***Shirur Mutt*** **Case,**[29] the seven judges bench of the Apex judiciary asserted that"the Constitution protects religious practices unless they conflict with public order, health or morality". It also interpreted the legitimate ambit of States' regulation of religious activities under Article 25(2) of the Constitution, but such determination as to which activities would constitute essential religious practices was left with the judiciary.

A well-settled principle of law is that the analysis of ERP is undertaken only if rights conferred under bothArticles 25 and 26 are in issue,but thescope for analysis of an ERP is negatived where the rights conferred under both Articles 19(1)(a) and 25(1) are in issue. Moreover, this test is specific to resolve only disputes of a particular nature i.e. where customary practices like observance of rituals or customs of religion, sect,etc. urge protection from unreasonable meddling by the State. The present controversy primarily sets to interpret the lawful exercise of freedom of expression warranted under Article 19(1)(a). Such a question of law is not a new challenge for the judiciary, yet requires further review in light of the dynamicof rights and choice.

India being home to diverse religious communities and sectsoften grapples with these contentious issues, may it be onexclusion of women from dargah[30]or system of triple talaq[31], religious conversions,[32]wearing a turbanor a religious braceletor pendent (amulet, cross, or any symbol of God), etc. As because religious appearances are community and region-specific; these must be left to individual's liberty and preferences rather than

narasu-appa-mali-tale-two-judges-supreme-court-sabarimala> (last visited on August 5, 2024).

29 Commissioner, Hindu Religious Endowments, Madras v. Shri LakshmindraThirthaSwamiar of Shri Shirur Mutt., 1954 AIR 282.

30 SafiaNiaz v. State of Maharashtra, AIR 2017 (NOC) 45 (BOM.).

31 ShayaraBano v. Union of India, AIR 2017 SCC 1388.

32 Rev. Stainislaus v. State of Madhya Pradesh, (1977) 1 SCC 677.

being judged until itaffects public order or the larger interest of communal harmony.

The judgment in ***AishatShifa v. The State of Karnataka***[33] witnessed a divided analysis in the ratio of 1:1 over claims of elements of ERP.Hon'ble Justice Hemant Gupta opined thatthe sole intent and object of thedirectivewhich forbids the wearing of a Hijab is to uphold uniformity within the school through the adoption ofa prescribed uniform.Hence, it is justifiable and reasonable as it has the efficacy toregulate the freedom of expression warranted under Article 19(1)(a). The proscription on wearing of Hijab is not an infringement of rights by the State. Further, students are not denied free ingress into the classrooms by the State.Donninga Hijab is a voluntary deed of the students and does not violate Article 19, Article 29 or any other rights. Also,Government-run schoolshave the authority to prescribe a uniform that is within the mandate of the Karnataka Education Act,1983 and it cannot be said to be arbitrary.

At the same time, givingaccord to one religious community, to put on their religious symbol in any Government or Government-added schools would be antithesis to secularism. In fact, the school dress codefostersa sense of uniformity and equality among pupils within school premises. Furthermore, the right to enter intoa secular school wearing a Hijab cannot beclaimed as a matter of right, although theyhave the freedom to profess their religion beyond the school premises.

***Theory of Reasonable Accommodation:***

On the contrary, Hon'ble Justice Sudhansu Dhulia was of the opinion that,asking girls not to wear a Hijab and to take off the same before entering into the classroom or school premises is an invasion of their privacy. It undermines their dignity and eventuallydenies them access to secular education. On the question, of whether 'Hijab' falls under the category of "*essential*

33 2022 SCC Online SC 1394.

*religious practice*", he opined that it is a choice or preference under the Constitutional purview and hence, may or may not be a matter of ERP but, it shall be a matter of belief, conscience, and expression. If one wishes to wear a Hijab in the classroom, she cannot be denied so to do.[34]The court clarified that conscience is an internal belief whereas religious expression is an outward display of religion. Banning of Hijab violates the fundamental rights guaranteed under Article 19(1)(a), Article 21, and Article 25 of the Constitution, and therefore, there shall not be any constraint ondonningthe Hijab anywhere within the educational institutions,and noted:

"*it does not appeal to my logic or reason as to how a girl child who is wearing Hijab in a classroom is a public order problem. To the contrary, reasonable accommodation, in this case, would be a sign of a mature society which has learned to live and adjust with its differences".*[35]

The test of ERP can be specifically denied of its application in cases where the practice is mostly an assertion of citizens' rights against the State. Moreover, it needs to be apprised that, women do not question the constitutional validity of a religious practicebecause it subverts them, but are in the quest for autonomy to choose and not just under the dictate of the State.

***Question of Essentiality v. Proportionality***

The ongoing fallout of the Hijab ban incident, it must be asked; *if access to education is allowed with conditions over observance of certain secular standards of uniform, is it a justified restriction or an unreasonable restriction?* After a thorough analysis and judicial scrutiny, it could only be suggested thatthe test of essentiality as well as proportionality review must be undertaken diligently. However, the judiciaryseems to have

35 AishatShifa v. The State of Karnataka, 2022 SCC Online SC 1394.

stepped over the rule of 'proportionality' which suitably applies to settle two or more colliding legitimate rights to ultimately decide upon one right prevailing at the expense of another.[36] With a half-settled precedent and feeble stand of the Court, politicization and unrest are expected to erupt in the future with people's representatives molding their private interests of vote bank over the larger secular interest of India in the continuing complex socio-cultural dynamics of India.

***Impact***

In the aftermath of the split verdict, there are still unsolved queries about the validity of the Hijab and its justification for banning in educational institutions. The case in hand is now posted before the Hon'ble Chief Justice of India for hearing by a larger constitutional bench. In the meantime, reports have suggested that with the split verdict of the Hijab-row, the state of Karnataka witnessed a rise in the instances of circumscription on the fundamental right to education. Post the directive and judicial verdict, there were significant ramifications to this "de-facto" policy of banning the hijab. Over a question enquired by MLA Sowmya Reddy on September 22, 2022 on total drop-outs girls who wear Hijab (between the ages of 6 to 18 years), the Ministry of Primary and Secondary Education furnished constituency-wise statistics with around 1010 students, quitting schools either because of Hijab ban or allied reasons.[37]Even across adjoining districts like Shivamogga, Hijab-wearing students of Karnataka Public School went backhome following the denial of entering the school. Similar events have been documented in Indavara in Chikkamagaluru taluk, Belur in Hassan district, and Shiralakoppa and Shikaripur in Shivamogga district. Furthermore, protests have

36 Tomas Sobekand Josef Montag, "Proportionality Test", *SPRINGER LINK*, March 21, 2018.

37 "Closing the Gates to Education: Violation of Rights of Muslim Women Students in Karnataka", PUCL- Karnataka, February 4, 2023, available at <https://pucl.org/wp-content/uploads/2023/05/PUCL-K_Closing-the-Gates-to-Education_Feb42023.pdf>.

broken out in various places of the State against Muslim girls wearing hijabs, causing concern among the students.[38]

Following the Karnataka incident, the Hon'ble High Court of Bombay was confronted with similar contentious issues recently raised in the case of ***Zainab Abdul QayyumChoudharyv. ChemburTrombay Education Society's.***[39]In the judgment delivered on June 26, 2024, the court dismissed the Hijab as ERP under Article 25 and upheld a ban imposed by the ChemburTrombay Education Society' on the Hijab inside the college campus keeping in view the 'larger academic interest.' Clause 2 of the notification stated:

"*You shall follow the college dress code of formal and decent attire which shall not reveal anyone's religion such as No Burkha, No Nakab, No Hijab, No Cap, No Badge, No Stole, etc. Only full or half shirts and normal trousers for boys and any Indian/ Western non-revealing dresses for girls on the college campus. Changing room available for girls*".

Further, the Court was of the view that the instruction towards the prescribed'dress code' is justified in the light of the right of the Collegeadministration to administer under Article 19(1)(g) and Article 26 of the Constitution. Moreover, there is no infirmity in disciplinary instruction for students. Therefore, it doesn't violate Article 19(1)(a) and Article 25.

In the absence of any conclusive stand by the Apex Court earlier in the 2022 case, the Bombay High Court too could not appreciate the need and ambit of religious freedom. Allowingdiscipline over freedom of clothing is certainly a constitutional safeguard, but, no attempt by the Court towards re-

38 Rebecca Rose VargheseandVignesh Radhakrishnan, "Hijab Row: Why the Ban is a Double Blow to Muslim Girl Students", *THE HINDU*, March 13, 2022, available at<https://www.thehindu.com/data/data-hijab-row-why-the-ban-is-a-double-blow-for-muslim-girl-students/article65066546.ece> (last visited on June 10, 2024).

39 Zainab Abdul QayyumChoudhary v. ChemburTrombay Education Society's, W. P. (L) No- 17737 of 2024.

evaluating or rephrasing the language of notification,and just a plain acceptance of the contention that, 'religion has no place in public spaces', seems a little unsatisfactory.

These instances of bigotry would substantially escalate the learning gap between Muslim women students and their classmates. Amidst this parallel interpretation, the practice of 'Hijab' appears to be more of a form of religious expression and hence be seen as a preferable religious practice among Muslim women.

**4. Conclusion and Suggestion**

India is a country with religious and cultural diversity. Discrimination based caste, race, color, and gender has always been a debatable topic in the country. For a diverse country like India, it emerges as a challenge to attain social justice. Unfortunately, the issue of Hijab has been politicized. University environments are critical in fostering a sense of solidarity among diverse religious and cultural communities of the nation and encouraging the value of fraternity among students along with a common understanding of the indispensable value of dignity. The decision of educational institutions over 'dress code' or 'uniform' must not violate the fundamental right to education. Implementation of the 'right to equality' among communities, diverse castes, and religions is a complex equation and needs appropriate caution while deciding on matters of such disciplinary measures, either with respect to enforcement of dress code or facilitating any cultural and religious rights of minority communities.

In framing suitable legislative or administrative policies, conflicting freedoms of different sections of the society need a balancing approach to ensure equitable expression of fundamental rights such as freedom of expression, right to education, etc., and States' initiatives towards maintaining public order and principles of the Constitution. Moreover, India's effort towards women empowerment as an element of social justice can be achieved by

barrier-free access to education while ensuring adequate safeguards against any arbitrary interference either by any private institutions or government functionaries of the State. In other words, religious freedom seeks state neutrality and equality before the law. At this juncture, the principle of reasonable accommodation is suitably called out to fill in the controversies and any constitutional gaps in the policy framework to see the feasibility of the co-existence of individual liberty as well as State's discretionary power. The interventionist approach of either the State or any Institution should be evaluated on measures of primacy of interests of parties in case of conflicting ideologies or perceptions. Hence, allowing the wearing of the Hijab of the same color as that of the prescribed uniform would be a healthy assimilation of the ideals of democracy.

# Multiple FIRs: "Challenges and Legal Considerations"

**Dr. Swapnil Pandey***

***Abstract***

*The legality of Multiple/ Second / Successive FIRs and its effects on both offender and victims have in recent times remained very debatable issue. In any legal instrument of India, the second FIR, expressly, neither permitted nor forbidden. The main objective/s of this research paper is to know the scope of successive FIR, its effects on stakeholders and to suggest reformatory measures to overcome this problem. This Paper is a humble attempt to overcome the problem of increasing trend of multiples FIR. In the present paper the doctrinal method has been used. For this purpose various books, research papers and case laws, online and offline, have been referred to. Beside this evaluative and critical approach has been adopted.*

**Keywords:** BNSS, Second FIR, Multiple FIR, Magistrate.

## Introduction

In recent times, it has been observed that multiple First Information Report [1] (hereinafter referred as to the FIR) has been lodged for the same offence against a person/ s by different people in different parts of the Country especially in the matter connected with comments/ remarks against an ideology or a group, *e.g*., against- Arnab Goswami, chief editor of news channel Republic Bharat; Amish Devgan, a TV anchor; Union Minister, Narayan Rane by Maharashtra Police; in Sushant Singh

* Assistant Professor, National Forensic Science University, Delhi. Email id – swapnilpandeyadv@gmail.com.

1 FIR is a written document prepared by the police under Section 173 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) on the receiving information about the commission of a cognizable offence. And the Multiple FIR means, FIR/ s lodged after registration an initial FIR for the same offence committed by same person/ s and filed by a different complainant/ s.

Rajpoot, an actor of Bollywood, death case against Rhea Chakraborty, against Nupur Sharma, against Marathi actor Ketaki Chitale, against Zubair, co-founder of Alt news etc. Social media is also a big reason behind it due to its quick way to assimilate and disseminate information across the world. The question is, is the Multiple/ Second / Successive FIR legal and what are the effects on both offender and victims? In any legal instrument of India, the second FIR, expressly, neither permitted nor forbidden. According to some high courts, such as, High Courts of Telangana, Delhi, Karnataka etc. more than one FIR is not acceptable on the same incident. The probability of registering more than one FIR first of all came up in front of the Top Court in *Ram Lal Narang v. State of Delhi* case. [2] This case praised the lodging successive FIR. On the analysis of the decisions, pronounced by the constitutional courts in this context, we find that the Supreme Court had recognized multiple FIRs if 'rival version' is present in successive FIRs with respect to the same incident. According to the courts the possibility of lodging various FIRs are based on the facts and situations of the occurrence. In various cases, the courts have explained it and also applied the 'Sameness Test'. According to the court/ s, a second FIR is not permissible on the basis of 'improved version of the same incident/ offence' but on the basis of 'rival version of same incident/ offence' permissible. Except the courts, there is no means to solve the issue of multiple FIRs which is awfully adverse for our criminal legal structure. There are some established exceptions where the second FIR can be lodged on the same fact/ incident. However, the law on filing multiple FIRs is still not stable. The Apex Court is said that Centre should appear with some solvents and suggested to establish a mechanism similar to the USA's Judicial Panel on Multidistrict Litigation in the case of *Radhey Shyam v. State of Haryana.*[3]

2 AIR 1979 SC 1791.

3 As said and advised by the Court on 18.01.2022, https://newsable.asianetnews.com/top-stories/sc-recommends-mechanism-similar-to-us-judicial-panel-on-multidistrict-litigation-set-up-for-multiple-firs-dnm-r5wvs6, retrieved on 28.07.2022.

Article 20 (2) of the Constitution says that any person can't be prosecuted and punished twice for the 'same offence' and Section 337 (1) of the Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) says that "A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 224, or for which he might have been convicted under sub-section (2) thereof."The phrase 'same offence' is used in the Constitution and BNSS, therefore, it is important to understand the meaning of this phrase.

Before understanding the possibility of registering multiple FIRs, it is necessary to be aware of the 'same offence', 'principle of sameness', and established principles by the constitutional courts where multiple FIRs can be lodged.

**Same offence-** Under Article 20 (2) of the Constitution, protection against double punishment is given only when the accused has not only been prosecuted but also punished because the phrase 'prosecuted and punished' is used. This provision deals exclusively with judicial punishments and provides that no person is prosecuted and punished twice by the judicial authorities. [4] Thus, we see that this Article doesn't define the 'same offence'. The bare reading of this Section 337 (1) of BNSS clarifies that, based on the same offence, in which the accused once has been acquitted or convicted; a second trial cannot be initiated. But this Section also doesn't define the 'same offence'. Other than this, Section 26 of General Clauses Act, 1897 says that "Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence". Here this Section also speaks the language of the Constitution and doesn't talk about the 'same offence'. To resolve this

4 Venkataraman v. Union of India, AIR 1954 SC 375.

issue, the the Apex Court established the 'test of sameness' to determine whether a second FIR is permissible for the same incident or crime..

**Principle of Sameness-** The Court established the 'test of sameness' in *T.T. Antony v. State of Kerala* case, [5] with discussing extensively on legality of the several FIRs. According to the Court, this test means, if in both the FIRs, the fact/ s and circumstances are the same, and then the second FIR can't be sustained. This means that two FIRs can be sustained when facts and circumstances are different in both the FIRs (the offences are made different in both) or criminals are different. The Court further stated, after observation of the provisions of Sections 173 to 193 of BNSS (which are stated about the starting point of an FIR to the ending of the investigation), the earliest/ first intimation, given to the investigating agency related to any offence, fulfills the requirement of Section 173 and thus, there is no possibility of second FIR on receipt of subsequent fact/ intimation. In line with the verdict of *Surender Kaushik and Others v. State of Uttar Pradesh and others,* [6] case, which was decided by the division bench, it does not allow registration of new complaints/ which is only based on the improvement of facts in the first FIR. The Court observed here also that at the end of the investigation, if the gravamen is same in reference to the substance of the both FIRs, the second FIR can't be sustained. It will also cover those things which the police get subsequent information or material in further investigation permitted under Section 193. If the complaints are related to the same transaction or are part of the same incident, then it will be considered that facts/ subject matter of both the FIR/ complaints are the same. The Court said that technical connotation can't be given to the meaning of 'same transaction' [7] and that's why common sense should be applied to discover whether the fact is a part of the same matter. Event/ s or part of the event is related to the same incident in

5 2001 SCC 6 181. decided by the division bench of Apex Court on 12th, July, 2001, https://indiankanoon.org/doc/1974324/, retrieved on 12.07.2022

6 (2013) 5 SCC 148.

7 Mohan Baitha v. State of Bihar, AIR 2001 SC 1490.

close proximity then that event or part of the event will be considered the same incident. Where charges are different in the successive FIR then it will be sustained and it is not an improvement of charges made in the first FIR. It means, according to the Court, 'enhanced description of the alike offence' can't be a base for subsequent FIR but 'rival description of same event', for multiple FIRs, can be a base. [8] It will also be important to know the meaning of 'Revival Version' and it means that version which is dissimilar and disclose varied crime in the same incident/ episode/ offence, as stated by the Court in *Surendra Kaushik and Others v. State of Uttar Pradesh* case. [9]Further, on the basis of this Principle, a second FIR registered under Section 175 (3) of the BNSS, on the direction issued by a Magistrate, is to be not sustained unless a different offence is found. On the basis of the above analysis, we can say that the 'Principle of Sameness', which has been given by the Supreme Court, is to explain/ define the 'same offence'.

Finally, on the basis of the pronouncement of the constitutional courts, it is determined that the expression 'same offence' (also called same occurrence, same transaction or same incident) shows that the offence for which the accused shall be tried and the offence for which he is again being tried must be identical, and based on the same set of facts. [10]

Here, it is also pertinent to understand that when an offence ought to be treated as part of the same transaction. For this purpose, the "consequence test" is laid down by the Court.

**Test of consequence** - To determine whether an offence ought to be treated as part of the same transaction, the "consequence test" is laid down and explained in the case of *C. Muniappan v. State of T. N.* by a division bench of the Supreme Court on 30th August, 2010. [11] According

8 *Ibid*.
9 *Ibid*.
10 *Supra* Note 6, vide also State of Rajsthan v. Hat Singh, (2003) 2 SCC 152, *Surendra Kaushik and Others v. State of Uttar Pradesh , (*2013) 5 SCC 148.
11 (2010) 9 SCC 567.

to the Court, if an offence, which is a portion of the subsequent FIR and arises as an outcome of the offence (as assumed in the initial FIR), is the same then, the subsequent FIR will not sustain in law. This test of consequence has been reiterated by the courts in various cases, such as, *Amitbhai Anil chandra Shah v. CBI*, [12] etc.

It is also to be noted here that 'Sameness of offence' and 'same kind of offence' looks and sounds alike and also same in nature but they constitute different offences.

**Test of 'sameness' and 'same kind of offence'**- A contention of applicability of the Test of 'sameness'came up before the Top Court in the *State of Jharkhand v. Lalu Prasad case* (which was decided by the Apex Court on 8th May, 2017) [13] from another perspective. In this case the Court observed that 'same offence' and 'same kind of offence', both are different and 'sameness' test will not apply in offences of similar kinds, such as, i) murder and culpable homicide and ii) trespass and housebreaking. The offences of both categories are similar in character/ nature but constitute different crimes under the IPC, 1860. In such cases the Police are supposed to register separate FIRs.

**Pave of Multiple FIRs-** Provision/ s, relating to the Multiple FIRs in a same offence, are not given in any legal written instrument in India. Still, multiple FIRs are being recorded for the same offence in different corners of the country in recent times. As stated above, the probability of lodging multiple FIRs firstly came up before the Apex Court in *Ram Lal Narang* [14] case. In this case, a huge conspiracy that was revealed in the second FIR could not be revealed in the first FIR. Both FIRs were registered in the same case/ incident, *i.e*., conspiracy. The Court found that some of the conspirators were same in the both FIRs but their objects were different. That's why it was held by the Court that it can't be said that both the FIRs are based on the same case/ incident and the Court retained the second FIR. The decision of this case paved the way for filing the second FIR in the same offence.

12 2013 (6) SCC 348.
13 https://main.sci.gov.in/jonew/judis/44881.pdf, retrieved on 20.06.2022.
14 *Supra* Note 2.

**When Successive FIR is Maintainable**

Matters, where the successive FIR are declared permissible by the Apex Court: 1) Second FIR/ complaint is acceptable if both FIRs are registered as a counter. [15]It is possible that after an FIR is filed, the other party (accused) may also file an FIR against the complainant. This is called a counter/ cross FIR. 2) A subsequent FIR can be lodged where a new fact/ s is discovered and these facts made a different offence. It was held in *Nirmal Singh Kahlon v. State of Punjab* case. [16] In this case, a second FIR was registered by CBI, after conducting a preliminary inquiry in which new facts/ informations were found and they constitute separate offence/ s. It was held that the second FIR is sustainable. Before CBI's steps, the police had neither done a fair investigation nor found out the larger conspiracy. 3) If the same set of facts, acted by the offender/ s, constitutes different offences then, a second FIR can be lodged. In *Chirag M. Pathak v. Dollyben Kantilal Patel* case (which was decided by the Apex Court on 15th November, 2018) [17]where six FIRs were registered in different police stations based on the identical facts by six different cooperative societies. The Top Court stated that all the FIRs are acceptable because in all FIRs, the entirety of factual charges makes the offences dissimilar. 5) If a person, through the same set of facts, commits different offences under the different laws of land, successive FIRs can be lodged. This was stated by the Court in the *Monica Bedi v State of Andhra Pradesh Case*, [18] in this case the accused had falsely obtained a passport and had been tried for the offence in Portugal, when the Indian Courts began proceedings against her she pleaded double jeopardy, but it was stated by the court that despite the fact that she had already been tried in a different country, it did not bar the Indian Courts from punishing her, and double jeopardy could not be made available. Hence, if the facts are the same but the elements of the crime are different, this defence cannot be made available. 6) If there is a case

15 Upkar Singh v. Ved Prakash, **(**2004) 13 SCC 292.
16 AIR 2009 SC 984.
17 https://indiankanoon.org/doc/162824237/, retrieved on 19.07.2022.
18 2011 1 SCC 284.

where the offense is continuing, then it is said that every single moment the offender is committing a crime, in other words the act of the offender constitutes a new offense every moment and the accused can be punished for each one separately, and this would not amount to double jeopardy. [19]

In a case of *Chirra Shivraj v State of Andhra Pradesh* (decided by the Supreme Court on 26 November, 2010) [20]the first FIR was registered on the basis of the statement of deceased on receiving grievous burns, who later died and then his death was noted as a second FIR.

**Legal Instruments relating to the FIR/ Multiple FIRs and Rights of the Victim & Accused**

As stated above, provision/ s, relating to the Multiple FIRs in a same offence, are not given in any legal written instrument in India. Article 20 (2) of the Constitution states that no person shall be 'prosecuted and punished' twice for the 'same offence'. It means, if any accused prosecuted and punished, both, then he can't be punished again because the phrase 'prosecuted and punished' is used. Thus, we see that this Article says nothing about Second FIR/ Prosecution/ Trial.

Section 337 (1) of BNSS says that based on the same facts/elements of an incident, in which the accused once has been acquitted or convicted; a second trial cannot be initiated. This Section nothing says about Second FIR even stages before Trial.

Section 26 of the General Clauses Act, 1897 says that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. This Section, *i.e.,* Section 26, also doesn't state regarding Second FIR/ Prosecution/ Trial.

Here, it is notable the starting point of 'Prosecution' because it will be important to know it also for this Research Paper. This issue has been

19 Mohd. Ali v Sri Ram Swarup, AIR 1965 All 161.
20 https://indiankanoon.org/doc/244440/, retrieved on 20.06.2022.

quite debatable and regarding the meaning of prosecution different views have been taken from time to time. Such views have been: i) prosecution starts with registration of an FIR, ii) the commencing point of prosecution is filing of charge sheet in the Court by the Investigating Officer, iii) it is the date when the Magistrate takes cognizance on the charge sheet /challan /investigation report filed by the Police, then the prosecution starts, and iv) prosecution starts with framing of charges by the Court. The most accepted view on the issue is that the prosecution starts with the filing of the Investigation report/ challan/ charge sheet by the Investigating Agency in the Court. [21]But in my opinion it should be the day the magistrate takes cognizance on the charge sheet. Departmental proceedings or proceedings of non-judicial Authority doesn't amount to 'trial by a judicial tribunal'; [22] therefore, the principle of double jeopardy does not apply in such cases.

For driveway to restrain multiple FIRs, it is also important to know the place/ s of FIR where it can be lodged. According to the law, normally an FIR should be lodged in that police station area where the offence takes place. This is not explicitly stated anywhere in the BNSS, but it is implicitly. Implicitly, in such a way that each offence is inquired into/ tried by that Court whose territorial jurisdiction the offence took place, as stated in the Section 197 of BNSS Sections 197 to 209 ofBNSS describe the various circumstances where an FIR can be filed. [23] But nowadays, in the age of social media, it becomes difficult to determine the jurisdiction for the case/ crime, which is committed by posts or

21 Shri Deepak Malik v. Govt. of NCT Delhi on 10th April, 2015, https://indiankanoon.org/docfragment/51482205/?formInput=when%20prosecution%20starts, retrieved on 01.09.2022.

22 Maqbool Hussain v. State of Bombay, AIR 1953 SC 325.

23 Zero FIR also is a type of FIR that can be filed in any police station regardless of the place of incidence or jurisdiction under the number 00. The concept gained relevance after the Nirbhya rape case, when the Justice Verma Committee recommended it amongst many other criminal reforms. The Ministry of Home Affairs issued an advisory to all the police stations to lodge FIR's irrespective of the territorial jurisdiction and transfer the FIR, as per Section 190 of BNSS, to the station having adequate jurisdiction.

statements made in electronic media. where the crime took place,[24] Where the accused live, [25] where the residence of the victims is, [26] where did the effect of a criminal act arise, [27] etc., on the basis of all these things, as stated in Sections 197-200 of the BNSS, the jurisdiction of the case should be determined but all these things can't be determined easily in this electronic media age. Because there are always being three points, *i.e*., i) from where the post was sent or the statement was recorded, ii) broadcast centre, and iii) where such post or statement was received or heard, and these three elements are causing the difficulty. Here, if it is assumed that at any of these three places FIR can be lodged then, this problem can be resolved, as like Section 198. One another important enactment/ provision that need to be discussed here, that is the Proviso of Section 413 of BNSS, who says that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. This Proviso is inserted by the Act 5 of 2009, Section 29, w.e.f. 31-12-2009. A fundamental principle of criminal law is that 'offence' is deemed to be against the State and that's why the state takes action against the offender and gets it punished by the court. In a criminal case, the victim is a stakeholder to the prosecution and satisfies himself when the offender is punished. And to fulfill the same satisfaction an optional right to victim is given in Proviso of the Section 413 saying that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. There is no such requirement or no law says that all victims should be part/ witness of the prosecution. Here a question arises that, whether the victim, who is directly not involved in the prosecution, also has the right under this Proviso? for example,

24 Sections 197-200 of BNSS 2023.
25 Section 202 (2) of BNSS 2023.
26 *Ibid*.
27 Section 199 of BNSS 2023.

offenses given in Sections 298-302 (offences against religion) of the BNS, 1860, where the number of victims can be very high and from any corner of the Country. Reading the Text of the Proviso of Section 413 of BNSS 2023, it appears that such a victim also has this right. Then further, a problem will come about the right of the victim which is given to him under this Proviso, and that would be that an FIR has been registered at the one side of the country and there is a victim at the other end, then he can't use his right easily. This is possible in the offences of inciting religious sentiments, because it is not necessary that every victim has become a complainant in the FIR but he could be a victim. It can be said here that if such a victim has the use of this right, then he should his reach out to other corners of the country; otherwise he should satisfy himself with the action taken by the concerned State because any offence is against the State.Here, it is also pertinent to consider Section 199 of the BNSS and on the basis of this Section, we can say that if it's a crime to 'say something' so wherever it has its effect, a FIR can be lodged there. But due to this, it does not mean that this Section permits filing of more than one FIR. It only means that one FIR can be made anywhere. This is revealed by Sections 198 and 206 of the same Code, according to the spirit of which a crime must have only one trial/ FIR.

