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EDITOR IN-CHIEF NOTE

I am delighted to present before the readers the seventh issue of Delhi Journal of Contemporary Law, a flagship journal of Law Centre-II of Delhi University. This online journal has become a living testament to our mission of engaging the researchers, academic community, advocates, judges and policy makers to publish their scholarly work. In this issue, a wide spectrum of brightest minds of the country have contributed scholarly articles on diverse issues. These articles reflect the quality of intellectual rigor that symbolizes the journal.

I am sure that this issue fulfils the need to discuss, analyse, and propose reforms in the contemporary legal framework in our country. The editorial team, led by Professor Vageshwari Deswal, deserves applaud for bringing out this issue of the journal by selecting the best articles on contemporary legal issues. I hope that this issue would receive the same level of response as the earlier ones. My best wishes to the progress of journal in achieving a wider readership across the country and the world!

Prof. Dr. Anupam Jha
Editor in-Chief
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EDITOR'S NOTE

The study of law is inextricably linked with the socio-economic, political and technological realities of our times. No development is free from challenges, and in this context legal scholarship is vital to gauge the complexities of emerging concerns and suggest plausible solutions. The present volume of the *Delhi Journal of Contemporary Law* brings together diverse contributions that engage with some of the most pressing concerns before the legal system today by critically evaluating the existing legal frameworks and proposing pathways for reform.

Among the significant themes examined is the replacement of the IPC, CrPC and the Indian Evidence Act by the new criminal laws; the continued use of animals in sporting and entertainment activities despite the inherent legal and ethical concerns; the legal dimensions of banking reforms in an era of economic uncertainty and financial innovation; environmental concerns especially the right to clean and safe water and many more. The volume also engages with the continuing quest for electoral reforms and democratic accountability and also how the rapid expansion of digital platforms has transformed political communication, public discourse, and citizen engagement. Questions of social justice remain central to legal scholarship, and this issue includes a thoughtful analysis of caste and class as enduring determinants of inequality.

The volume deals with subjects that vary considerably in scope and context, yet they offer valuable insights into contemporary legal concerns that promise to engage the readers in a meaningful and informed legal discourse.

I extend my sincere appreciation to the Editor in Chief Prof. Anupam Jha for his illuminating guidance. I am also indebted to all the authors, reviewers, and members of my editorial team whose dedication has made this publication possible. Equally important are our readers whose interest in our journal impels us to contribute meaningfully to academic discourse and inspire further research into the legal issues discussed in these articles.

Happy Reading!

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THE NEW CRIMINAL LAWS: HERALDING A NEW ERA IN CRIMINAL LAW JURISPRUDENCE

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ABSTRACT

Replacement of the old and archaic 150-year-old criminal laws with the new criminal laws is a watershed moment for Indian criminal law jurisprudence. Laws need to keep pace with the changing needs of society and the old laws needed transformation to align with contemporary statutes, incorporate judicial pronouncements and incorporate technological advancements. The arduous exercise was undertaken in order to decolonise and indianize the laws, remove redundant provisions, introduce new provisions to deal with newer kinds of crimes, introduce new rules of evidence to deal with technological challenges and streamline investigations and trials to ensure smooth and quick justice delivery. This article traces the development of criminal laws in India while critically highlighting the areas where we could have done better.

Keywords: *Organised Crime, Decolonisation, Victim Friendly, Time lines, BNS, BNSS, BSA.*

I. Introduction to Crime and Criminal Behaviour

The subject of crime is as old as mankind itself but it is impossible to define the term 'crime' with perfection owing to its varying content. Russel, in his book on Crimes, says "To define crime is a task which has so far not been satisfactorily accomplished by any writer. In fact, criminal offences are basically the creation of criminal policy adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security and comfort by causing sovereign power in the state to repress conduct which they feel may endanger their position."[1] The word crime owes its origin to the Greek word '*Krim*a' which means offence against the community, rather than a private or a moral wrong.[2] Some writers trace its origin to the Latin root '*Cerno*' meaning to decide, resolve or determine. Whether a given act or omission constitutes a crime does not depend on the nature of that act

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1 J.W.Cecil Turner, *Russel on Crimes* (12th ed Stevens, London,1964).

2 Bakaoukas Michael, "The Conceptualization of 'Crime' in Classical Greek Antiquity: From the ancient Greek 'Crime' (Krima) as an intellectual error to the Christian 'Crime' (Crimen) as a moral sin." ERCES (European and International research group on Crime, Social Philosophy and Ethics), 2005.

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or omission. It depends on the nature of legal consequences that may follow it.[3] An act or omission is a crime if it is capable of being followed by criminal proceedings.[4]

Different civilizations have different notions as to what constitutes criminal behaviour and sometimes their notions may change with time. Some acts which were previously regarded as pious or rightful might be later regarded as crimes if the law declares them to be so. For example the social practices of Dowry and *Sati pratha* in India, which were earlier considered to be praiseworthy have now been declared as crimes by the Dowry Prohibition Act, 1961 and The commission of Sati (Prevention) Act, 1987, in view of the monstrous and socially damaging proportions assumed by these practices. Similarly social discrimination on Caste basis, Child marriages, *Devdasi* system and many other practices earlier considered unobjectionable are now criminal acts punishable under the law[5].

Criminal laws

Laws are a potent tool to regulate human behaviour in civilised societies. Acts that are capable of causing public harm or creating an alarm and scare in the society are dealt with seriously and categorised as Crimes. The three major legislative enactments on Criminal Law in India are the *Bharatiya Nyaya Sanhita*, 2023; the *Bharatiya Nagarik Suraksha Sanhita*, 2023 and the *Bharatiya Sakshya Adhiniyam*, 2023. Law on crimes is divided into substantive and procedural legislations. The *Bharatiya Nyaya Sanhita*, 2023 has replaced the Indian Penal Code, 1860 as the substantive enactment on criminal law in India which prescribes the definitions of substantive crimes such as theft, murder, forgery etc. It lays down the essential ingredients of every crime and also provides the punishment for the same. Unless all the requirements necessary to constitute a crime under the BNS are fulfilled, no person can be held guilty of a crime. It lays down the conditions required for imposition of criminal liability as well as the conditions required for exemption from criminal liability. The procedural law prescribes the procedure for setting the criminal justice machinery in action and has provisions relating to registration of criminal cases, investigations, arrest of accused persons, bail, framing of charges, conduct of trial, plea bargaining, compounding of offences, execution of death penalty, appeals etc. The *Sakshay Adhiniyam* supports the principal substantive and procedural

3 *Seaman* v. *Burley* (1896) 2 QB, P.346.
4 Glanville Williams, *Learning the Law* 3 (11th ed, Stevens, London, 1982).
5 See the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; The Prohibition of Child Marriage Act, 2006; Karnataka Devadasis (Prohibition of Dedication) Act,1982.

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laws by laying down rules relating to collection, relevance and admissibility of evidences, examination of witnesses and other matters significant to the criminal case.

Historical background and development of the New Criminal Laws

Prior to 1860 there was no uniformity in the Indian provincial laws in dealing with criminal matters. Pundits and Kazis were consulted on legal issues depending upon the religion of the parties involved. There was widespread confusion and uncertainty regarding laws and this led to arbitrary decisions by the courts. In 1833, Lord Macaulay moved the House of Commons to codify the entire bulk of criminal law in India. This led to the constitution of the First Indian Law Commission in 1834. After the expiry of its term the Second Law Commission was constituted with the same members in 1845 and they drafted an exhaustive code after much deliberations and revisions. The Bill which they finally submitted to the Legislative Council in 1856 was passed on October 6th, 1860 as the Indian Penal Code, 1860 (Act XLV of 1860) and became operational from January 1st 1862. To ensure the proper implementation of the substantive laws, two sets of procedural laws were enacted. One for the presidency towns and other for the provinces. Indian Evidence Act which was enacted in 1872 was amended several times during the 152 years of its existence to modernise it as per the changing needs of time. The procedural laws were consolidated into a single Code of Criminal Procedure on 22nd march 1898. It was amended a few times but after gaining independence from the Britishers, the law commission suggested significant reforms in our criminal justice machinery and the old CrPC was replaced by a new Code of criminal procedure in 1973. The objective was to constitutionalise our procedures But, interest of significant stakeholders was overlooked as the law failed to recognize that punishment to accused doesn't necessarily translate into justice for the victim. An accused does not cease to be human, the moment he is arrested. The law did not make provisions for protection of rights of accused persons, arrested persons or under trials. There was no provision for compensation for victims or protection of witnesses. Judiciary did step in from time to time to pass guidelines[6] and the legislature also undertook significant amendments but there was a dire necessity to overhaul the century old laws.

Initially the Indian Penal Code consisted of 23 chapters and 511 Sections, but with the passage of time many sections were added and deleted in order to amend the code according to the changing needs of time and society. Three new chapters were added. Chapter V-A consisting of two sections 120A and 120B dealing with the offence of Criminal conspiracy was added in

[6] See *DK Basu* v. *State of West Bengal*, (1997) 1 SCC 416; *Chairman Railway board* v. *Chandrima Das*, AIR 2000SC 988; *Neelam Katara* v. *UOI* 2003 SCC online Del 952

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1913 by The Indian Criminal Law Amendment Act, 1913 (8 of 1913). Chapter IX-A was inserted in 1920 to lay down law regarding Election offences by The Indian Elections Offences and Inquiries Act, 1920 (39 of 1920). This chapter consists of total nine sections from 171A to171I. In 1983 another chapter XX-A consisting of a single section 498A was inserted in the IPC by The Criminal Law (Second Amendment) Act, 1983 (46 of 1983), to deal with offences involving cruelty against a married woman by husband or the relatives of husband. In addition to these 40 more sections (52A, 53A, 55A, 108A,121A,124A,138A,153A,153AA,153B,174A,195A,216A,216B,225A,225B,228A,229A ,263D,294A,295D,304A,304B,363A,364A,366A,366B,376A,376B,376C,376D,376DA,376 DB,376DC,477A,489A,489B,489C,489D,489E) were added and 21 sections (Sections 13, 15, 16, 56, 58, 59, 61, 62, 138A, 161, 162, 163, 164, 165, 165A, 216B, 303, 478, 480, 490 and 492) were deleted from time to time. The years 1983, 2013 and 2018 witnessed major overhaul in law relating to sexual offences. In 1983, Mathura case sparked a series of protests ultimately leading to changes in rape laws, introduction of custodial rapes as a separate category and also acknowledging the right to non disclosure of identity of rape victims. In 2013 the definition of rape was enlarged to include all forms of penetrative violations of human anatomy and four new types of sexual offences were introduced in the form of sexual harassment, disrobing, voyeurism and stalking. The 2018 amendment prescribed harsher penalties for rapes of minors. The evidence act was also amended from time to time to deal with challenges faced by prosecution agencies in prosecuting crimes occurring in private such as in cases of rape, or where witnesses would be reluctant to testify such as in cases of dowry deaths or abetment of suicides. Thus presumptions were added in the evidence law which reversed the onus of proof on the accused party. From time to time major amendments in the area of criminal laws were undertaken in light of suggestions given by the Santhanam committee, the Malimath committee, and Justice Verma Committee to deal with problems plaguing the modern day society, but an overhaul was overdue. In 2020, the Ministry of Home Affairs constituted a committee headed by Prof. (Dr.) Ranbir Singh, the then Vice Chancellor of National Law University (NLU), Delhi to review the three codes of criminal law and recommend reforms in the criminal laws of the country in a principled, effective and efficient manner so as to ensure the safety and security of the individual, the community and the nation and prioritise the constitutional values of justice, dignity and the inherent worth of the individual. Subsequently a committee of legal experts and policy makers drafted three new bills to replace the three old criminal laws. The three bills titled, the *Bharatiya Nyaya Sanhita* (BNS) alongwith the BNSS and BSA were introduced in the Lok Sabha on August 11, 2023 to replace the IPC, CrPC and

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IEA. It was examined by the Standing Committee on Home Affairs. The committee submitted its report on November 10, 2023. The *Bharatiya Nyaya (Second) Sanhita*, 2023 (Bill no. 173 of 2023 was introduced on December 12, 2023 after the earlier Bill was withdrawn. On 20th Dec the BNS (second) Bill was passed by Lok Sabha by majority voice vote and the very next day i.e. on 21st December, 2023 by the Rajya Sabha in similar fashion. On 25th Dec, 2023 the Bill received the assent of the President and became operational from July 1st 2024.

II. Changes in Titles

These new laws have replaced the archaic criminal laws that were enacted by our colonial masters in the 19th century for their subjects. The laws have Hindi titles and use 'Bharat' in their titles. The Constitution of India declares, "India, that is Bharat, shall be a union of states"[7]. India does not have a single designated national language however, Hindi has been designated as the official language.[8] Article 351 also issues directs the Union of India to take steps for promotion and spread of the Hindi language. Bharat is a term that finds mention in most of Indian languages, whereas India was a name given to us by outsiders such as ancient Persians, Greek and later Britishers. Bharat is our native term and proclaims our deliberate move to embrace our indigenous heritage, emphasizing upon the historical and cultural magnificence of our civilization while discarding the colonial era titles. This move is also significant at a time when Bharat is consolidating its position as a global leader on the international plane.

The titles also reflect a conscious attempt to shed the colonial mindset. The objective behind the old substantive criminal law was to punish those who dared to transgress the norms established by these imperial rulers, hence the title Indian Penal Code. The new law has been enacted by our democratically elected leaders for their own people, hence the focus has shifted from 'penal' to '*nyaya*'. The objective is to ensure justice and therefore we have prescribed punishments depending upon the gravity of crimes. For petty offences committed by first time offenders, the law introduces community service as a kind of punishment.

The Code of Criminal Procedure which was the procedural law merely laid down the procedure to be followed for apprehending, trying and punishing those offenders. The new law proclaims that the objective is protection of our people hence the title '*Bharatiya Nagrik Suraksha Sanhita*' By providing stricter timelines, clarifying procedures for arrest and bail and

[7] Constitution of India, art. 1.
[8] *Id.,* art. 343(1).

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leveraging technology for better investigations, the new procedural law gives out a clear message that the guilty will not be spared and at the same time affirms that the innocent have nothing to fear. This citizen centric approach will serve to inspire faith of our people in the criminal justice system.

III. Structural changes in the laws

From 511 sections spread across 23 chapters under the Indian Penal Code, 1860, we have reduced the number of sections to 358 spread across 20 chapters under the *Bharatiya Nyaya Sanhita*, 2023. In CrPC we had 484 sections in 37 chapters. BNSS has increased the procedural provisions to 531 sections across 39 chapters. The least changes have been effected under the evidence laws where the 167 sections under 11 chapters of Indian Evidence Act, 1872 have been replaced by 170 sections under 12 chapters under the *Bharatiya Sakshya Adhiniyam*, 2023.