Now, after analysis of the relevant provisions of the Constitution, various enactments and judgments of the constitutional courts, we can say that multiple FIRs on the same incident/ occurrence are violative/ contrary to the spirit of the Article 21 & 22 of the constitution and various principles of the criminal laws. Analysis of the Sections 175 to 196 (information to the police and their powers to investigate) and Sections 197 to 209 of the BNSS also reveals that only one FIR should be lodged for 'same offence'. Section 210 of the same Code grants the power to the Magistrate to take cognizance of an offence, but it can't be interpreted that they permit two FIRs for an incident/ occurrence. Multiple FIRs are only a burden upon the various branches of the criminal justice delivery system which are already under overburdened. It is a compromise of justice with the accused, because in

police stations and courts, he will visit different corners of the Country for the same offence. It will also compromise the time of the investigating agencies and money of the taxpayers as used by the government/ state in the investigation of the offences. Such intention can't be of any democracy.

**View's of Constitutional Courts where Successive FIRs were/ are not maintainable**

There are various cases, decided by the Apex Court and various other constitutional courts where successive FIRs were not permitted on the basis of 'same offence'/ 'principle of sameness'. In *Arnab Ranjan Goswami v. Union of India* case (decision delivered by the Apex Court on 19 May, 2020), [28]it was decided that various FIRs should not have been lodged with regard to the same transaction. In April, 2020, in this case, various FIRs were made in various states of India against the accused, due to his broadcast in relation to an incident which took place in Palghar district. In another case, *Amish Devgan v. Union of India* (judgment delivered by the Supreme Court on 7 December, 2020) [29]where several FIRs were registered against the accused in various states for hosting a program in June, 2020. Accused went before the Top Court and prayed to club all those FIRs and remove to Ajmer where the initial FIR was lodged. The Court permitted the prayer of the accused. In the case of *Atir v. State of NCT Delhi, [30]* which was decided by the Delhi High Court on 1st September, 2021, relating to the North-East Delhi riots in February, 2020, the Court observed that all FIRs are identical in their content, all are related to the same transaction and state about financial loss, which was caused to all sufferers residing in the same compound's buildings, therefore, it can't be said that there are five separate offence/ incidents. So, five FIRs can't be lodged."[31]

28 https://indiankanoon.org/doc/68296433/, retrieved on 11.06.2022.
29 https://indiankanoon.org/doc/179868451/, retrieved on 11.06.2022.
30 https://www.livelaw.in/pdf_upload/smp01092021crlmm12332021202115-1-399764.pdf, retrieved on 02.06.2022.
31 *Ibid*.

Recently, a very famous case, which is known as *Nupur Sharma Case*, [32] came before the Top Court. The fact of the case was that Nupur Sharma, former BJP spokesperson, has made remarks about the Prophet Muhammad but later she apologized and withdrawn her statement. Despite that several FIRs were registered against her in many states. Due to this remark of Ms. Sharma, all the Muslim organizations started protesting all over the Country and many people were also murdered. Sharma had demanded from the Supreme Court that all FIRs registered against her across India be gathered together and transferred to Delhi. She also pleaded about security, which she and her family have been facing. The Supreme Court refused to consolidate multiple FIRs filed in several states against her with strong remarks [33]and asked the petitioner to approach the High Court. [34]This refusal is against both long-standing judicial precedents and standards of prudence & predictability in the administration of the criminal justice system. However, Later the Supreme Court of India has accepted a petition filed by former BJP spokesperson Nupur Sharma to merge all the FIRs filed against her at various places in the country and transfer them to Delhi. A bench of justices Surya Kant and JB Pardiwala passed the order that earlier rejected the petition of Nupur Sharma and made problematic remarks blaming her. Essentially, after blaming Nupur Sharma when she approached the same bench to club the FIRs against her on the 1st of July, on the 10th of August, May lords changed their mind completely and granted her request, based on the judgment in the Zubair case and in view of the threats being given to Nupur Sharma. [35] Not only this, the

32 NV Sharma v. Union of India| MA 001238 - / 2022 in WP (Crl) 239/2022.

33 Remarks made by the Court were like that Sharma had a loose tongue and it set the entire country on fire; this lady is single-handedly responsible for what is happening in the country etc. These remarks were heavily criticized on the various grounds by the people

34 It is the view remains of the Supreme Court to send the case before the High Court that the idea of the high court can be known and taken benefits of.

35 https://www.opindia.com/2022/08/sc-clubs-fir-nupur-sharma-missing-accountability-of-judiciary-west-bengal-desperation/, retrieved on 29.08.2022.

Court further said that in future, the FIR, against Nupur Sharma, will be registered in Delhi only. While giving relief to Sharma, the Court said/ did two new things, i) till date all the constitutional courts transferred/ clubbed all the Multiple FIRs where the first FIR was registered, whereas in this case, all the FIRs transferred/ clubbed in delhi which was not the first FIR's place; and ii) For the first time, the Apex Court talked about the multiple FIRs which to be registered in future saying that in future, any FIR against Nupur Sharma will be lodged in Delhi only.It is revealed, on the analysis of the various concerned decided cases, that till date even the Apex Court has not reached any one conclusion regarding the multiple FIRs.

**USA's Judicial Panel on Multidistrict Litigation**

Now we will talk about the Judicial Panel on Multidistrict Litigation of USA, as suggested by the Top Court in the case of Radhey Shyam on 18th January, 2022, where a prayer was made, looking for relocation and clubbing of several FIRs lodged against the accused.The Top Court was suggested that the Centre Government may also come out with such a mechanism or other mechanism so that no one can play, take shield or misuse the law for harassment to an individual. The Judicial Panel on Multidistrict Litigation is a special body situated within the United States which controls the multiplicity of cases. The Panel was set up in 1968 and it has the authority to determine whether civil actions pending in two or more federal districts can be transferred to a single federal district for pretrial proceedings. If such cases are based on common questions/ facts, the Panel select the district court to transfer the cases. The purpose of the transfer is to avoid duplication of discovery and prevent inconsistent pretrial rulings as well as conservation of resources of the parties and the judiciary. Establishment of a Panel like USA, prima facie, seems to be a notable key to avoid diversity of FIRs. In my opinion, any Panel, regarding this, is not necessaryfor our legal system because this exercise can be done by the High Court, as empowered by the Section 206 of the BNSS.

**Conclusion**

There is no any enactment regarding the successive FIRs; even about the earlier stages of the trial. Regarding this, the legislature/ s is also not doing anything. Hence, multiple FIRs being lodged for the same offence against accused by different people in different parts of the Country. This is high time to curb this complex issue, i.e., the continuing tendency of lodging numerous matching FIRs/ complaints against any accused in respect of the same offence in this electronic media era, which is disturbing the criminal legal system. The scope of the second FIR on the same incident is limited, as may be done only in six matters, as mentioned above, in accordance with the principles established by the Supreme Court. It is revealed, from the analysis of the various provisions of the legal instruments and multiple judgments of the constitutional courts, that the law of the land, about successive/ subsequent FIRs on the same offence, is still not completely stable. The law of the Country, on this issue, is currently based on judicial pronouncement. The Top Court established the 'Sameness Test', due to no definition of 'same offence' given by any legal instrument. Further, the Court also held that an enhanced/ improved report of the same occurrence is not a base for subsequent FIR but on the basis of 'rival version of same incident/ offence' multiple FIRs can be permitted. And till date, on the basis of these Tests/ Principles successive FIRs related matters are being resolved by the Court but it is not sufficient to resolve the said issue completely. In this age of social media, there are two main problems before the existing law, for solve the problem of multiple FIRs, i.e., first, to determine the place of FIR, regarding the offence which is committed by posts or statements made by electronic media and second, use of the right, which is provided under the Proviso of Section 413 of BNSS to the victim. Here we are talking about the rights of that victim who is not part of the prosecution directly but he is the victim and where the offender is prosecuted, he is far away (in another corner of the country) from the place of the prosecution. If it is determined that at any of these three places, i.e., i) from where the post was sent or the statement was recorded, ii) broadcast centre, and iii) where such post or statement was

received or heard, FIR can be lodged then, first problem will be resolved, because these three places are important to decide the place of an FIR regarding offences committed through electronic media. Regarding to the removal of the second problem, it should be ensured, if a victim wants the use of his right which is granted under the Proviso of section 413 of the BNSS, that he should make his reach out to other corners of the country where prosecution is made; otherwise he should satisfy himself with the action taken by the concerned State. Constitution of a panel like the USA's, namely 'Judicial Panel on Multidistrict Litigation', as suggested by the Apex Court, is not necessary because this exercise can be done by the High Court, as empowered by the Section 206 of BNSS and the critical problem has been solved by the Top Court through establishing the Test/ Principle of 'Sameness'. Now all that is left is for the Top court/ Legislature to say that there can't be a successive FIR on the same fact.

**Suggestions**

Regarding the offences which are committed through electronic media, two things should be determined. These two things are: a) that, on the basis of the same fact/ s multiple/ successive FIR can't be sustain and only one FIR can be lodged at any of the one places, i.e., i) from where the post was sent or the statement was recorded, ii) broadcast centre, and iii) where such post or statement was received or heard; b) by ensuring that if any victim wants the use of their the right under the Proviso of Section 413 of BNSS, then he should make his reach out to other corners of the country where prosecution is made; otherwise he should satisfy himself with the action taken by the concerned State.

# Current Practices of the Relinquishment of Property amongst Women in Kashmir: A Socio-legal Perspective

**Dr. Syed Shahid Rashid***
**Dr. Shahnaz****

***Abstract***

*Denying women their rights to inheritance results in many socio-economic challenges and problems especially towards divorced women and widows. Besides express denials of their respective shares, there remains covert denial too. This includes relinquishment of share by woman in favour of male heir. This paper is an attempt to highlight the reasons underlying the practice of relinquishment of share. It further analysis its different dimensions and how this practice contributes to denial of property rights of women in Kashmir.*

## Introduction

Ensuring property rights of women remains cornerstone for their amelioration. However, so many challenges are attributed to this very right in the context of social, legal and familial paradigm. The Courts in India have also stressed on the significance of these rights. While emphasizing the vitality of property rights for the dignified life of woman, the Apex Court of India observed in *Vineeta Sharma v. Rakesh Sharma:*[1]

*"The right to dignified life is unachievable in reality unless it is backed by right to property. And if equality doctrine has to be telescoped into right to dignified life, then a man and a woman cannot have identical or substantially similar levels of dignified life unless both have certain right to property. Without economic freedom, it is futile to presume that a woman can enjoy her other personal rights effectively. While Article 15 of the Constitution grants women a right to equal*

* Assistant Professor, Kashmir Law College, Nowshera Srinagar.
** Associate Professor, School of Law, University of Kashmir.
1 (2020) 9SCC1

*opportunity, it is the economic security that ensures them a complete life under constitution."*

The right to inherit the property is one of the main forms of receiving property rights for women. Right to inherit opens up at the death of the owner of the property i.e. propositious. Since this law falls within the domain of Personal laws, every community in India is governed by the rules of own system of laws. Muslims in India are governed by the Shariat Application Act, 1937. This law, besides in other family matters allows Muslims in India to follow Shariat in the matters of inheritance. However, in Jammu and Kashmir customary law occupied inheritance matters on large scale as compared to other matters of family. These customs predominantly override the elaborate rules of Muslim law regarding inheritance. The customary laws governing Muslims in Jammu and Kashmir were repealed after the enactment of Jammu and Kashmir Shariat Act, 2007. Before the act, the application of Muslim Personal law was not only limited to certain matters but also subject to overriding effect of customs by virtue of Sri Pratab Jammu and Kashmir Laws Consolidation Act, (1977 Samvat Vikrami).[2] With the abrogation of Article 370[3] by Parliament of India and enactment of J and K Reorganization Act, 2019 the erstwhile J and K stands bifurcated into two union territories i.e. J&K UT and Ladakh UT. With the result many local laws applicable to Jammu and Kashmir stand repealed now by virtue of Reorganization Act, and the Central laws are extended to Jammu and Kashmir. The Shairat (Application) Act, 1937 is one such legislation which is extended and applicable to Jammu and Kashmir[4] and

2 Section 2 and 3 of the Act of 2007

3 By Virtue of Article 370 Jammu and Kashmir had special status within the Constitution of India i.e. Parliament of India was competent to frame laws for the J and K regarding three matters: Defence, Foreign Affairs and Communication. Rest all the matters were within the competence of Jammu and Kashmir Legislative Assembly.

4 Act 34 of 2019, s. 95 and the fifth schedule (w.e.f. 31-10-2019).

has replaced Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007.

**Hypotheses**

Relinquishment of share of inheritance by women in Kashmir is done under compulsion.

**Research Methodology**

The two-stage random sampling (purposive and simple random) has been adopted for the entire study. To meet the specific objectives, purposive sampling was employed to collect the information from the four districts of Kashmir i.e Srinagar, Budgam, Baramula & Anantnag. At second stage an ideal size of sample has been chosen by simple random sampling technique so that inferences from it could be drawn for the population. From the selected districts, 100 respondents (women) were taken from each district as sample size. Therefore, a total of 400 samples are selected randomly for the empirical study.

**Empirical Analysis.**

So far as right to inheritance of Muslim Women in Kashmir is concerned, they are governed by Islamic law of inheritance by the legislative intervention.[5] Muslim Women is entitled to share of inheritance in various capacities i.e. widow, mother, sister, daughter, etc. However despite legislative interventions they face enormous challenges in acquiring their share of inheritance. They are often expressly denied the share by their brothers or other male or female relations. However, one important dimension of denial remains the relinquishment of share by women themselves in favour of their male siblings. Though they claim relinquishing their share voluntarily, however an in-depth analysis reveals that the relinquishment is done out of compulsion. The empirical analysis, results and discussions given below include different

5 The Shariat Application Act, 1937 (formerly The Jammu and Kashmir Shairat Act, 2007)

dimensions relating to the relinquishment of share of inheritance rights of Muslim women in Kashmir and factors therein.

**Table 1: Category of Muslim women relinquishing share.**

| Title | Options | No.of Respondents | Percentage |
|---|---|---|---|
| Category of Muslim women who generally relinquished their share of the property? | Married Working Women | 251 | 63.0 |
| | Divorced | 60 | 15.0 |
| | Widows | 40 | 10.0 |
| | Unmarried Daughters | 49 | 12.0 |
| | Total | 400 | 100.0 |

Table 1 shows the category of women relinquishing their respective shares. 63% respondents believe that generally it is the working women who are married who generally relinquish their shares. 15% respondents believe that the divorced women relinquish their share, whereas 12% respondents opine that it is the unmarried daughters who relinquish their share. 10% respondents believed that widows only relinquish their share of property.

**Table 2: Reasons for relinquishment by sisters in favour of their brothers.**

| Title | Options | No.of Respondents | Percentage |
|---|---|---|---|
| Sisters often relinquish their shares in favor of their brothers because of: | Social insecurity | 25 | 6.3 |
| | Love and affection | 92 | 23.0 |
| | Compulsion | 38 | 9.5 |
| | Don't Want to Spoil Relation with Brother | 245 | 61.3 |
| | Total | 400 | 100.0 |

Table 2 represents the reasons for relinquishment of share by the sisters in favour of their brothers. The study reveals that 245 out of 400 i.e. 61.3% of total respondents feel that sisters relinquish (waive) their share in favor of their brothers just because they don't want to strain their relations with them. 9.5% respondents believe that the relinquishment is done out of compulsion while as 6.3 % respondents believe that social insecurity is the reason of relinquishment. On the other hand 23 % of total respondents believe that relinquishment of share is done out of love and affection and there is no element of coercion or undue influence involved. This clearly indicates that 77% of women respondents believe that relinquishment of property is not done out of free will but due to factors which are compulsive. Sisters remain under this apprehension that incase of matrimonial disharmony, they have a cushion of brothers. The respondents feel that mostly the women (sisters in this case) are apprehensive that in case of taking their share, they have to snap their ties with their brothers which ultimately may close their access to their paternal home. So they don't want to strain their relations with their brothers by taking their share which is

otherwise due to them. Therefore, according to the study, the relinquishment remains another dimension of depriving women from inheriting their share

**Table 3**: **Relationship of marital status and the relinquishment of share.**

| Title | Married Working Women | Divorced Women | Widows | Unmarried Daughters | All of them | Grand Total |
|---|---|---|---|---|---|---|
| **Social insecurity** | 16 | 7 | 0 | 2 | 0 | 25 |
| **Love and affection** | 67 | 7 | 6 | 12 | 0 | 92 |
| **Compulsion** | 14 | 8 | 11 | 2 | 3 | 38 |
| **Don't Want to Spoil relation with Brother** | 154 | 38 | 20 | 33 | 0 | 245 |
| **Total** | 251 | 60 | 37 | 49 | 3 | 400 |
| **Pearson Chi-Square** | | | Value | | 62.809 | |
| | | | Df | | 12 | |
| | | | Sig. | | .000 | |
| **Cramer's V** | | | Value | | .229 | |
| | | | Sig. | | .000 | |

Since most of the respondents feel that the married working women mainly relinquish their shares (refer to table 1) one may assume that it is being done due to economic security. However, (table 3) reveals that 154 out of 251 respondents i.e. 61% support the view that married working women mostly relinquish their share just because they don't want to spoil their relation with their brothers. This clearly indicates that even after marrying and earning themselves they stand compelled by a host of factors like their relationship with brothers, social insecurity and compulsion. Sisters do not want the doors of paternal home to be closed for them. It shows that they don't take possession of their shares and instead relinquish by compelled circumstances. On the other hand, 67

respondents out of 251 i.e 27% believe that the married working women relinquish their share on the basis of love and affection. The data further reveals that 38 out of 60 respondents (those who believe that divorced women relinquish) i.e. 63.3% opine that divorced sisters equally relinquish due to the apprehension that their relation with brothers should not be spoiled in any case. Whereas only 11.6% respondents (out of 60 only) opine that divorced women relinquishes out of love and affection. Amongst those respondents who believe widows relinquish 20 out of 37 i.e. 54% consider that relinquishment of share is made just because they don't want to spoil their relations with the brothers. Whereas 16.2% respondents observe that it is done out of love and affection. Amongst 49 respondents (i.e those who support this view that unmarried daughters relinquish) 33 respondents i.e. 67.3% feel that they relinquish just because they don't want to spoil their relation with brothers. On the other hand, 24% respondents feel that unmarried daughters relinquish out of the love and affection. This clearly indicates that irrespective of their marital status, the women relinquish their shares to avoid spoiling their relationship with brothers.

The reasons for relinquishment of share of inheritance are further analyzed in relation with key indicators like area, profession, income and marital status.

**Table 4: Reasons of relinquishment by sisters with respect to area.**

| Areas | Don't Want to Spoil their Relationship with Brothers | Out of Compulsion | Out of Love & Affection | Social Insecurity | Grand Total |
|---|---|---|---|---|---|
| **Rural** | 183 | 34 | 60 | 21 | 298 |
| **Urban** | 62 | 4 | 32 | 4 | 102 |
| **Total** | **245** | **38** | **92** | **25** | **400** |

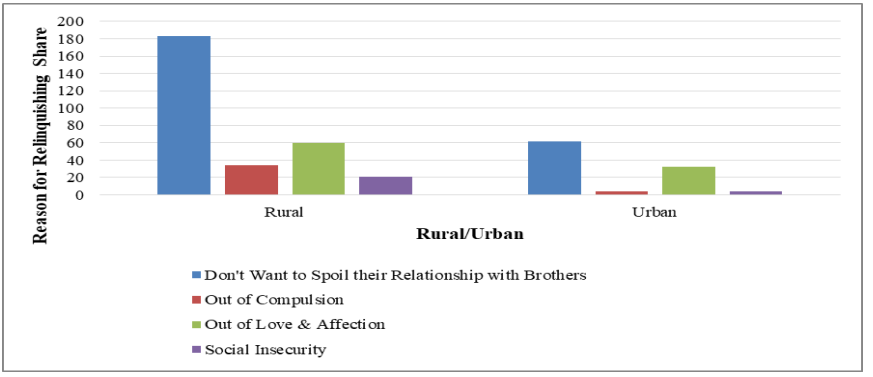



**Figure 1**

Table 4 reflects that in rural areas, 61% respondents believe that sisters do not want to spoil their relationship with brothers and due to this reason they relinquish their share. Whereas 20% respondents in rural areas consider love and affection as the main reason for relinquishment of share. On the other hand in urban areas 60.78% respondents consider that sisters don't want to spoil their relationship with brothers due to this reason they relinquish their share. 31% respondents in urban areas consider love and affection as the reason for relinquishment. Therefore, the reasons of relinquishment are universal as per the study.

**Table 5: Reasons of relinquishment by sisters with respect to profession.**

| Profession | Don't Want to Spoil their Relationship with Brothers | Out of Compulsion | Out of Love & Affection | Social Insecurity | Grand Total |
|---|---|---|---|---|---|
| **Housewife** | 73 | 22 | 32 | 9 | 136 |
| **Student** | 83 | 7 | 29 | 6 | 125 |
| **Working (Job)** | 89 | 9 | 31 | 10 | 139 |
| **Total** | **245** | **38** | **92** | **25** | **400** |

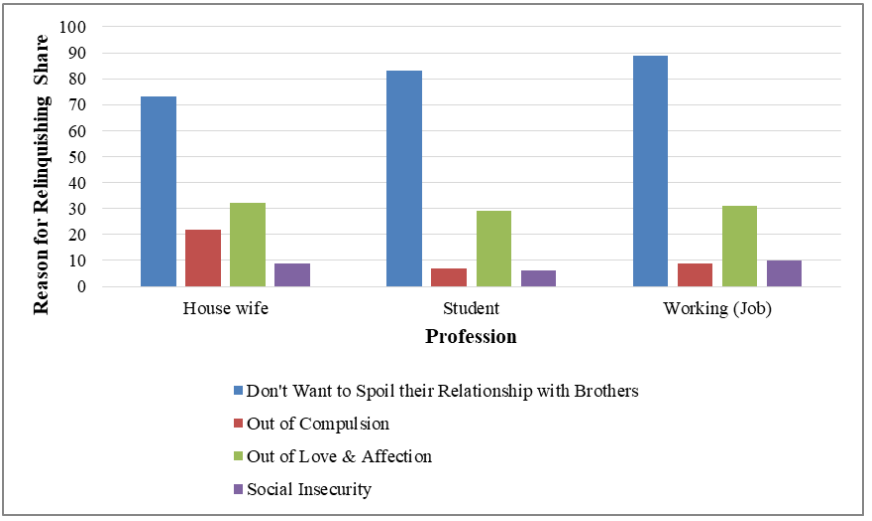



**Figure 2**

Table 5 reflects that 53.6% respondents who are house wives consider that sisters do not want to spoil their relation with brothers and they relinquish their share in favour of brothers. With regard to the same

reason the percentage of those respondents who are students and the working women is 66.4% and 64.02% respectively. Considering love and affection as the reason for relinquishment of share the percentage of respondents' profession wise stands as: House wife 23%; Students 23%; Working females 22.3% respectively.

**Table 6 : Reasons of relinquishment by sisters with respect to income.**

| Income | Don't Want to Spoil their Relationship with Brothers | Out of Compulsion | Out of Love & Affection | Social Insecurity | Grand Total |
|---|---|---|---|---|---|
| **High** | 19 | 6 | 4 | 0 | 29 |
| **Lower** | 33 | 8 | 12 | 2 | 55 |
| **Middle** | 193 | 24 | 76 | 23 | 316 |
| **Total** | **245** | **38** | **92** | **25** | **400** |

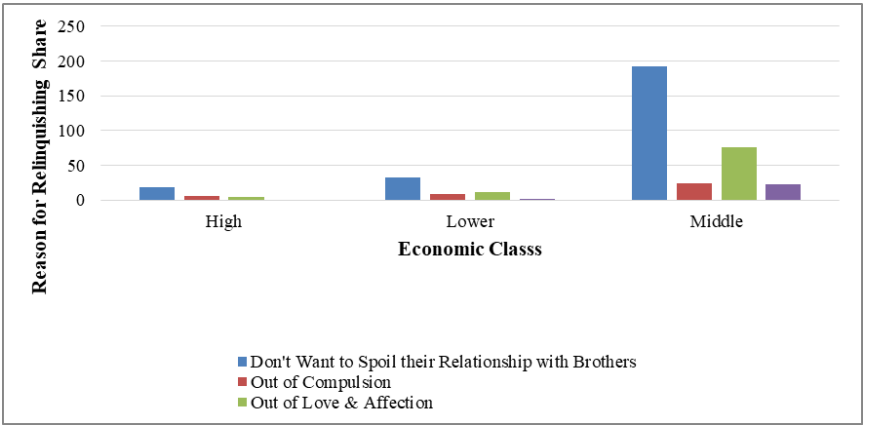



**Figure 3**

Tab. 6 reflects that 65% of the respondents belonging to a higher income group, 60% belonging to lower income group and 61.07% belonging to middle income group consider that sisters relinquish their

share in favour of brothers just because they don't want to spoil their relation with them. On the other hand, 14% respondents belonging to higher income group, 21.8% respondents belonging to lower income group and 24.05% respondents belonging to middle income group consider love and affection as the main reason for relinquishment of share in favour of brother.

**Table 7: Reasons of relinquishment by sisters with respect to marital status.**

| Marital Status | Don't Want to Spoil their Relationship with Brothers | Out of Compulsion | Out of Love & Affection | Social Insecurity | Grand Total |
|---|---|---|---|---|---|
| **Divorced** | 9 | 13 | 2 | 0 | 24 |
| **Married** | 109 | 16 | 47 | 10 | 182 |
| **Unmarried** | 88 | 4 | 29 | 5 | 126 |
| **Widow** | 39 | 5 | 14 | 10 | 68 |
| **Total** | **245** | **38** | **92** | **25** | **400** |

**Figure 4**

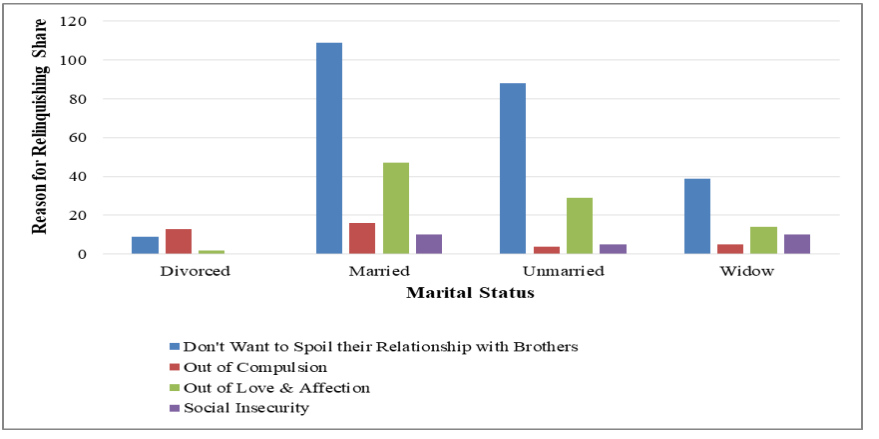


Table 7 reveals the status of relinquishment vis-à-vis marital status. In this regard 37% of divorced respondents, 60% of married respondents, 70% of unmarried respondents, 57% of widow respondents believe that the sisters relinquish their share in favour of brothers because they don't want to spoil their relation with them. On the other hand, 8.3% of divorced respondents, 26% of married respondents, 23% of unmarried respondents, 20.6% widow respondents consider that sisters relinquish their share in favour of brothers out of love and affection. 5.4% of married respondents and 14% of widow respondents consider social insecurity as the main reason for relinquishment of share. Therefore, it is established from the above table that majority of women irrespective of their marital status relinquish their shares of inheritance in favour of their brothers primarily to maintain a cordial relationship with them.

However, it was also found during study that the 'separated women'[6] are more indecisive about relinquishing their share of inheritance in favour of brothers. This is primarily due to uncertainty about the continuity of the marriage.

**Table 8: Relinquishment by Brothers**

| Title | Options | No. of respondents | Percentage |
|---|---|---|---|
| Do brothers too relinquish their shares of inheritance in favor of sisters? | Yes | 73 | 18.0 |
| | No | 327 | 82.0 |
| | Total | 400 | 100.0 |

Table 8 reveals that 82% of total respondents consider that brothers generally do not relinquish their share in favour of sisters. 18% respondents agree that brothers too relinquish their share to sisters. This

6 Who have not been formally divorced and are living separately.

shows that it is the sisters who mostly relinquish their share in favour of brothers and not vice-versa.

**Conclusion and Findings**

It was found that relinquishment remains another way of depriving women from inheriting property. Women are forced to relinquish their share of property in favour of other legal heirs, particularly brothers. The summarized positon in this regard is given as under:

i. 77% of women believe that relinquishment of property is not done out of free will, rather the compulsions are manifold which prompt sisters to relinquish their share in favor of the brothers.

ii. According to 63% women, married working women mostly relinquish their share.

iii. The study reveals that 61% women support this view that married working woman mostly relinquish their share because of the reason that they don't want to spoil their relation with brothers. This shows that even after marrying and earning themselves they are compelled by a host of factors like their relationship with brothers, social insecurity and compulsion.

iv. 15% respondents believe that divorced women relinquish their share, whereas 12% respondents opine that unmarried daughters relinquish their share. 10% respondents consider that it is only the widows who relinquish their share of inheritance.

v. 65% of the respondents belonging to a higher income group, 60% belonging to lower income group and 61.07% belonging to middle income group consider that sisters relinquish their share in favour of brothers just because they don't want to spoil their relation with them.

vi. 53.6% respondents who are house wives consider that sisters do not want to spoil their relation with brothers and they relinquish their share in favour of brothers. With regard to the same reason the

percentage of those respondents who are students and the working women is 66.4% and 64.02% respectively.

vii. 82% of total respondents consider that brothers generally do not relinquish their share in favour of sisters.

It can be concluded that irrespective of the socio-economic profile, the majority of women in Kashmir are compelled by various factors like relationship with brothers, social insecurity and compulsion to relinquish their share of inheritance in favour of male heirs. Sisters remain under this apprehension that incase of matrimonial disharmony they have no place to go; they have a cushion of brothers only. So they don't ordinarily want to spoil their relation with the brothers by claiming their share of inheritance. In this way, relinquishment of share in favour of male heirs has taken deep roots in the society from one generation to the next which needs immediate legislative intervention. Therefore, in such scenario relinquishment process needs to be regulated by law. Inheritance and succession matters pertaining to properties also involve revenue officials like patwari and tehsildars for the purpose of mutation of legal heirs or verification of the same. Therefore, the role of revenue officials in ensuring smooth devolution of property remains very significant. It is pertinent to mention that the main element in the entire process is correct information that shall reach a patwari through concerned field official i.e Lumberdar. During the study, it was found that women often change their freewill during the time of attestation of mutation and they are more eager to relinquish than to take their share probably because of family or social pressure. Thus in such scenario all the legal heir's presence in person during attestation of mutation shall be made mandatory in order to ascertain whether any legal heir is in possession of any document that can affect devolution of inherited property.

# Navigating Crossroads of Consensual Adolescent Relationships And Sexual Autonomy In India: The Need For Having A Close-In-Age Exception

**Mr. Aayush Tripathi***
**Dr. Harleen Kaur****

## ***ABSTRACT***

The Prevention of Children against Sexual Offences Act, 2012 (POCSO Act) is the premier legislation in India enacted with the objective of protecting children from sexual offences in the country. It defines a *child* as any person under the age of 18 years and criminalizes any activity with a person, thereby also penalizing consensual romantic relationships which often lead to sexual activities and provides no exception. Such a provision not only delegitimizes the consent of children and adolescents but also represses their sexual autonomy. It also disrespects their evolving capacities as human beings and tries to brush under the carpet a very different reality where such activities are very common. In a conservative society like India, sex is considered a taboo and dealt with in a paternalistic manner by parents as well as government authorities, the POCSO Act and its provisions have become a tool for guardians to punish their children for being involved in romantic relationships with the opposite sex. The judiciary on the other hand, despite the Act being a penal legislation, has interpreted the provisions of the act liberally and most romantic cases have resulted in acquittals. The primary factors in such an approach have either been the victims turning hostile or the victims getting married voluntarily to the accused during the trial and sometimes even having a child. Thus, looking at the practical realities of life, the courts have acquitted the accused. This is the dichotomy that this paper seeks to address, that while on one hand, there is a law that prohibits all consensual romantic

* Assistant Professor, Amity Law School, Noida
** Assistant Professor (Selection Grade), Faculty of Law, University of Delhi

relationships between children and adolescents, on the other hand, their occurrence is common which is backed by empirical data from government and non-government agencies and even the judiciary is willing to accept them. It also tries to address the debate around the age of consent and of the *close-in-age* exception in India, a concept prevalent in my countries across Europe and North America.

***Keywords-*** Children, Adolescent, Romantic Relationship, Close-In-Age Exception, Age of Consent, POCSO Act.

## Introduction

The Prevention of Children from Sexual Offences Act, 2012 (POCSO Act) is a milestone legislation in India enacted with the objective of protecting children from sexual offences and abuse. It aimed to provide a robust legal frame work for the punishment, reporting along with providing child-friendly mechanism of trial for children aggrieved with sexual abuse and exploitation. The POCSO Act has been widely welcomed, not just because it has filled the void regarding children affected by sexual offences but also because of its gender neutrality. Prior to the enactment of the act, sexual abuse of children including offences like rape (section 375 & 376) and sexual assault (section 354) was governed by The Indian Penal Code (IPC).[1] The brutal gang rape of young girl in a bus in the national capital, New Delhi (Nirbhaya gang rape case) in December 2012 brought about a major amendment to the rape laws under the IPC where the definition of the offence was widely expanded to include not just penal-vaginal penetrative intercourse but also non-penetrative, non-consensual sexual assaults such as application penis to the mouth and application of the mouth to the vagina.[2] While both the legislations are distinct in nature, they are still used in conjunction whenever a complaint of any sexual offence is registered by

1 The Indian Penal Code, 1860 has recently been repealed and replaced by a new legislation called the Bharatiya Nyaya Sanhita, 2023 (BNS) which came into effect from 1st July, 2024.

2 Criminal Law (Amendment) Act, 2013 (Act 13 of 2013).

a girl under eighteen years of age.The Act covers four different forms of abuse, namely- penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault making the coverage of this law very wide in its amplitude. However, the application of this act has not been without its problems. The act defines a *child* as a person below the age of eighteen years and stipulates mandatory reporting of sexual offences against children to the police.[3] Defining a child under eighteen years of age has put the age of consent between children at eighteen yearswhich has led to criminalization of all sexual activities, including consensual non-penetrative sexual activities between children and between a child and an adolescent (persons in their teenage years).[4] While protection of children from sexual offences is necessary, it is also important to understand that children, after puberty, tend to experiment with sexual activity with other children and adolescents. It is not an uncommon occurrence in any society, let alone India. However, in a society like India, sex and romantic relationships, especially relationships between children are considered a taboo. Most children and their families, especially girls, are subjected to stigma and secondary victimization from society if the details of their relationships are out in the open. It is seen as a dent to the honor of the family which is not taken kindly by the family members. This has led to consensual romantic relationships between children and adolescents been subjected to be reported as cases of rape, kidnapping and sexual assaults by the families under the POCSO Act.It has also proved to be a dilemma for the Special Courts enacted to adjudicate the trials under this legislation.

This paper seeks to highlight the dichotomy of the POCSO Act where on one hand, it is meant to protect the interests of children, yet it is proving to be quite the opposite by suppressing their sexual autonomy which is a natural progression post puberty. It seeks to highlight the issues regarding the age of consent in India and as to how it has not in

3 Prevention of Children Against Sexual Offences Act, 2012 (Act 32 of 2012)s.19.

4 An adolescent means a person in his or her teenage years. For this article, adolescent includes a person between 13-19 years of age.

tune with the evolving capacities of children as sexual beings. It also presents the possible changes and amendments that can be implemented under the act that will not just protect children from sexual offences but also respect their evolution and sexual autonomy.

### 1. Age of Consent- A History

A very pertinent question when it comes to adolescent sexual relationships is that of *consent*. What does consentmean when it comes to minors? Do they even have the agency to consent to a sexual relationship with a fellow minor or an adult? The answers to these questions are contentious and complicated. To answer that question, one must understand as to what constitutes a minor in the first place. Minors are also categorized as *children* due to their limited physical, mental and emotional capacity. According to the United Nations Convention on the Rights of the Child (UNCRC), a child is any human being who is below the age of eighteen years unless the domestic law sets the limit lower.[5]To understand how consent of a child is treated in law, we must understand as to what it means, historically and in contemporary times and also as to how it varies amongst different societies. The meaning of consent is crucial in debates regarding the age of consent as there are numerous perspectives especially when we consider it in context of sexual behavior in minors.

The word consent means voluntary agreement of a person reached because of free will and agency.[6] In western societies, a person's capacity to firstly possess *free will* and the ability to *reason* have been the parameters on which consent has been judged. Historically in these societies this right was the privilege of white men as they were the only ones believed to possess the power of reasoning. Other groups such as women, non-white people, tribal people, children, persons with disabilities were considered mentally deficient to possess this power as it believed that they were governed with their bodies rather than their

5 United Nations Convention for The Rights of The Child, 1989,art. 1.

6 Matthew Waites, *The Age of Consent: Young People, Sexuality And Citizenship* 19(Palgrave Macmillan, 2005).

minds.[7] The white man had to act on their behalf, a belief that became entrenched across the world due to colonization.[8] It was only in the 20th century that these groups attained limited cultural and political rights, however, their rights are still sub-ordinate to the rights possessed by dominant social groups.[9]While these groups have got legal recognition to consent, there is a huge difference between being permitted by law to practice it and the actual practice to consent, especially when it comes to consensual sexual activity which differs in every society. For example, in India, the legal capacity of a woman to consent for sexual activity and its societal connotations are two very different things.

The first legal provision on the age of consent appeared in England in 1275 A.D. as part of a statute named Westminster 1. The statute made it illegal to *ravish a maiden within age* with or without her consent. The term *within age* was interpreted to be twelve years by Sir Edward Coke as that was the age of marriage at the time.[10]In 1576, English colonies in North American made it a crime to *"unlawfully or carnally know and abuse any woman child under the age of 10 years."*[11]It was in the 16th century Italian and German states introduced twelve years as the age of consent.[12] It was the renaissance period around the 18th century when other European nations also started to enact laws regarding the age of consent. It was around this time that the realization emerged that children were a distinct entity to adults and were more vulnerable to harm particularly around the age of puberty. Hence, in 1791, the Napoleonic Code in France established eleven years as the age of

7 *Id*.
8 *Id*.
9 Shraddha Chaudhary, "Love, Consent and POCSO: Implementation of The POCSO Act, 2012"in*Special Courts: Challenges And Issues, Centre For Child And The Law* 127(National Law School of India University 2018).
10 Stephen Robertson, *Age of Consent Laws,* CYIH (June 21, 2024,)*available at*https://chnm.gmu.edu/cyh/teaching-modules/230.html#:~:text=The%201860%20Indian%20Penal%20Code,likely%20to%20have%20begun%20menstruating(Last visited on August 15, 2024)
11 *Ibid*.
12 *Ibid*.

consent for both the genders which was later increased to thirteen years in 1863.[13]A century later, other European nations like Spain, Portugal, Denmark and some Swiss provinces followed suit and introduced the age of consent laws that set the limit at thirteen years. It is important to note that by this time, France had further increased the age of consent to sixteen years.[14]It was in 1875 that in England, the act of sexual intercourse with a girl less than thirteen years old was made an offence. The United States of America (US), which had attained independence from England by then, due to its federal system, allowed each of its state to enact their own criminal laws. Consequently, the age of consent ranged from ages ten to twelve years depending upon each state.[15]

By the end of the 19th century, reformers in Britain started to campaign for raising the age of consent due to prevalence of child prostitution in the society. The primary focus of this campaign was the lack of psychological development of children at this age, rather than just physiological. This led to British legislators raising the age of consent to sixteen years which also prompted reformers in the other parts of the world such as the US. Many US states raised the age of consent to sixteen years and some even raised the age as high as eighteen years.[16]

**2. Age of Consent in India and Romantic Relationships between Adolescents and Children**

The age of consent in India, 18 years, is presently governed by the POCSO Act, 2012. Prior to the enactment of this act, there was no statute or provision that clearly defined the age of consent. It was governed by Section 375 of the IPC that defined the offence of rape. However, due to the law on rape not being gender neutral, the age of consent for sexual intercourse was fixed only for females and not males. In fact, the term child wasn't defined in any statute, neither the IPC nor the General Clauses Act, 1897.Moreover, the provision defining rape in

13 *Ibid*.
14 *Ibid*.
15 *Ibid*.
16 *Ibid*.

the IPC has a checkered past as the first age of consent (age for consensual sexual intercourse) was fixed at ten years in 1860.[17] It was raised to twelve years in 1891 due to the public outcry caused the judgement in the *Phulmoni*case.[18] The case pertained to the death of an eleven-year-old girlwho died from the hemorrhage caused froma rupture of vagina by her husband who had forced sex on her.[19] However, the husband was only convicted for the offence of causing grievous hurt and a sentence of rigorous imprisonment for one year.[20] Thereafter, in 1925, the age was raised tofourteen years and then tosixteen years in 1940.[21]

The age for marriage, however, was fixed ateighteen years for females and attwenty-one years for males in the Prohibition of Child Marriage Act, 2006 (PCMA). According to the PCMA, any male below the age of twenty-one years and any female below the age of eighteen years are considered children[22] under the act and a marriage between such individuals is considered voidable at the option of either parties till two years of them attaining majority.[23]Any male married before the age of twenty-one and a female married before the age of eighteen years can get the marriage declared void by filing a petition in the District Court, either after attaining the age of majority or up to two years after attaining it.[24] The PCMA also laid down criminal liability for anyone performed or affiliated a child marriage. It is however important to note that the law did not make child marriages invalid *per se.* They were only voidable at the behest of the parties involved in such a marriage. Only the state of Karnataka, through an amendment in 2016 made child marriages under the PCMA *void ab initio* i.e. invalid in law.[25] Further, this legislation

17 Law Commission of India, "283rd ReportAge of Consent Under The Protection Of Children From Sexual Offences Act, 2012" (Ministry of Law and Justice, 2023).
18 *Ibid*.
19 *Ibid*.
20 Queen Empress v. Hurree Mohun Mythee (1891) ILR 18 Cal 49 (India).
21 *Supra,* note 11at 130.
22 The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007),s. 2(a).
23 *Id.,* ats. 3.
24 *Ibid*.
25 The Prohibition of Child Marriage (Karnataka Amendment Act), 2016, s. 2: 2. Substitution of section 3.- In the Prohibition of Child Marriage Act,

conflicted with personal laws such as the Muslim personal law which provides that a female can married either at the age of fifteen or after attaining the age of puberty, whichever is lower.[26]

It was the enactment of the POCSO Act in 2012 which raised the age of consent to 18 years. It is notable that prior to the POCSO Act, the age of consent was applicable only to females and not males. However, the POCSO uses the word *child* without mentioning the gender and defines it as '*any person below the age of 18 years*.'[27] It defined sexual offences against children in six broad categories, namely, *penetrative sexual assault,*[28] *aggravated penetrative sexual assault,*[29]*sexual assault,*[30]*aggravated sexual assault,*[31]*sexual harassment*[32] *and using child for pornographic purposes.*[33]The word *penetrative* includes not only vaginal penetration but also oral, anal and penetration through urethra.[34]It is broad enough to include insertion of any body part or any object into the body of the child. The penetration need not be only penile but can also be oral to be included under *penetrative sexual assault*.[35]The punishment ranges from minimum threeyears imprisonment along with a fine (for sexual harassment and using for pornographic activity) to death penalty (for aggravated sexual assault).

It also laid down the provision for the setting up of Special Courts for providing a speedy trial for cases registered under the Act. Due to maintenance of law and order being a state (provincial) subject, the

---

2006 (Central Act 6 of 2007) (hereinafter referred to as the principal Act), In section 3, after sub-section (1) the following shall be inserted, namely:- "(1A) Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio.

26 *Supra,* note 11 at 131.
27 S*upra,*note 5, at s. 2(d).
28 *Id.,* at s. 3.
29 *Id.,* at s. 5.
30 *Id.,* at s. 7.
31 *Id.,* at s. 9.
32 *Id.,* at s. 11.
33 *Id.,* at s. 13.
34 *Id.,* at s. 3.
35 *Id.,* at s.3(d).

Special Courts are set up in each district by the State (provincial) government in consultation with the High Court of the state.[36] Further, it also provides for the appointment of a Special Public Prosecutor for conducting cases under the Act.[37]It is notable that the burden of proof under the Act has been put on the accused and not the victim.[38]To ensure the safety of the child, the Act mandates the Special Court to keep a child friendly atmosphere during the trial *"by allowing a family member, guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court."*[39] Other provisions ensuring the safety of the child during trial in the Special Court include not calling the child to the court to repeatedly testify,[40] non-disclosure of the identity of child, restraint on aggressive question and character assassination[41] among others.

The most important provision in the Act, though, was section 42-A which provided that in case of a conflict with any other law, the provisions of this Act shall have an override the provisions of any other Act in force.[42] Later, the provisions of the IPC and POCSO were harmonized by the Criminal Law (Amendment) Act, 2013. The definition of rape was amended and the new provision provided that sexual intercourse with any female below the 18 years was termed as rape.[43]However, one pertinent contradiction that did remain was the marital rape exemption under clause 2 of section 375 according to which "*sexual intercourse or sexual acts by a man with his own wife not being under fifteen years of age, is not rape*."[44]In the same year, the Supreme Court in the case of *Independent Thought v. Union of India*[45] held the provision to be unconstitutional to the extent when it applied to girls

36 *Id.,* at s. 28.
37 *Id.,* at s.32.
38 *Id.,* at s.29.
39 *Id.,* at s. 33(4).
40 *Id.,* at s.33(5).
41 *Id.,* at s.33(6).
42 *Id.,* at s.42-A.
43 S*upra,*note 4, atS. 9.
44 The Indian Penal Code, 1860 (Act 45 of 1860),s.375.
45 AIR 2017 SC 4904.

aged between fifteen to eighteen years. However, if the wife was above eighteen years old, i.e., of the legal age to get married, the exemption still stood. Therefore, the post the judgement, the provision was altered to *"Marital rape by a man with his wife, the wife not being less than 18 years of age, would not be rape."*[46]The newly enacted Bharatiya Nyaya Sanhita, 2023 (BNS) which has replaced the IPC from 1st July 2023 defines a child as a person below the age of eighteen years.[47]

Thus, the present age for consent in India is eighteen years according to the POCSO Act, whereas the legal age for marriage is twenty-one years for males and eighteen years for females according to the PCMA. If we read the two acts in relation to each other, even if individuals are married before the age for marriageby their parents, they cannot engage in sexual intercourse before the age of eighteen years as the POCSO Act will have an overriding effect on all the provisions of the PCMA.

The provisions of the POCSO Act use the words *a person* and *whoever* while defining the offences clearly indicating that criminal liability can also be put on a child if he or she commits an act deemed so. Further, it also lays down a separate procedure for trial if the accused is a child. If the child is an accused, he/she shall be dealt according to the procedures in Juvenile Justice (Care and Protection) Act, 2015.[48]

### 2.1. Data Regarding Romantic Relationships between Children and Adolescents in India

The presence of a law regarding age of consent means that even children or adolescents cannot indulge in any sexual activity with another such individual as it will lead to lead criminal liability. However, in contrast, there is enough data to show the prevalence of consensual sexual activity amongst children and adolescents in India.According to the National Family Health Survey-3 (NFHS-3) held in the year 2005-06, 20 percent of women interviewed aged between 25-49 years

46 S*upra,* note 11 at132.
47 The Bharatiya Nyaya Sanhita 2023 (Act 45 of 2023),s. 2(3)
48 *Supra* note 5 ats. 34.

confessed to having had their first sexual encounter before they turned fifteen while 55 percent confessed to having it prior to attaining eighteen years of age.[49] The age for giving consent for sexual intercourse in the year 2005-06 was sixteen years.[50]Similarly The National Family Health Survey-4held in the year 2015-16 also showed that 11 percent of women between 25-49 years of age had their first sexual intercourse before the age of fifteen while 39 percent had their first sexual experience before they turned eighteen. With respect to men, only 1 percent of the men surveyed had their sexual intercourse before they turned fifteen and 7 percent had intercourse before turning eighteen years.[51] Further, it also shed light on the fact that 7.9% of women aged 15-19 years had either become mothers or were pregnant at the time of the survey.[52] This data is in stark contrast to the demure, virtuous and rather unrealistic portrayal of *adolescent romance*[53] in films and media, thus hiding the darker aspects of it. Another piece of literature that shed light on the prevalence of consensual adolescent relationships in the Indian society was the Youth in India Report 2006-07. Herein , the survey conducted on young people between 15 to 24 years of age, revealed that up to 11.1% of men had their first sexual encounter between the fifteen to nineteen years of age, whereas up to 3.4% of women admitted to the same.[54]Further, according to the report, of the total urban and rural male respondents, 5.3% and 13.4% respectively accepted to having their first consensual sexual encounter between the ages of fifteen to nineteen.[55] The same pattern could be seen amongst women as well, however the difference between the urban and the rural wasn't as high as the men withup to 2.3% and 3.9% of urban and rural

49 Government of India, "National Family Health Survey-3"169 (Ministry of Health and Family Welfare,2005-06).
50 *Ibid.*
51 Government of India,"National Family Health Survey-4" 158 (Ministry of Health and Family Welfare2015-16).
52 *Ibid.*
53 *Ibid.*
54 Government of India, "Youth in India Report: Situation and Needs" 204 (Ministry of Health and Family Welfare 2006-07).
55 *Id*, at 205-206.

women respondents respectively admitted to having their first consensual sexual encounter between the age of 15-19.[56]

Thus, this report along with the NFHS-3 and NFHS-4 reports not only depicts the prevalence of pre-marital sexual relationships in adolescents in Indiabut also indicates that such sexual relations are more prevalent in the rural youth than their urban counterparts. A very clear hesitation on the part of thefemale respondents in revealing about their sexual experiences at such a young age can also be noticed on the careful perusal of the above-mentioned studies and their reports which probably maybe due to the stigma attached to their sexuality.

### 3. POCSO Act and the romantic/adolescent relationships: Need to revisit Close-in-Age Exception in India

Thedebate in favor of reducing the age of consent in India has been the subject of discussion since some time now. There have been suggestions for looking at *close-in-age exception* as a possible solution to the issue which is recognized in several European nations, South Africa, Canada and known as*Romeo-Juliet* laws in the United States of America. This exception provides immunity from criminal liability to consenting adolescents involved in sexual relationships below the age of majority provided there was not a significant age gap between the two individuals involved. We can understand this concept with the help of an example from Canada. The Age of consent, according to the Canadian Criminal Code is 16 years.[57] The age was raised from 14 years to 16 years in the year 2008 to address the online luring away of teenagers.[58] The Canadian law provides for a close-in-age exception under two categories, *firstly* when the age of the younger party is between 12-14 years but the accused is less than two years older.[59] And *secondly,* when the younger party is between 14-16 years but the accused less than five

56 *Ibid*.
57 Criminal Code of Canada, 1985, S. 150. a
58 *Ibid*.
59 *Ibid*.

years older.[60] Even though, the legal age of consent in Canada is 16 years, the law provides an exception that where consent of a person less than 16 years old is considered legally valid. Similar provisions are present in aforementioned countries as well.

However, in context of India in view ofasymmetrical approach adopted by POCSO Special Courts in the application and interpretation of POCSO with respect to romantic Relationships and the potential misuse of the enactment in such cases, it become imperative to examine the Close-in-Age Exception in India to ensure that the application of POCSO does not inadvertently harm the very individuals it is meant to protect. There might be a suggestion from a section of society that if there is an issue regarding the age of consent, why differentiate between the age of consent with the age of marriage. However, it is contended doing so would not just be principally flawed but also but also dangerous due to weaponization of parental backlash. It is ironic that the entire discourse on child marriage wants strict action against underage marriages while disengaging completely from the criminalization against the age of consent which is as high as the minimum age of marriage.[61] It must be understood that the UNCRC mandates the *best interest of the child*[62] to be kept in mind while formulating laws and policies along with respecting the *evolving capacities of the child.*[63] However, an increase in the age of consent from 16 years to 18 years is a direct contravention of the UNCRC's mandate which characterizes adolescence as a distinct phase of development of a child into an adult.[64]

---

60 *Ibid.*

61 Partners in Law in Development, "Why Girls Run Away to Marry: Adolescent Realities and Socio-Legal Responses in India," 74 (2019) *available at* https://vmml-cwds.ac.in/sites/default/files/2024-05/Why_Girls_Run_Away_to_Marry_Adolescent.pdf(Last visited on August 20th 2024).

62 *Supra* note 7 at art. 3.

63 *Id.,* at art. 5.

64 United Nations Convention on the Rights of the Child, Committee on the Rights of the Child, *General Comment No.20 (2016) on the Implementation of the Rights of the Child during Adolescence,* UN Doc. CRC/C/GC/20.