In BNS, many new types of crimes have been added, jail terms and fines have been increased in 116 sections while mandatory minimum punishments have now been prescribed for 23 offences. Community service has been introduced as a new type of punishment in six crimes.

BNSS has added 92 new sections, subsections and clauses, deleted 14 sections and modified 117 others. Timelines have been specified at 35 places and audio-video electronic means are required at 35 places. BSA has a total of 15 new insertions in the form of sections, sub-sections, explanations and provisos; 24 provisions have been modified and there are ten deletions of sections and explanations.

The laws have been better structured, thus making it easier for people to understand. Law is meant for people and should be in easy language. Now all definitions have been updated and included in one place. They have also been arranged alphabetically for convenience. The chapterization scheme has also been updated to reflect the changing priorities of the State.

Under IPC, 1860 the crime of abetment was covered under chapter V titled 'Of Abetment' consisting of sections 107-120; Criminal Conspiracy[9] was covered under Chapter VA consisting of Sections 120A and 120B; and attempt was covered under Chapter XXIII consisting of a single provision, Section 511. BNS, 2023 has clubbed all inchoate crimes in one single chapter, Chapter IV titled "Of Abetment, Criminal Conspiracy and Attempt"

[9] Inserted by Act 8 of 1913

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extending from Sections 45 to Section 62. The extraterritorial jurisdiction of BNS extends to abetment outside India of crimes committed within India.[10]

A new chapter titled, offences against woman and child' has been introduced in the Bharatiya Nyaya Sanhita in which all offences against women and children and related provisions have been placed together, and this chapter has been placed before the chapter related to crimes against State or even human body to reflect the State's commitment towards safeguarding the most vulnerable segment of our society i.e. women and children. Tow significant additions in this chapter are in the form of Sections 69 and 95.

IV. Paradigm Shift

The new laws taken together have adopted a progressive stance. Instead of focusing only on punishment, the main goal is to ensure justice to all stakeholders. Our reformative approach towards offenders makes room for restorative principles of justice in the new laws by introducing community service as a kind of punishment in some petty offences or for first time. We have retained the deterrence element by continuing with death penalty in certain heinous offences. From 1860 to 2023 the Indian Penal Code has been amended several times in the course of its 163 years and many provisions have been added and deleted from the same. Punishments such as penal servitude (Repealed by Criminal Justice Act, 1948) and Transportation for life (Repealed by Criminal Laws (Amendment) Act, 26 of 1955) were effaced from our statutes. Whipping was also abolished as a punishment in the year 1955. The punishments prescribed under our laws had become outdated and there was a need to introduce newer forms of punishment bearing in mind the object of punishment being punitive as well as reformative. "The punitive strategy of our penal code did not sufficiently reflect the modern trends in correctional treatment and personalized sentencing. When accused persons are of tender age then even in a murder case it is not desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation".[11]

There was a need to individualize punishments keeping in mind the peculiar background and circumstances of each criminal that prompt him to commit crimes. The social, economic, educational and psychological problems of every individual should be considered and appropriate punishments should be awarded to the accused. It is the duty of judges to consider

[10] S. 48: Abetment outside India for Offence in India
[11] *Shivaji* v. *State of Maharashtra*, AIR 1973 SC 2622

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the totality of factors bearing on the offence and the offender and fix a punishment which will promote effectively the punitive objective of the law-deterrence and rehabilitation. In Inder Singh v. State[12], the Supreme Court directed the State Government to ensure that young accused are not given any degrading work and to be given the benefit of liberal parole every year if their behavior shows responsibility and trustworthiness. The court also directed the Sessions Judge to make jail visits to ensure compliance with these directions.

In the case of *Ashok Kumar* v. *State (Delhi Administration)*[13], the accused in 1971 while he was a 19 years old college student, tried his hand at stealing a scooter. He was arrested but bailed out and while on bail was accused of committing a car theft. Both these cases were tried and he was found guilty. Allowing his appeals on the question of sentence the court observed "The long protracted litigation from 1971 onwards is some deterrent for a young man in his 20s. The youthful age of the offender is a factor which deserves consideration. A long period of incarceration may brutalize a boy and blunt his finer sensibilities so that the incarceration may perhaps be more criminal than the one at the point of entry. The offender having served a term of nearly six months must have realized that the game of crime does not pay".

Over the years, Community service came to be increasingly recognized as an alternative to imprisonment in petty offences. Clause 27 of the IPC (Amendment) Bill, 1978, had suggested the insertion of a new section 74A exclusively to deal with punishment of community service. It specified that convict will have to perform the service without any remuneration. The All India Committee on Jail reforms also gave suggestions to improve conditions inside the prisons, and also about finding alternatives to incarceration.

In 2023 we introduced "community service" as a type of punishment under Section 4(f) of the BNS, but, it is not defined in BNS. However, Community service may be understood as work which the court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.[14] This is a form of non-custodial, restorative justice and an attempt at re-socialising the convict and has been introduced by BNS in the following cases-

i. Non-appearance in response to a proclamation[15] under Section 84, BNSS

[12] AIR 1978 SC 1091
[13] AIR 1980 SC 636
[14] Explanation to Section23(3) of BNSS, 2023.
[15] BNS, sec. 209.

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ii. Involvement of public servant in illegal trade[16]

iii. Attempt to commit suicide to compel or restraint exercise of lawful power of public servant[17]

iv. Theft[18]

v. Misconduct in public by a drunken person[19]

vi. Defamation[20]

The introduction of 'Community Service' under clause 4(*f*) of the BNS is a welcome step. This is a very commendable effort and a reformatory approach to tackle delinquents. Its introduction as a punishment was appreciated by all stakeholders as it shall not only reduce the burden on the prison infrastructure by reducing the number of prison inmates but also improve the management of prisons in the country. However, the term and nature of 'community service' has not been specified, and judges will have to devise means of ensuring that the punishment of community service is tailored as per the requirement of each case so as to serve the ends of justice while also reforming and reintegrating the offender.

V. Changes in definitions

The Indian Penal Code did not define the term 'child'. It used the term 'minor' that had separate connotations for boys as well as girls.[21] The definition of "child" has been introduced in BNS to align with other statutory enactments. Section 2(12) of the Juvenile Justice (care and protection of children) Act, 2015 defines "Child" a person who has not completed eighteen years of age. Section 2 (1)(d) of the Protection of Children from Sexual Offences Act provides "child" means any person below the age of eighteen years. Under BNS, 2023 'child' is a gender neutral term that applies uniformly to all persons who are below eighteen years of age, irrespective of their gender.

Taking note of technological advancements the term document under Section 2 (8) of the BNS is not restricted to paper records and includes 'electronic and digital records'. Section 2(1)(d) of the *Bharatiya Sakshya Adhiniyam*, 2023 states that 'document' means any matter expressed

[16] *Id.,* sec 202.
[17] *Id.,* sec.226.
[18] *Id.,* proviso to sec. 303.
[19] *Id.,* sec.355.
[20] *Id.,* sec.35.
[21] Under IPC a girl below 18 years could be kidnapped from lawful guardianship whereas for boys they could be kidnapped only till they attained 16 years of age. See Section 361 of the Indian Penal Code, 1860.

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or described upon any substance by means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records. This also corresponds with Section 2(1)(*t*) of the Information Technology Act, 2000 which defines the expression "electronic record" as to mean data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche."

Similarly, taking note of changing dimensions of property and associated crimes the definition of movable property has also been amended.[22] Now definition of 'movable property' omits the word "are intended to include corporeal" before the word "property" which was there in the definition of movable property in section 22 of IPC. Therefore, movable property includes property of every description other than immovable property whether such property is in corporeal (tangible physical) form or not.

This new definition of movable property under BNS will include intangible assets like patents, copyrights, etc., also as well as actionable claims. In view of expanded definition of movable property, theft will include theft of intangible assets, theft of data, theft through card skimming, online theft through hacking bank accounts or cloning the mobile etc.

Another change is relating to the term 'calender'. Under the BNS, Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the Gregorian calendar.[23]This change, while, has no legal implications has been done so as to efface all traces of the colonial legacy by removing all terms related to the colonial empire such as british queen, or british calender . A year is the time period in which the revolution of the earth round the sun is completed, *viz.*, 365 days, 5 hours, 48 minutes and 51.6 seconds. For ordinary purposes the average length of a year is taken to be 365 days. But every fourth year the extra hours are taken into account and the fourth year consists of 366 days and hence called the leap year. Commonly a year is divided into 12 months of irregular lengths. 11 of the months have either 30 or 31 days while one month (February) has 28 days and 29 days in a leap year. The Gregorian Calendar is the most widely used calendar in the world today. The term 'British' calender used in IPC has been replaced with 'Gregorian' in a bid to decolonise our substantive criminal law.

VI. Gender inclusivity and partial gender neutrality

[22] Section 2(21) of BNS
[23] Section 2 (20) BNS

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In a historical step, the BNS has included transgenders as persons. Section 2 (10) of the *Bharatiya Nyaya Sanhita*, 2023 defines the term 'Gender'. It lays down that, "The pronoun "he" and its derivatives are used of any person, whether male, female or transgender".

The explanation appended to this section clarifies that 'transgender' shall have the same meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (40 0f 2019)

In 2019, this act was enacted to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto. According to Section 2 (k) of the Transgender Persons (Protection of Rights) Act, 2019, "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner, hijra, aravani* and *jogta*.

Earlier law did not acknowledge the separate identity of transgenders as persons. The significance of identity was highlighted in *National Legal Services Authority* v. *Union of India and others*[24], wherein Radhakrishnan, J., after referring to catena of judgments and certain International Covenants, opined that "gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. A person's sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology". The learned Judge further observed that "at times, genital anatomy problems may arise in certain persons in the sense that their innate perception of themselves is not in conformity with the sex assigned to them at birth and may include pre-and post- operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation." Sikri, J., in his concurring opinion, dwelling upon the rights of transgenders, laid down that "gender identification is an essential component which is required for enjoying civil rights by the community. It is only with this recognition that many rights attached to the sexual recognition as ―third gender would be available to the said community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through

[24] (2014) 5 SCC 438 .

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a passport and a ration card, a driver's licence, the right to education, employment, health and so on"[25] In this case transgenders have been recognized as a third gender apart from male and female and have been given certain rights.

The 246th Report of the Parliamentary Standing Committee on Home Affairs noted the widening of the 'gender' definition in the BNS. Considering the fact that the population of transgender persons is 4,87,803 (as per the Census 2011), the Committee appreciated that the scope of gender under clause 2(9) has been expanded by the Government to make it more inclusive. This change gives effect to the rights of transgender persons recognised by the Supreme Court in the *Navtej Singh Johar* v. *Union of India* case, 2018."26

Crimes of voyeurism and stalking have been made partially gender neutral in the sense that the perpetrator can be any person whereas the victim can only be a woman. The term 'man' has been replaced with 'whoever' so that the perpetrator may be a man, a woman or even a trans person.

The term, 'Child' has also been defined in a gender neutral manner to mean any person below the age of eighteen years. This would now include boys, girls as well as trans children under its protection.

Under Section 3 (3) of the BNS[27], property in the possession of a person's spouse, clerk or servant, on account of that person, is deemed to be in that person's possession. This sub- section replaces the term 'wife' used under Section 27 of the IPC with the gender neutral term 'spouse'. Similarly for harbouring of offenders and deserters now the exemption from criminal liability earlier accorded to only wives[28] has been extended to both spouses.[29]

Earlier summons could be served in the absence of the person summoned upon some other adult male member of his family. Now, the law had deleted the term 'male' and summons may be served on any adult member, whether male or female, of the family.[30]

VII. Introduction of new crimes

[25] *Ibid.*
[26] Para 3.3.5 of the report.
[27] S. 3(3) When property is in the possession of a person's spouse, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Sanhita.
[28] Exception to Section 136 IPC
[29] BNS, sec. 164
[30] Section 66 BNSS

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While redundant provisions such as related to thug,[31] adultery[32] or carnal intercourse against the order of nature[33] have been struck down, the new laws have introduced some newer types of crimes to deal with rising crime graph of our country.

Section 69 of BNS introduces a new provision wherein an accused who exploits a woman and fraudulently obtains her consent for sexual intercourse by promising her marriage, job or promotion in return, is punishable. It provides that whoever, by deceitful means or making by promise to marry a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Section 95 of BNS has been introduced with a view to minimise chances of children being lured, threatened or by any means being sucked into the vortex of criminal life. There are several reasons why children fall easy prey to such people who use them to commit crimes. It could be the lure of easy money, luxurious life, substance abuse, parental neglect or lenient provisions under the Juvenile Justice Act, 2015 under which a child, unless accused of a heinous crime, is not to be detained beyond three years and after that too his records are to be erased to prevent any kind of stigma.

Section 103(2) of BNS provides that when a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

This is in line with the Supreme Court of India recommendations in *Tehseen S Poonawalla* v. *Union of India case* [34]". Section 103(2) of the BNS introduces joint liability within the language of the statutory provision itself subject to the condition that there should be a minimum of five persons. For group with less than five, common intention may be invoked by the prosecution. Section 103 provides punishment for murder. To bring the case within sub-section (2) of section 103, the act in addition to being committed in concert by five or more persons should amount to murder as defined under Section 101 of the BNS. Further, in order to invoke liability under this sub-section the accused should have committed the crime on grounds of race, caste,

[31] Section 310 IPC
[32] Section 397 IPC
[33] Section 377 IPC
[34] (2018)9 SCC 501

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community, sex, personal beliefs, language etc. Thus, cases of honour killings, hate crimes and mob lynchings would be covered herein.

BNS increases the punishment for causing death by negligence from a maximum of two years to a maximum of five years.[35] This change reflects a stricter approach to cases of negligence resulting in death. Also, medical negligence has been made a punishable crime.[36]In case of registered medical practitioner if negligent act is done while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

We are increasingly witnessing a rise in the crimes committed by groups in an organized manner like smuggling; trafficking of drugs, humans; money laundering, cyber crimes etc. Generally people who are part of some organized crime syndicate plan and engage in systematically committing various activities in furtherance of some criminal objective. So, people associate for carrying out any criminal activities and in accordance with a bigger plan and execute the parts assigned to them at different times or different places towards achievement of the common goal. The IPC did not have any section dealing with organised crime by such crime syndicates/gangs. Organised Crime was dealt with by state laws like Maharashtra Control of Organised Crime Act, 1999 (MCOCA,1999). BNS has introduced provisions dealing with organised crime[37] as well as petty organized[38] crime as specific crimes to deal with such crimes.