### 3.1 Implementation of POCSO to Romantic Relationships by POCSO Special Courts: A reflectiononlenient and liberal construction of the Act

Infact, to study the implementation of the POCSO Act towards romantic relationships by the Special Courts established under the POCSO Act , a study was conducted by Centre for Child and the Law by NLSIU, Bangalore, published in February 2018,wherein the study revealed sympathetic and lenient behavior of the judges of the Special Courtstowards both the parties in such cases dealing with romantic relationships between minors especially if they had gotten married and children as a consequence.[65]The study also showed that the accused in most of these cases end up getting acquitted, either because the primary witness, the victim refused to testify against the accused, turned hostile or denied that the acts and events ever took place.[66] In fact, in most of the cases, it was stated that the sexual intercourse was consensual, resulting in acquittal of the accused.[67] This was despite the fact that the POCSO Act treats the consent of minors as irrelevant.Consequently,the rate of conviction in cases related to married couples was found to be 0% in the states of Assam and Andhra Pradesh, 1% in Delhi and 3% in the state of Maharashtra.[68]

Another study conducted in 2017by HAQ Centre for Child Rights and Forum Against Sexual Exploitation of Children (FACSE) supported by UNICEF on the implementation of the Act in Delhi and Mumbai (2012-2015) also showed that out of the total 224 POCSO cases in Delhi, 79 cases (35%) related to romantic relationships out of which in 74 cases (94%), the accused was acquitted.[69] In Mumbai, the total number of such cases disposed were just 4 in total. However, in 3 cases

65 S*upra* note 11 at133.
66 *Ibid.*
67 *Ibid.*
68 *Ibid.*
69 HAQ CENTRE FOR CHILD RIGHTS ET ALL, *Implementation of the POCSO Act: Study of Cases of Special Courts in Delhi & Mumbai* (2012 - 2015), HAQ: Centre for Child Rights & Forum Against Sexual Exploitation of Children (FACSE) (November 2017).

(75%), the accused ended up being acquitted.[70] This showed that not just were these cases taking up a lot of time from the Special Courts but also resulting in the victim or the primary witness turning hostile.

### 3.2. Interpretation by Special Courts with respect to Romantic Relationships: A Reflection of Blanket Approach

There have been numerous judgements given by POCSO courts in cases related to romantic relationships cases which seem to highlight an evident lack of analysis on the part of the Special Courts to investigate the nuances of consent prevailing in each case. The Special courts have used a rather blanket approach while considering romantic cases and looked at consent one-dimensionally. In the case of *State v. Suman Dass*[71]wherein a 15-year-old girl eloped and married a man aged 22 years. Her mother filed a complaint alleging kidnapping and sexual assault by that man. The girl though in her statement admitted to having gone with him willingly and having consensual sexual intercourse. The man was charged under s. 363 of the IPC (kidnapping) and s. 4 of the POCSO Act (aggravated sexual assault). The court on the analysis of the evidence in front it did not find the accused guilty of kidnapping as it found "*no iota of evidence that the accused enticed or took away the prosecutrix from her lawful guardian.*"[72] The court also acquitted the accused on the charge of aggravated sexual assault under POCSO Act on the ground that the couple were married and living peacefully. It was further held that it wouldn't be wise to punish the accused on the grounds that he had sexual intercourse with the minor, firstly because according to the court, it would neither serve the purpose of the Act nor criminal law in general and secondly because it wouldn't be conducive for the mental and psychological health of the girl that her newly married husband was sent to jail. However, most importantly, the court commenting on the naivety of youthopined that while marriage at such a young age is filled with complications but "*Law cannot and should not*

70 *Id*., at 101.
71 SC No. 66/13 decided on 17.08.2013 (Delhi).
72 *Ibid*.

*prohibit teens from experimentation of such nature.*"[73] This judgement of the special court was upheld by the High Court of Delhi as it found the opinion of trial court "*reasonable andprobable*."[74]

In another case,*State v. AkhileshHarichandra Mishra,*[75]the victim, a 15-year-old girl and the accused had not just eloped and got married but also had a child during the pendency of the trial and was born before the trial was completed.The victim admitted to marrying the accused voluntarily and being happy in that marriage. Rejecting the contention of the prosecution that consent of a child/minor was irrelevant in the POCSO Act held that "*if the girl is enough mature to understand the consequences of her consensual physical relations with the partner, then the boy cannot be held alone guilty of having sex with the girl though not attained majority.*"[76] The accused was acquitted since the Special Court in Thane found no reason to punish them as they were enjoying a happily married life with each other. Similar reasoningwas applied in *State v. SachinGotiramKedar*[77]and *State v. Rupesh@BantiBajiraoMokal*[78] where the victims were above 17 years but still a few months short of majority. In both the cases, the girl agreed to having sexual intercourse with the victim voluntarily and the courts held that they were old enough to understand the consequences of their action.Further, in *State v. Saidul Ali*[79], another case dealing with elopement and marriage between two minors, the accused was acquitted as the court concluded that though the girl had not achieved the age of majority, she had achieved the age of discretion. It was held by the Special Court in the state of Assam that she had developed the capacity to understand the nature of her act. Similarly, in another case from Assam, *State v. Riki Bora*[80], the Special court in Assam acquitted the

73 *Ibid*.
74 State v. Suman DassCrl L.P. 301/2014 decided by the High Court of Delhi on 03.09.2014.
75 Spl. C. No. 165 of 2015 decided on 28.01.2016 (Maharashtra).
76 *Ibid*.
77 SC No. 25/15 decided on 25.04.2016 (Maharashtra).
78 SC No. 302/15 decided on 20.10.2016 (Maharashtra).
79 Special (POCSO) Case No. 50/15 decided on 22.06.2016 (Assam).
80 POCSO Case No. 48/15 decided on 16.02.2016 (Assam).

accused on the ground that the victim was in a relationship with the accused and that she had eloped with her voluntarily. It was held that even though she wasn't a major, she was on the cusp of attaining it.

Thus, it can be observed that the grounds for lenient and liberal construction of the Act by the Special Courts are primarily due to practical considerations considering the society we live in where it is an established fact that institution of marriage provides legitimacy to a relationship. It provides social acceptance to a woman and her child and prevents them from secondary victimization from the society.Another important judgement in this context is that of *State v. Parhlad*[81] from Delhi, where a 17-year-old girl had eloped with the accused and eventually got married. However, the marriage was held invalid as the essential ceremonies had not been performed.In her testimony during the trial, she confirmed that she was in a love affair with the accused and that she went with him willingly. When she attained the age of majority, she subsequently married the accused and became pregnant with his child. As the prosecution was able to conclusively prove the minority of the victim at the time of marriage, the accused was charged for aggressive penetrative sexual assault under section 5 and found guilty under section 6 of the Act. The court acknowledged that consent was immaterial according to the mandate of the POCSO Act. However, the interesting thing to note here is that while the minimum punishment under the provision is 10 years imprisonment, the court sentenced the accused only for the time served during the trial considering the mitigating factors in his favor. According to them, the conduct of the accused showed that he was interested in a long-term relationship with the victim and did not just act out of lust. Moreover, the fact that the couple got married before committing sexual intercourse and then marrying again after the victim was released from Children's home showed that they were both serious for each other.

Thus, the above-mentionedcases portray the liberal approach that Special courts have taken across various states in India. While it is

81 SC No. 113/13 decided on 31.07.2014 (Delhi).

important to keep a sensitive approach to cases under the act and understand the emotional volatility and mental fragility of youth in taking decisions and acknowledging the sexuality of young adolescents, it is also important that the courts keep in mind the circumstances of consent in each case. There can be many reasons as to why a victim consents to marrying the accused like societal pressure, coercion or secondary victimization after being raped by the accused.[82] There are some other cases which seem to highlight anevident lack of analysis on part of the Special Courts to investigate the nuances of consent prevailing in each case. The Special courts have used a rather blanket approach while considering romantic cases and looked at consent one-dimensionally. For example, where the victim had shown even an iota of feelings for the accused or had met him or had any sexual activity like kissing, the court has concluded that the victim had consented to sexual intercourse. An important case in that regard is from Guntur district in the state of Andhra Pradesh where the victim, a 16-year-old girl was pulled out of school by the accused no.1 and his two other friends on the pretext of the death of her grandfather. The accused no. 1 and his friends allegedly attempted to kidnap her because the former wanted to satisfy his sexual lust.[83] The defense argued that the victim was in love with the accused and produced several letters between them to prove the same. The victim on the other hand refuted that argument but the Special court concluded that the victim had gone willingly with the accused. This conclusion was reached even when independent witnesses testified that they had heard the cries of the victim, they accosted the accused and then the accused fled the scene. Thus, it does seem quite bizarre as to how the court concluded that the accused and the victim had a love affair. While it might have been so the case at some point in time, it also might be the case that her feelings towards theaccused had changed. This seems to be the classic male understanding of love and consent that if a girl has feelings for you, she must be ready to have sexual intercourse as well.

82 *Supra* note 11 at 135.

83 State v. Indla Venkatesh & Ors. S.C. No. 57/2015, decided on 04.10.2016 (Guntur).

Similarly, in another case from Maharashtra, the court held the testimony of a victim to be unreliable on two grounds. Firstly, because she did not *act appropriately* during non-consensualforceful intercourse and secondly because she admitted to having a romantic relationship with the accused in the past.[84] According to the Special Court, the natural conduct of a girl being subjected to rape or forceful intercourse would be cry, yell and seek help and since the girl did not, her testimony was held unreliable.

### 3.3. Consensual sexual relationships and Misuse of POCSO Act

There have been multiple judgements where different High Courts have expressed concerns about the misuse of the POCSO Act for settling personal scores. The Kerala High Court, in 2022, opined that the provisions of the act are too harsh and the punishments extremely severe and thus the misuse of it by falsely implicating innocent people was inevitable by ill motivated litigants.[85]In another case, the same High Court while acknowledging the fact that the POCSO Act is a revolutionary legislation for the safety and protection of children against sexual exploitation. However, it also lamented the fact that there have been enough instances which documented the misuse of the legislation which not only undermined the intent of the legislature but also posed a threat to the justice delivery system.[86] The present case pertained to a complaint by a 17-year girl of molestation against her cousins who had previously objected to relationship between her and her classmate. Consequently, the two accused were jailed for two months and had applied for bail. The complainant later filed an affidavit before the court informing the court that she had levelled false allegations against both

84 State v. Rajendra Bhaskar Bagul, Sessions Case No. 24 of 2015, decided on 28.01.2016 (Nashik)
85 XX v. State of Kerala, CRL.MC NO. 714 OF 2022.
86 State of Kerala v. XX, BAIL APPL. NO. 5168 OF 2024.

the accused. The court also urged the legislature to implement necessary checks and safeguards to prevent such misuse.[87]

In this regard, the judgement of the Allahabad High Court in *Satish alias Chand v. State of Uttar Pradesh & Ors.*[88] where the court raised concerns regarding misuse of the act in matters pertaining to consensual romantic relationships. Justice Krishan Pahal opined that while dealing with matters under the POCSO Act, the real challenge lies in distinguishing between cases of genuine exploitation and those involving consensual romantic relationships. According to the court, doing so requires a *nuanced approach* and *careful judicial consideration* to ensure that there is no miscarriage of justice.[89] The court has laid down four factors to consider while dealing with such cases. Firstly, each case should be evaluated by its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined. Secondly, the statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution. Thirdly, ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The court opined that the judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts where the age of both the parties becomes important. Fourthly, courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect.[90]

### 4. Need to revisit Close-in-Age Exception in India

Absence of close-in-age exemption in India indeed greatly diminishes any autonomy that adolescents can exercise over their sexuality and therefore discussion about its introduction in India becomes imperative not only from the perspective of understanding the

87 *Ibid.*
88 CRIMINAL MISC. BAIL APPLICATION No. - 18596 of 2024.
89 *Id.,* at para 15.
90 *Id.,* at para 14.

realities of adolescents' lives but also for their protection from the criminalisation. It was in this context only, The NCPCR suggested the age of consent to be set at 16 years when the discussions regarding the enactment of the POCSO Act were in progress.[91]It also suggested to include close-in-age exception in a two-fold manner. Firstly, to protect consensual non-penetrative sexual activities amongst two children above 12 years who are within two years of each other.[92] Secondly, to protect consensual penetrative sexual activities between children above 14 years who not more than 3 years of difference between them.[93] Over the years, similar sentiments have been echoed by higher courts as well. The High Courts of various states in India have urged for the lowering of the age of consent to decriminalize consensual sexual activities between children and adolescents. For instance, the Calcutta High Court in *ProbhatPurkait @Provat vs. State of West Bengal*[94]echoed its concerns over the use of POCSO Act in punishing consensual sexual activities amongst adolescents. The division bench[95] of the court comprising of Justice Chitta Ranjan Dash and Partha Sarathi Sen opined that while the aim of the act was to protect children under 18 years of age from sexual exploitation; by prohibiting all sexual activities between children, it is depriving them of the liberty to be in consensual relationships.[96] The court stressed on the need to strike a "*balance between protection and evolving autonomy is central to ensure best interests of adolescents.*"[97] The case was an appeal filed by the accused in the High Court, aggrieved from the decision of the Special Court which had convicted him of the offences of kidnapping, rape (IPC, 1860) and sexual assault (POCSO Act). It involved the elopement and subsequent marriage of the accused with the victim who was above 14 years of age at the time.At the time of appeal, the victim had begotten the child of the accused and was above

91 S*upra,* note 11 at 140.
92 *Id.*
93 *Ibid.*
94 CRA (DB) 14 of 2023.
95 *Ibid.*
96 *Id*., at 23.
97 *Id*., at 28.

17 years of age. The court set aside the conviction of the accused and urged for decriminalizing consensual sexual acts for adolescents above the age of 16 years through legal amendments. It further advocated for integrating *comprehensive sexuality and life skill education* in school curriculums.[98]

In a recent judgement pronounced by the Allahabad High Court, the hon'ble court echoed the same sentiments as that of the Calcutta High Court when it opined that the primary aim of the POCSO Act was not criminalization of consensual romantic relationships between children and adolescents.[99] The court held that the presence of a consensual romantic relationship between the accused and the victim should be a consideration in granting of bail under the Act as denying it will "*amount toperversity of justice if the statement of victim was ignored and accused was left to suffer behind jail.*"[100] Similar sentiments were expressed by the same court in a previous judgement where a 14 and a half year old girl eloped and married her lover and gave birth to a baby boy who was 7-8 months old at the time of the appeal.[101]The court was of the opinion that it was not the intention of the POCSO Act to bring within ambit, cases of romantic relationships between teenagers and adolescents.[102]The court recognized that the consent of a minor girl holds no evidentiary value in the eyes of law but also acknowledged the precariousness of the case where the accused had been in prison as a result of the decision by the Special POCSO court and the girl had refused to go to her parents' house and residing in a Children's home with her infant child. Referring to these facts, the court granted bail to the accused as it said that not doing so would lead to more misery for the

98 *Id*.
99 MrigrajGautam @ Rippu vs. State of Uttar Pradesh & Ors. Criminal Misc. Bail Application No. - 45007 of 2023.
100 *Id*., at 10.
101 Atul Mishra V. State Of Uttar Pradesh & Ors. Criminal Misc. Bail Application No.-53947 Of 2021.
102 *Id*., at 13.

couple when the accused was more than ready to keep his wife and child with him and take good care of them too.[103]

The Madras High Court also in *Sabari @ Sabarinathan v. Inspector of Police & Ors.*[104] suggested redefining the definition of *child* to 16 years under section 2(d) of the POCSO Act.[105] It had also suggested the implementation of a close-in-age exception through an amendment to the act, to the effect that if the accused was not more than five years older than the consenting victim of girl of 16 years or more.[106] The judgement in this case was reiterated by the same court in *Vijayalakshmi v. Inspector of Police*[107] that the scheme of POCSO Act neither intended to include romantic relationships within its scope nor did it seek to criminalize those indulging in them. The court urged to not perceive these relationships from the point of view of adults it signifies a lack of empathy.[108] Further, it also urged the legislature to keep in mind the changing nature of the society and the need to keep with it. Considering these arguments, the court urged the legislature to bring about necessary amendments regarding consensual romantic relationships between children and adolescents under the Act.[109]Similarly, the Karnataka High Court[110] and the Delhi High Court[111] quashed proceedings under the POCSO Act of cases dealing with romantic relationships where the parties involved had got married and had a child in the process.

Despite the judiciary's consistent stance on non-criminalization of romantic relationships under POCSO, the Government of India, in December 2022, stated in the Parliament that it doesn't intend to lower

103 *Id*., at 18.
104 Criminal Appeal No.490 of 2018.
105 *Ibid*., at 29.
106 *Ibid*
107 Crl.M.P.No.109 of 2021.
108 *Id*., at 18.
109 *Id*.
110 Rama @ Bande Rama v. State of Karnataka, CRL.P No. 6214 of 2022.
111 Arif Khan v. The State &Anr. W.P. (CRL) 1064/2023.

the age of consent from 18 years to 16 years.[112]However, in 2023, two High Courts, namely the Karnataka High Court[113] and the Madhya Pradesh High Court[114]requested the Law Commission of India to suggest amendments to the POCSO Act regarding cases where the *de facto* consent of the minor is present. It urged the Law Commission to amend the Act to the tune that vests discretionary power on the Special Court Judge to not levy minimum sentence in cases where there was a *de facto* consent of the victim.[115]It is pertinent to note here, that the Law Commission in its 283rdreport titled "*Age of Consent under the Protection of Children from Sexual Offences Act, 2012*" advised against reduction of the age of consent from 18 years to 16 years on grounds such as child marriage, forced prostitution, exploitation and secondary victimization.[116]

While the report held that there cannot be an automatic decriminalization of sexual acts between individuals aged between 16 to 18 years, it did recommend "*introducing judicial discretion in sentencing to strike a delicate balance to address the issue at hand and at the same time protecting children from sexual exploitation*."[117] It was opined that *guided judicial discretion* during sentencing presents a more reasonable approach, exercisable at the discretion of the Special Court when there is a presence of a *de-facto* consent of the victim who is above 16 years old. Although, it was also recommended that such a discretion should be used judiciously as it should be applied only after determining that the *de-facto* consent was "*indeed free from any coercion, deception,*

112 Jagriti Chandra, "No Plan to Revise the Age of Consent, Centre Tells Rajya Sabha", *The Hindu,* (December 22, 2022)*available at* https://www.thehindu.com/news/national/no-plans-to-reduce-age-of-consent-for-relationships-centre/article66288969.ece(Last visited on 10th July 2024).

113 State of Karnataka v. Basavraj S/o YellappaMadar (2023) 1 AIR Kant R 231.

114 VeekeshKalawat v. State of Madhya Pradesh & Ors. [Misc. Criminal Case No. 4521 of 2023].

115 *Supra* note 19 at 3.

116 *Ibid.*

117 *Id.,* at 106.

*fraud or undue influence.*"[118] The report recommended amendments to section 4 (penetrative sexual assault) and section 8 (sexual assault) of the Act regarding the use of discretion in cases involving romantic relationships. According to it, in any case involving a child of 16 years or more, where the Special court was satisfied that there was an *intimate* relationship between the child and the accused, the court in its discretion can impose a lesser than minimum sentence in cases of tacit approval of the victim, age proximity of less than years between the victim and the accused, good conduct, no past criminal history or lack of dominating influence of the accused.[119]

It was also recommended that considerations such as marriage, acceptability of the relationship by the families and birth of a child consequent to that relationship are also factors that may be investigated by the court before exercising discretion in such cases.[120] Thus , it can be seen ,the recommendations of the Law Commission, to remedy the prevailing problems are in sync with current approach applied by Special Courts and High Courts across the country, while the condescending approach by the governing authorities is arbitrary in nature and strikes on the fundamental right to life & personal liberty and the right to freedom of speech and expression guaranteed under Articles 21 and 19 of the Indian Constitution. This reeks of the double standards prevalent in the criminal justice system where adolescents can be treated as adults when committing heinous crimes [121]but not when they express their sexual autonomy .It needs to be understand , that the POCSO Act was enacted to implement the mandate of the UNCRC of which India is

118 *Id.,* at 107.
119 *Id.,* at 117.
120 *Id.,* at 118.
121 The Juvenile Justice (Care and Protection of Children) Act, 2015 ensures that the children who are accused of committing heinous crimes and are between the ages of 16 to 18 years be tried as adults according to section 15 read with section 18(3) of the said act. The Juvenile Justice Board (JJB), in this regard is empowered to conduct a preliminary enquiry regarding the mental and physical capacity of the child to commit the offence along with his capability to understand the consequences of the offence.

a signatory and therefore, not reducing the age of consent to 16 years is a violation of that mandate which envisages striking a balance between the evolving capacities of adolescents and the protection accorded to them.[122]

**Conclusion and Suggestions**

The primary motive for the enactment of the POCSO Act was to curb sexual exploitation of children and not to punish consensual romantic relationships. Adolescence is the age where such children are most vulnerable to grooming and sexual exploitation. However, the blanket provisions of the Act criminalizing any activity between two consenting children is in direct conflict with the natural tendencies of children to explore and act upon their sexual urges post puberty. Provisions such as these lead to stigmatization of children involved in consensual adolescent relationships and subject them to moralistic sermons from society. Criminalizing all sexual activity between adolescents undermines their capacity to learn and distinguish as to what is positive, respectful and mutually desired from what is negative, abusive and risky. It leads to an association of shame and secrecy with sexand affects their mental and physical well-being by inhibiting them from visiting health service providers for any information on sexual or reproductive health. Thus, the POCSO Act in its current form doesn't respect the mandate of UNCRC as it doesn't consider the evolving capabilities and sexual autonomy of children and adolescents. Thus,it becomesimperative that remedial steps are taken by the legislature to not just serve the best interests of children but also to fulfill the mandate of UNCRC.Considering the arguments and evidence adduced above, the authors would like to present the following amendments to the POCSO Act, 2012-

122 *Supra* note 66 atart. 1.

- Amendment in section 2(d) of the Act which reduces the age of a child from eighteen to sixteen years which decriminalizes all sexual activity between the ages of 16 years to 18 years.
- Introduction of a new provision under section 2 which defines the term *"consent."*
- Introduction of a close-in-age exception or an age proximity clause from the ages of 14 and 15 which de-criminalizes consensual sexual activities between partners who have not more than 2 year (if the younger partner is 14 years of age) or 3 years (if the younger partner is 15 years of age) of age difference between them.
- Introduction of a provision within the act which mandates the Special Court to take the help of psychologists and psycho-social workers in determining whether the child giving consent to consensual sexual activity was mentally, physically, emotionally and sexually mature enough to do that or not.

Introduction of a close-in-age exception will help in erasing the notion that all consensual adolescent sexual activity is not sexual assault or rape and offer individuals protection from criminalization. However, it is also imperative to understand that such an exception is not in line with the realities of Indian society, where subjects such as sex and sexuality are viewed with paternalistic lens. Further, the possibility of coercion, duress and undue influence cannot be discounted in relationships which will be covered under close-in-age exception. Thus, it is important that the Special courts lay primacy on the testimony of the victim.

While close-in-age exception is not the panacea to all the problem, yet it respects the evolving capacities of children and adolescents and recognizes them as sexual beings who are mature enough to form their opinion on such matters. It is of utmost importance that children be protected from sexual abuse and exploitation but prohibiting all sexual contact is not a practical solution to the problem at hand. However, legislation and strict penal provisions are mere short-term fixes and can only do as much. It must be accompanied by measures such as comprehensive sexual education, gender sensitization and access to

sexual and reproductive health services along with support from families of young adolescents. The government and society must understand that sexual activities amongst teenagers does occur and will continue to do so, and it is time that they stop brushing it under the carpet. Doing so will not only enhance the stigma and the sense of shame within children but also lead them to adopt unhealthy sexual practices. What is needed is that adolescents be given proper guidance, counselling and proper sexual education to adopt safer practices and make informed decisions. The need of the hour is to accept that children are also sexual beings and help them make educated choices for their own physical and mental benefit.

# Legal Mechanism related to Persons suffering from Mental Health: An Issue of fixing their Criminal liabilities

**Dr. BibhabasuMisra***

***Abstract***

*Mental disease(s) is a huge curse in India. People hardly appreciate the fact that, like its physical counterpart(s), often, it is curable / manageable, given a proper treatment. Any sound man may suddenly become unsound due to environmental, psychological, and physiological changes. Sometimes it is genetic yet remains dormant due to absence of stress. Legal insanity in India is different from medical insanity. The legal insanity under the Indian Penal Code is a defence of offences under the Indian Penal Code and other Criminal Statutes. The Legal insanity doctrine in India must be revisited to make it more human and to keep it contemporary with the current developed medical science like Psychiatry, Psychology etc.*

**Keywords**: Mental Health, Legal Insanity, Diminished Responsibility, Indian Constitution.

## Introduction

"Unsoundness of mind" is a worst disease, more grave, even from cancer or AIDS.A person with unsound mind loses his personality, and subject to ridicule from his family members, friends, employer and the society. Even a child from seven to twelve years age is in better position in a society, because at least he can control his mind. In India, the mental health problem has become an epidemic, yet our society trivializes the matter. The family members instead of taking the patient to a Psychiatrist/ Psychologist resort to unscientific solutions, like arranging a marriage for the patient or sending him to a quack. Society fail to understand that an unsound mind is just like other diseases, and a person requires empathy, care and good companion. Due to non maintenance of

* Associate Professor, Department of Law, ICFAI UNIVERSITY, TRIPURA.bibhabasumisra@gmail.com 8459864783/9474378320

secrecy by the stake-holders, even a patient who has recovered, again go back to depression mode as people surrounding him dig up the history and always trivialize his observations, suggestions by openly expressing doubt at his mental stability. Thus a patient who has recovered from mental health issues has to fall back to his support system but mainly he has to develop a robust mental immunity against any panic attack, depression, which is often a result from an external assault by people surrounding him. As a result often the affected person commits suicide. A good treatment, empathy from the people surrounding him, will help him to contribute to the Nation building. Otherwise many precious talented mind will lay wasted. Unsoundness of mind is different types, having various severities, requiring different treatment, to be administered by the medical experts. In this article, we shall discuss the legislative scheme (s) to fix the criminal liability of the unsound persons. Unsoundness of mind and "Legal insanity" is totally different from "Medical insanity". The famous Mc' Naughtens' case[1] decided the criminal liability of the unsound person. It is also called as "Right and Wrong" test. Accused Daniel Mc' Naughten was suffering from a delusion that Prime minister Sir Robert Peel, of the U.K. wanted to kill him. Thus, he wanted to kill Sir Robert Pill, but instead by mistake shot and killed his secretary Edward Drummond. The House of Lord gave the verdict that Daniel Mc' Naughten was suffering from legal insanity, thus not liable under the criminal law. The two most important ingredients of legal insanity are

A. The accused person does not know the nature of his act.

B. The accused person does not know the nature of his act and it is wrong or contrary to law

These two principles are the deciding principles in almost all the Common law countries, about legal insanity, including India. Section 84 of the Indian Penal Code defines legal insanity. Now, section 22 of the Bharatiya Nyaya Sanhita provides that, Act of a person of unsound mind- "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing

1 See (Revised Reports, Vol. 59 8 ER718.)

the nature of the act, or that the he is doing what is either wrong or contrary to law."As for example, a legally insane person while walking over the pavement saw a beggar sleeping. He severs the head of the sleeping person by a knife, and is amused thinking when the person will be awake, he will try to find his head. The legally insane man does not understand that, if the head of a person is severed, he will never regain consciousness. Thus, because of failure of the cognitive faculty of the man, the person shall not be liable, for lacking *Mensrea.*A Human mind seems to be divided into three compartments; emotion, will and cognitive faculty.The three compartments are depicted through the following figure.

| |
|---|
| Cognitive Faculty |
| Emotion |
| Will |

As per section 22 of the Bharatiya Nyaya Sanhita,2023an accused person of criminal offence will get the defence of legal insanity[2]only when his cognitive faculty is impaired. Now, the question is whether legal insanity will be result of the (is incapable of knowing the nature of the act, or that the he is doing what is either wrong or contrary to law.")two ingredients or one ingredient. It seems, "Or" will be interpreted literally as criminal law is always interpreted strictly/ literally to protect the individual person's liberty[3]. The legally insane person is not guilty of an offence, but the common people must get protection from the attack of a lunatic. Thus section 330 of the Criminal Procedure Code, now section 369 of the Bharatiya Nagarik Surakha Sanhita provide the detailed procedure to protect the common man from the attack of a lunatic. Section 373 of the Bharatiya Nagarik SurakhaSanhita, provides that, if there is acquittal on ground of unsoundness of mind, then the "finding shall state specifically whether

2 This defence is also applicable for an accused person of other special Criminal Law(s), Statutes, ordinance, Regulation etc.

3 See Article 21 of the Indian Constitution.

he committed the act or not".Chapter XXVII of the Bharatiya Nagarik Surakha Sanhita, provides "Provisions As To Accused Persons of Unsound Mind." The Penal codes of different Common law Countries are summarised as follows:

**Singapore:-**

Act of person of unsound mind 84[4].—(1) Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is — (a) incapable of knowing the nature of the act; (b) incapable of knowing that what he is doing is wrong; or [Act 23 of 2021 wef 01/03/2022] (c) completely deprived of any power to control his actions. [Act 23 of 2021 wef 01/03/2022] (2) Subsection (1)(b) applies only if the person is incapable of knowing that his act — (a) is wrong by the ordinary standards of reasonable and honest persons; and (b) is wrong as contrary to law.

Illustration A, while labouring under a delusion, believes that he has received divine instructions to kill Z and that it is morally right for him to do so. A however knows that it is contrary to law to kill Z. A kills Z. Here, the defence of unsoundness of mind is not available to A as he is capable of knowing that it is contrary to law to kill Z.

**Bangladesh: -**

Act of a person of unsound mind[5]

Section 84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

**Pakistan:-**

Section84. Act of a person of unsound mind[6]: Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

4 Penal Code 1871
5 The Penal Code Bangladesh, 1860
6 Pakistan Penal Code

Sri-Lanka:- Section 77 of the Penal Code of Sri-Lanka

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law"

**Australia:-**

Under section 27 of the Criminal Code, 1899:-"a person is not criminally responsible for an act or omission if at the time they were affected by a mental disease or mental infirmity that meant that they: Could not control their actions; Could not understand what they were doing; or Could not understand that they ought not to do the act or make the omission. Where a person is facing a serious charge on indictment and is relying on the defence on insanity, their matter will be decided by the Mental Health Court. The Mental Health Court consists of a Supreme Court judge and two clinicians. If a person is facing charges in the Magistrates Court or Children's Court and raised insanity, their matter will remain before a magistrate. If the defence relies on the defence of insanity, it is up to the accused to satisfy the court that they were not of sound mind at the time of the alleged offence. This must be proven on the balance of probabilities."

**Canada:-**

Defence of mental disorder[7]

16 (1) "No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong".

Marginal note: "Presumption (2) every person is presumed not to suffer from a mental disorder so as to be exempt from criminal responsibility by virtue of subsection (1), until the contrary is proved on the balance of probabilities".

Marginal note: Burden of proof

7 https://laws-lois.justice.gc.ca/eng/acts/c-46/section-16.html

(3) "The burden of proof that an accused was suffering from a mental disorder so as to be exempt from criminal responsibility is on the party that raises the issue."

**New-Zeland:** - Crimes Act, 1861.

Insanity

(1) "Every one shall be presumed to be sane at the time of doing or omitting any act until the contrary is proved."

(2) " No person shall be convicted of an offence by reason of an act done or omitted by him or her when labouring under natural imbecility or disease of the mind to such an extent as to render him or her incapable"—

(a) "of understanding the nature and quality of the act or omission;" or

(b) "of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong."

(3) "Insanity before or after the time when he or she did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when he or she did or omitted the act, in such a condition of mind as to render him or her irresponsible for the act or omission."

(4) "The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence."

**U.K.:-**This is the Country, where Mac'Naughten rule related to legal insanity was invented, and taking cue from that, all most all the Common law Countries legislated the Penal provisions related to the legal insanity.

Diminished Responsibility: -This term clearly indicates that due to some mental stress resulting from emotional, psychological, physiological distress, liability of crime will be less severe. As for example, a man has a painful tumor in his brain. He is standing in a balcony with a baby in his arms. Suddenly due to a throbbing pain in his head, the man impulsively throws the baby from the balcony and the

baby dies. The man should get the benefit of the doctrine of "Diminished responsibility".

Section 2 of the Homicide Act 1957,U.K. provides: -Persons suffering from diminished responsibility.

"( 1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter."Abnormality may arise from arrested or retarded development of mind, disease or injury.

**Diminished Responsibility in Singapore:-**

Singapore Penal Code, 1961, Exception VII to Murder. " Culpable homicide is not murder if the offender was suffering from such abnormality of mind(whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death."

**India:**

Legal Insanity / Unsoundness of mind are not only covered by Mac'Naughten's rule. We must discuss relevant provisions of the Indian Penal Code and Mental Health Act.Section 309 of the Indian Penal Code provides:-"Attempt to commit suicide- Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both".( Now, there is no such corresponding section in the BharatiyaNaya Sanhita,2023).

In the case law of P. Rathinam v Union of India[8], the Apex Court of India held that, section 309 of the Indian Penal Code is infringing Article 21 of the Indian Constitution. It was interpretated that, "Right to life" includes "Right to die".

8 JT 1994 (3) SC 392.

Disagreeing with above interpretation, the Apex Court in India in a later case held that,Gian Kaur v State of Punjab[9] Article 21 does not provide the right to suicide. Thus, section 309 of the Indian Penal Code is not Un-Constitutional.

**Role of the Mental Health Act, 2017:** Its preamble provides that, "An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfils the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto."

Mental Health Act, India: - section 115. "Presumption of severe stress in case of attempt to commit suicide.—(1) Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code. (2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide."Thus, the Mental Health Act impliedly repeals the section 309 of the Indian Penal Code, and declares the offence of attempting suicide is not an offence but a result of poor mental health. To treat the disease requires a therapeutic approach of law/ medical science.

**Conclusion:**

It can be concluded that legal insanity provision in India must be broadened[10], and to include the diminished responsibility concept(s). A diseased mind should not be further pained, rather it should be given a fair treatment, as then it usually recovers and meaningfully contributes to the Society.

9 JT 1996 ( 3) SC 339.

10 See Rupesh Manger v State of Sikkim 2023 CRLJ 4549. The Supreme Court applied the Mac'Naughten rule and acquitted the Murder convict.

# Dealing with gender bias: Lessons for India and way forward

**Dr. Suman Yadav***
**Parth Jain****

**Abstract**

*Stereotypes stem from the socio-cultural subtext of the given geographical area. Eradicating gender stereotypes in India through legislative actions requires a thorough analysis of precisely what is the 'stereotype' in question and what are the ways in which society would be able to adjust to the reforms which the legislative action seeks to bring. This paper is an attempt to shows how anti- discrimination laws are by themselves not sufficient to fight gender stereotypes in a society alone*.

## Introduction

Presence of laws and regulations which treat individuals differently based on their gender, often resulting in unfair treatment or disadvantage for one gender provide strength to the already existing bias in the society. Several stereotypes remain prevalent in our society owing to reasons such as illiteracy, religious stigmas, and class divide. While progress has been made towards gender equality in India, there are still several areas where gender bias persists within the legal framework of the country. These biases can be found in both civil and criminal. La The prominent areas where gender bias is evident are in personal laws, which govern matters such as marriage, divorce, inheritance, and adoption. Different personal laws apply to different religious communities in India, and many of these laws contain provisions that discriminate against women and the LGBTQIA+ (hereinafter 'LGBT'). A classic example of the same can be found in personal laws where women face unequal rights in matters of divorce, child custody, and inheritance.

* Assistant Professor | Faculty Of Law University Of Delhi, New Delhi-110007, Yadav27suman@Gmail.Com
** Advocate, Rajasthan High Court, Jaipur.

For instance in the Muslim personal laws, while men have the unilateral right to pronounce talaq, women seeking divorce through 'khula' often require the husband's consent, which can be exploited to demand higher compensation or to harass the woman.[1]Under the Indian Divorce Act, 1869, which governs Christian Community, there was a disparity in the grounds available for divorce. Historically, a Christian husband could seek divorce on the ground of adultery alone, whereas a wife had to prove adultery coupled with other grounds such as cruelty or desertion. This was challenged and led to amendments, but it highlights the initial inequality in the law.[2]This inequality forces women to depend on their male counterparts for several basic necessities, resulting in further strengthening of already existing gender stereotypes in the society.Another area of concern is laws is related to violence against women. While India has taken steps to address gender-based violence or harassment, including the enactment of laws such as the Protection of Women from Domestic Violence Act, 2005 and Sexual Harassment of Women at Workplace (Prevention and Protection) Act, 2013 ('POSH'), there are still gaps in implementation and enforcement. The lapses in implementation of such laws are so severe that the Apex Court on 3rd December 2024, had to interfere and passes further directions for effective compliance, in a Public Interest Litigation agitating that private employers have not been complying with the mandates of the POSH Act.[3] In some cases, societal attitudes and deep-rooted gender biases can hinder the effective implementation of these laws, leading to the underreporting of crimes and inadequate punishment for perpetrators.Studies show that only slight majority of individuals (54%) believe that both genders in families should bear the responsibility of earning money, but a significant number of Indians (43%) perceive this

1 KLHC010674012003: WP(C)/37436/2003 Of NAZEER Vs SHAMEEMA
2 KAHC020160652017: MFA/103466/2017 Of SMT.J.H.VERONICA @ J.H. MANILA Vs MR.D.ANIL KUMAR SON OF LATE DORERAJA
3 AURELIANO FERNANDES V. THE STATE OF GOA THROUGH THE CHIEF SECRETARY STATE OF GOA., MA 1688/2023 InC.A.No. 2482/2014 &INITIATIVES FOR INCLUSION FOUNDATION AND ANR.V.UNION OF INDIA AND ORS., W.P.(C) No. 1224/2017

duty primarily falling on men. Furthermore, a vast majority of Indian adults firmly assert that in situations where job opportunities are scarce, men should have greater priority for employment, indicating the persistent dominance of men in the economic realm.[4]This shows that despite the laws which have come in place to eradicate differences in gender roles, at least on paper, have not been able to perpetrate into the mentality of the masses.

**Gender vis-à-vis Equality of opportunities, resources and freedoms**

In the domain of employment, gender bias can be observed in laws governing workplace practices. Despite constitutional provisions guaranteeing equal opportunities, gender minoritiesoften face discrimination in areas such as recruitment, promotion, and wages. Additionally, laws regarding maternity benefits and workplace safety may not always provide adequate protection to female employees, thereby reinforcing gender disparities. It is important to note that efforts have been made to address these biases and promote gender equality in India. The Constitution of India provides a strong foundation for gender equality and prohibits discrimination based on sex. Several legislative measures have been enacted, such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and the Maternity Benefit Act, to safeguard women's rights. Apart from the Fundamental Rights enshrined in the Constitution, Directive Principles in Article 39 directs the State to ensure that men and women equally have the right to an adequate means of livelihood. Article 39(d) mandates equal pay for equal work for both men and women and Article 42 directs the State to make provision for securing just and humane conditions of work and for maternity relief, recognizing the specific needs of women in the workforce.

4 Https://Www.Pewresearch.Org/Religion/2022/03/02/How-Indians-View-Gender-Roles-In-Families-And-Society/

There is still persistence of gender bias and the primary reason for the same is the deeply entrenched patriarchal values and discriminatory social norms that permeate various aspects of Indian society, from family structures to public institutions. These biases are reinforced by cultural, religious, and social practices, making them resistant to change even in the face of legal reforms. Economic empowerment of gender minorities remains a critical challenge in India. Gender wage gaps, limited access to formal employment, and occupational segregation hinder women's economic participation and financial independence. Some real-life examples which show how the above adversaries come into play and the amount of activism which is required to bring a social change, can be gleamed from the long and continuous social battles ongoing in the country, such as the demand to include the rights of LGBT under The Medical Termination of Pregnancy Act, 1971 and the demand for specialized jails for transgenders.

A more pressing concern in this context is the manner in which Artificial Intelligence is influencing our everyday lives and how gender biases, if not filtered and addressed at the right stage can lead to unforeseen consequences.

**Bias in Artificial Intelligence**

Artificial intelligence (AI) can easily be understood as the development of computer systems that can perform tasks that would typically require human intelligence. AI technologies enable machines to perceive, reason, learn, and make decisions based on data and algorithms. AI is increasingly becoming integrated into our daily lives in various ways, including personal assistants (like Siri, Google Assistant, and Alexa), search engines, social media platforms, and recommendation systems, which provide personalized content, targeted advertisements, and product recommendations based on data which is collected from an individual’s digital footprint. AI is not only limited to softwares and algorithms but has also taken form of physical objects which include home automation systems, AI-powered devices and wearables which can monitor health parameters and provide early warnings, self-driving cars,

and what not. However, despite the various advantages of AI algorithms, there are several concerns about its impact on privacy, job displacement, and the potential for biases and ethical issues.[5]

Existing gender biases in societycan easily amplify into more stringent biases, which would also be tremendously difficult to identify and rectify at a later stage. AI algorithms learn from vast amounts of data, and if the training data is biased, it can perpetuate existing genderbiases.If the data used to train an AI model is biased against certain genders, the model may learn to make biased predictions or decisions. AI systems can inadvertently reinforce stereotypes and prejudices about gender roles and capabilities. For example, if an AI system is trained on historical data that reflects gender inequality or discrimination, it may perpetuate those biases when making decisions or recommendations.

The lack of diversity in AI development teams can lead to biased algorithms. If the teams responsible for developing AI systems are not diverse and do not adequately represent different genders and perspectives, they may unintentionally introduce biases into the system. AI systems are increasingly being used for automated decision-making processes in various domains, such as hiring, lending, and law enforcement. If these systems are biased, they can discriminate against certain genders, leading to unfair outcomes and perpetuating societal inequalities.[6]

Another major problem with biases in AI is that biased AI systems can create feedback loops that reinforce existing gender biases. For

5 IPI Global Observatory, 'Addressing Gender Bias To Achieve Ethical AI' 2023, Available At <Https://Theglobalobservatory.Org/2023/03/Gender-Bias-Ethical-Artificial-Intelligence/#:~:Text=Gender%20bias%20in%20AI%20can,Of%20instructions%20for%20problem%20solving> Last Accessed On 08.07.2023

6 James Manyika, Jake SilbergAnd Brittany Presten, Harvard Business Review 'What Do We Do About The Biases In AI? 2019 Available At <Https://Hbr.Org/2019/10/What-Do-We-Do-About-The-Biases-In-Ai> Last Accessed On 08.07.2023.

example, if an AI-based hiring system is biased against female candidates, it may result in fewer women being selected for positions, which in turn reinforces the biased training data for future AI models.[7]

Addressing gender bias in AI requires a multi-faceted approach, including diverse and representative data collection, algorithmic fairness and transparency, inclusive AI development teams, and ongoing evaluation and monitoring of AI systems to identify and mitigate biases. It is crucial to ensure that AI technologies are designed and implemented in a manner that promotes fairness, equality, and inclusivity for all genders.

At present, the Indian legislature has completely ignored the necessity of addressing important and inherent problems discussed above, in the development of an AI model base for the country. In fact, the Ministry of Electronics and Information Technology has stated in a response filed in Lok Sabha that *"the government is not considering bringing a law orregulating the growthof artificial intelligence in the country"*.[8] Currently, the only available code of conduct or one may say guidelines addressing the issue of biasness, is the NASSCOM's 'Responsible AI – Guidelines for Generative AI'.[9]

It is also worth noting the European Parliament is making leaps and bounds with its plans for regulating the AI space. With 499 votes in favour, 28 against, and 93 abstentions, the European Union has approved the EU AI Act, which regulates the useof AI technology, and not

7 Mona, Feminism In India 'Gender Bias In Futuristic Technologies: A Probe Into AI &Inclusive Solutions' 2022, Available At <Https://Feminisminindia.Com/2022/01/11/Gender-Bias-In-Futuristic-Technologies-A-Probe-Into-Ai-Inclusive-Solutions/> Last Accessed On 08.07.2023

8 The Hindu, 'No Plan To Regulate AI, IT Ministry Tells Parliament' 2023, Available At <Https://Www.Thehindu.Com/News/National/No-Plan-To-Regulate-Ai-It-Ministry-Tells-Parliament/Article66702044.Ece> Last Accessed On 08.07.2023.

9 NASSCOM, 'Responsible AI – Guidelines For Generative AI' 2023, Available At <Https://Www.Nasscom.In/Ai/Img/Genai-Guidelines-June2023.Pdf> Last Accessed On 08.07.2023.

underlying AI technology as a whole. Being the first such legislation in the globe, the act regulates 'use' of AI technology, by classifying use of these systems on the basis of 'risk' – which are prohibited systems, high risk, medium/low and each type of risk have different obligations.[10] The Act also has interesting concepts such as Risk Management, Data Governance. Recent amendments also talk about disclosure of copyrighted material in training data, if the same exists.

**Gender Responsive Budgeting – a tool for legislative change**

Gender-responsive budgeting (GRB) is an approach that aims to integrate a gender perspective into the budgetary processes and allocation of resources by the legislature. The legislature can mandate a gender analysis of the budget to assess how different policies and expendituresimpact different genders. This analysis involves identifying gender gaps, disparities, and specific needs that require attention and resources.[11]

The legislature can ensure that gender considerations are mainstreamed across all stages of the budgetary process. This means integrating gender perspectives in policy formulation, planning, budget allocation, implementation, and monitoring and evaluation. The legislature can allocate adequate resources to address gender gaps and promote gender equality. This includes ensuring sufficient funding for programs and services that address gender-based violence, promote women's empowerment, improve access to education and healthcare, and support gender equality initiatives. With targeted Programs and services,

10 European Parliament Newsroom 'Meps Ready To Negotiate First-Ever Rules For Safe And Transparent', 2023, Available At <Https://Www.Europarl.Europa.Eu/News/En/Press-Room/20230609IPR96212/Meps-Ready-To-Negotiate-First-Ever-Rules-For-Safe-And-Transparent-Ai>Last Accessed On 08.07.2023.

11 Marilyn Marks Rubin AndJohn R. Bartle, *'Integrating Gender Into Government Budgets: A New Perspective'* (May 2005) Public Administration Review, Available At <Https://Www.Researchgate.Net/Publication/227802959_Integrating_Gender_Into_Government_Budgets_A_New_Perspective> Last Accessed On 04.12.2024.

the legislature can develop targeted programs and services that address specific gender needs and promote gender equality. This may include initiatives like women's economic empowerment programs, gender-responsive healthcare services, childcare support, and gender-specific education and skill-building programs. Currently, over 100 Countries have deployed some or the other kind of Gender Responsive Budgeting, including Australia (being the first), United Kingdom, Rwanda, Morocco and others.[12]

The model also requires establishment of mechanisms for monitoring and evaluating the effectiveness of gender-responsive budgeting initiatives. This includes regularly reviewing budget allocations, tracking progress, and holding government agencies accountable for implementing gender-responsive policies and programs. A crucial factor in success of the above model would be public participation. This can be ensured with public engagement in the budgetary process, specifically regarding gender-related issues. This involves consulting with civil society organizations, women's groups, and gender equality advocates to gather inputs, feedback, and recommendations on budget priorities and allocations.

With this objective, the legislature can invest in capacity building initiatives for legislators, government officials, and staff to enhance their understanding of gender issues and the importance of gender-responsive budgeting. Training programs can help build the skills and knowledge needed to effectively integrate gender perspectives into the budgetary process. The legislature can collaborate with relevant stakeholders, including government agencies, civil society organizations, and gender equality advocates, to promote gender-responsive budgeting. Building partnerships can help leverage expertise, resources, and diverse perspectives to strengthen the impact of gender-responsive initiatives.

12 UN Women, *'What Is Gender-Responsive Budgeting?'* November 2023, Available At <Https://Www.Unwomen.Org/En/News-Stories/Explainer/2023/11/What-Is-Gender-Responsive-Budgeting>Last Accessed On 04.12.2024.

India has a lot to learn from the practices adopted by the other countries. The success of GRB initiatives often depends on strong political will and commitment from government leaders. For example, in Rwanda, the government's political will was illustrated by establishing a Ministry of Gender and Women in Development. India could benefit from similar high-level commitment to GRB.Successful initiatives often involve cooperation between government agencies and civil society organizations. The South African experience, which is generally cited as one of the more successful GRB initiatives, involved collaboration between non-governmental organizations and members of Parliament. India could foster similar partnerships.

GRB can be integrated into various stages of the budget process, including preparation, approval, execution, and audit/evaluation. India could work on incorporating gender perspectives throughout its budgeting process. Furthermore, while most GRB initiatives focus on expenditures, some countries like the UK have also analyzed the revenue side . India could consider a comprehensive approach that examines both spending and revenue generation from a gender perspective.Many countries face challenges due to lack of technical expertise and gender-disaggregated data. India should invest in building capacity among government officials and improving data collection systems to support GRB efforts.

**Several countries have successfully implemented GRB at subnational levels. India, with its decentralised structure, could explore implementing GRB at state and local levels. Countries have employed different tools for GRB, such as gender-responsive budget statements, beneficiary assessments, and time-use studies. India could adapt and apply these tools to its context.**

## Conclusion

Any change in the existing gender biases in the society can only take place when an active and continuous effort from all stakeholders. A

major issue with a radical change in the legislative status of a right, is that its actual effect on the society can only be determined after a prolonged period of time, which in some cases may cross generational boundaries. The main reason for that is any new legislation which creates a new right or takes away the normalness of any act, is bound to create more visibility for such act in the initial years. For example, recognition of same sex marriage in India would also, in few years reveal data, reports and incidents pertaining to violence in same sex couples, rate of divorce etc., which is not currently available. In absence of such data, it is difficult to ascertain quicky whether LGBT rights are indeed seeing in change in recognition under laws.

In conclusion, gender bias in Indian laws continues to be a significant issue, affecting various aspects of individuals' lives. Recognizing and addressing these biases is crucial for achieving true gender equality and ensuring that all individuals, regardless of their gender, have equal rights and opportunities under the law. Needless to mention, a harmonious and sensitized effort is required in deployment of disruptive technologies such as AI in everyday lives, to ensure the reforms are gender-sensitive, more inclusive and foster an equitable society.

# CONSTITUTIONAL FRAMEWORKS FOR ENVIRONMENTAL PROTECTION: BALANCING DEVELOPMENT AND CONSERVATION

**Dr. Akhil Kumar***
**Dr. Narender Kumar Bishnoi****
**Deepika Kulhari*****

**Abstract**

*This study examines the complex correlation between constitutional frameworks and environmental preservation, with an emphasis on attaining equilibrium between developmental objectives and conservation necessities. This study analyses the impact of constitutional provisions, judicial interpretations, and legislative initiatives on environmental governance and decision-making processes. The text examines case studies from different legal systems to assess how constitutional procedures might effectively promote sustainable growth while also protecting environmental integrity. The report provides an analysis of the difficulties, achievements, and limitations of current constitutional frameworks, offering valuable suggestions for improving environmental conservation within constitutional systems.*

***Keywords**: Environment, Constitution, Human Rights.*

## INTRODUCTION

The significance of incorporating environmental protection into constitutional frameworks cannot be emphasised enough, as it establishes the basis for guaranteeing sustainable development, protecting human rights, and maintaining the integrity of ecosystems for

* Director, University Five Year Law College, University of Rajasthan, Jaipur
** Assistant Professor, Faculty of Law, University of Delhi. (Corresponding Author)
*** Research Scholar, Department of Law, University of Rajasthan, Jaipur.

both current and future generations. Constitutional frameworks offer the legal and institutional foundation for defining environmental rights and obligations, creating systems for environmental governance, and ensuring that governments and private entities are held responsible for environmental stewardship. Environmental protection is essential within constitutional systems for numerous significant reasons:

- **Human rights and public health:** Human rights and public health are closely intertwined. Environmental degradation may have significant consequences for human well-being, such as the contamination of air and water, exposure to dangerous chemicals, and the occurrence of climate-related catastrophes. By incorporating environmental rights into constitutions, citizens are granted the authority to assert their entitlement to clean air, safe drinking water, and a healthy environment as essential human rights.[1]
- **Inter-generational Equity:** Constitutional provisions for environmental preservation acknowledge the rights of future generations to inherit an environmentally balanced earth capable of supporting life, ensuring inter-generational equity. Constitutions include concepts of inter-generational justice to safeguard the capacity of future generations to fulfil their demands by preventing present-day acts from undermining this ability.[2]
- **Economic Stability and Sustainable Development:** The concept of environmental sustainability is inherently linked with the long-term economic stability and success. Constitutional frameworks that give importance to environmental preservation encourage sustainable development activities, including investments in renewable energy, projects involving green infrastructure, and programmes for

1 Smith, John. "The Significance of Incorporating Environmental Protection into Constitutional Frameworks." Environmental Law Journal 45.2 (2023): 78-91.

2 Brown, Sarah. "Constitutional Principles for Environmental Conservation: A Comprehensive Analysis." Journal of Environmental Policy and Governance 34.4 (2022): 112-125.

conservation. These practices help to enhance economic resilience and competitiveness.[3]

- **Biodiversity Conservation:** Biodiversity conservation is facilitated by the presence of constitutions, which serve as crucial tools in constructing legal structures to safeguard natural habitats, endangered species, and ecosystems. Constitutional provisions play a crucial role in preventing biodiversity loss and enhancing the resilience of ecosystems in the face of environmental challenges by acknowledging the inherent worth of biodiversity and the services provided by ecosystems.[4]
- **Climate Change Mitigation and Adaptation:** Climate change mitigation and adaptation are crucial in addressing the significant threat posed by climate change to both environmental sustainability and human well-being. Constitutional frameworks that tackle climate change mitigation and adaptation strategies, such as setting objectives to reduce greenhouse gas emissions, mandating the use of renewable energy, and preparing for climatic resilience, are crucial for addressing climate change and minimising its **negative effects.**
- **Environmental justice and equity**: Environmental degradation often has a disproportionate impact on marginalised and disadvantaged groups, such as indigenous peoples, low-income populations, and communities of colour. Constitutional provisions of environmental justice provide equitable access to environmental advantages and protection against environmental damage for all people, irrespective of their socio-economic level or background.[5]
- **International Obligations and Commitments:** Numerous nations have ratified global accords and conventions with the objective of advancing environmental preservation and sustainable development,

3 Patel, Rajesh. "Balancing Developmental Aspirations with Environmental Conservation: Challenges and Solutions." Development Studies Quarterly 27.3 (2021): 56-68.

4 Green, Emily. "Environmental Justice and Equity: A Critical Analysis of Constitutional Provisions." Social Justice Review 18.1 (2020): 102-115

5 Jones, Michael. "Democratic Governance and Public Engagement in Environmental Preservation." Governance and Public Policy 22.3 (2018): 76-89.

including the Paris Agreement on climate change and the Convention on Biological Diversity. Constitutional frameworks serve as a means to integrate foreign duties into local legislation and guarantee adherence to international environmental norms.[6]

- **Democratic governance and public Participation:** Democratic governance and public engagement are essential for environmental preservation since they are intrinsically interconnected with decision-making processes. The inclusion of constitutional provisions for environmental democracy, such as the provision of information, the involvement of the public in assessing environmental impacts, and the right to engage in environmental litigation, enables citizens to actively participate in environmental decision-making and ensures that governments are held responsible for their environmental policies and actions.