Another provision has been introduced in the form of Section 113 to deal with Terrorist acts. Terrorism is the biggest threat to humans in India as well as across the world. Acts of terrorism include threats of terrorism; assassinations; kidnappings; hijackings; bomb scares and bombings; cyberattacks (computer-based); and the use of chemical, biological, nuclear and radiological weapons. It targets innocents and there is general fear or alarm amongst people. Reasons might be ethnic, religious, ideological beliefs, political causes or any thing else

Terrorism compels states to take strong repressive actions which might sometimes border onto illegal or unconstitutional. This creates negative impression amongst people and governments lose popular support as they get convinced that their state has failed to control terrorism or worse that the state is compelling people to become terrorists by employing unlawful tactics.

[35] See Section 106(1) BNS, 2023.
[36] See S. 106 (1) BNS Causing death by negligence**.**
[37] BNS, sec. 111.
[38] *Id.,* sec.112.

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So the State is projected in a negative light. We had UAPA (and the erstwhile TADA and POTA) as a special legislation. Now, BNS also a specific provision to deal with terrorist acts.

Unlike IPC, sedition[39] is no longer an offence under BNS. Instead, offence under BNS is treason which is covered in section 152 of BNS as acts endangering sovereignty, unity and integrity of India.

Section 304 of BNS introduces snatching as distinct crime. IPC did not treat snatching as offence distinct from theft under section 379 of IPC. Under BNS, "theft is "snatching" if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property. Punishment for snatching has been prescribed as imprisonment of either description for a term which may extend to three years, and shall also be liable to fine"

Further the law acknowledges the changing dimensions of crime and provides that if offender commits snatching as a lone wolf (operating by himself solo and not part of gang/group), he will be punishable under this section and if he commits "snatching"(chain snatching, mobile snatching etc.) as a member of a gang or group, then the offence of snatching would be punishable under section 112 as petty organized crime.

Attempt to commit suicide[40] under the Indian Penal Code had been impliedly decriminalized by virtue of the Mental Health Care Act, 2017 but, attempting suicide has been re-introduced as a crime under BNS, but only when such an act is done to prevent public servant from performing his duty[41]. Age of marital rape exemption[42] has been increased to 18 years to confirm to the Supreme Court judgment in the case of *Independent thought* v. *Union of India*[43]. Stigmatizing terms such as lunatic, idiot- have been removed. Terms referring to colonial era such as British calender, queen, British India have been removed in order to decolonize our substantive law on crimes and make it more suited to the Indian ethos.

VIII. Some significant changes in the procedural law

The Bharatiya Nagarik Suraksha Sanhita, 2023 has replaced the Code of Criminal Procedure, 1973. The reasons behind this change is to ensure fast and efficient justice delivery. Towards this end provisions have been introduced to secure release of those undertrials, on personal

[39] Section 124A IPC
[40] Section 309 IPC
[41] Section 226 BNS
[42] *Id.,* exception 2 to Section 63.
[43] AIR 2017 SC 4904

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bond, who have spent half of maximum prescribed sentence in custody. The new sanhita aims to reduce complexity by streamlining legal procedures and reduce pendency by prescribing fixed timelines have been set for procedures ranging from investigations, medical examinations, conduct of trails, to pronouncement of judgments. In order to improve the conviction rate, the quality of investigations has to be enhanced and towards that end we need to use technology at relevant places. Wherever required, trials, inquiries and proceedings may be conducted electronically though video-conferencing. Also, in-absentia trials[44] may be conducted for proclaimed offenders evading trials. Utilization of forensic has been mandated for offences punishable with imprisonment of seven years and above[45]. The law encourages usage of technology and forensics in crime investigations, through registration of e- FIR's[46] etc. Jurisdictional formalities have been eased by introducing the concept of Zero FIR[47]. In petty offences, summary trials have been made mandatory[48].

There have been significant changes in powers of police relating to Arrest[49]. In case of offences punishable with imprisonment upto 7 years decision has to be taken whether to arrest or not and reasons have to be recorded for both[50], whereas for offences punishable with imprisonment more than 7 years while they may decide whether to arrest or not, but recording of reasons for arrest is not mandatory[51]. Under Section. 35(3) Where the decision is against arrest then they must issue notice for appearance and such person shall be duty bound to appear.[52] If such person fails to appear he may be arrested under S. 35 (6). If the person appears, he shall not be arrested. But, where arrest is required, he may be arrested after recording reasons. Further permission of police officer of rank of DSP or above is required in cases of arrest where offence is punishable with less than 3 years of imprisonment.[53]To safeguard the rights of accused persons now the law mandates the display of arrest information in every police station and district headquarters[54]. This shall help to minimize chances of custodial violence against arrested persons.

[44] Section 356 BNSS
[45] *Id.,* sec. 176 (3).
[46] *Id.,* sec. 173 (1).
[47] *ibid*
[48] Section 283-288 BNSS
[49] *Id.,* sec 35 (Section 41 CrPC)
[50] *Id.,* sec. 35 (1)(b).
[51] *Id.,* sec. 35(1)(c).
[52] *Id.,* sec. 35(4).
[53] *Id.,* sec. 35(7).
[54] *Id.,* sec. 37 (b).

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Now victim has been accorded more visibility and say in the criminal system. The new laws mandate that victims have to be supplied copies of FIR's[55] and they have to be kept updated about progress of investigation. Further in cases where punishment is seven years or more, victim has to be heard before state decides to withdraw prosecution[56]. Witness protection scheme has also been introduced in the Statute[57] (S. 368 BNSS)

IX. Notable developments in the evidence law

The Indian Evidence Act, 1872 did not address the technological advancements and there was a requirement of a law to fulfil the contemporary needs and aspirations of our people. Under the new law, evidence includes any information given electronically which would permit appearance of witnesses, accused, experts and victims through electronic means[58]. Now electronic or digital records are admissible as evidence having the same legal effect, validity and enforceability as any other document[59]. Standardized formats for certificates essential for validation of electronic evidences have streamlined admissibility of electronic records[60]. *Bharatiya Sakshya Adhiniyam* has expanded the scope of secondary evidence to include copies made from original by mechanical processes. It introduces more precise and uniform rules of practice of courts in dealing with facts and circumstances of case by means of evidence. Some obsolete provisions have been dropped such as presumption regarding telegraphic messages[61], presumption as to document admissible in England without proof of seal or signature[62], or proof of cessation of territory[63] and power of juror or assessors to put questions[64].

X. Conclusion

Although the laws have been revised to align with contemporary legislations and incorporate certain significant judicial pronouncements, there are certain areas that seem to have been overlooked. For example adultery under Section 497 of the IPC was repealed to give effect to Supreme Court judgment in *Joseph Shine* v. *Union of India*,[65]but section 498 has been retained as section 84. This section deals with 'enticing or taking away or detaining with criminal intent

[55] *Id.,* sec.173 (2).
[56] *Id.,* sec.360.
[57] *Id.,* sec. 368.

[59] BSA, sec. 57
[60] See Schedule A
[61] BSA, sec.88.
[62] *Id.,* sec. 82.
[63] *Id.,* sec. 113.
[64] *Id.,* sec. 166.
[65] AIR 2018 SC 4898

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a married woman', and treats even adult women as the chattel of her husband. Her agency is of no consequence in exonerating the accused and this provision applies only to women. What about husbands who are enticed or detained with criminal intent? The grounds on which Section 497 was struck down apply to section 498 too.

Another concern is the total removal of Section 377, while Supreme court had merely watered it down to exclude consensual homosexuality from ambit of criminality[66]. By total removal, animals and adult men have been stripped of the legal protection against penetrative sexual assaults. The legislature also missed the opportunity to revise the regressive and subjective phrase 'outraging the modesty'. We could have replaced it with the more objective 'non-penetrative sexual assault'. The provisions relating to miscarriage[67] could also have been revised in light of the provisions of The Medical Termination of Pregnancy Act, 1971.

To quote the Greek philosopher Heraclitus, "the only constant in life is change". Society changes and laws need to keep pace with the changing times. These three laws have been drafted keeping in mind the contemporary needs and aspirations of our people. Needless to say, the changes introduced are commendable but in the absence of adequate infrastructure and trained manpower, it would be some time before we can witness the true impact of these new criminal laws.

[66] *Navtej Singh Johar* v. *Union of India*, AIR 2018 SC 4321
[67] BNS, sec.88.

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ANIMAL CRUELTY, BOVINE SPORTS CULTURE AND ANIMAL RIGHTS: THE PRISM OF INDIAN CONSTITUTIONALISM

Partha Pratim Mitra*

ABSTRACT

Recently, the Supreme Court of India in its searchlight case has ordered an exhaustive judgment relating to culture and tradition vis-á-vis prevention of cruelty to animals within the constitutional framework where a five-judge constitutional bench was formed to find out the constitutional validity of three state legislations legalizing bovine animals cart races passed by those three State legislative assemblies. Here, three States defended for their Statutes relating to bovine sports were part of their culture and tradition. In 2014, the Court's landmark judgment recognized that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. But in present case, the Court opined that Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States had undergone substantial change in the manner they were used to be practiced or performed. So, the factual conditions of the 2014's judgment cannot be equated with the present situation and in the changed circumstances, absolutely no pain or suffering would be inflicted upon the bulls while holding these sports. This new move by the judiciary has generated lots of hue & cry among animal rights activists and legal experts as the court categorically declared that animals have no rights under the Constitution and the law makers have recognized the rights of animals as part of the social and cultural policy. This article is to find out the origin of culture and tradition about animal sports and the prevention of cruelty to animal from international law and constitutional law perspective.

Keywords: *prevention of cruelty to animal, performing animals, bovine sports, Constitution of India, culture & tradition*

I. Introduction

First time a constitutional bench[1] was set up by the Supreme Court of India to examine about the cruelty against animals within the purview of the constitutional framework. This five-judge constitutional bench delivered an exhaustive judgment relating to constitutional validity of three state legislations legalizing bovine animal's cart races passed by three State legislative assemblies and subsequently got the assent of the President of India. The said judgment has very minutely analyzed the equation relating to prevention of cruelty towards animals' *vis-á-vis* culture and tradition within the constitutional framework. This case is a landmark in global sense also where the apex judiciary has ransacked all the earlier precedents developed by the same

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1 *Animal Welfare Board of India* v. *Union of India*, Writ Petition (Civil) No. 23 of 2016.

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court and established an Indian standard in international level. Again, this latest 2023's judgment is a reverse of the 2014's landmark decision on animal rights precisely on the perspective of cattle race traditions and performing animals.

II. A Study on Performing Animals Since 2011

On 11th July, 2011, the Ministry of Environment and Forest issued a notification[2] in exercise of the powers conferred by Section 22 of the Prevention of Cruelty to Animal Act, 1960 that animals like (1) Bears, (2) Monkeys, (3) Tigers, (4) Panthers, (5) Lions, (6) Bulls should not be exhibited or trained as performing animals. The issue came to the apex court as Jallikattu or bullock cart races were very much in culture and tradition in many states particularly Tamil Nadu and Maharashtra. A two-Judge Bench was required to examine the rights of animals under the Constitution of India and existing laws, culture, tradition, religion and ethology. Finally, the Supreme Court in *Animal Welfare Board of India v. Union of India*, a landmark judgment[3] found that the Tamil Nadu Regulation of Jallikattu Act, 2009 was repugnant to Prevention of Cruelty to Animal Act, 1960, a welfare legislation, was held constitutionally void, being violative of Article 254(1) of the Constitution of India. Again, on 7th January 2016, the Ministry of Environment, Forest and Climate Change issued a notification prohibited exhibition or training of bulls as performing animals. However, it was specified in this notification that bulls might be continued to be trained as performing animals at events such as Jallikattu in Tamil Nadu, Kambala in Karnataka and Bullock Cart Races in Maharashtra, Punjab, Haryana, Kerala and Gujarat in the manner by the customs of common community or practice traditionally in any part of the country. Though certain exceptions were made in the 2016's Notification to reduce the pain and suffering of bulls while being used in such sports but a batch of writ petitions[4] were instituted before a Division Bench the Supreme Court of India questioning the legality of the said notification in compliance with the directions of the case of *A. Nagaraja* Case.[5] In *Compassion Unlimited Plus Action vs. Union of India*[6] case, several writ petitions under Article 32 for quashing Notification published by the Union of India on 7th January, 2016 and to ensure the

2 G.S.R. 528(E) [F.No.27-1/2011-AWD].
3 *Animal Welfare Board of India v. A. Nagaraja* (2014) 7 SCC 547 Para 77 (11).
4 W.P. (C) Nos. 23 of 2016, 24 of 2016, 25 of 2016, 26 of 2016, 27 of 2016, 88 of 2016, 1059 of 2017, 1011 of 2017, 1188 of 2017, 1193 of 2017, SLP(C) No.3528 of 2018 and SLP(C) Nos. 3526-3527 of 2018.
5 *Animal Welfare Board of India* v. *A. Nagaraja* (2014) 7 SCC 547.
6 Writ Petition (Civil) No.24 of 2016, SC.

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compliance with the law laid down in *Animal Welfare Board of India v. A. Nagaraja*[7] case. But Attorney General submitted that the writ petitions were not maintainable under Article 32 of the Constitution of India as the fundamental rights of the Animal Welfare Board and other petitioners were in no way affected and the Court did not totally prohibit the participation of bulls in the Jallikattu but desired that care should be taken so that the bulls were not meted with cruelty. On 12th January 2016, a two-Judge Bench stayed the Notification issued by the Ministry of Environment Forest and Climate Change dated 7th January, 2016, until further orders passed as an interim measure.[8] In the meantime few states already amended the Prevention of Cruelty to Animals Act, 1960 at state level and received Presidential assent like the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, the Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017 and the Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017.

III. The Matrix of the Amendments by Three States

A Division Bench passed an order for constituting five judges Constitution Bench to decide the matter on 2 February, 2018 and formulated five questions to be answered by the Constitution Bench like: (1) Is the Tamil Nadu Amendment Act referable, in pith and substance, to Entry 17, List III of the Seventh Schedule to the Constitution of India, or does it further and perpetuate cruelty to animals; and can it, therefore, be said to be a measure of prevention of cruelty to animals? Is it colourable legislation which does not relate to any Entry in the State List or Entry 17 of the Concurrent List? (2) The Tamil Nadu Amendment Act states that it is to preserve the cultural heritage of the State of Tamil Nadu. Can the impugned Tamil Nadu Amendment Act be stated to be part of the cultural heritage of the people of the State of Tamil Nadu so as to receive the protection of Article 29 of the Constitution of India? (3) Is the Tamil Nadu Amendment Act, in pith and substance, to ensure the survival and well-being of the native breed of bulls? Is the Act, in pith and substance, relatable to Article 48 of the Constitution of India? (4) Does the Tamil Nadu Amendment Act go contrary to Articles 51A(g) and 51A(h), and could it be said, therefore, to be unreasonable and violative of Articles 14 and 21 of the Constitution of India? (5)

[7] (2014) 7 SCC 547.
[8] *Compassion Unlimited Plus Action* v. *Union of India*, Writ Petition (Civil) No.24 of 2016.