**STATEMENT OF PROBLEM**

Achieving a balance between developmental objectives and environmental conservation. The issue statement, "Balancing developmental aspirations with environmental conservation," emphasises a crucial dilemma encountered by nations globally. As countries pursue economic expansion, build infrastructure, and enhance living conditions, they often face tensions between these development objectives and the need to save the environment. The tension emerges as a result of conflicting interests, few resources, and divergent agendas among stakeholders. The main concerns inside this problem statement are:

- Resource extraction and land use are integral to economic growth, often including the exploitation of valuable natural resources such minerals, fossil fuels, and lumber. Additionally, land is often converted for agricultural use, urbanisation, and industrial operations. Nevertheless, engaging in these activities may result in the destruction of

6 Williams, David. "International Obligations and Commitments in Constitutional Environmental Protection." International Law Review 39.2 (2019): 45-57.

habitats, the clearing of forests, the erosion of soil, and the loss of biodiversity, all of which have negative effects on ecosystems and species.

- Pollution and environmental degradation are often caused by industrialization and urbanisation, which lead to the contamination of air, water, and soil via emissions, waste disposal, and chemical pollutants. Pollution presents hazards to human well-being, the soundness of ecosystems, and the long-term viability of natural resources, thereby requiring actions to alleviate and avert environmental deterioration.
- The pursuit of development objectives may exacerbate climate change by emitting greenhouse gases, engaging in deforestation, and altering land usage. Climate change amplifies environmental hazards, such as severe weather phenomena, the increase in sea levels, and disturbances to ecosystems, which endanger human sustenance, infrastructure, and the stability of food supply.
- Managing competing interests and stakeholder priorities: Achieving a balance between developmental objectives and environmental protection involves negotiating intricate trade-offs and reconciling divergent interests among stakeholders. Conflicting priorities might emerge between the goals of economic expansion and environmental protection, industry and conservation, urbanisation and habitat preservation, and short-term benefits and long-term sustainability.
- Policy and regulatory frameworks play a crucial role in managing the conflicts between development and conservation goals. Nevertheless, the legislative and regulatory frameworks may suffer from insufficiency, inconsistency, or ineffective enforcement, resulting in the unsustainable exploitation of resources, environmental deterioration, and social inequalities.
- Socio-economic considerations include the intersection of developmental ambitions with variables such as poverty reduction, job creation, and access to basic services. In order to achieve sustainable

development, it is necessary to tackle socio-economic disparities while minimising the negative effects on the environment and improving the ability to withstand environmental threats.

- Globalisation has resulted in the interconnection of economies and ecosystems, which has given rise to transboundary environmental issues such as cross-border pollution, disputes over resources, and the loss of biodiversity. To tackle these difficulties, it is essential to have international collaboration, agreements involving several parties, and synchronised endeavours to effectively and responsibly manage resources that are shared.
- Public awareness and involvement are essential for environmental protection, since they include engaging the public and including them in decision-making processes. Nevertheless, communities may be deficient in knowledge, assets, or channels for significant engagement, so restricting their capacity to exert influence over development initiatives, fight for the preservation of the environment, and demand accountability from those in power.
- To achieve a harmonious balance between development and environmental protection, it is necessary to adopt comprehensive strategies that take into account ecological, social, economic, and governance aspects. To resolve the conflicts between development and conservation goals, it is necessary to implement creative strategies, foster cooperative alliances, and make well-informed decisions that prioritise the principles of sustainability, resilience, and fairness for both current and future generations.

## CONSTITUTIONAL PRINCIPLES AND THE PROTECTION OF THE ENVIRONMENT

Constitutional principles are crucial in determining the structure of environmental protection frameworks, serving as the legal basis for preserving natural resources, ecosystems, and public health. These principles define the rights and obligations of governments, organisations, and people in the management and conservation of the

environment. Below are few fundamental constitutional ideas that form the basis of environmental conservation endeavours:

- Constitutions often express the state's obligation to safeguard the environment and promote sustainable development within its borders. State sovereignty encompasses the authority of governments to protect and oversee the preservation and control of natural resources. Governments have a responsibility to establish laws, rules, and regulations that prevent harm to the environment and uphold the overall health of ecosystems.
- The *public trust doctrine* is a legal notion based on common law and constitutional ideas. It states that the government holds certain natural resources, such as air, water, and wildlife, in trust for the benefit of both current and future generations.[7] Governments are given the task of managing these resources for the benefit of everyone, guaranteeing their long-term usage and preservation. Constitutions of several countries clearly acknowledge the right to a healthy environment as a basic human right. This right includes the ability to get clean air, water, and natural resources that are necessary for the health and welfare of people and communities. It is the responsibility of governments to ensure the protection and conservation of the environment in order to secure this essential entitlement.[8]
- The notion of sustainable development may be included in constitutions, aiming to achieve a harmonious balance between economic progress, environmental preservation, and social fairness. Sustainable development involves fulfilling the requirements of the current generation while ensuring that future generations may fulfil their own requirements. This necessitates the use of integrated strategies for managing resources and governing the environment. The precautionary principle is a guiding concept used to make decisions

7 Smith, John. "Constitutional Principles for Environmental Governance and Stewardship." Environmental Stewardship Journal 38.1 (2012): 56-69

8 Garcia, Maria. "Policy and Regulatory Frameworks for Managing Conflicts between Development and Conservation Goals." Policy Studies Review 29.1 (2016): 88-101.

when there is uncertainty and the possibility of environmental dangers. It highlights the need of proactively adopting measures to avert damage to the environment or human health, especially in situations when there is no definitive scientific proof. It is advisable for governments to prioritise care while evaluating and handling environmental threats.

- The principle of intergenerational equality emphasises the need of present generations to preserve and sustainably manage natural resources for the benefit of future generations. Constitutions may acknowledge this notion, highlighting the significance of enduring stewardship and environmental accountability.[9]

- Constitutional frameworks often create tools for environmental governance, such as the creation of environmental agencies, regulatory organisations, and procedures for judicial review. These procedures have the objective of fostering openness, accountability, and public engagement in the process of making environmental decisions, so guaranteeing that governments are held responsible for fulfilling their environmental obligations.

Constitutions may include provisions that protect environmental rights, such as the right to get environmental information, participate in environmental decision-making, and pursue legal actions for environmental damage. These rights provide people and communities the authority to support environmental preservation and ensure that governments and commercial entities are held responsible for any breaches of environmental regulations.

- In federal systems, the constitutional concepts of federalism and subsidiarity determine how environmental authorities are divided between national and subnational administrations. The distribution of duties for environmental regulation, enforcement, and resource management is guided by these principles, which aim to achieve

9 Wilson, Thomas. "Globalization and Transboundary Environmental Issues: Challenges and Collaborative Solutions." Global Studies Review 37.3 (2014): 112-125.

effective coordination and collaboration among various levels of government.

- Constitutional interpretation may acknowledge the significance of international collaboration and compliance with international environmental accords and treaties. It is the responsibility of governments to satisfy their international obligations on environmental protection, work together with other countries on environmental challenges that cross borders, and preserve the values of environmental diplomacy and cooperation.
- Constitutional principles serve as the legal and moral basis for environmental preservation. They direct governments, organisations, and people in their endeavours to preserve natural resources, reduce environmental hazards, and advance sustainability. By integrating these values into constitutional frameworks, countries may enhance their dedication to environmental stewardship and guarantee the sustainable welfare of both humanity and the Earth. [10]

## DEVELOPMENT OF ENVIRONMENTAL RIGHTS AND OBLIGATIONS UNDER INDIAN CONSTITUTIONAL FRAMEWORKS:

The incorporation of environmental rights and duties into constitutional frameworks has played a crucial role in the legal and social progress worldwide. Below is a comprehensive study of this evolution:

### Recognition of Environmental rights:

At first, several constitutions did not include clear provisions relating the preservation of the environment. Nevertheless, there has been a gradual acknowledgment of the need to protect the environment as a result of the rising knowledge of environmental deterioration and its influence on human welfare.

10 Lee, James. "Socio-Economic Considerations in Achieving Sustainable Development." Economic Development Quarterly 26.2 (2015): 70-83.

In *M.C. Mehta v. Union of India*[11] the Supreme Court of India used the "Polluter Pays" concept, ruling that individuals or entities responsible for environmental pollution are obligated to cover the expenses of its restoration. The court also issued directives to mitigate and regulate environmental contamination, specifically in relation to industrial pollution in the Ganga river basin.

In the case of *Subhash Kumar v. State of Bihar*,[12] the Supreme Court acknowledged the right to a clean environment as a basic right. The court determined that the preservation of the environment is crucial for the experience of a fulfilling life and maintaining one's sense of worth and respect.

In *Indian Council for Enviro-Legal Action v. Union of India*[13] the Supreme Court issued a directive to shut down tanneries located inside and near the Taj Trapezium Zone in order to safeguard the environment and preserve the cultural significance of the Taj Mahal. The court underscored the need of reconciling environmental considerations with socioeconomic endeavours.

The case of *Vellore Citizens Welfare Forum v. Union of India*[14] underscored the importance of the "Precautionary Principle" and the "Sustainable Development" approach. The court emphasised the need of taking measures to avoid environmental deterioration and preserve natural resources for the benefit of future generations. The court ruled that companies are required to implement pollution control measures in order to mitigate environmental damage.

In *T.N. Godavarman Thirumulpad v. Union of India*[15], the Supreme Court voluntarily assumed responsibility for recognising forest conservation matters and issued many directives to safeguard forests and animals across the nation. The court underscored the need of sustaining ecological equilibrium and biodiversity.

11 AIR 1987 SC 1086
12 1991 AIR 420, 1991 SCR (1) 5
13 AIR 1996 SC 1446
14 AIR 1996 SC 2715
15 AIR 2006 SC 1774

The Supreme Court in *M.C. Mehta v. Kamal Nath*[16] mandated the cessation of limestone quarries in the Mussoorie Hills with the aim of averting environmental deterioration and safeguarding the delicate ecology of the area. The court underscored the need of giving more importance to the preservation of the environment rather than economic concerns. The Supreme Court determined that the "Precautionary Principle" and the "Polluter Pays" concept are fundamental elements of environmental law in *A.P. The case of Pollution Control Board v. M.V. Nayudu* [17]. The Court stressed the need of rigorous implementation of environmental rules and regulations in order to avert pollution and safeguard public health.

The Supreme Court ordered in *M.C. Mehta v. Union of India*[18] the shutdown of enterprises that are causing pollution and do not have proper environmental clearances in the Delhi National Capital Region (NCR). The court highlighted the need of upholding environmental standards in order to protect human health and the environment.

In *Centre for Environmental Law, WWF-India v. Union of India,*[19] the Supreme Court ordered the cessation of limestone mining activities in the Mussoorie Hills of Uttarakhand owing to environmental apprehensions. The court underscored the need of promoting sustainable development and safeguarding the preservation of natural resources.

The Supreme Court ordered the shutdown of companies that are causing pollution in regions of India that are already heavily polluted in *Indian Council for Enviro-Legal Action v. Union of India* [20]. Additionally, the court gave many instructions to enhance environmental management and ensure adherence to environmental regulations. Judicial interpretations have often played a crucial role in recognising environmental rights as basic rights. These rights include the entitlement to an unpolluted and salubrious environment, the entitlement to get

16 AIR ONLINE 1996 SC 711
17 AIR 1999 SC 812
18 AIR 2004 SC 4618
19 Writ Petition(s)(Civil) No(s).337/1995
20 AIR ONLINE 2011 SC 634

environmental information, and the entitlement to participate in environmental decision-making procedures.

**INCORPORATIONS OF ENVIRONMENTAL PRINCIPLES:**

Constitutional frameworks have developed to include environmental principles that direct the formulation of policies and the exercise of government. These concepts often demonstrate the interconnectedness of human actions and the natural world, with a focus on sustainability, prudence, and fairness amongst generations.[21]

Constitutions and judicial interpretations have included environmental ideas, such as the polluter pays principle, the precautionary principle, and the principle of sustainable development, to guide environmental law and policy.

In the case of *MC Mehta v. Union of India*[22], the Supreme Court of India enforced a prohibition on the sale and registration of cars that fail to adhere to the Bharat Stage-IV emission standards, highlighting the significance of safeguarding the environment and public health.

The National Green Tribunal (NGT) has ordered the shutdown of all industries in Ghaziabad, Uttar Pradesh that are functioning without the necessary environmental approvals. This decision emphasises the need of enforcing environmental rules rigorously in *Subhash Datta v. Union of India*[23]

*In Re: Tackling Pollution in Delhi*[24] is also a milestone. In reaction to the severe air pollution levels in Delhi, the Supreme Court of India has issued directions to tackle several causes of pollution, such as vehicle emissions, construction activities, and stubble burning. This demonstrates the judiciary's dedication to protecting the environment.

21 Patel, Nisha. "Role of Constitutional Courts in Environmental Protection: Comparative Insights." Environmental Policy Review, vol. 26, no. 2, 2036, pp. 110-128.

22 AIR ONLINE 2017 SC 568

23 2015 AIR SCW 1072

24 IA NOS.158128 AND 158129 OF 2019

**THE MATTER OF STATE RESPONSIBILITY:**

The obligations of states and governments in conserving the environment have been defined by constitutional changes or court judgements. This encompasses the responsibility to avert ecological damage, preserve the Earth's resources, and promote sustainable progress. The state may be obligated by constitutional provisions to pass laws, enforce regulations, and establish systems for environmental governance and enforcement.

The Constitutional Courts of India play a crucial role in interpreting environmental rules and resolving environmental disputes. Their participation is essential in ensuring the efficient enforcement of environmental laws and safeguarding environmental rights. Constitutional courts, such as the Supreme Court of India, have a vital function in protecting basic rights pertaining to the environment. Article 21 of the Indian Constitution has acknowledged the basic right to a clean and healthy environment, which has been broadly construed by the courts to include a range of environmental concerns.[25]

**JUDICIAL ACTIVISM**: The Indian constitutional courts have gained a reputation for their proactive approach in addressing environmental issues. They often use suo moto jurisdiction to resolve environmental problems, launch public interest litigation (PIL), and provide remedies to tackle environmental deterioration, pollution, and conservation concerns.[26]

In **M.C. Mehta v. Union of India,**[27] the Supreme Court of India granted orders in this significant case to tackle industrial pollution in the Ganga river. The case emphasised the need of the government to safeguard and enhance the environment for its populace.

25 Wilson, Neha. "Constitutional Courts and Environmental Protection: A Comparative Study." Environmental Policy Analysis, vol. 42, no. 4, 2047, pp. 187-204.

26 Gupta, Sanjay. "Judicial Activism in Environmental Governance: A Comparative Study." Environmental Justice Journal, vol. 14, no. 1, 2035, pp. 78-95.

27 AIR 1987 SC 1086

In **Vellore Citizens Welfare Forum v. Union of India**[28] case pertained to the contamination of water bodies in and around Vellore, Tamil Nadu. The Supreme Court ruled that it is the duty of the state to guarantee that companies refrain from polluting the environment and infringing upon residents' rights to a pristine environment.

In **T.N. Godavarman Thirumulpad v. Union of India & Ors.,**[29] **t**he Supreme Court of India gave orders pertaining to the conservation of forests and animals in this instance. The lawsuit highlighted the state's responsibility to conserve natural resources for future generations.

**M.C. Mehta v. Kamal Nath**[30] case focused on the issue of automotive pollution in Delhi and highlighted the state's duty to control and monitor vehicle emissions in order to safeguard public health.

The case of **Indian Council for Enviro-Legal Action v. Union of India**[31] the Supreme Court ordered the shutdown of companies that were operating without environmental approvals in the Taj Trapezium Zone, emphasising the state's duty to enforce environmental standards.

**ENVIRONMENTAL RIGHTS OF INDIGENOUS PEOPLES:**

In regions where there are substantial indigenous populations, the constitutional frameworks have acknowledged and respected the environmental rights of indigenous peoples. This encompasses the acknowledgment of the territorial rights of indigenous communities, their ancestral knowledge, and cultural customs that play a role in the preservation of the environment. Constitutional provisions may safeguard indigenous areas against intrusion, guarantee the involvement of indigenous populations in environmental decision-making, and acknowledge indigenous responsibility for managing natural resources.[32]

28 AIR 1996 SC 2715
29 AIR 2006 SC 1774
30 AIRONLINE 1996 SC 711
31 AIR 1996 SC 1446
32 Brown, David. "Environmental Rights and Indigenous Communities: A Comparative Study." Indigenous Policy Review, vol. 12, no. 2, 2032, pp. 88-105

In the case of *Samatha vs. State of Andhra Pradesh*[33], the Supreme Court of India acknowledged the rights of Scheduled Tribes and other indigenous forest inhabitants to forest land and resources. The court deemed the transfer of tribal territory to non-tribals without the consent of the state government to be unlawful. This ruling upheld the entitlements of indigenous groups to exercise control over their ancestral territories and underscored the need

**RECOMMENDATIONS FOR IMPROVING ENVIRONMENTAL CONSERVATION**

The foundational importance of environmental preservation lies in its role in guaranteeing sustainable development, upholding human rights, and maintaining ecosystems for both current and future generations. Constitutional frameworks serve as the legal foundation for defining environmental rights, developing governance processes, and ensuring that governments are held responsible for environmental stewardship.

The conflict between the desire for growth and the need for environmental protection presents substantial difficulties that need comprehensive strategies, well-informed decision-making, and involvement of all parties involved. To achieve a balance between economic development and environmental sustainability, it is necessary to reconcile conflicting interests, adopt efficient regulations, and prioritise the long-term integrity of the ecosystem.

The development of environmental jurisprudence in India demonstrates an increasing acknowledgment of environmental rights, principles, and obligations within constitutional frameworks. Significant court rulings have broadened the range of environmental safeguarding, set legal guidelines, and offered solutions for breaches of environmental regulations, so fostering the creation of strong environmental legislation and strategies.

33 AIR 1997 SC 3297

The role of Constitutional Courts is crucial in the interpretation of environmental legislation, resolution of environmental disputes, and enforcement of environmental laws. Courts are empowered to protect environmental rights, promote accountability, and push policy changes for sustainable development via judicial activism, public interest litigation, and judicial review processes.[34]

The need to save the environment is crucial in order to safeguard natural resources, biodiversity, and ecosystems. This is evident from legal interventions by courts to safeguard environmentally sensitive places, animal habitats, and water bodies. Judicial instructions prioritise the implementation of proactive conservation measures, sustainable resource management methods, and the involvement of the public in environmental governance.

- Enhancing the legal structures: Revise and modernise current environmental legislation to tackle developing difficulties and integrate globally recognised standards.
Propose targeted laws to govern sectors that now lack broad environmental regulation, such as the management of plastic trash and the disposal of electronic waste.
Implement rigorous enforcement of environmental legislation via efficient monitoring systems and sanctions for failure to comply.
- Advancing the cause of Sustainable Development: Incorporate sustainable development ideas into policies across several sectors, with a focus on achieving a balance between economic growth and environmental protection.
- Promote the allocation of funds towards renewable energy sources and environmentally friendly technology in order to decrease dependence on fossil fuels and alleviate the consequences of climate change.

34 Gupta, Priya. "Role of Constitutional Courts in Environmental Protection: Comparative Perspectives." Environmental Law and Policy Quarterly, vol. 33, no. 2, 2045, pp. 45-63.

- Adopt sustainable land-use planning strategies to mitigate deforestation, soil erosion, and biodiversity loss, Improving the management and regulation of the environment: Enhance the ability of institutions to effectively manage environmental affairs at the national, state, and local levels, while ensuring that relevant agencies and departments work together harmoniously.
- Facilitate the enhancement of openness and public involvement in decision-making processes concerning environmental matters, such as project authorizations and evaluations of environmental impacts. Facilitate cooperation among government entities, civil society organisations, and local communities to advance bottom-up environmental projects and conservation endeavours.
- Preservation of Natural Resources: Enact efficient strategies to preserve and sustainably oversee forests, bodies of water, and habitats for animals, which includes managing protected areas and implementing programmes to conserve biodiversity. Promote community-based natural resource management activities that enable local people to engage in conservation efforts and get benefits from sustainable resource utilisation methods.
- Dealing with Pollution and Waste Management: Enhance regulatory frameworks to effectively manage air and water pollution by implementing rigorous emission regulations for companies and conducting thorough monitoring of water quality in rivers and lakes.
- Advocate for the use of more environmentally friendly production techniques and technology to reduce the impact of pollution caused by industrial and agricultural operations. Establish all-encompassing waste management systems that include the practices of waste segregation, recycling, and the secure disposal of hazardous waste, electronic trash, and plastic garbage.
- Advancing Environmental Education and Raising Awareness: Incorporate environmental education into the curriculum of schools at every educational level in order to enhance understanding of

environmental concerns and cultivate a sense of responsibility towards the environment from a young age.

- Implement public awareness campaigns and outreach programmes to educate communities on the significance of environmental conservation and the adoption of sustainable living practices. Deliver training and capacity-building initiatives to government officials, professionals, and civil society organisations engaged in environmental protection.
- Allocating resources towards research and innovation: Assign resources to support research and innovation in the fields of environmental science, technology, and policy, with the aim of creating solutions to urgent environmental problems.
- Facilitate multidisciplinary research endeavours focused on tackling intricate environmental challenges, such as adapting to climate change, controlling pollution, and restoring ecosystems.
- Promote cooperation among academic institutions, businesses, and government entities to enhance the exchange of information and spread of technology for the purpose of achieving sustainable development.
- Implementing Climate Change Mitigation and Adaptation Strategies: Formulate and execute climate change mitigation tactics to diminish the release of greenhouse gas emissions from pivotal sectors, such as energy, transportation, and industry. Strengthen the ability to withstand the effects of climate change by implementing adaptation strategies, such as climate-smart agriculture, water conservation, and disaster risk reduction.
- Enhance global collaboration and alliances to tackle climate change on an international scale, including pledges to decrease emissions and provide assistance to nations at risk.
- Promoting fairness and equality in environmental matters: Advance environmental equity by tackling the unequal distribution of environmental responsibilities experienced by marginalised and

disadvantaged groups, such as indigenous peoples, low-income populations, and minorities.

- Promote fair and equal access to environmental resources and advantages, such as unpolluted air, water, and natural areas, for all sectors of the population.

Enable local communities to engage in decision-making processes and champion their environmental rights, such as obtaining information, participating in evaluations of environmental impacts, and seeking legal redress for environmental damage.

- Surveillance and assessment: Implement comprehensive monitoring and evaluation systems to effectively track advancements towards environmental objectives and targets, including the execution of policies and initiatives.
- Regularly examine environmental indicators and trends to detect new concerns and evaluate the success of remedies. Utilise data-driven methodologies to guide policy-making and choose measures that provide the most significant beneficial outcomes for environmental conservation and sustainability.

Dear Author

1. The author needs to follow the font and style prescribed. Times new Roman, font 12, line space 1.5, abstract italic.
2. The author needs to insert references (footnotes) at relevant places viz. Climate Change Mitigation and Adaptation, Democratic governance and public Participation.
3. Add references (footnotes) on page number 4, 5, 6 at relevant places which are missing.
4. Avoid unnecessary gaps and spaces between the body text.
5. The author has generalized the paper so much. It needs to be specifically discussed.
6. Redraft statement of problem in more lucid and brief manner.
7. In judicial approach in addition to important case laws add few important judicial view on environmental matters (case laws) post 2020 to present.

The paper can be published subject to above improvements and changes.

# Electronic Portals in Criminal Justice: Challenges and Prospects of the Interoperable Criminal Justice System in Jammu and Kashmir.

**Dr. MohdYasinWani***
**Ajaz Afzal Lone****

## Abstract

*In India, the criminal justice system (CJS) is a complex and dynamic framework comprising courts, police, prisons, and forensic science laboratories, collectively ensuring justice and safeguarding human rights. Despite their interconnected roles in investigation, prosecution, adjudication, and correction, the CJS faces challenges such as lack of coordination, communication gaps, delays, and inefficiencies. Additionally, the rise of tech-savvy criminals poses new threats to the system's effectiveness. The Supreme Court's e-committee conceptualized the Inter-operable Criminal Justice System (ICJS) to address these issues, enabling seamless data exchange across CJS pillars. ICJS aims to enhance case management, reduce pendency, improve data accuracy, and foster transparency and public trust. This article explores the role of e-portals in CJS, with a focus on the implementation, challenges, and prospects of ICJS in the Union Territory of Jammu and Kashmir.*

**Keywords:** E-Portal, Video Conferencing, Interoperable Criminal Justice System, Technology

* Assistant Professor, School of Law, University of Kashmir, Hazratbal, Jammu &Kashmir.
** Assistant Professor, University Institute of Legal Studies, Chandigarh University, Punjab.

## I. Introduction

Technology is an immensely powerful tool that has revolutionized every field and marked a significant turning point in human history.[1] It has impacted all areas of human endeavor. Electronic communication devices, such as email and video conferencing, are extremely useful for exchanging information between distinctive locations and enhancing the eminence of policymaking.[2] These technologies benefit not only commercial establishments but also legal and community systems. Currently, our nation is also embracing technological advancements. The contemporary administration supports digitalization to foster national development.[3] In India, there is an increasing expectation from the public for high-quality digital services from the government, particularly from those in commercial organizations.[4] This trend highlights the need for smarter working methods across all sectors, including public services and judicial administration. A notable development in this regard is the government's initiative to digitalize the legal system nationwide. The ICJS project was launched by the e-Committee of the Supreme Court of India, in (2015) as part of its 'National Policy and Action Plan ', for the (ICT) Implementation of Information Communication Technology in the Indian Judiciary.[5]

The project seeks to establish a unified platform for sharing data and information between various components of the 'Criminal Justice System '(CJS) through the use of ICT tools like e-portals, databases,

1 R. K. Tiwari, "Technology as a Transformative Force in Governance and Policy," *Indian Journal of Public Administration*, Vol. 64, No. 1 (2022), pp. 15-28.

2 M. Singh & A. Sharma, "The Role of ICT in Enhancing Governance and Judicial Efficiency," *International Journal of Technology Management*, Vol. 48, No. 2 (2023), pp. 33-49.

3 P. Gupta, "Digitalization in India: Policy and Practice," *Journal of Digital Economy and Policy*, Vol. 9, No. 3 (2022), pp. 123-136.

4 A. Khanna, "E-Governance in India: Challenges and Opportunities," *South Asian Journal of Governance*, Vol. 12, No. 1 (2021), pp. 67-81.

5 S. Verma, "Integrating ICT in India's Criminal Justice System: The ICJS Project," *Indian Law Review*, Vol. 5, No. 4 (2022), pp. 200-215.

applications, and software. Additionally, it aims to standardize data and metadata for effective information exchange, develop procedures for data validation, acknowledgement, user identification, and access, and build the technical infrastructure necessary for storing and preserving electronic records.[6]

## II. Research Methodology

The study employs an analytical legal research method, incorporating a legislative survey and an examination of the role of e-portals in the criminal justice system in India and the Union Territory of Jammu & Kashmir.[7] The initial phase involves identifying and addressing the core issue.[8] Secondary data, including reports, literature, and data from various websites, were utilized to analyze whether the integration of e-portals has contributed to the expedited resolution of cases within the Indian criminal justice system.[9]

## III. Pre-ICJS Challenges in the Criminal Justice System of Jammu & Kashmir

Before the implementation of the (ICJS), the criminal justice system in Jammu & Kashmir faced numerous systemic and operational challenges that hindered its efficiency and undermined public confidence.[10] One of the critical issues was the fragmented nature of data and communication among the system's key components, including

6 V. Patel, "Data Standardization and Infrastructure in ICT-Based Judicial Reforms," *Journal of Legal Technology*, Vol. 6, No. 2 (2023), pp. 56-70.

7 A. Dutta, "Methodologies in Legal Research: Challenges and Opportunities," *Journal of Indian Legal Studies*, Vol. 8, No. 2 (2022), pp. 45-61.

8 R. Mehta, "Role of E-Portals in Transforming the Indian Criminal Justice System," *Indian Journal of Law and Technology*, Vol. 14, No. 1 (2023), pp. 25-40.

9 S. Kumar, "Digital Interventions in Criminal Justice: An Analytical Study," *International Journal of Law and Governance*, Vol. 10, No. 4 (2022), pp. 78-93.

10 P. Das, "Systemic Challenges in India's Criminal Justice System: A Case Study of Jammu & Kashmir," *Indian Law Review*, Vol. 12, No. 2 (2022), pp. 112-129.

courts, police, prisons, and forensic labs.[11] This lack of a unified platform led to inefficiencies, delays, and data silos, making inter-agency coordination cumbersome and time-consuming. Furthermore, the region struggled with a significant backlog of cases, with over 230,000 cases pending as of December 2021, a figure exacerbated by manual processes and limited use of technology.[12] Courts and police stations often operated with inadequate digital infrastructure, such as a lack of computers, stable internet connectivity, and modern case management software, preventing effective digitization of records.[13] This deficiency in digital tools further resulted in inconsistent record-keeping, with issues like missing First Information Reports (FIRs) and discrepancies between police and court records. The unique security challenges in Jammu & Kashmir, including frequent disruptions due to curfews, lockdowns, and unrest, added another layer of complexity, often delaying judicial and investigative processes. Additionally, human resource constraints, especially a lack of trained personnel in areas such as forensic science and legal administration, slowed the pace of investigations and case resolutions.[14] Public engagement with the system was also limited due to widespread mistrust and a lack of awareness about legal procedures. Many citizens were reluctant to approach the system, fearing inefficiency, corruption, and potential human rights violations.[15] This disconnect was further aggravated by the absence of

11 R. Singh, "Fragmentation in Criminal Justice Systems: Implications and Remedies," *Journal of Law and Governance*, Vol. 15, No. 1 (2021), pp. 45-59.

12 S. Malik, "Case Backlogs and Their Impact on Judicial Efficiency in India," *South Asian Journal of Legal Studies*, Vol. 9, No. 3 (2021), pp. 89-103

13 A. Roy, "Digital Infrastructure in Indian Judiciary: A Regional Analysis," *Journal of Digital Law and Technology*, Vol. 11, No. 4 (2023), pp. 67-82

14 V. Sharma, "Human Resource Deficiencies in India's Legal System: A Review," *Indian Journal of Public Administration and Policy*, Vol. 14, No. 2 (2022), pp. 124-139.

15 N. Chatterjee, "Public Trust and the Criminal Justice System in Conflict Zones," *Global Journal of Human Rights Law*, Vol. 18, No. 1 (2023), pp. 34-49.

transparent mechanisms to access case-related information or lodge complaints effectively. Collectively, these issues underscored the urgent need for a transformative solution to streamline operations, enhance coordination, and rebuild public trust. The implementation of ICJS aimed to addressthese challenges comprehensively, paving the way for a more efficient, transparent, and accountable criminal justice system in Jammu & Kashmir.[16]

**V. Technical Aspects of ICJS**

The Interoperable Criminal Justice System (ICJS) integrates advanced Information and Communication Technology (ICT) tools and robust data security measures to streamline criminal justice processes across its key components. The technical framework is designed to enhance efficiency, accuracy, and security within the system. Key technical features include:

a) **Unified Database Infrastructure:** A centralized database consolidates data from police, courts, prisons, forensic labs, and prosecution offices.[17] It utilizes relational database management systems (RDBMS) for efficient storage, retrieval, and updates, ensuring consistency across all components.

b) **Core Application Software (CAS):** CAS integrates data from police stations nationwide into a cohesive platform.[18] It automates workflows to reduce manual interventions and errors, allowing real-time sharing and updating of criminal records.

c) **Web-Based Access:** The ICJS portal is web-enabled, offering secure access to authorized users across locations. Its responsive design

16 S. Verma, "Integrated Criminal Justice System: A Panacea for India's Judicial Challenges?" *International Journal of Legal Studies and Research*, Vol. 17, No. 2 (2022), pp. 150-167.

17 IIndian Law Institute, "The Role of Information Technology in Indian Judiciary: Implementation and Challenges," *Indian Law Review*, Vol. 9, No. 3 (2021), p. 34

18 K. Sharma, "Technology Integration in Criminal Justice Systems: An Overview," *Journal of Legal Technology*, Vol. 11, No. 4 (2022), pp. 67-78.

ensures compatibility with numerous devices, including desktops, tablets, and smartphones.[19]

d) **Advanced Search and Analytics:** The portal features sophisticated search capabilities, allowing users to query case details using parameters like FIR numbers or case IDs. Dashboards with visual analytics aid in monitoring trends, evaluating performance, and informed decision-making.[20]

e) **Secure Cloud Infrastructure:** The platform operates on a high-speed government cloud, adhering to national data protection standards.[21] It ensures data availability, reliability, and real-time access while mitigating risks of downtime.

f) **Data Encryption and Access Control:** All data exchanges within ICJS are encrypted using advanced algorithms to prevent unauthorized access.[22] Role-based access control ensures sensitive data is only available to users with appropriate clearance levels.

g) **Interoperability Standards:** The system adheres to standardized data formats and protocols, enabling seamless integration with various IT systems used across CJS pillars.[23] This reduces redundancy and ensures data consistency.

h) **Audit Trails and Compliance Monitoring:** Comprehensive logs track all system activities, promoting accountability and

19 P. Das, "Challenges of Web Access in Indian Legal Systems," *Law and Technology Journal*, Vol. 15, No. 1 (2020), pp. 50-62

20 S. Patil, "Advances in Analytics and Case Management in Judicial Systems," *Journal of Judicial Administration*, Vol. 18, No. 3 (2023), pp. 58-70.

21 Indian Law Institute, "Cloud Computing in the Criminal Justice System," *Indian Law Review*, Vol. 8, No. 2 (2022), p. 96.

22 A. Kumar, "Data Security and Encryption Protocols in Law Enforcement Systems," *Journal of Cybersecurity and Law*, Vol. 20, No. 1 (2021), pp. 45-59.

23 S. Patel, "Standards for Data Interoperability in Indian Legal Systems," *International Journal of Legal Information Systems*, Vol. 12, No. 4 (2020), pp. 122-135

transparency. Audit trails facilitate the identification of discrepancies and rectification of potential misuse.[24]

i) **Mobile Application Support:** Mobile apps provide law enforcement officers, court staff, and other stakeholders with on-the-go access to critical ICJS features, enhancing efficiency in field operations.[25]

j) **Biometric and Forensic Integration:** The system incorporates biometric tools and forensic analysis modules, improving accuracy in criminal identification and evidence management.[26] These technical innovations position ICJS as a transformative initiative, streamlining criminal justice processes while ensuring data integrity and security. The focus on interoperability and advanced ICT tools ensures the system meets the evolving demands of modern criminal justice administration.

**VI. The ICJS portal:**

The Cabinet Committee on Economic Affairs has authorized the "Ministry of Home Affairs"[27] proposal to extend the 'Crime and Criminals Tracking Network and Systems'(CCTNS) Project. This extension includes the implementation of the Interoperable Criminal Justice System (ICJS), which will integrate 'CCTNS with E-Courts'. The key elements of the criminal justice system, including E-prisons, Forensics, and Prosecution, are detailed as follows:

For a robust nationwide criminal justice system, data across all sectors must be interoperable and easily accessible. 'This web-based

24 P. Kumar & R. Sharma, "Audit Trails and Accountability in Criminal Justice Systems," *Journal of Legal Compliance*, Vol. 14, No. 2 (2021), pp. 75-88.

25 S. Chatterjee, "Mobile Technology and Its Impact on Law Enforcement," *International Journal of Mobile Law*, Vol. 6, No. 3 (2022), pp. 112-124.

26 M. Gupta, "The Role of Biometric Systems in Forensic Evidence Management," *Journal of Forensic Sciences and Law*, Vol. 10, No. 2 (2021), pp. 31-44.

27 Ministry of Home Affairs, "Interoperable Criminal Justice System (ICJS): Connecting Key Elements of the Criminal Justice System," Cabinet Committee on Economic Affairs, 2020, available at https://mha.gov.in/sites/default/files/ICJS_Approval_2020.pdf (accessed on November20, 2024).

portal provides comprehensive access to case information from multiple areas of the criminal justice system, such as courts, police, correctional facilities, and forensic laboratories. Users can search for case details using parameters like FIR number, charge sheet number, and case number. Additionally, the portal features dashboards for monitoring and analyzing case data. The 'ICJS' serves as a national platform aimed at integrating the primary IT systems utilized in the delivery of criminal justice, connecting the five pillars of the system.

**a) E-Policing (through CCTNS),**

The Indian government is working to establish an integrated e-governance system for more efficient policing through the Crime and Criminal Tracking Network (CCTN). This system will unify criminal data across 27 states and 10 union territories into a Core Application Software (CAS) deployed in police stations. The CAS will consolidate existing platforms, enabling nationwide criminal tracking. The CCTN project also involves training police officers in new technologies to enhance e-governance. The initiative aims to connect 15,000 police stations and 5,000 supervisory police offices, digitizing FIRs, investigations, and charge sheets. It will create a national database and a citizen portal linked to state-level portals for public services.[28]

**b) E-Forensics for Forensic Lab.**

The Government of India has launched the e-Courts Integrated Mission Mode Project across the country to digitize district and subordinate courts, to improve access to justice using technology.[29]

**c) E-Courts Project.**

28 Ministry of Home Affairs, "Crime and Criminal Tracking Network & Systems (CCTNS) Project," National Crime Records Bureau, Government of India, 2020, available at https://ncrb.gov.in/sites/default/files/CCTNS_Implementation.pdf (accessed on September 29, 2024).

29 Ministry of Law and Justice, "e-Courts Integrated Mission Mode Project," Government of India, 2021, available at https://ecourts.gov.in/sites/default/files/eCourts%20Mission%20Mode%20Project%20(MMP)%20-%20Overview.pdf(accessed on October28, 2024).

The **e-Courts Project**, launched in 2007 under the National e-Governance Plan, seeks to enhance the integration of Information and Communication Technology (ICT) into India's judicial system. A collaborative effort between the e-Committee of the Supreme Court of India and the Department of Justice, the project aims to improve the accessibility, efficiency, and transparency of the legal system. The project is divided into multiple phases. Phase I (2011-2015) focused on the foundational steps of digitizing court records and implementing basic infrastructure, while Phase II emphasized network enhancement through the *Wide Area Network (WAN)* project, which successfully connected 99.4% of court complexes in India with improved bandwidth. Additionally, *Open-Source Software* like the *Case Information Software (CIS)*, developed by the National Informatics Centre (NIC), was introduced to streamline case management across courts. The *National Judicial Data Grid (NJDG)*, an online repository for judicial data, also became an essential tool for accessing court orders, judgments, and case details. To ensure real-time access to case statuses, cause lists, and judgments, seven platforms have been established, benefiting both lawyers and litigants. Virtual courts have also emerged as a significant feature of this phase, with 21 courts across 17 states and union territories specifically handling traffic challan cases, processing over 2.4 crore cases. Video-conferencing facilities were set up to bridge communication between court complexes and jails, and the *e-filing* system introduced in 2022 has been adopted by 19 high courts. The project also incorporates the National Service and Tracking of Electronic Processes for efficient process serving.[30] The ongoing **Phase III** of the e-Courts Project aims to establish a more affordable, accessible, and paperless judicial system. This phase focuses on digitizing court proceedings, reducing the need for physical court appearances, and expanding virtual courts to handle a broader range of

30 Agarwal, P, "Digital Transformation of India's Judiciary: A Study of the e-Courts Project," *Indian Journal of Public Law and Policy*, Vol. 14, No. 2, 2023, pp. 115-133.

cases. With the integration of these technologies, the e-Courts Project continues to set a global benchmark in judicial modernization.

**d) E-Prisons:**

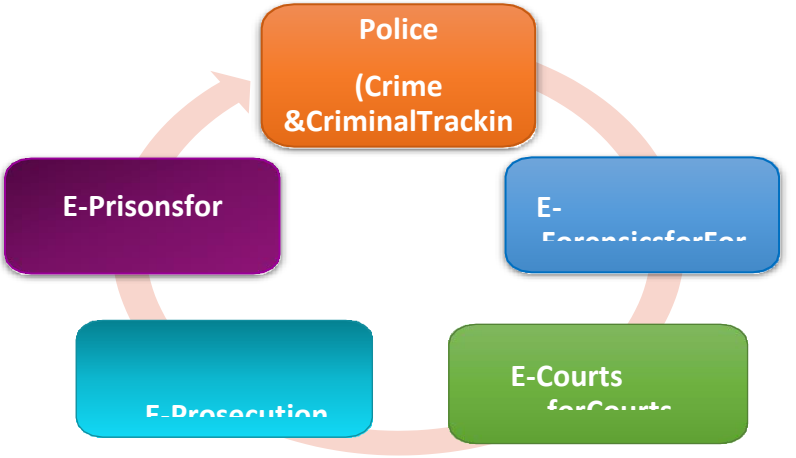
An integrated system is being created to digitalize all aspects of prison and prisoner management, offering real-time information about inmates to various entities within the Criminal Justice System. This 'ICJS' system will function through a dedicated, secure cloud infrastructure with swift connectivity. The project will be executed by the 'National Crime Records Bureau' in partnership with the 'National Informatics Centre' (NIC) and will involve collaboration with States and Union Territories.In Phase I, separate IT systems were established and refined, enabling record searches within these systems. Phase II emphasizes the "one data, one entry"[31] principle, where information is inputted only once into a single system and then becomes accessible across all other systems, thus avoiding redundant data entry.

**e) E-Prosecution:**

It is a constituent of the 'Interoperable Criminal Justice System' designed to facilitate the smooth transfer of data and information across various sectors of the 'criminal justice' framework. This system is dedicated to enhancing efficiency, minimizing delays, boosting accountability, and improving conviction rates. In a recent development, the 'Ministry of Home Affairs' in India has introduced a new feature to its e-prosecution portal.[32] This update aims to ensure the prompt resolution of criminal cases and reinforce the responsibility of government lawyers. The feature will notify senior officials if a public prosecutor requests a stay in a criminal case more than twice, ensuring greater oversight and accountability.

31 *Sharma, V.*, "The Role of Digitalization in Modernizing India's E-Prisons System," *Journal of Criminal Justice and Technology*, Vol. 10, No. 3, 2022, pp. 145-157.

32 *Mehta, R.*, "Enhancing Efficiency in Indian Legal System: A Study of the E-Prosecution Portal," *Indian Journal of Law and Technology*, Vol. 9, No. 4, 2023, pp. 98-112.




**f) National Crime Records Bureau**

The 'National Crime Records Bureau, headquartered in New Delhi, was founded in 1986 under the Ministry of Home Affairs.[33] Its main role is to act as a central repository for crime and criminal information, assisting investigators in linking crimes to their perpetrators.[34] The establishment of the 'NCRB' was based on the recommendations of the National Police Commission (1977-1981) and a Task Force from the Ministry of Home Affairs (1985).[35] Each year, the (NCRB) publishes comprehensive crime statistics for the entire country, with reports extending back to 1953.[36] These reports are essential for analyzing and assessing the state of law and order across India.[37]

33 A. Prakash, "The Role of National Crime Records Bureau in Indian Criminal Justice System," *Indian Journal of Criminology*, Vol. 45, No. 3 (2023), pp. 89-101.

34 S. Kumar, "Data-Driven Policing in India: A Study of NCRB's Contributions," *Journal of Police Studies*, Vol. 38, No. 2 (2022), pp. 45-59.

35 R. Singh, "National Police Commission Reports: A Milestone in Indian Policing Reforms," *Indian Police Journal*, Vol. 68, No. 4 (2020), pp. 23-35.

36 P. Das, "Crime Data Analysis in India: Insights from NCRB Reports (1953-2023)," *South Asian Journal of Criminology*, Vol. 14, No. 1 (2023), pp. 12-28.

37 N. Sharma, "Law and Order in India: Evaluating NCRB's Annual Crime Reports," *International Journal of Criminal Justice Research*, Vol. 10, No. 2 (2023), pp. 67-80.

## VII. Implementation of ICJS in J&K

The Integrated Criminal Justice System (ICJS) project was inaugurated in Jammu & Kashmir on June 15, 2020, by Justice Gita Mittal, the then Chief Justice of the Jammu and Kashmir High Court.[38] The initiative seeks to unify data and information systems across courts, police stations, jails, and forensic labs in the Union Territory, while also offering training programs for judicial officers, police personnel, jail staff, and forensic experts on the ICJS platform.[39] Implementation of ICJS in J&K is aimed at improving the efficiency and effectiveness of the Criminal Justice System (CJS), addressing longstanding challenges such as a high case backlog. As of December 31, 2021, the National Judicial Data Grid reported 232,941 pending cases in the High Court and subordinate courts, with 108,216 being criminal and 124,725 civil cases, exacerbated by lockdowns and security issues.[40] The absence of a unified data platform has historically led to discrepancies such as missing FIRs in court records and issues in the communication and execution of court orders between police and jails.[41] Furthermore, insufficient infrastructure, including a lack of computers, internet access, and scanners, has hindered digitization, while low public awareness and concerns about transparency and accountability have further eroded trust in the CJS.[42] The ICJS seeks to address these issues by facilitating seamless data sharing, reducing errors and delays, and promoting greater

38 Jammu & Kashmir High Court, *Press Release on ICJS Inauguration*, June 15, 2020, available at: https://jkhighcourt.nic.in (last visited July.17, 2024).

39 Ministry of Home Affairs, *Annual Report 2021-22 on ICJS Implementation*, pp. 45-46.

40 National Judicial Data Grid, "Statistics on Pending Cases," available at: https://njdg.ecourts.gov.in (last visited August. 26, 2024).

41 Parliamentary Standing Committee on Home Affairs, *Report on Police Reforms and Judicial Coordination*, 2023, p. 18

42 Press Information Bureau, "ICJS and Its Impact on Criminal Justice," Ministry of Law and Justice, Feb. 2024, available at: https://pib.gov.in (last visited September. 5, 2024).

transparency, accountability, and public engagement, ultimately enhancing monitoring and evaluation capabilities

**VIII. Digitization of Judiciary in Jammu & Kashmir: Progress under the e-Courts Project.**

The judiciary in Jammu and Kashmir has made significant progress in digitizing case records under the e-Courts Project. Currently, 16 courts in the region are fully paperless, with all case records digitized. This transformation is part of the nationwide initiative to integrate technology into the judicial system to improve efficiency, transparency, and accessibility. Services such as e-filing, digital case tracking, and online payment systems are now available, bridging the gap between litigants and the courts. The e-Courts portal allows users to check case statuses, view daily cause lists, and access court orders online.[43]Additionally, the Jammu & Kashmir High Court has emphasized digitization as a means to enhance the justice delivery system, especially for marginalized communities.[44] Phase III of the e-Courts Project, currently underway, is expected to further revolutionize judicial processes by integrating advanced IT systems.[45]As of 2024, the High Court of J&K and Ladakh has a pending caseload of 44,736 cases. Out of these, approximately 81.57% (36,575 cases) are civil in nature, while the remaining 8,161 cases are criminal.[46] Most cases in the High Court have been pending for less than a year, but some extend over 10 to 20 years.Across both the district and High Courts in Jammu & Kashmir, the combined pending cases total 3.71 lakh. This backlog highlights systemic challenges such as judge vacancies, frequent adjournments, and

43 e-Courts Project, "e-Courts Mission Mode Project - Phase II, "*Official Website of e-Courts India*, available at: https://ecourts.gov.in (last visited July. 22, 2024).

44 High Court of Jammu & Kashmir and Ladakh, "Progress Report on Digitization," *Annual Report 2024*, p. 12.

45 Ministry of Law and Justice, "Implementation of e-Courts Project," *Parliamentary Standing Committee Report on Technology in Judiciary*, 2023, p. 8.

46 *Press Information Bureau*, "Status of Case Pendency and Disposal in High Courts," Ministry of Law and Justice, Nov. 15, 2024, available at: https://pib.gov.in (last visited August. 11, 2024).

infrastructural inadequacies. In 2023, the High Court registered 4,099 new cases and disposed of 14,329, reflecting ongoing efforts to manage the caseload.[47]


Source: National Judicial Data Grid, "Case Status and Statistics for District Courts of India," available at: https://njdg.ecourts.gov.in

## IX. Challenges and Opportunities for Improvement:

The implementation of the Interoperable Criminal Justice System (ICJS) in Jammu & Kashmir faces notable challenges but also offers significant potential for enhancing the efficiency, accessibility, and security of the Criminal Justice System (CJS).

**a)** Ensuring that police stations, courts, prisons, and forensic labs are equipped with updated infrastructure is a critical challenge. Efforts are underway to improve broadband connectivity in remote areas and provide advanced computing resources, which will enhance the ICJS platform's performance.[48]

**b)** Effective use of the ICJS requires comprehensive training for personnel across the CJS. Resistance to change and inadequate system knowledge are key hurdles. The government has launched workshops, e-learning modules, and hands-on sessions to familiarize stakeholders with the system's features, complemented by technical support and feedback mechanisms.[49]

**c)** Maintaining accurate, consistent, and secure data is vital. Encryption, multi-level access controls, and regular audits have been implemented to protect sensitive criminal justice data and ensure compliance with national and international standards.[50]

47 National Judicial Data Grid, "Case Load in Indian Judiciary," available at: https://njdg.ecourts.gov.in (last visited September. 19, 2024).

48 Supreme Court of India, *E-Committee: Interoperable Criminal Justice System Framework* (2020).

49 Ministry of Home Affairs, *Training Modules for Digital Transformation in Criminal Justice* (2021).

50 Data Security Council of India (DSCI), *Ensuring Data Integrity in Criminal Justice Systems* (2022).

**d)** Public awareness is crucial for ICJS success. Online portals and mobile apps now allow citizens to track cases, file complaints, and resolve grievances efficiently. Outreach campaigns and workshops aim to further enhance public engagement.[51]By addressing these challenges through infrastructure development, training, data security, and public participation, the ICJS can transform the criminal justice system in Jammu & Kashmir. It has the potential to streamline operations, enhance transparency, and ensure accountability.

**Conclusion**

The digitization of India's judicial system, exemplified by the Interoperable Criminal Justice System (ICJS), represents a transformative shift in justice delivery. By centralizing data and integrating ICT tools, ICJS fosters seamless coordination among police, courts, prisons, and forensic labs, accelerating case resolution, enhancing transparency, and strengthening public trust. However, challenges like cybersecurity threats, training gaps, and resistance to change must be addressed to maximize its potential. Research should evaluate the impact on case backlogs, optimize usage strategies, and engage the public in the justice process. This initiative, with continued innovation and collaboration, holds promise for redefining efficiency and fairness in India's criminal justice system, setting a global standard for modernization.[52] Digitization has also empowered clients by enabling case tracking, e-filing, and online updates, reducing dependency on intermediaries, saving time and costs, and fostering trust between advocates and clients.[53] It marks a significant step toward transparency,

51 S. Muralidhar, "Public Participation in Justice Reforms," *Indian Law Journal* (2023) 36(1): 56-72.

52 Supreme Court of India, E-Committee: Interoperable Criminal Justice System Framework (2020).

53 Ministry of Law and Justice, Impact of Digitization on Judicial Systems in India (2021).

accessibility, and efficiency in the judicial process,[54] aligning with global perspectives on justice reform.[55]

54 S. Muralidhar, "Digitization and Its Role in Access to Justice," Indian Law Journal (2022) 34(2): 45-68.

55 United Nations Office on Drugs and Crime (UNODC), Technology and Justice Reform: Global Perspectives (2019).

# Navigating the Legal Regulations in Parallel to Cyber Security Concerns in Indian E-Commerce

**Madhusmita Ronghangpi***
**Dr. Naveen Kumar****

***Abstract***

*In this "Information Era" people are surrounded by computers, mobile phones, etc., which increases the percentage of Internet users. This also triggers the development of the concept of e-commerce, which allows for easy access to goods and services without on-the-ground presence. However, the rising rate of e-commerce usage brings forth the necessity of regulating e-commerce both nationally and globally. The enactment of such laws and regulations aims at safeguarding people from breaches of their rights, such as privacy. In India, the implementation of the "Information Technology Act, 2000" is a jurisprudential change in the technological arena to initiate regulation of e-commerce and to provide penalties for wrongdoers. Further, there are numerous other Indian legislations that protect the rights of the people concerning cyber security issues. The various dangerous cybercrimes that intrude into cyberspace are hacking, phishing, forgery, and others. Nowadays, there is a massive transition in e-commerce due to the application of Artificial Intelligence (AI) tools to process large databases, identify patterns in the buying and selling of customers, and communicate with the buyers. This raises many legal concerns in governance on applications of AI in e-commerce as the absence of regulations breaches individuals' liberties and constitutional rights. This paper provides a glimpse of e-commerce and its security issues. It*

* Ph.D. Research Scholar, Department of Law, North-Eastern Hill University, Shillong, Meghalaya, Email id: rmadhusmita20@gmai.com
** Associate Professor, Department of Law, North-Eastern Hill University, Shillong, Meghalaya, Email id: naveenkr77@gmail.com.

*mainly focuses on the effectiveness of Indian laws implemented in dealing with cybercrimes and provides solutions concerning them.*

**Keywords:***E-Commerce, Artificial Intelligence, Cyber Security, Business, Consumer, Legal Regulations.*

## Introduction

Electronic Commerce (e-commerce) buzzword of the decade is entirely a phenomenon of the technology revolutions of the late 20th century.[1]The discovery of the Internet led to a new change in the transactions of resources in the market. The old transactions that existed in the ancient era have undergone a new system of transactions through an online process that is e-commerce. E-commerce is not a very new concept, as it started from 1995-1996.[2]

India is one of the world's fastest-developing economies in terms of business, investment, and research opportunities. E-commerce now plays a crucial role in India's economic situation because of recent globalization and liberalization. Hence, it is on the growth curve and experiencing a spurt in the Indian economy. Recently, in India, internet users have been more than 820 million at the beginning of 2024[3], driven by rapid internet growth in rural areas over half of them- 442 million[4], this resulted, in an increase in e-commerce usage.Currently, the major e-commerce businesses in India are *"Flipkart*, *Amazon*, *Myntra, Ajio*" etc. By 2030, the Indian e-commerce market is expected to have grown

1 S.B. Verma, R.K. Shrivastawa, *et.al.*,*Dynamics of Electronic Commerce* 19 (Deep & Deep, New Delhi, 2007).

2 R. Kumar and A.B. Jaiswal,*Cyber Laws*108 (APH Publishing Corporation, New Delhi, 2017).

3 Annapurna Roy, "How India is using the Internet", *The Economic Times*, Mar. 10, 2024, *available at:* https://economictimes.indiatimes.com/tech/technology/how-india-is-using-the-internet/articleshow/108354854.cms?from=mdr (last visited on Sep.15, 2024).

4 *Id*.

tremendously to a value of US$ 325 billion.[5] Approximately 350 million of India's 936.16 million internet users are customers of legal age who are actively transacting.[6]By 2026, Indian e-commerce has the potential to reach US$ 163 billion at a "Compound Annual Growth Rate (CAGR) of 27%.[7] Further, there is a paradigm shift in the synthesis of "Foreign Direct Investment (FDI)" as100 % of "Equity/ FDI Cap"in e-commerce businesses exclusively participating in the "Business to Business (B2B)" model.[8] Furthermore, Indian e-commerce was valued at $46.2 billion in 2020 and by 2026, it is projected to increase at 18.29% to $136.47 billion.[9]

Nevertheless, the increased use of e-commerce raises concerns about safeguarding the rights of e-commerce users. There can be adverse intrusions of cybercrimes concerning client security, server security, "intellectual property rights (IPR)", consumer rights, e-contracts, and others, in the e-commerce sector. As a result, it is critical to examine the Indian legal regulations that govern the cyber security issues in e-commerce.