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Is the impugned Tamil Nadu Amendment Act directly contrary to the judgment in *A. Nagaraja* (2014), and the review judgment dated 16th November, 2016 in the aforesaid case, and whether the defects pointed out in the aforesaid two judgments could be said to have been overcome by the Tamil Nadu Legislature by enacting the impugned Tamil Nadu Amendment Act? The present case was mainly to answer these five constitutional questions. Here the apex court categorically differentiated between the Prevention of Cruelty to Animals Act, 1960 with three amendment Acts made by Tamil Nadu[9], Karnataka[10] and Maharashtra[11] in columnar form on the ground of scope and Sections 2, 3, 11, 22, 27 and more specifically Section 28A as inserted all the three amended statues. All the three bovine sports, after Amendment, assumed different character in their performance and practice and for those reasons the court did not accept the petitioners' argument that the Amendment Acts were merely a piece of colourable legislation with cosmetic change to override judicial pronouncement. But in opinion of the Supreme Court, no irrational classification as regards this bull sports had been made by the legislature so as to attract the mischief which Article 14 of the Constitution of India seeks to prevent. The validity of a legislative Act can also be negated on the ground of it being unreasonable. Here the Supreme Court questioned why should bulls be permitted to undertake such activities – which are apparently involuntary and subject these sentient bovine species to pain and suffering? The Horse racing was allowed under Performing Animals (Registration) Rules, 2001. Horse was also a sentient animal. Here, the focus shifted from causing pain and suffering to the degree of pain and suffering to which a sentient animal was subjected to while being compelled to undertake certain activities for the benefit of human beings. Finally, the Supreme Court answered all the five questions very categorically as framed earlier, like: (1) The Tamil Nadu Amendment Act is not a piece of colourable legislation. It relates, in pith and substance, to Entry 17 of List III of Seventh Schedule to the Constitution of India and would not come within the mischief sought to be remedied by Sections 3, 11(1) (a) and (m) of the 1960 Act. (2) Jallikattu is a type of bovine sports though in *A. Nagaraja (2014)* case, the Division Bench found the cultural approach unsubstantiated and concluded that such activities offended Sections 3 and 11(1)(a) and (m) of the 1960 Act. But the Amendment Act read with the Rules seek to substantially minimize the

[9] The Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017.
[10] The Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017.
[11] The Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017.

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pain and suffering and continue with the traditional sports. The Amendment having received Presidential assent, the court do not think there is any flaw in the State action. Jallikattu as bovine sports have to be isolated from the way they were earlier practiced and organizing the sports itself would be permissible, in terms of the Tamil Nadu Rules. (iii) The Tamil Nadu Amendment Act is not elatable to Article 48 of the Constitution of India but in pith and substance the Act is relatable to Entry 17 of List III of the Seventh Schedule to the Constitution of India. (4) The Tamil Nadu Amendment Act does not go contrary to the Articles 51-A (g) and 51-A(h) and it does not violate the provisions of Articles 14 and 21 of the Constitution of India. (5) The Tamil Nadu Amendment Act read along with the Rules framed in that behalf is not directly contrary to the ratio of the judgment in the case of *A. Nagaraja (2014)* case and the defects pointed out in the judgment have been overcome by the State Amendment Act read with the Rules made in that behalf.

IV. Laws for Prevention of Cruelty to Animals

The Supreme Court in 2014's Jallikattu Case extended the rights guaranteed under Article 21 of the Constitution to all living beings. The extended protection of right to life was to allow all species a set of rights according to international standards. It was observed in the case that animals also have honor and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks. Every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity. The Supreme Court of India explained life of the non-human species specifically animal beings. The subject 'Prevention of cruelty to animals' got a very important place in Indian Constitution as Centre, State and Municipality all have the power to make law. It is under Entry 17 of the Concurrent List in the Schedule VII of the Constitution of India and has been allotted to both State as well as Centre to legislate law on the said matter. This same item was in Entry 22 also at the Concurrent List of the Government of India Act, 1935. After the 74th Constitutional Amendment in 1992, the subject of 'Prevention of cruelty to animals has been vested to Municipal Authority of the local government as per Schedule XII under Article 243W of the Constitution.

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V. Rights of Animals Within Constitutional Framework

During 2023, of course, the animals cannot demand their right in the same way human beings can assert for bringing a legislation, but according to the recent judgment of the Supreme Court of India[12], as part of the social and cultural policy the law makers have recognized the rights of animals by essentially imposing restriction on human beings on the manner in which they deal with animals. But earlier the same Supreme Court extended the rights guaranteed under Article 21 of the Constitution to all living beings. The extended protection of right to life was to allow all species a set of rights according to international standards. It was observed in the case that an animal also has honour and dignity which it cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks. Every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity.[13] In *Ramlila Maidan*[14] case it was held that the Constitution does not merely speaks for human right protection. The catena of judgments also speaks of preservation and protection of man as well as animals, all creatures, plants, rivers, hills and environment. Our Constitution professes for collective life and collective responsibility on one hand and individual rights and responsibilities on the other hand.[15] Even all the birds have fundamental rights to fly in the sky and all human beings have no right to keep them in small cages for the purposes of their business or otherwise.[16] The High Court of Gujarat realized that cattle, like human beings, possess life in them. According to the court, even an animal has a right to say that its liberty cannot be deprived except in accordance with law. There are many enactments which have recognized rights of the animals.[17]

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[12] *Animal Welfare Board of India* v. *Union of India*, Writ Petition (Civil) No. 23 of 2016, Civil Original Jurisdiction, Supreme Court of India, Para 23.

[13] *Animal Welfare Board of India* v. *A. Nagaraja* (2014) 7 SCC 547.

[14] In Ramlila Maidan Incident, Suo Motu W.P. (CRL.) No. 122 of 2011, Criminal Original Jurisdiction, the Supreme Court of India.

[15] *Ibid*.,para 18.

[16] *People for Animals v. Mohazzim*, Crl. 2015(3)RCR (Criminal) 94.

[17] *Mahisagar Mataji Samaj Seva Trust* v. *State of Gujarat*, Writ Petition (PIL) No. 173 of 2011, In the High Court of Gujarat at Ahmedabad.

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V. Indian Judiciary on Performing Animals

Indian judiciary has been active in protecting performing animals from human entertainment. In *Animals and Birds Charitable Trust v. Municipal Corporation of Greater Mumbai*[18], a Public Interest Litigation brought the plight of the horses and ponies used for victorias and horse carriages in the city of Mumbai. The horses were forced to overwork regularly. They suffered from various injuries and did not have proper stables or shelters to live. The instances of accidents suffered by the horse carriages/victorias used for joyrides were also pointed out in the Petition. It was also submitted, that the provisions of the Prevention of Cruelty to Animals (Licensing of Farriers) Rules, 1965 were violated and no horse or pony was registered under the Performing Animals (Registration) Rules, 2001. The Court held that the use of horse driven carriages was completely illegal and it was not public conveyance within the meaning of the Bombay Public Conveyance Act, 1920 and should be completely stopped on expiry of a period of one year. The Court directed the State Government for rehabilitation scheme of the families associated with the business of running carriages driven by the horses in the city of Mumbai and to formulate a scheme for rehabilitation of the horses used for plying victorias in the city of Mumbai. In, *The Society for Prevention of Cruelty to Animals v. State of Kerala*[19], the petitioner approached before the High Court of Kerala at Ernakulam seeking direction to respondent to ensure that the provisions of the Performing Animals (Registration) Rules 2001 had been enforced with regard to captive elephants used for rides and also directions that respondent permitting elephant rides using captive elephants without taking registration under the Performing Animals (Registration) Rules 2001 was arbitrary and illegal. Respondent submitted that the Captive Elephants were managed under the Kerala Captive Elephants (Management and Maintenance) Rules 2012 and respondent also directed the concerned officers by letter to stop using of elephants under their jurisdiction as performing animals till the elephants were registered under the Performing Animals (Registration) Rules, 2001. The Court found that the authorities were vigilant in the matter. However, they should ensure about proper implementation of the Performing Animals (Registration) Rules, 2001 and should take

[18] Public Interest Litigation No.36 of 2011, Ordinary Original Civil Jurisdiction, In the High Court of Judicature at Bombay.

[19] W.P.(C) No.10424 of 2014

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appropriate actions in the said matter. In *N.R. Nair v. Union of India*[20], the main challenge in several appeals by special leave from the judgment of the Kerala High Court was about the validity of Section 22 of the Prevention of Cruelty to Animals Act, 1960 and the Notification[21] under Section 22 to the effect that no person should train or exhibit any animals specified therein, namely, bears, monkeys, tigers, panthers and lions. This Notification was challenged by the Indian Circus Federation before the High Court of Delhi. After the issuance of the Notification, a corrigendum was issued whereby 'dogs' were excluded from the said Notification. Again, the said Notification was challenged in the Kerala High Court by present Petitioner, but the High Court upheld the validity of the said Notification. Against this High Court judgment, the Appellant argued that no direction could be issued depriving the appellants of the ownership of the animals. The Court did not go into this question, but the circus owners were prohibited from either training or exhibiting any of the five animals referred to in the impugned Notification. The Supreme Court agreed with the decision of the High Court that in exercise of judicial review neither the High Court nor this Court could go into the correctness of the decision of the Government in issuing the impugned Notification which was within the parameters of the Prevention of Cruelty to Animals Act, 1960. In *Indian Circus Federation vs. Union of India*[22], the main petition challenged the notification of the Ministry of Environment and Forests dated 2nd March, 1991 issued under Section 22 of the Prevention of Cruelty to Animals Act, 1960, though in the said notification five animals, namely, . bears, monkeys, tigers, panthers and dogs, were banned from being trained or exhibited and by a subsequent notification ban on training and exhibiting of dogs was withdrawn. The challenge was made mainly on grounds that the ban had been imposed without being adequate material available with the Government justifying the necessity of imposing the ban and Government had failed to apply mind to decide regulation or framing of the rules. The impugned notification was intended to ban circus only without bringing zoos within its ken, which was discriminatory. The notification was stayed by Delhi High Court by means of an interim order. Subsequently the Government of India constituted a committee which strongly felt that the circuses failed to achieve the standards of housing and upkeep of animals to provide even better standards in future. The Committee was

[20] Appeal (Civil) 3609 - 3620 of 2001, the Supreme Court of India.
[21] Earlier on 2nd March, 1991 a Notification under Section 22 was issued banning training and exhibition of bears, monkeys, tigers, panthers and dogs.
[22] 1999 (48) DRJ 171 Delhi High Court.

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also not convinced that the circuses contributed to the conservation of endangered species. According to the Committee, zoos played an important role in ex-situ preservation of species particularly conservation of rare and endangered species whereas circuses had captured, transported and trained animals for rehearsal and performance. Based on the report of the Committee, the Central Government issued a Notification dated 14.10.98 banning the abovementioned five animals from being exhibited or trained as 'performing animals'. It was held that the Government, upon consideration of the report which was based on relevant material, issued the Notification dated 14.10.98 which banned the exhibition and training of the animals and there was no justification to stay the operation of such Notification.

VI. Legality of Bovine Sports and Performing Animals

In *Animal Welfare Board of India v. Union of India*, the Supreme Court opined, Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States had undergone substantial change in the manner they were used to be practiced or performed and the factual conditions that prevailed at the time the *A. Nagaraja* judgment[23] was delivered cannot be equated with the present situation and in the changed circumstances, absolutely no pain or suffering would be inflicted upon the bulls while holding these sports. Three States mentioned in their petitions that bovine sports were part of the culture and tradition and according to the Supreme Court of India, whether a particular practice or event is part of culture or tradition is to be decided by the custom and usage of a particular community or a geographical region which can be translated into an enactment by the appropriate legislature. The states like, Tamil Nadu enacted the Prevention of Cruelty to Animals (Tamil Nadu Amendment) Act, 2017, Maharashtra legislated the Prevention of Cruelty to Animals (Maharashtra Amendment) Act, 2017 and Karnataka passed the Prevention of Cruelty to Animals (Karnataka Second Amendment) Act, 2017 to legitimize various types of bovine sports including Jallikattu[24] in Tamil Nadu, Bullock Cart Race[25] in Maharashtra and Kambala[26] in Karnataka. All these Amendment Acts had

[23] [(2014) 7 SCC 547].

[24] Jallikattu means an event involving bulls conducted with a view to follow tradition and culture on such days from the months of January to May of a calendar year and in such places, as may be notified by the State Government, and includes "manjuviratu", "vadamadu" and "erudhuvidumvizha".

[25] "Bullock cart race" means an event involving bulls or bullocks to conduct a race, whether tied to cart with the help of wooden yoke or not (by whatever name called), with or without a cartman with a view to follow tradition

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received Presidential assent. But the petitioners' argument was that the continuance of the subject sports had been found to be in breach of a Central Statute by a Division Bench of the Supreme Court and those three Amendment Acts sought to revive the earlier position. Here Professor emeritus Upendra Baxi[27] questioned, is the Court justified in saying that Jallikattu has become "an integral part of Tamil culture and does not require religious, cultural and social analysis in greater detail, which…is an exercise that cannot be undertaken by the Judiciary"?. It may be noted n that in landmark cases like *Vishaka*[28] which issued directions regarding sexual harassment at workplace proclaiming the law and policy till Parliament enacted a law on the subject and the indefinite stay order issued by the Supreme Court putting in abeyance the three farm laws r enacted by Parliament, the Court did not allow a "debateable" issue to generate a judicial hands-off stance. However, in the present case, is it not an example of judicial abdication to say that "cultural heritage" of a particular state is best "concluded in the House of the People?"[29]

VII. Performing Animals in Culture and Traditions

In *Animal Welfare Board of India v. A. Nagaraja*[30], the Supreme Court vibrated the rights of animals under our Constitution, laws, culture, tradition, religion and ethology among Indian citizen and generated a nationwide awareness about animal law. Here, the Tamil Nadu Regulation of Jallikattu Act, 2009 was found repugnant to the Prevention of Cruelty to Animals Act, 1960, and held constitutionally void, being violative or Article 254(1) of the Constitution of India. In the line of the Court, Jallikattu and Bullock cart races, the manner in which they were conducted, have no support of Tamil tradition or culture. This judgment became a milestone for

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and culture on such days and in any District where it is being traditionally held at such places, as may be previously approved by the District Collector, and also known as "Bailgada Sharyat", "Chhakadi" and "Shankarpat" in the State of Maharashtra.

26 "Kambala" means the traditional sports event involving Buffalo's (male) race normally held as a part of tradition and culture in the state on such days and places, as may be notified by the State Government.

27 Cruelty v. culture: Re-writing the magna carta of the rights of nature? Prof Upendra Baxi, *India Legal*, June 12, 2023, page 12

28 *Vishakha* v. *State of Rajasthan*, AIR 1997 SC 3011.

29 *Animal Welfare Board of India* v. *Union of India*, Writ Petition (Civil) No. 23 of 2016, Civil Original Jurisdiction, Supreme Court of India, para 40.

30 *Animal Welfare Board of India* v. *A. Nagaraja*, Civil Appeal No. 5387 of 2014, Civil Appellate Jurisdiction, In the Supreme Court of India.

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all cases relating to performing animals and the ratio was used by several cases afterwards. In *P.L.Ramaiah vs. The District Collector, Sivagangai*[31] case a writ petition was filed seeking to quash the impugned order passed by District Collector, Sivagangai (1st respondent) by which the District Collector refused to grant permission and necessary protection for conducting the Jallikattu at Poolankurichi Village, Thiruppathur Taluk, Sivagangai District. The respondent refused to grant permission on the ground that the petitioner did not make arrangements as per the conditions stipulated in said Government Order.[32] Finally tough the High Court quashed the impugned order of the respondent but the petitioner was directed to comply with all the conditions stipulated in the Government Order. In *Narahari Jagadish Kumar vs. State of Andhra Pradesh*[33], the High Court issued directions to State Government as well as District authorities to take stringent steps to prevent organizing cock fights with betting during *Sankranthi* festival in Krishna, West Godavari and East Godavari Districts of Andhra Pradesh. According to the court, the manner in which an animal was killed which was required to be sanctioned by religion to be saved under Section 28 of the Prevention of Cruelty to Animals Act, 1960, and not the killing of the animal itself. Cockfight events were in violation of Sections 3 and 11 of 1960's Act and were not saved by Section 28 thereof. Cock fighting, a spectator sport associated with the Sankranthi festival, did not appear to have any religious sanction. No religious text required cocks to fight each other unto death as a part of a ritual or as a method of slaughter prescribed by religion, saved by Section 28 of the Act. In *Mahaveer Bishnoi v. State of Rajasthan*[34] case, the writ petition of public interest was filed by the President, Legal Cell of *Vishnoi Mahasabha Van Evam Vanya Jeev Raksha Samiti* with the prayer to restrain the respondent(s) from organizing 'Tonga Race' which used to take place on 9th Shukla day of Bhadrapad covers a distance of 17 kms. from village Mundiad to Kharnal and the race on the next day passes through a distance of 19 kms. between village Kharnal and the town of Nagaur. It was an avoidable non-essential human activity organized by ignoring the welfare of horses and solely for human pleasure. The race inherently involves pain and suffering both physical and mental which was nothing but

[31] W.P. (MD) No.11768 of 2018.

[32] The Government of Tamil Nadu framed Tamil Nadu Prevention of Cruelty to Animals (Conduct of Jallikattu) Rules, 2017 through Government Order in GO.MS.No: 7 by Animal Husbandry Dairying and Fishery (AH3) dated 21.01.2017.

[33] W.P.(PIL) No.320 of 2014 in the Andhra Pradesh High Court Judgment, Dated 26-11-2016.

[34] D.B. CIVIL Writ Petition (PIL) No. 6176/2014, in the High Court of Rajasthan at Jodhpur, Date of Order 06.01.2016.

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cruelty as defined under Section 11 of the Prevention of Cruelty to Animals Act, 1960. The Court agreed that "tradition" was never a sufficient justification for cruelty, and a cruel tradition should never be allowed to define a culture. Therefore, High Court of Rajasthan at Jodhpur directed that the Collector, Nagaur and other functionaries of the State of Rajasthan take appropriate steps to see that the persons-in-charge or care of animals and the State must ensure the implementation of the Prevention of Cruelty to Animals Act, 1960 in its letter and spirit. In *Cattle Race Club of India, Palakkad v. State of Kerala*[35], the High Court of Kerala at Ernakulam relying upon the ratio of the Supreme Court's judgment in *Animal Welfare Board of India* vs. *Nagaraja,* upheld the Notification issued by the Central Government under Section 22 of the Prevention of Cruelty to Animals Act, 1960 declaring that bulls (along with five other animals) shall not be exhibited or trained as performing animals. Though petitioners contended here before the High Court that Kaalapoottu/ Kannupoottu/ Maramadi are different from Jallikattu or bullock cart race where no beating or whipping or any other instance cruelty was meted out to the Bulls and also contended to energize and to revitalize the idle cattle after the Monsoon/Onam but the High Court held that chances for extending cruelty to animals even in the case of the mentioned sports very much existed, even going by the admitted version of the petitioners, and squarely applied the apex court's decision and dismissed the writ petitions.

In earlier cases also, the Indian judiciary has upheld the cause of protection of animal against over culture or tradition. In *Anandappally Karshakasamithy v. District Collector, Pathanamthitta Collectorate*[36], the Petitioner argued that Maramadi was traditional rituals involving bullock driving on the paddy field being followed for decades and no race was involved. It was also stated that cattle race could not be permitted under the Performing Animals (Registration) Rules, 2001. But the Court held that competition and race were very much reflected from the petition itself. The very nature of overriding and beating of animals were inevitable from such event. That cruelty should be prevented in strongest term by the District Collector, Superintendent of Police and no Maramadi should be permitted to be conducted. In *K. Muniasamythevar v. Dy. Superintendent of Police*[37], the petitioner asked for a Writ of Mandamus forbearing the respondents from conducting of bullock cart race also known as Rekla race in *'Maha* Kumbhabishegam Festival in Ramanathapuram District. The Madras High Court held that the

[35] 2015(5) FLT 739 (Ker HC).
[36] WP (C) 22271/2009, in the High court of Kerala at Ernakulam, Dated 12th August 2009.
[37] AIR 2006 Mad 255.

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right to life and the habitat was universal but limited, within the domain of the human species. Hence, in the absence of such rights were left only with duties of the human species towards the other species. But considering the scheme of the Prevention of Cruelty to Animals Act, 1960 and the provisions contained in Article 51A of the Constitution of India, it is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures, the State Police were directed to ensure prevention of cruelty to animals inflicted under the guise of Rekla Race or Oxen Race and Jallikattu or any other, entertainment causing cruelty to animals, and strictly implementing the provisions. In *People for Animals v. State of Goa*[38], the petitioners contented that the illegalities of bull fights, locally known as 'dhirio' were being conducted in the State of Goa in spite of requests to authorities to take appropriate steps in the matter to prevent the same in Goa. Those bull fights were in direct contravention of the provisions contained in section 11(1)(m) and section 11(1)(n) of the Prevention of Cruelty to Animals Act, 1960 and that the authorities were duty-bound to take action against the said offenders. The High Court of Bombay (Panaji Bench) held that the enactment of the law to prevent cruelty to the animals was not an end in itself and what was important was the implementation of that Act and also to see that the activities which were prohibited under the said Act. Therefore, respondents were directed to take immediate steps to ban all types of animal fights including bull fights and 'dhirios' in the State of Goa and to see that the direction was fully complied with in letter and spirit which the Act seeks to achieve.

VIII. Constitutionality of Animal Rights: Judgments of 2014 *vis-a-vis* 2023

It is clear that the latest judgment of the apex court is not an adverse of 2013's Jallikattu judgment. Both judgments have established animal rights very clearly within the purview of Indian constitution. But in 2014, The Supreme Court of India's landmark judgment recognized that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity. In the Jallikattu case, the court has extended the rights guaranteed under Article 21 of the Constitution to all living beings and the protection of right to life was allowed to all species as a set of rights according to international standards. It was observed in the case that animal also had honor and dignity which cannot be arbitrarily deprived

[38] 1997(4) BomCR 271 : 1998(100(1))BOMLR226.

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of and its rights and privacy had to be respected and protected from unlawful attacks. In present case[39], three States defended their Statutes and submitted that bovine sports were part of their culture and tradition and at the same time, according to the apex court of India, whether a particular practice or event is part of culture or tradition is to be decided by the custom and usage of a particular community or a geographical region which can be translated into an enactment by the appropriate legislature. In the final opinion of the Court, Jallikattu, Kambala and Bull Cart Race as introduced by the Amendment Acts of the three States had undergone substantial change in the manner they were used to be practiced or performed. But in regard to this latest judgment, Professor Upendra Baxi[40] opined that the Supreme Court did not shrug its constitutional shoulders in *Nagaraja* case[41], and outlawed two common sports practiced in Tamil Nadu and Maharashtra, popularly referred to as "Jallikattu" and "Bullock Cart Race", saying they were contrary to the provisions of the Act. At that point of time, a Tamil Nadu Regulation of Jallikattu Act, 2009, which regulated the sport, was held void on the ground of doctrine of repugnancy, in view of Article 254 (1) of the Constitution.

IX. Conclusion

The factual conditions that prevailed when the 2014 judgment was delivered cannot be equated with the present situation and in the changed circumstances, absolutely no pain or suffering can be inflicted upon the bulls while holding these sports. This new move by the judiciary has generated lots of hue and cry among animal rights activists and legal experts as the court categorically declared that animals have no rights under the Constitution and the law makers have recognized the rights of animals by essentially imposing restriction on human beings on the manner in which they deal with animals as part of the social and cultural policy. It may be said that both judgments of the Supreme Court of India within a decade are supplementary and complementary of each and other. If any gaps were left by the earlier decisions, those were

[39] *Animal Welfare Board of India v. Union of India*, Writ Petition (Civil) No. 23 of 2016, Civil Original Jurisdiction Supreme Court of India, Decided on May 18, 2023

[40] Prof Upendra Baxi, "Cruelty v. culture: Re-writing the magna carta of the rights of nature?" June 12 *India Legal* 12 (2023).

[41] (2014) 7 SCC.

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clarified by this latest order of the court. Perhaps, this case may prove to be a milestone in upholding and establishing animal rights in India.

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NAVIGATING BANKING DISPUTES IN INDIA: CHALLENGES, LEGAL FRAMEWORKS, AND PATHWAYS TO REFORM

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ABSTRACT

India's banking sector, a key driver of economic growth, faces substantial challenges due to recurring disputes that affect trust, efficiency, and stability. This paper examines four major types of banking disputes: dishonour of cheque, loan defaults, unauthorized electronic transactions, and service deficiencies. Dishonour of cheque, regulated by the Negotiable Instruments Act, 1881, continues to overburden courts due to reasons like insufficient funds or technical errors, resulting in delays in justice delivery. Loan defaults, governed under the SARFAESI Act 2002, and the Insolvency and Bankruptcy Code, 2016, in particular, severely impact the financial health of banks, especially in the retail and Micro Small and Medium Enterprises sectors, owing to rising economic stress and weak recovery mechanisms. Unauthorized electronic transactions, such as Unified Payment Interface-related frauds and phishing, exploit the growth of digital banking and expose critical gaps in cybersecurity despite safeguards under the Information Technology Act, 2000. Service deficiencies, including delayed loan disbursements and ineffective grievance redressal, fall under violations of the Consumer Protection Act, 2019, leading to customer dissatisfaction and mistrust. These issues are aggravated due to outdated operational systems, lack of financial awareness, and gaps in regulatory implementation, which collectively strain courts and redressal bodies like the Banking Ombudsman. The paper analyses the existing legal framework, judicial interpretations, and operational hurdles, identifying concerns such as judicial delays, inconsistent enforcement, and fragmented complaint resolution mechanisms. It proposes reforms including faster technology-based dispute resolution, stronger cybersecurity infrastructure, and improved transparency in loan recovery processes. Enhancing financial literacy, streamlining regulations in line with global standards, and modernizing banking infrastructure are essential to reducing conflicts, improving reliability, and fostering customer confidence. By addressing these challenges holistically, India can build a resilient and inclusive banking system that promotes sustainable economic growth and strengthens trust among all stakeholders.

Keywords: *Banks, Reserve Bank of India, SARFAESI, IBC 2016, Banking Ombudsman*

I. Introduction

Banking is the foundation of India's financial system, facilitating public savings into productive investments and enabling efficient economic transactions critical for growth. As defined by

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section 5(b) of the Banking Regulation Act, 1949, banking involves "accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise".[1] Enacted in post-independence India, this statute regulates banking companies to ensure financial stability, safeguard depositors, and prevent irregularities like fraud or liquidity mismatches. The Reserve Bank of India (RBI), established under the RBI Act, 1934, plays a central role in overseeing monetary policy, issuing currency, and supervising banks to maintain financial stability.[2] Banking operations encompass deposit collection, credit disbursement, payment services, and investment management, all guided by regulatory frameworks to uphold public trust and economic stability.

The economic significance of banking in India is critical, as it drives capital formation, fuels industrial and agricultural growth, and promotes financial inclusion. Banks facilitate over 80 percent of formal credit, supporting key sectors like manufacturing, services, and infrastructure that are integral to India's Gross Domestic Product (GDP).[3] In Financial Year 2024 (FY24), scheduled commercial banks (SCBs) recorded substantial growth, with deposits rising by 14 percent and advances by 19 percent, reflecting strong credit demand amid economic recovery.[4] Initiatives like the Pradhan Mantri Jan Dhan Yojana have extended banking access to over 500 million individuals, boosting savings and consumption, which are essential for economic momentum.[5]

The sector's profitability, with a return on assets of 1.3 percent in FY24, underscores its stability and contribution to India's 6.5–8 percent annual GDP growth, establishing India as a global economic leader.[6] Without an efficient banking system, India's ambition to achieve a $5 trillion economy would face substantial challenges, as banking underpins trade, investment,

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1 The Banking Regulation Act, 1949 (Act 10 of 1949), s. 5(b).

2 The Reserve Bank of India Act, 1934 (Act 2 of 1934), s. 3 [*hereinafter* "RBI Act"].

3 World Bank, "India Economic Update" (2024), *available at*: https://www.worldbank.org/en/country/india/publication/india-economic-update (last visited on Aug. 21, 2025).

4 Reserve Bank of India, "Trend and Progress of Banking in India 2023–24" (2024), *available at*: https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/0RTP261220247FFF1F49DFC04C508F300904A90C7439.PDF (last visited on Aug. 21, 2025).