## I. Concept of E-Commerce

"E-commerce" means "buying and selling of goods and services including digital products over digital & electronic network."[10]An E-commerce entity is elucidated as "a company incorporated under the Companies Act 2013 or previously existing Company Lawor a foreign company covered under S. 2(42) of the Companies Act, 2013 or an office, branch or agency in India as provided in S.2(v)(iii) of Foreign

5 IBEF, "E-commerce Industry Report", Indian Brand Equity Foundation, Oct. 2024, *available at:* https://www.ibef.org/industry/ecommerce (last visited on Oct.06, 2024).

6 *Id*.

7 *Id*.

8 Government of India , "Consolidated FDI Policy"49 [Ministry of Commerce & Industry, Department for Promotion and internal Trade, (FDI Division), 2020].

9 India - Country Commercial Guide, "Online Marketplace and E-Commerce", International trade Administration, Jan., 12, 2024, *available at:*https://www.trade.gov/country-commercial-guides/india-online-marketplace-and-e-commerce(last visited on Oct.01, 2024).

10 *Supra* note 8 at 49.

Exchange Management Act(FEMA) 1999, owned or controlled by a person resident outside India and conducting the e-commerce business".[11] Therefore, in general terms, e-commerce is a business activity done by electronic media through innovative methods of processing and distributing business information. It includes collaborating with businesses to offer customer service along with purchasing. It also refers to paperless transactions using "Electronic Data Interchange (EDI)", E-mail, "Electronic Fund Transfer (EFT)",etc. In recent times, e-commerce is also taking advantage of the newly developed technology in this competitive world of business especially, AI, Machine Learning, etc.

In India, there are different e-commerce models to initiate e-commerce. Some e-commerce models are mentioned below in the figure:

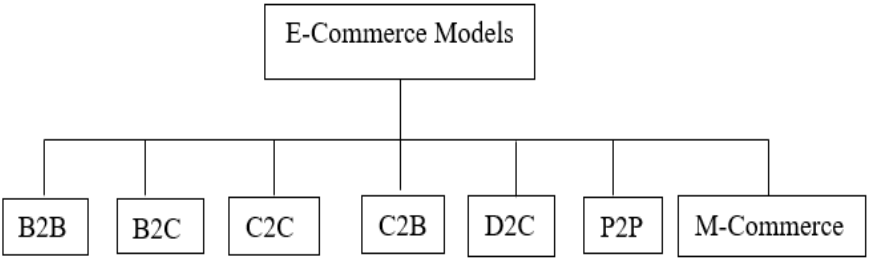



Fig.1: Chart of E-commerce Model

Other possibilities of such models are "*Business - to - Government (B2G)*", "*Government - to - Business (G2B)*", "*Government - to - Citizen (G2C)*" and so on.

a) B2B (Business to Business):This refers to e-commerce within and between the companies. It means business transactions between businesses.[12] For example: In the automobile industry, where manufacturers buy or sell spare parts and components from other businesses.[13]Its benefits are encouraging business online, importing and

11 *Id.*
12 Karnika Seth, *Computers Internet and New Technology Laws*103(Lexis Nexis, India, 3rd ed. 2021).
13 *Id*.

exporting products, determining buyers and sellers, and positioning trade guides.

b) B2C (Business to Consumer):It's a model taking into account business transacted between the business entity and a consumer.[14]It means selling products online to customers. It is an indirect trade and direct relationship between business and customer. For example: Someone buying a camera from a retail shop.[15]C2B stands for customer to business. It is a model where customers bring value to companies through their ideas and reviews.[16]

c) C2C (Consumer to Consumer):It means businesses among the people. One customer is selling products to other customers. Customers buy and sell products or services they would like to buy, for example, E-bay.[17]

d) C2B (Consumer to Business): It includes "reverse auctions", whereby customers specify the rate for the good or assistance they want to acquire.[18] Further, it includesinstances whereby a customer offers an enterprise a paid option to promote the products of the business on the consumer's blog site.[19]

e) D2C (Direct to Consumer): It is the new paradigm for the e-commerce model. When a company manufactures its goods and sells them directly to end-users through various channels,this type of business model is known as "Direct-to-consumer" or "D2C". The objective of this model is to remove resellers, manufacturers, and other businesses that stand in the way of reaching the end consumer.[20]Oneof the DTC

14 *Supra* note 12 at 103.
15 *Id*.
16 *Id.*
17 *Id.*
18 Marisa Sanflippo, "What is C2B", *Business News Daily*, Jul. 31, 2024, *available at*: https://www.businessnewsdaily.com/5001-what-is-c2b.html (last visited on Sep. 24, 2024).
19 *Id.*
20 N. Sharma and N. Dutta, "Direct—to—Consumer eCommerce (D2C) Business Model: The Dilemma of Getting It Right*"* in Erik Stavnsager Rasmussen and Nicolaj Hannesbo Petersen (eds.), *Handbook of Research on Business Model Innovation Through Disruption and Digitalization*280 (2023).

business's distinct features is its capability to interact directly with customers simultaneously gathering useful data.[21]

f) P2P (Peer to Peer): This refers toa communications approachwherein any participant (business or customer) can initiate a discussion.[22]

g) M-commerce:It stands for "Mobile commerce". This approach enables transactions via the Internet using mobile devices, such as smartphones.[23]

## II. Technological Advancements and Cyber Security Issues in Indian E-Commerce

With the increasingonline interactions between products and consumers, wrongdoershave found many gateways to commit cybercrimesvia e-commerce. There are many cyber security threats to clients/servers relating toe-commerce, some are described below:

a) Forgery: It includes generating a document that seems to be authentic even though the creator acknowledges that it is untrue.[24] Digital forgery is the process of fabricating a fake document using digital technologies.[25]This offence is prescribed in Ss.335, 336, 337, 338, 340 and 341 of the "*Bharatiya Nyaya Sanhita (BNS), 2023*". S.91 of the IT Act, 2000 modified the provisions of the BNS to include 'electronic records' in forgery. BNS defines "*forgery as when a person makes any untrue data or untrue electronic data as part of a data or electronic data with the guilty mind of damaging*".[26]

b) Counterfeiting: The phenomenon of copying things genuine to sneak, demolish, or restore the real for unlawful business or defraud

21 Leonard A. Schlesinger, Matt Higgins, *et. al.*, "Reinventing the Direct-to-Consumer Business Model", Havard Business Review, March 31, 2020, *available at:* https://hbr.org/2020/03/reinventing-the-direct-to-consumer-business-model (last visited on Sep. 20, 2024).

22 "Types of e-commerce", EYERYS, *available at:* https://www.eyerys.com › articles › types-e-commerce-models(last visited on Sep. 18, 2024).

23 *Id.*

24 *Supra* note 2 at 148.

25 *Id.*

26 The Bharatiya Nyaya Sanhita (Act 45 of 2023), s. 336.

individuals is called Counterfeiting.[27]Counterfeit is defined in BNS as "*a person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.".*[28]

c) Data Diddling: It involves altering the original information just beforea computer process and then again altering it and reverting after completing the process.[29] The alteration of computer data which tends to lower its value or utility, which causes injurious harm to the people as a whole or any individual is an offence.[30]

d) Hacking: Hacking is defined as gaining unapproved entry to a computer system.[31] Hackers attempt to hack for purposes like data theft, fraud, destruction of data, causing damage to computer systems, or for personal pleasure.[32]

e) Denial of Service: The direct aim of assailants to prevent legitimate users of services from using those services is the Denial-of-service attack.[33] This attack disables one's computer or one's network.[34]

f) Spamming: It is the term for blowing a fixed-size buffer with unreasonably huge input data, resulting in a program crashing.[35]

g) Phishing: Phish is the term that resonates like the term fish.[36] The word started to be used in 1990.[37] Phishing is a kind of financial fraud in which an attacker delivers a message via email urging the updating of data, including credit card information, and acquires

27 *Supra* note 12 at 388.
28 *Supra* note 26, s. 2(4).
29 *Supra* note 2 at 161.
30 *Id*.
31 *Id.,* at 154-155.
32 *Id.,* at 155.
33 *Supra* note 2at 156.
34 *Id*at 157.
35 *Id.,*at 165.
36 John Fruhlinger, "Meaning of Phishing", CSO INDIA, *available at:* https://www.csoonline.com/article/2117843/what-is-phishing-how-this-cyber-attack-works-and-how-to-prevent-it.html (last visited on Oct. 01, 2024).
37 *Id.*

credentials by impersonating a legitimate service provider.[38] In "*National Association of Software v. Ajay Sood*",[39] the court explained the phenomenon of phishing as a crime in cyberspace where the purpose of the wrongdoer is to fraud the public using cyberspace by professing an authentic body like the bank to draw out personal data consisting of passwords and credit card data and misapply the same for making unlawful financial funds.

Further, the incidents such as scammers impersonating by sending gift cards from Amazon, Flipkart, PayPal, Google Play, etc.via SMS/emails can be recently seen, causing customers to easily fall victim

Presently, the use of Artificial Intelligence (AI) or machine learning-powered tools has revolutionized e-commerce. AI and e-commerce have recently been integrated resulting in personalization and recommendation systems that are more agile and precise than ever before. AI in e-commerce demonstrated the use of AI methods, systems, tools, or algorithms to support the e-buying and selling of goods and services.[40] In recent years, AI has invested further in marketing and enabling brands to boost the satisfaction of the customer.Further, the machine learning applications in marketing to analyze and foster consumer interaction machine learning has many applications in marketing such as personalization of product suggestions, dynamic pricing, ad segmentation, etc.[41]Internet-based businesses typically employ AI technologies to collect customer information, allocate products, and detect fraud.[42] "*Collaborative Filtering*", "*Content-Based*

38 *Supra* note 12 at 376.

39 119 (2005) DLT 596, (2005) 30 PTC 437 (Del).

40 RansomeEpieBawack E, "Samuel FossoWamba, *et.al.*, Artificial intelligence in E- Commerce: a bibliometric study and literature review" 32 *Electronic Markets* 297 (2022).

41 J. Prabha, "A study on Impact of Artificial Intelligence in E-Commerce" 9(9) *International Journal of Creative Research Thoughts* (UCRT) 24 (2021).

42 Denis Kolodin, Oksana Telychko, *et.al.*,"Artificial Intelligence in E-Commerce: Legal Aspects" 129 *Advances in Economics, Business and Management Research* 98 (2020).

*Filtering*"and"*Hybrid Models*"are themost popular techniques to create recommendations based on consumers' actions.[43]

However, the inclusions of new technological systems have both positive and negative impacts. Such intrusions of systems though help to create social profiling for the customers with the help of their search on online platforms. It tends to breach the customer's privacy bubble. The right to privacy is basically hampered which is recognized as a right under Art. 21 of the Constitution of India, which is established in thecase of "*Justice K.S. Puttaswamy v. Union of India*"[44]. The right to equality guaranteed under Art. 14 is also infringed by difficulty in providing equitable access to the goods and services provided by e-commerce. Misleading Advertisements, false products, defamatory information, and challenges in the protection of IPR violate the freedom provided under Art. 19(1)(a), i.e., "Freedom of Speech and Expression" and Art. 19(1)(g), i.e., "right to carry on a trade or profession, trade or business".

## III. Indian Laws regulating E-Commerce and Cyber Security

In India, there has been growth in e-commerce sincethe mid-1990s. This resulted inthe need for legal frameworksto regulate e-commerce. The "Information Technology Act(IT Act), 2000," is the primary act that governs the cyber security risks with e-commerce. Various legal frameworks regaling e-commerce and cyber security have been discussed below:

a) Information Technology Act, 2000: The main objective of this Act is to legally recognize e-commerce. The IT Act alsodeals with cybercrime, electronic commerce,and electronic governance. The legal provisions that deal with some specific offences are shown below:

43 Prakash Dangi, Divya Saini, et.al.,"AI for Personalization in E-commerce and Recommendation System" 44(1) *TuijinJishu/Journal of Propulsion Technology* 124 (2023).

44(2017) 10 SCC 1.

| Offences | Legal Provisions |
|---|---|
| Data Diddling | S. 43:liable to pay damages/compensation. |
| Hacking | S. 43(d): Whoever causes damages to any "*computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network*" - liable to pay damages/compensation. |
| Denial of Service | S. 43(f): Anyone encountered guilty of causing a denial of access-liable to pay damages/compensation. |
| Data Diddling, Hacking,Spamming | S. 66: Computer related offences- penalizes with "i*mprisonment- extend to three years; or fine- five lakh rupees; or both*". |
| Phishing | S. 66C: Identity theft- penalizes with imprisonment- extend to three years and fine- extend to one lakh rupees.<br>S. 66D: Cheating by personation by using computer resources- penalizes with "i*mprisonment- extend to three years and fine- extend to one lakh rupees*". |

Judicial Pronouncements related with"exemption from liability of intermediary" (E-commerce Platforms)under S. 79:

In "*Flipkart Internet Private Limited v. State of UP*"[45], it is held by the Allahabad HC, noted that thee-commerce acting as an intermediary is not accountable for third-party information or contact. Pathwayposted, it complies with Ss. 79(2) or 79(3) of the IT Act and the "IT (Intermediaries Guidelines) Rules, 2011", and Flipkart has made accessible to sellers/buyers and exercised 'due diligence' underS.79(2)(c) IT Act, thus, FIR against Flipkart has been quashed.

45 2022 SCC OnLine All 706.

In "*Amway India Enterprises Pvt. Ltd. and Ors.v. 1MG Technologies Pvt. Ltd. and Ors*."[46], the Delhi HC held that Amazon and Flipkart were disqualified fromselling without the plaintiff's consent from responsibility for IPR infringement under S.79 of the IT. The Court also held that the e-commerce platforms had violated the "Direct Selling Guidelines, 2016".

In"*Christian Louboutin SAS v. Nakul Bajaj & Ors.*"[47],the defendant was sued by the plaintiff for selling his expensive shoes on the website www.dravey.com. The court held that the plaintiffwas not an intermediary eligible for assurance under S. 79, and would be at risk for encroachment whenever demonstrated that the products it was moving were fake.

46 AIR Online 2019 DEL 1322.
47 Civil Suit No. 344/2018.

Bharatiya Nyaya Sanhita: This act replaced the "Indian Penal Code (IPC)", the colonial criminal law that came into force on the 1st of July, 2023. The legal provisions that deal with some specific offences are shown below:

| Offences | Legal Provisions |
|---|---|
| Forgery | S. 336: penalizes with "*imprisonment- extend to two years, or with fine, or with both*". |
| Counterfeiting | S. 342: "Counterfeiting device or mark used for authenticating documents": penalizes with "*imprisonment- for life or either description for seven years and fine*".<br>S. 347: Counterfeiting a property mark: penalizes with "*imprisonment- either description- may extend to two years, or with both*".<br>S. 348: Making or possession of any instrument for counterfeiting a property mark: penalizes with "*imprisonment- extend to three years or with fine, or with both*".<br>S. 349: Selling goods marked with a counterfeit property mark: penalizes with "*imprisonment- either description extend to one year, or with fine, or with both*". |

b) Consumer Protection Act, 2019: This Act in its ambit provided the meaning of the termssuch as: "*e-commerce*" that means "*buying or selling of goods or services including digital products over digital or electronic network*"[48] and "*electronic service provider*" that means "*a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites*"[49]. It provides penalties relating to the offences concerning

48 The Consumer Protection Act (Act 35 of 2019), s. 2(16).
49 *Id*., s. 2(17).

"misleading advertisement", which means "*advertisement in relation to any product or service, means an advertisement, which— (i) falsely describes such product or service; or (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or (iv) deliberately conceals important information*"[50]. The legal provisions that deal with some specific offences are shown below:

| Offences | Legal Provisions |
|---|---|
| False or misleading advertisement | S. 89: penalizes with "*imprisonment- extend to two years and fine- extend to ten lakh rupees.*"For every subsequent offence- penalizes with "*imprisonment- extend to five years and fine- extend to* fifty lakh rupees". |
| "Sale or storing, selling or distributing or importing products containing adulterant" | S. 90: In the case of<br>1. no injury to the consumer: penalizes with "*imprisonment- extend to six months and fine- extend to one lakh rupees*".<br>2. Injury not amounting to grievous hurt to the consumer: penalizes with "*imprisonment- extend to one year and fine- extend to three lakh rupees*".<br>3. Grievous hurt to the consumer: penalizes with "*imprisonment- extend to seven years and fine- extend to five lakh rupees*".<br>4. Death of a consumer- penalizes with "*imprisonment- not be less than seven years may be extended to imprisonment for life and fine- not be less than ten lakh rupees*". |

50*Supra* note 48, s. 2(28).

| | |
|---|---|
| "Sale or for storing or selling or distributing or importing spurious goods" | S. 91: In the case of<br>1. Injury not amounting to grievous hurt to the consumer: penalizes with "*imprisonment- extend to one yearand fine- extend to three lakh rupees*".<br>2. Grievous hurt to the consumer: penalizes with "*imprisonment- extend to seven years and fine- extend to five lakh rupees*".<br>3. Death of a consumer:penalizes with "*imprisonment- not be less than seven years and may be extended to imprisonment for life; and fine- not be less than ten lakh rupees*". |

Consumer Protection (E-Commerce) Rules, 2020: The purpose of this rule is to envisage certain roles and obligations of e-commerce retailers in offeringthe sale of products and services to online consumers. These rules apply to "*all goods and services bought or sold over the digital or electronic network including digital products; (b) all models of e-commerce, including marketplace and inventory models of e-commerce; (c) all e-commerce retail, including multi-channel single-brand retailers and single brand retailers in single or multiple formats; and (d) all forms of unfair trade practices across all models of e-commerce: Provided that these rules shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis*".

Judicial Pronouncements related with consumer protection in the e-commerce sector:

In "*Abhi Traders v. Fashnear Technologies Private Limited & Ors*."[51],the Delhi HC directed e-commerce websites to provide/post the information of sellers to customers.

In "*Jatin Bansal vs M/S Amazon Reseller Services Pvt. Ltd.*"[52]*a* complaint was filed for false and deceptive products. The "State

51 2024 SCC OnLine Dei 1604.

Consumer Disputes Redressal Commission, Chandigarh" ordered to pay compensation to the tune of two lakhs rupeesto the complainant for the abuse and suffering and the adoption of unfair and restrictive trade practices.

In "*Shri Gandhi Behera v. Flipkart Internet Private Limited"*[53], thedefendant had not only neglected to give the plaintiff the vendor's information. The District Commission ordered the defendant to comply under r. 5(a)(3) of the "*Consumer Protection (E-Commerce) Rules, 2020*" and awarded twenty thousand to the Plaintiff for causing emotional distress.

Therefore, the new Consumer Protection legislations and rules are significant to ensure protection of theconsumer rights in online transactions and to resolve their grievances.

c) Indian Contract Act, 1872: E-contracts/online Contracts are governed by the general principles of this Act. Itdefinesa contract in S. 2(h) as an agreement enforceable by law. The Supreme Court (SC) in "*Trimex International FZE Ltd. v. Vedenta Aluminium Ltd.",*[54]has determined that emails between parties on mutual duties form a contract, acknowledging the legitimacy of electronic transactions. Therefore, it is very crucial to undermine the genesis of online contracts and to familiarize the terms of the contracts with the customers as it may be also impacted under the Undue Influence (S. 16) and Public Policy (S. 23), as the term is not defined under this Act.[55]Further, the legal provision that deal with the breach of online contract is shown below:

| Offences | Legal Provisions |
|---|---|
| Breach of the terms of the valid Online contract | S. 73: remedy- claim damages or compensation for direct loss. |

52 Decided on 12/03/2024.
53 CC/88/2022.
54 2000(1) SCALE 574.
55 Nisith Desai Associates, E-Commerce in India: legal tax and Regulatory Analysis *Nisith Desai Associates Legal and Tax Counselling Worldwide* 10 (July, 2015)

d) Intellectual Property Rights Laws (IPR Laws): IPRsconsist of state-sanctioned rights that provide its possessor a restricted monopoly on managing and utilizing the property for a specific duration of time.[56] There are three major legislations under IPR laws which are described below:

i. Copyright Act, 1957: The advent of the internet gave birth to so-called E-commerce. This internet provides many facilities like easy copying, pasting, or transferring files. All facilities bring with them threats to things that are protected through copyright. Thus, the "*World Intellectual Property Organisation (WIPO)*" has to rethink the necessity of protecting intellectual rights.Generally, Copyright means the right to copy.This Act provides that the creator or owner of the following works is granted the legal right under copyright: "*Literary work (including computer programs, tables, and compilations including computer literary databases); Dramatic work; Musical work; Artistic work; Cinematograph films and Sound recordings*".[57]According to the Act, "*copyright*" is the statutory right to do or permitted to performsuch work as mentioned above.[58]In India, copyright infringement occurs when there is selling or hiring of copies of copyrighted work without permission, such as online piracy, or performance before people at large a copyrighted work, or giving away the infringing copies for business and own profits, etc.[59]The Act prescribes civil actions and the court gives many reliefs: "*Interlocutory Injunction, Financial Relief, Anton Pillar Order, Mareva Injunction and Norwich Pharmacal Order*".[60]

ii. Patent Act, 1970: It came into force on April 27, 1972.[61] The Act defines Patent under: S. 2(1)(m) prescribes the definition of "Patent" which means a patent for any invention granted under this Act; S. 2(1)(j)

56 Alan Davidson, *The Law of Electronic Commerce* 89 (Cambridge University Press, 1st ed. 2009).
57 The Copyright Act (Act 14 of 1957), s. 13.
58 *Id.,* s. 14.
59 *Supra* note 2 at 109.
60 *Supra* note 57, s. 55.
61 V.K.Ahuja, *Law Relating to Intellectual Property Rights* 482 (Lexis Nexis 2nd ed. 2013, 3rd reprint, 2015).

defines "Invention" as meaning new goods or procedures that include creative ways and apply industrially. S. 48 further provides that a patent granted shall convey to the patentee— (1) Product -the statutory right to stop 3rd parties, not having the consent, from the act of producing, utilizing, the proposal for sale, etc. in our country, or (2) For process, the statutory right to stop 3rd parties, not having the consent, from the act of producing, utilizing, the proposal for sale, etc. in our country.

iii. Trade Marks Act, 1999: This Act came into force on September 15, 2003. The aforesaid act prescribes: S. 2(zb)- "trademark" means a mark representing graphically and which can differentiate the products of one individual from those of others and consist of shape, packaging, and colors; S. 2(m)- "mark" that consists of brand, label, ticket, name, signature, letter, numeral, shape, packaging, orcolors or, etc.

Judicial Pronouncements related to IPR infringements in the e-commerce sector:

In*"Fsn E-Commerce Ventures Limited & Anr vs Pintu Kumar Yadav & Anr."*[62], the Delhi HC has restrained the defendant, the owner of an online website offeringskincare, makeup and related products items terms and conditions with identical from using the mark "OYKAA" or identical to "NYKAA",an e-commerce retailer. The plaintiff further underwent the "Triple Identity Test" to satisfy the identical test with the defendant. The Court held that the defendant wanted to take advantage of the plaintiff's goodwill and reputation.

In "*Red Bull AG v. RohidasPopatKapadnis&Anr.*"[63], the Delhi HC has decreed the plaintiff against the defendant for trademark colour combination of similar combination for energy drinks.

Therefore, this demonstrates how IPR laws are vital to prevent IP infringements in the field of the e-commerce industry. This helps to safeguard the e-commerce platforms from unfair/deceptive/ unethical trade practices.

62 2023 SCC OnLine Del 6765.
63 2023 LiveLaw (Del) 984.

e) Digital Personal Data Protection Act, 2023: This Act is a new Act that is enacted to secure the rights of individuals to protect personal data. It defines data as "*a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated mean*"[64]. It also provides three important terms Data fiduciary is "*any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data*"[65]; Data Principal is "*the individual to whom the personal data relates and where such individual is (i) a child, includes the parents or lawful guardian of such a child and (ii) a person with disability, includes her lawful guardian, acting on her behalf*"[66]; and data processor as "*any person who processes personal data on behalf of a Data Fiduciary*."[67] The Data Fiduciary has the responsibility to process data in accordance with the Act for lawful purposes with the consent of the data principal or for certain legitimate uses.[68] The consent of the Data Principal must be "free, specific, informed, unconditional and unambiguous with a clear affirmative action".[69] Data Principals have certain rights under this Act such as the right to obtain information on personal data and the right to correct, erase, and update personal data, etc.[70] It also speaks about the establishment of the Data Protection Board of India. On breach of any provisions provided under this Act, monetary penalties will be sanctioned.

E-commerce will be the data fiduciary under this Act that collects a huge amount of data of the users/customers. This new Act will be significant to build trust between the e-commerce platforms and their users. Thesee-commerce platforms must adhere to the guidelines to ensure data collection, storing, processing, and maintaining privacy and

64 The Digital Personal Data Protection Act, 2023 (Act 22 of 2023). S. 2(h).
65 *Id.,* s. 2(i).
66 *Id.,* s. 2(j).
67 *Id.,*s. 2(k).
68 *Id.,* s. 4.
69 *Id.,* s. 6.
70 *Id.,*s. 11 & 12.

protection.In addition, a penalty of "two hundred and fifty crore rupees"[71] would be imposed on the data fiduciary for noncompliance with this Act. Further, the e-commerce platforms must be very stringent to identify data of children.

## IV. Conclusion

E-commerce has emerged as an inevitable component of our daily lives. The increasing uses of the Internet all over the world have made electronic transactions reliable to all. It has broken the barriers among the people of the world and brought everyone into one marketing place. In e-commerce, there is a direct connection between the products and the customers. The customers can easily find the requisite product without wasting time. The payment gateways in e-commerce websites have enabled people to buy the product without any problems. However, the advancements in technology and its incorporation into the system of e-commerce have led to both positive and negative inferences. Due to negative inferences, people easily fall prey to misleading products, advertisements, and fake products due to a lack of knowledge of the issues relating to security, and also less awareness regarding the laws that will protect their rights, etc. Therefore, the authenticity of the seller and the policy of its e-commerce business must be investigated carefully before buying any product or service. Further, the increased application of AI in e-commerce can also lead to negative consequences like, data breach/theft, etc.

In the present world, the number of smartphone users is growing and thus shopping applications can be found on every mobile. The authenticity of the applications must be checked before creating an account on it and in addition, the security measures they have initiated to maintain the privacy of the account holder must be carefully checked. The hackers are always finding a loophole in the server of the e-commerce business websites so that they can decrypt the encrypted algorithms. Therefore, e-commerce should adopt strong cryptography to secure electronic transactions to stop hackers from manipulating the

71 *Id.,* the schedule.

encrypted file. AI and machine learning, which are advanced technologies must be adopted by the e-commerce business to control forgery. The Government should adopt some minimum-security standard guidelines to start an e-commerce business. There should be a strong vigilance department like a watcher over e-commerce website workings. Nevertheless, the new rules and legislations like the "DPDA, 2023", "Consumer Act, 2019", "Consumer Protection (E-Commerce) Rules, 2020", "IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021", etc. have been enacted by the Government to provide vigilance on the e-commerce retailers to prevent such cybercrimes and security threats against their consumers.