5 Ministry of Finance, "Pradhan Mantri Jan Dhan Yojana: Progress Report" (2024), *available at*: https://pmjdy.gov.in/files/Progress-Report.pdf (last visited on Aug. 21, 2025).

6 Reserve Bank of India, "Financial Stability Report" (June 2024), *available at*: https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/0FSRJUN2024_270620242B95CB128D1847A3ACAB5B5A4BEBF0DF.PDF (last visited on Aug. 21, 2025).

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and fiscal policy execution. Its role in mobilizing resources and enabling credit access makes it indispensable for sustaining economic aspirations and fostering inclusive development.

The evolution of Indian banking reflects the nation's socio-economic transformations, transitioning from colonial-era institutions to a digitally integrated ecosystem. In the pre-independence period, banks like the Bank of Bengal (established in 1806) primarily served British trade interests.[7] Post-independence, the nationalization of fourteen major banks in 1969, followed by six more in 1980, prioritized credit to priority sectors like agriculture and small industries, promoting inclusive growth.[8]

The 1991 economic liberalization, necessitated by a balance-of-payments crisis, introduced reforms such as interest rate deregulation and the entry of private and foreign banks, fostering competition and efficiency.[9] The digital banking era, marked by the increase of internet and mobile platforms post-2000, redefined accessibility. The launch of the Unified Payments Interface (UPI) in 2016 modernised transactions, enabling real-time, smartphone-based transfers.[10] By 2024, UPI accounted for 80 percent of India's digital payments, establishing India's dominance in fintech innovation.[11] This shift from traditional to technology-driven banking has enhanced convenience but also introduced new vulnerabilities, necessitating robust legal and regulatory frameworks.

Table 1: Historical Timeline of Indian Banking Evolution

Year	Event	Significance of Banking and Disputes
1770	Establishment of the Bank of Hindustan	Marks the beginning of modern banking in India.
1921	Merger of Presidential Banks to form Imperial Bank of India	Consolidation of British-era banking institutions.

[7] Amiya Kumar Bagchi, *The Evolution of the State Bank of India: The Roots, 1806–1876* (1987).

[8] Rakesh Mohan, *India's Financial Sector: An Era of Reforms* (2005), *available at*: http://rakeshmohan.com/docs/RBIBulletinOct2004-2.pdf (last visited on Aug. 21, 2025).

[9] M. Narasimham, "Report of the Committee on the Financial System" (1991), *available at*: https://indianculture.gov.in/reports-proceedings/report-committee-financial-system (last visited on Aug. 21, 2025).

[10] National Payments Corporation of India, "UPI Product Overview" (2016), *available at*: https://www.npci.org.in/what-we-do/upi/product-overview (last visited on Aug. 21, 2025).

[11] Internet and Mobile Association of India, Indian Payments Handbook 2023–2028 (2023), *available at*: https://www.pwc.in/assets/pdfs/consulting/financial-services/fintech/publications/the-indian-payments-handbook-2023-2028.pdf (last visited on Aug. 21, 2025).

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1949	Nationalization of RBI & Enactment of Banking Regulation Act	Created the central regulatory framework and empowered the government to control banking.
1969	Nationalization of fourteen major private banks	Aimed to promote financial inclusion and shift credit to priority sectors.
1980	Nationalization of six more private banks	Further consolidated state control over the banking sector.
1991	Liberalization reforms (Narasimha Committee)	Opened the sector to private and foreign players, fostering competition and efficiency.
1993	Establishment of Debt Recovery Tribunals (DRT) (established under the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)	Created specialized tribunals for swift recovery of large bank debts.
2002	Enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)	Empowered banks to seize and sell secured assets without court intervention.
2016	Launch of UPI	Ushered in a new era of digital payments and financial inclusion.
2021	Launch of RBI Integrated Ombudsman Scheme	Centralized and streamlined the grievance redressal process for all regulated entities.

The rapid expansion of banking services has led to a substantial increase in disputes, reflecting the complexities of a modern financial landscape. dishonour of cheque cases under section 138 of the Negotiable Instruments Act, 1881 (NI Act) have intensified, with millions pending in courts by 2024.[12]

Loan defaults, while reducing to a 2.7 percent gross non-performing assets (GNPA) rate, saw a 28 percent increase in unsecured loan non-performing assets (NPAs), reaching substantial proportions.[13] Unauthorized electronic transactions, particularly UPI-related frauds, have

[12] National Judicial Data Grid, "Pending Cases under Negotiable Instruments Act" (2024), *available at*: https://njdg.ecourts.gov.in/njdgnew/ (last visited on Aug. 21, 2025).

[13] Reserve Bank of India, "Sectoral Deployment of Bank Credit" (2024), *available at*: https://rbi.org.in/Scripts/Data_Sectoral_Deployment.aspx (last visited on Aug. 21, 2025).

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sharply increased, with substantial financial losses reported in recent years.[14] Cybercrimes, including phishing and One Time Password (OTP) scams, have also witnessed sharp growth, driven by increased digital adoption.[15]

Judicial precedents like *B.S. Krishna* v. *State of Karnataka* (2020)[16] clarify liability in dishonour of cheque cases, emphasizing the presumption of guilt unless rebutted, while the case of *Axis Bank Ltd.* v. *Vidarbha Industries Power Ltd.* (2022)[17] underscores the equilibrium between creditor and debtor rights in insolvency disputes under the Insolvency and Bankruptcy Code, 2016 (IBC). These disputes highlight systemic gaps in consumer protection and dispute resolution, highlighting the need for comprehensive reforms.

With this backdrop, this paper aims to examine the nature, causes, and classification of frequent banking disputes, including in particular dishonour of cheques, loan defaults, unauthorized electronic transactions, and deficiencies in banking services. It seeks to evaluate the legal frameworks governing these issues, such as the NI Act for cheque-related disputes, the SARFAESI, for loan recoveries, and regulatory guidelines for digital transactions.

The paper explores common arguments, such as lack of proper notice in dishonour of cheque cases or bona fide errors, alongside judicial trends that prioritize expedited and equitable resolutions. By tracing the progression of these disputes from their operational origins to their legal and economic implications, the paper proposes practical reforms, including enhanced online dispute resolution (ODR) mechanisms, improved cybersecurity measures, and policy interventions to simplify processes. Ultimately, it aims to balance consumer protection with the banking sector's critical role in driving India's economic growth, ensuring a resilient and sustainable financial ecosystem.

II. Institutional Mechanisms and Operational Architecture of the Banking Sector

[14] Reserve Bank of India, "Annual Report 2023–24" (2024), *available at*: https://rbidocs.rbi.org.in/rdocs/AnnualReport/PDFs/0ANNUALREPORT202324_FULLDF549205FA214F62A2441C5320D64A29.PDF (last visited on Aug. 21, 2025).

[15] National Crime Records Bureau, "Crime in India 2023" (2024).

[16] *B.S. Krishna* v. *State of Karnataka* (2020) 9 SCC 657.

[17] *Axis Bank Ltd.* v. *Vidarbha Industries Power Ltd.* (2022) 8 SCC 352.

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Banking operations are the foundation of India's financial system, enabling savings, lending, and transactions for individuals and businesses. These operations span various segments and are governed by laws ensuring transparency and security. Recent trends, particularly in digital banking, have redefined these operations but also intensified disputes, posing challenges to the system's stability. This section examines the types of banking operations, their legal frameworks, and emerging trends with a focus on growing disputes regarding, dishonour of cheques, loan defaults, unauthorized transactions, and service deficiencies laying the foundation for their detailed analysis in the next section.

Types of Banking Operations

Banking Operations refer to the core activities, processes, and services carried out by banks to manage money, facilitate financial transactions, and provide financial products to customers. These operations involve accepting deposits, lending funds, managing accounts, processing payments, ensuring compliance, and resolving disputes, all under regulatory frameworks set by the RBI and relevant laws. In simple terms, banking operations are the day-to-day functions that enable smooth financial intermediation between depositors, borrowers, and other stakeholders. Some of the important operations are explained further.

Retail Banking serves individuals with savings accounts, personal loans, mortgages, and credit cards, fulfilling routine financial requirements like saving salaries or paying bills. Banks like State Bank of India (SBI) maintain widespread branches for accessibility.[18] In 2024, retail loans grew by 18 percent, driven by housing and consumer credit, making this segment critical for financial inclusion.[19]

Corporate Banking supports businesses with large-scale loans, trade credit, and cash management. It funds infrastructural projects like roads and factories, which are essential for India's growth.[20] Handling high-value transactions, this segment requires careful risk management due to the substantial funds involved.

[18] *Supra* note 4.
[19] *Ibid.*
[20] *Ibid.*

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Investment Banking deals with capital markets, helping companies raise funds through initial public offerings (IPOs) and mergers and acquisitions (M&As). Banks like ICICI offer advisory services and wealth management.[21] India's IPO market saw a 25 percent increase in 2024, showing strong growth.[22]

Digital Banking and Fintech use technology to provide internet banking, mobile apps, and the UPI. Fintech platforms like Paytm offer digital wallets and lending, reaching financially excluded regions.[23] UPI processes over thirteen billion transactions monthly, dominating global digital payment systems.[24]

Laws Governing Banking Operations

A strong legal framework ensures banking operations are secure and transparent. The Banking Regulation Act allows the RBI to license banks, set capital rules, and oversee lending and deposits, protecting customers.[25] The RBI Act, 1934 empowers the RBI to manage monetary policy and supervise banks, maintaining economic stability.[26]

The NI Act regulates cheques and promissory notes, addressing disputes like dishonour of cheques.[27] The SARFAESI, Act enables banks to recover bad loans by enforcing security, easing debt recovery.[28] The Foreign Exchange Management Act 1999 (FEMA) governs cross-border transactions, supporting corporate banking.[29] The Information Technology Act, 2000 (ITA). tackles online frauds, mandating cybersecurity for digital banking.[30] These laws create a robust framework to manage risks and ensure trust.

Recent Trends and Associated Disputes

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21 Securities and Exchange Board of India, "Capital Market Review 2024" (2024), *available at*: https://www.primedatabase.com/article/2024/Article-Dr.Milind_Dalvi.pdf (last visited on Aug. 21, 2025).

22 *Ibid.*

23 Internet and Mobile Association of India, "Indian Fintech Landscape 2023" (2023), *available at*: https://www.iamai.in/research/indian-fintech-landscape-2023 (last visited on Aug. 21, 2025).

24 National Payments Corporation of India, "UPI Transaction Statistics" (2025), *available at*: https://www.npci.org.in/what-we-do/upi/product-statistics (last visited on Aug. 21, 2025).

25 The Banking Regulation Act, 1949 (Act 10 of 1949), ss. 11, 22, 35, 35A.

26 *Supra* note 3, ss. 7, 17, 21.

27 The Negotiable Instruments Act, 1881 (Act 26 of 1881), ss. 4, 6.

28 The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act 54 of 2002), s. 13.

29 The Foreign Exchange Management Act, 1999 (Act 42 of 1999), ss. 3, 10.

30 The Information Technology Act, 2000 (Act 21 of 2000), ss. 43A, 66.

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Digital banking has restructured operations, with UPI processing over thirteen billion transactions monthly in 2025, accounting for 80 percent of India's digital payments.[31] However, this growth has resulted in a significant increase in disputes, particularly dishonour of cheques, loan defaults, unauthorized transactions, and service deficiencies, which are rising rapidly and pressuring the banking system. Neo-banking platforms like Jupiter offer digital-only services, but their limited regulation heightens vulnerability to fraud.[32] Digital lending, including platforms like the Unified Lending Interface, disbursed Rs. 27,000 crores in 2024, yet unsecured loan defaults increased by 28 percent, triggering repayment disputes.[33] The Central Bank Digital Currency (CBDC), piloted in 2022, aims to streamline payments but poses cybersecurity challenges.[34]

Dishonour of cheques remains a significant concern, with over 4 million cases pending in 2024 under the NI Act, overburdening judicial forums and delaying resolutions.[35] These disputes often increase from insufficient funds or errors, impacting trust in transactions. Loan defaults, though reduced to a 2.7 percent GNPA rate in 2024, are rising in unsecured segments like credit cards, with personal loan defaults increasing by 28 percent due to inadequate credit assessment mechanisms.[36] The RBI's 2023 risk weight hike on unsecured loans aims to curb this, but defaults continue to grow, especially in digital lending.[37]

Unauthorized transactions, such as UPI frauds and phishing, surged by 85 percent in 2024, with losses reaching Rs. 21,367 crores in the first half of Financial Year 2025, caused by fraudulent schemes like digital arrests originating abroad.[38] Service deficiencies, including hidden charges and poor grievance redressal, have increased sharply, with 1.2 million banking complaints reported in 2024, often due to non-transparent loan contracts or coercive debt recovery methods.[39]

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31 *Supra* note 14.
32 *Ibid.*
33 *Ibid.*
34 Reserve Bank of India, "Concept Note on Central Bank Digital Currency" (2022), *available at*: https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/CONCEPTNOTEACB531172E0B4DFC9A6E506C2C24FFB6.PDF (last visited on Aug. 21, 2025).
35 *Supra* note 12.
36 *Supra* note 4.
37 *Ibid.*
38 BioCatch, "2025 India Digital Fraud Trends" (2025), *available at*: https://www.biocatch.com/report-digital-banking-fraud-trends-india-2025 (last visited on Aug. 21, 2025).
39 *Supra* note 4.

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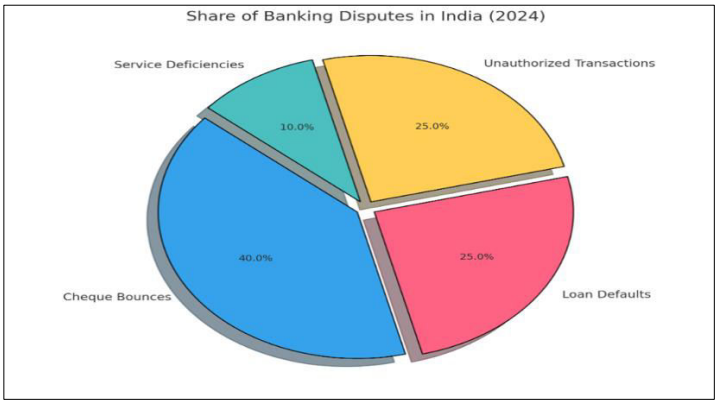
These disputes are worsening due to rapid digital adoption and inadequate safeguards. For instance, UPI's convenience has made it a prime vulnerability for cyberattacks, with 292,800 cybercrime cases reported in 2024, including OTP scams and Aadhaar-enabled payment frauds.[40] Neo-banks and fintech, lacking comprehensive regulatory supervision, contribute to fraud vulnerabilities, while digital lending's growth has surpassed effective risk evaluation, leading to defaults. The Supreme Court's ruling in *Axis Bank Ltd.* v. *Vidarbha Industries Power Ltd.* (2022) emphasizes balancing creditor-debtor rights in loan disputes, highlighting the need for expedited dispute settlement systems.[41] These challenges, rooted in operational advancements, demand immediate policy interventions, which will be explored in the next section.

GRAPH – 1 – Share of Banking Disputes in India (2024)



GRAPH 1 reveals that dishonour of cheque issues constitute the largest share of banking disputes in India in 2024 at 40 percent, reflecting their substantial impact. Loan defaults and unauthorized transactions each account for 25 percent, while service deficiencies make up the remaining 10 percent. This distribution underscores the dominance of cheque-related issues and the growing challenge of digital frauds, as supported by RBI and NCRB data.[42]

III. Spectrum of Disputes in the Banking Ecosystem

Dishounour of Cheque Issues and Legal Framework

[40] *Supra* note 15.
[41] *Axis Bank Ltd.* v. *Vidarbha Industries Power Ltd.* (2022) 8 SCC 352.
[42] *Supra* note 38.

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The expansion of banking operations, particularly in retail and digital segments, has heightened disputes that challenge India's financial system. Building on the operational trends discussed earlier, this section evaluates dishounour of cheque disputes, a persistent issue undermining trust in negotiable instruments. Despite digital payment growth, cheques remain critical for business and personal transactions, making their dishonor a substantial concern. This sub-section analyzes the nature, legal framework, procedures, defenses, and judicial interpretations of dishounour of cheque disputes, assessing their impact on stakeholders and the judiciary. Statistical Trends highlight the scale of the problem, setting the stage for reforms to enhance resolution efficiency and restore trust in banking.

Overview and Analysis

Dishounour of cheque disputes increase when a bank dishonors a cheque due to insufficient funds, signature mismatches, or account closures, causing financial loss to the payee. These disputes disrupt transactions and erode trust, particularly for small businesses and individuals reliant on cheques. Section 138 of the NI, Act, criminalizes dishonor due to insufficient funds, imposing up to two years' imprisonment or a fine double the cheque amount.[43] The 2018 amendments introduced interim compensation (up to 20 percent of the cheque amount) to protect payees, balancing deterrence with fairness.[44] The procedure involves the payee receiving a dishonor memo, issuing a demand notice within 30 days, and filing a complaint in a Magistrate Court within one month if the drawer fails to pay within 15 days.[45] Courts presume guilt under section 139, requiring drawers to rebut liability.[46]

Defenses hinge on disproving debt or intent. In *Indus Airways Pvt. Ltd.* v. *Magnum Aviation* (2014), the Supreme Court held that cheques issued as advances, and not as debts, avoid liability.[47] Other defenses include security cheques, unintentional signature mismatches, or time-barred debts.[48] In *C.C. Alavi Haji* v. *Palapetty Muhammed* (2007), the court ruled that a

[43] *Supra* note 28, s. 138.
[44] The Negotiable Instruments (Amendment) Act, 2018 (Act 20 of 2018); The Negotiable Instruments Act, 1881 (Act 26 of 1881), s. 143A.
[45] *Supra* note 28, s. 138, proviso (b) & (c); s. 142(1)(b).
[46] *Supra* note 28, s. 139.
[47] *Indus Airways Pvt. Ltd.* v. *Magnum Aviation Pvt. Ltd.* (2014) 12 SCC 539.
[48] The Limitation Act, 1963 (Act 36 of 1963), s. 3.

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correctly sent notice is deemed served, easing prosecution.[49] *M/s Meters and Instruments Pvt. Ltd.* v. *Kanchan Mehta* (2018) promoted compounding to reduce pendency, allowing settlements.[50] The landmark case of *Dashrath Rupsingh Rathod* v. *State of Maharashtra* (2014) mandated filing cases at the payee's bank jurisdiction, curbing forum shopping but complicating access.[51] Another vital case of *Dayawati* v. *Yogesh Kumar Gosain* (2017) endorsed mediation, advancing alternative dispute resolution (ADR) to alleviate court burdens.[52] These rulings streamline processes but struggle against judicial delays.

The persistence of dishonour of cheque issues reflects operational and economic issues. Small businesses often issue cheques without sufficient funds, while bank errors like delayed processing exacerbate disputes. Economic pressures, such as Micro, Small and Medium Enterprises (MSME) cash flow constraints, drive defaults. The judiciary's push for ADR, as in *Dayawati* case, and RBI's cheque truncation system (CTS) aim to mitigate issues, but low adoption limits impact.[53] *In Re: Expeditious Trial of Cases under Section 138* (2021) Supreme Court directed special courts, yet resource constraints hinder progress.[54] These challenges highlight the need for digital verification and faster judicial processes to reduce disputes and restore cheque reliability.

Statistical Trends

Dishounour of cheque disputes dominate banking litigation, with over 43 lakh cases pending in 2025, up from 33.44 lakh in 2022, per NCRB data.[55] Rajasthan accounts for 6.4 lakh cases, reflecting regional cheque reliance.[56]

Despite resolving 15 lakh cases in 2024, the banking sector still faces a significant backlog, resulting in a pendency ratio of 2:1.[57] This backlog delays justice, pressuring courts and eroding

[49] *C.C. Alavi Haji* v. *Palapetty Muhammed* (2007) 6 SCC 555.
[50] *M/s Meters and Instruments Pvt. Ltd.* v. *Kanchan Mehta* (2018) 1 SCC 560.
[51] *Dashrath Rupsingh Rathod* v. *State of Maharashtra* (2014) 9 SCC 129.
[52] *Dayawati* v. *Yogesh Kumar Gosain* (2017) SCC OnLine Del 11092.
[53] Reserve Bank of India, "Cheque Truncation System Guidelines" (2010), *available at*: https://www.rbi.org.in/commonman/Upload/English/Notification/PDFs/CACA220610.pdf (last visited on Aug. 21, 2025).
[54] *In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881*, (2021) 4 SCC 784.
[55] *Supra* note 15.
[56] *Ibid.*
[57] *Supra* note 12.

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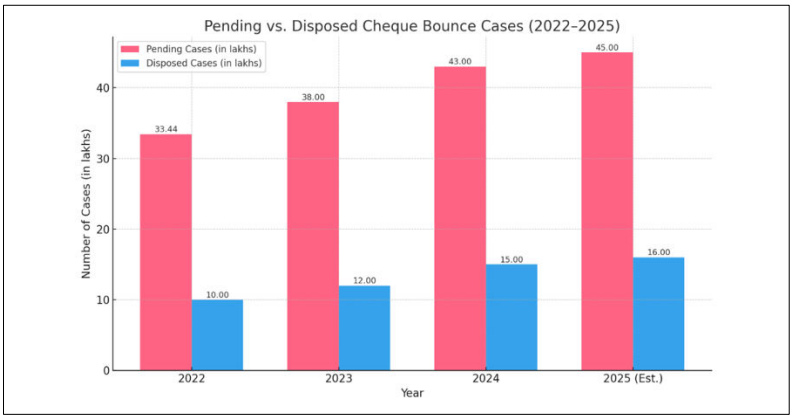
trust. RBI notes cheques drive substantial complaints, particularly among MSMEs.[58] The bar graph below compares pending and disposed cases, highlighting the judicial burden.

GRAPH 2 – Pending vs. Disposed Cases (2022- 2025)



GRAPH 2 illustrates a rising trend in dishonor of cheque cases, with pending cases increasing from 33.44 lakhs in 2022 to an estimated 45.00 lakhs in 2025. Disposed cases remain lower, rising from 10.00 lakhs in 2022 to an estimated 16.00 lakhs in 2025, with a notable 15.00 lakhs in 2024. This creates a growing pendency ratio, underscoring the judicial system's increasing burden, as per NCRB data.

Loan Defaults and Recovery Issues

Following the analysis of dishounour of cheque disputes, this sub-section evaluates loan defaults and recovery disputes, a critical issue impacting bank liquidity and borrower finances. Non-payment of loans, resulting in NPAs, triggers legal battles over recovery and classification, pressuring banks and borrowers alike. This sub-section analyzes the nature, legal framework, remedies, defenses, and judicial interpretations of these disputes, assessing their impact on the banking ecosystem. Statistical Trends highlight their scale, building on the operational vulnerabilities discussed earlier and setting the stage for reforms to enhance recovery mechanisms and restore trust in lending.

Overview and Analysis

[58] *Supra* note 14.

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Loan default disputes aincrease when borrowers fail to repay equated monthly installments (EMIs) or loan dues, leading to NPAs that erode bank profitability. These disputes, common in retail, corporate, and MSME loans, stem from economic downturns, job losses, or lax credit appraisals, particularly in digital lending. The SARFAESI Act, empowers banks to recover dues above ₹1 lakh by issuing a 60-day demand notice and seizing secured assets without court intervention, streamlining recovery.[59] For disputes exceeding ₹20 lakh, the RDB Act 1993[60], 1993, establishes DRTs to adjudicate recovery suits, while the IBC, 2016, governs corporate insolvencies, for disputes exceeding ₹1 Crore, allowing creditors to initiate resolution processes.[61] These laws balance swift recovery with borrower protections, though procedural lapses fuel disputes.

Banks employ multiple remedies to recover dues. Under SARFAESI, a demand notice triggers repayment or asset seizure, followed by auctions if unpaid. DRTs handle unsecured loan suits, and IBC enables insolvency proceedings against corporate borrowers, appointing resolution professionals to maximize recovery.[62] The RBI guidelines require banks to follow fair practices, including offering loan restructuring options to borrowers before initiating enforcement actions.[63] Borrowers, however, can challenge recovery actions by alleging incorrect NPA classification, defective notices, or miscalculated interest rates.

In *Mardia Chemicals Ltd.* v. *Union of India* (2004), the Supreme Court of India upheld the SARFAESI Act but declared Section 17(2) of the Act unconstitutional, striking down the requirement for a borrower to deposit 75 percent of the outstanding dues to appeal a bank's action. The Court found this requirement to be an impossible condition, making the remedy before the DRT nugatory, but otherwise found the Act constitutionally valid as it provided a reasonably fair process for loan recovery.[64] In another case, *Laxmi Pat Surana* v. *Union Bank of India* (2021) the Supreme Court held that creditors can initiate insolvency proceedings

[59] The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act 54 of 2002), ss. 13(2), 13(4).

[60] The Recovery of Debts and Bankruptcy Act, 1993 (Act 51 of 1993), ss. 3, 19 read with s. 1(4).

[61] The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ss. 4, 7.

[62] Reserve Bank of India, "Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning" (2024), *available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MC01042025792E33CF094B46F2B838E6409777438D.PDF (last visited on Aug. 21, 2025).

[63] Reserve Bank of India, "Framework for Resolution of Stressed Assets" (June 7, 2019), *available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/PRUDENTIALB20DA810F3E148B099C113C2457FBF8C.PDF (last visited on Aug. 21, 2025).

[64] *Mardia Chemicals Ltd.* v. *Union of India* (2004) 4 SCC 311.

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against personal guarantors, thereby extending liability to guarantors and strengthening the enforcement rights of banks.[65] These rulings clarify legal boundaries but highlight procedural complexities that prolong disputes.

Judicial interpretations further shape recovery disputes. The Supreme Court upheld SARFAESI's non-judicial recovery powers, affirming banks' authority to act swiftly.[66] However, Supreme court also emphasises fair insolvency processes under IBC, protecting borrower rights.[67] Borrowers often cite RBI's restructuring guidelines or claim arbitrary NPA classification, as seen in *Swiss Ribbons Pvt. Ltd.* v. *Union of India* (2019), where the court upheld IBC's constitutionality but stressed equitable treatment.[68] Despite legal clarity, disputes persist due to economic pressures and digital lending's rapid growth, which often bypasses robust credit checks. The surge in unsecured loan defaults, particularly in retail and fintech, underscores the need for stricter appraisal systems and transparent recovery processes to mitigate conflicts.

The persistence of loan defaults reflects operational and systemic challenges. Digital lending platforms, while expanding access, have fueled defaults due to inadequate borrower vetting, as seen in the 28 percent increase in unsecured loan NPAs.[69] Economic ups and downs, especially after COVID-19, have made it harder for MSMEs to repay loans. Banks' aggressive recovery methods, like sending improper notices, often lead to disputes. Many borrowers also struggle to understand financial rules due to low financial literacy. While courts promote fair processes and the RBI suggests loan restructuring as a solution, delays in proper implementation continue to cause problems. Strengthening credit appraisal, standardizing notices, and promoting ADR could aid in reducing such disputes, and consequentially enhancing trust in lending operations.

Statistical Trends

Loan defaults remain a substantial challenge, with GNPAs at ₹2.84 lakh crore in March 2025, down from ₹6.17 lakh crore in 2021, reflecting a GNPA ratio of 2.58 percent.[70] However,

[65] *Laxmi Pat Surana* v. *Union Bank of India* (2021) 8 SCC 481.
[66] *Transcore* v. *Union of India* (2008) 1 SCC 125.
[67] *Vijay Karia* v. *Prysmian Investment Holdings* (2020) 11 SCC 1.
[68] *Swiss Ribbons Pvt. Ltd.* v. *Union of India* (2019) 4 SCC 17.
[69] *Supra* note 4.
[70] *Supra* note 6.

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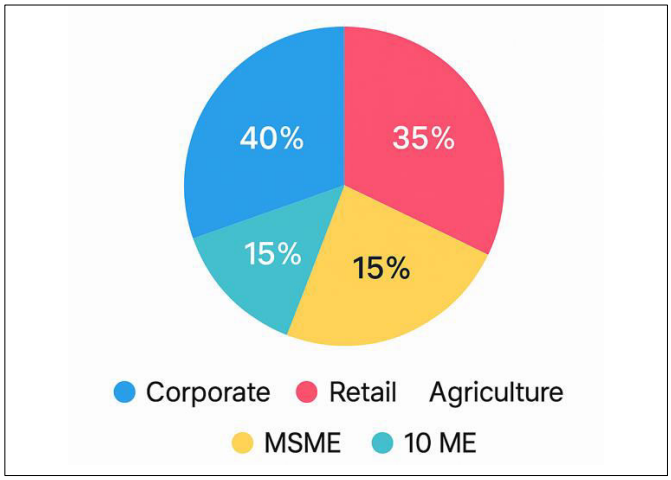
unsecured loans, particularly in retail and fintech, saw a 28 percent default increase in 2024, driven by lax digital lending practices.[71]

NPAs are mainly concentrated in the corporate and retail sectors, while MSMEs and the agriculture sector also make significant contributions.[72] RBI data indicates improved recovery rates through SARFAESI and IBC, but disputes over classifications and notices persist, clogging DRTs.[73] The pie chart below illustrates sector-wise defaults in 2025, highlighting corporate and retail dominance.

GRAPH 3 – Sector – Wise Loan Defaults (2025)



GRAPH 3 shows that corporate loans account for the largest share of sector-wise loan defaults in 2025 at 40 percent, followed closely by retail at 35 percent. MSME and agriculture each contribute 15 percent, while the "Other Micro Enterprises" (OME) sector makes up the remaining 15 percent. This distribution underscores the dominance of corporate and retail sectors in NPAs.

Electronic Transactions

[71] *Supra* note 14.
[72] *Supra* note 34.
[73] Reserve Bank of India, "DRT Case Statistics", *available at*: https://rbi.org.in/Scripts/Statistics.aspx (last visited on Aug. 21, 2025).

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This section focuses on disputes arising from fraudulent UPI transfers, phishing, OTP misuse, and identity theft, which exploit vulnerabilities in digital platforms. These incidents, driven by the rapid adoption of UPI and online banking, challenge banks and customers with liability disputes and financial losses. This section analyses the nature, legal framework, procedures, defences, and judicial interpretations of unauthorized electronic transactions, assessing their impact on stakeholders and cybersecurity. Statistical trends underscore the scale of the problem, building on the digital vulnerabilities noted previously and setting the stage for reforms to strengthen security and dispute resolution.

Overview and Analysis

Unauthorized electronic transactions involve fraudulent activities like UPI scams, phishing emails, OTP misuse, and identity theft, resulting in unauthorized debits from customer accounts. For example, a person receives a message pretending to be from their bank, asking them to update their Know Your Customer (KYC) details. When they click the link and enter their account information and OTP, the fraudsters use those details to transfer money from the person's account through multiple UPI transactions without permission.

These disputes, fuelled by UPI's dominance and lax user awareness, disrupt financial trust and burden banks with refund claims. The RBI's Guidelines on Limiting Liability of Customers in Unauthorised Electronic Banking Transactions (2017) ensure zero liability if fraud is reported within three working days, with capped liability (₹5,000–₹25,000) for delays up to seven days.[74] Beyond seven days, bank policies determine refunds.[75] The ITA, penalizes hacking and identity theft under Sections 66[76] and 66D, while Indian Penal Code sections 419 and 420 address cheating and fraud.[77] Recent RBI circulars mandate refunds within 10 days for zero-liability cases and require 24/7 fraud monitoring, emphasizing robust cybersecurity.[78]

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[74] Reserve Bank of India, "Guidelines on Limiting Liability of Customers in Unauthorised Electronic Banking Transactions" (July 6, 2017), *available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI15D620D2C4D2CA4A33AABC928CA6204B19.PDF (last visited on Aug. 21, 2025).

[75] Reserve Bank of India, "Customer Protection Circular" (Aug. 29, 2019), *available at*: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11668&Mode=0 (last visited on Aug. 21, 2025).

[76] *Supra* note 31, ss. 66, 66D.

[77] The Indian Penal Code, 1860 (Act 45 of 1860), ss. 419, 420.

[78] Reserve Bank of India, "Circular on Fraud Risk Management in Electronic Payments" (Mar. 15, 2024), *available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/118MDE97B8ED9A09B4B21BE7FDDE5F836CD09.PDF (last visited on Aug. 21, 2025).

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The resolution process begins with customers reporting fraud via bank helplines or RBI's Banking Ombudsman, triggering investigations to determine liability. Banks must verify system breaches versus customer negligence, such as sharing OTPs. In *Punjab National Bank* v. *Rupa Mahajan Pahwa* (2020), the Delhi High Court held that banks are liable for unauthorized withdrawals due to security lapses, reinforcing customer protections.[79] Banks often defend by citing negligence or delayed reporting, as permitted under RBI guidelines.

In *ICICI Bank* v. *Sanjay Kumar* (2022), the National Consumer Disputes Redressal Commission (NCDRC) ruled that customers sharing OTPs bear liability, balancing responsibilities between consumers and the banks.[80] These rulings highlight the shared burden of cybersecurity, with banks being urged to enhance their monitoring systems and customers being simultaneously encouraged to safeguard their credentials.

Judicial interpretations further clarify liability, for instance the Supreme Court emphasised on banks' duty to maintain secure systems, holding them accountable for preventable breaches.[81] However, in another case courts upheld bank defences when customers fail to report fraud promptly, reinforcing RBI timelines.[82] The surge in UPI frauds, driven by phishing and fake apps, reflects systemic gaps, such as inadequate two-factor authentication or user education. RBI's circulars, like the 2024 mandate for real-time fraud alerts, aim to curb losses, but implementation varies.[83] Customers' financial illiteracy and banks' inconsistent monitoring exacerbate disputes, necessitating stronger cybersecurity and awareness campaigns to reduce conflicts.

The increase in unauthorized transactions stems from digital banking's growth and evolving fraud tactics. Scammers exploit UPI's simplicity through fake payment requests or phishing links, as noted in RBI's 2024 report.[84] For example, a scammer sends a fake UPI payment request claiming to refund money or make a small payment. When the person unknowingly approves the request, the money gets deducted from their account instead of being credited.

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79 *Punjab National Bank* v. *Rupa Mahajan Pahwa* (2020) SCC OnLine Del 150.
80 *ICICI Bank* v. *Sanjay Kumar* (2022) SCC OnLine NCDRC 142.
81 *State Bank of India* v. *National Commission* (2018) 3 SCC 641.
82 *HDFC Bank* v. *Biju Thomas* (2023) SCC OnLine NCDRC 89.
83 *Supra* note 14.
84 *Supra* note 4.

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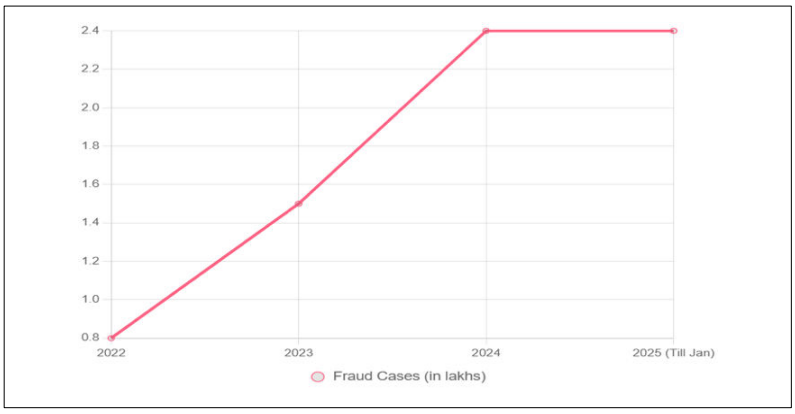
Economic pressures, such as post-COVID reliance on digital payments, amplify vulnerabilities, particularly among less tech-savvy users. Judicial emphasis on shared liability, as in *ICICI Bank* case, and RBI's focus on proactive monitoring offer solutions, but gaps in enforcement persist. Strengthening multi-factor authentication, standardizing fraud reporting, and promoting digital literacy has the potential to mitigate disputes, thereby, restoring trust in digital banking platforms.

Statistical Trends

Unauthorized electronic transactions, particularly UPI frauds, have surged, with a 67 percent increase from 2022 to 2024, resulting in ₹4,245 crore lost across 2.4 million incidents from April 2024 to January 2025.[85] Total digital fraud losses reached ₹22,842 crore in 2024, driven by phishing and OTP scams.[86] RBI data indicates UPI transactions accounted for 80 percent of digital payment frauds in 2024, reflecting their dominance.[87] The line graph below illustrates the spike in fraud cases, highlighting the growing challenge.

GRAPH 4 – Increase in Fraud Cases (2022-2025)



GRAPH 4 depicts a sharp increase in fraud cases from 0.8 lakhs in 2022 to an estimated 2.4 lakhs by January 2025. The data shows a steady increase, reaching 1.6 lakhs in 2023 and 2.4 lakhs in 2024, with a notable 67% surge from 2022 to 2024. This trend underscores the worsening challenge of unauthorized electronic transactions, particularly UPI frauds, as highlighted by RBI data.

Deficiency in Services

[85] *Supra* note 39.
[86] *Supra* note 7.
[87] National Payments Corporation of India, "UPI Ecosystem Statistics" (July 2025), *available at*: https://www.npci.org.in/what-we-do/upi/upi-ecosystem-statistics (last visited on Aug. 21, 2025).

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This section focuses on deficiencies in banking services, such as delays in loan processing, wrongful deductions, and poor grievance redressal, which frustrate customers and trigger legal disputes. These issues, driven by operational lapses and transparency gaps, burden redressal mechanisms and highlight the need for robust service standards. This section analyses the nature, legal framework, types of claims, redressal forums, and judicial interpretations of service deficiencies, assessing their impact on stakeholders. Statistical Trends underscore the scale of the problem, building on the operational challenges noted earlier and setting the stage for reforms to enhance service delivery and dispute resolution.

Overview and Analysis

Deficiencies in banking services encompass operational failures like delayed loan processing, wrongful deductions, and inadequate grievance redressal, leading to customer dissatisfaction and legal claims. These disputes, common in retail banking, often arise from hidden charges, rejected loan applications, or unrefunded failed transactions, especially on digital platforms. The CPA, defines service deficiency as any fault or negligence, empowering customers to seek compensation for unfair practices.[88] The RBI's Banking Ombudsman Scheme, 2006, provides free redressal for claims up to ₹20 lakh, with appeals to appellate authorities.[89] Common claims include delayed cheque clearance, wrongful loan rejections, and non-refunded transactions, often linked to digital banking's complexity. Customers report issues through bank channels or the Ombudsman, triggering investigations to verify lapses.

In *Punjab National Bank* v. *K.B. Shetty* (1991), the Supreme Court held liability of banks for wrongful cheque dishonour, awarding damages for reputational harm.[90] Banks defend by citing errors made by a customer, such as filing incomplete applications, or using contractual terms limiting liability.

In *Canara Bank* v. *Canara Sales Corporation* (1987), banks' duty was emphasized to provide accurate services, holding them accountable for erroneous deductions.[91] In another case of

[88] The Consumer Protection Act, 2019 (Act 35 of 2019), ss. 2(11), 2(42).
[89] Reserve Bank of India, Banking Ombudsman Scheme, 2006 (as amended 2021).
[90] *Punjab National Bank* v. *K.B. Shetty* (1991) 2 SCC 96.
[91] *Canara Bank* v. *Canara Sales Corporation* (1987) 2 SCC 666.

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UCO Bank v. *Rajinder Lal Capoor* (2008) the court clarified that banks must address grievances promptly, reinforcing Ombudsman efficacy.[92] These rulings balance customer protections with bank accountability, but rising complaints highlight persistent service gaps, particularly in digital banking.

Judicial interpretations underscore the need for transparency and efficiency. In *Consumer Education and Research Society* v. *State Bank of India* (2019), the NCDRC penalized banks for hidden charges, promoting fair practices.[93] RBI guidelines mandate clear disclosures and timely redressal, yet implementation varies.[94] Digital banking's growth has increased complaints about failed transactions and unresponsive support, as noted in RBI's 2024 report.[95] Customers' lack of awareness about redressal forums and banks' inconsistent grievance handling fuel disputes. Strengthening digital infrastructure, standardizing service protocols, and enhancing Ombudsman accessibility could reduce conflicts, restoring trust in banking services.

The persistence of service deficiencies reflects operational and systemic issues. Digital platforms often fail to process transactions promptly, while staff shortages and outdated systems exacerbate delays. For example, during peak hours, a customer's online payment might remain pending for several hours due to server overload, and limited staff availability further delays resolving the issue. Economic pressures, such as post-COVID loan demand, strain processing capacity, particularly for MSMEs. Judicial emphasis on accountability, as in the *Canara Bank* case, and RBI's focus on customer-centric policies offer solutions, but enforcement still lags. Promoting financial literacy and streamlining grievance mechanisms could mitigate disputes, aligning with the broader need for operational reforms discussed in subsequent sections.

Statistical Trends

Service deficiency complaints surged 32.81 percent in 2024, with 57 percent of Banking Ombudsman cases tied to issues like hidden charges, loan delays, and poor redressal, as per

[92] *UCO Bank* v. *Rajinder Lal Capoor* (2008) 5 SCC 257.
[93] *Consumer Education and Research Society* v. *State Bank of India* (2019) SCC OnLine NCDRC 123.
[94] Reserve Bank of India, "Customer Service Guidelines" (July 1, 2023), *available at*: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11668&Mode=0 (last visited on Aug. 21, 2025).
[95] *Supra* note 4.

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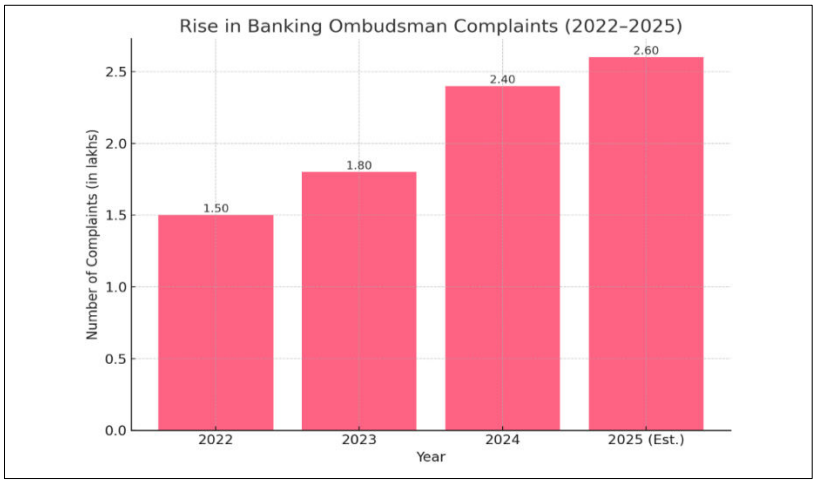
RBI data.[96] Digital banking-related grievances, such as failed transactions, accounted for 30 percent of complaints, reflecting UPI and online banking growth.[97]

GRAPH 5 – Increase in Ombudsman Complaints (2022-2025)



GRAPH 5 illustrates a steady increase in Banking Ombudsman complaints from 1.50 lakhs in 2022 to an estimated 2.60 lakhs in 2025. The data shows a substantial increase, with a peak of 2.40 lakhs in 2024, reflecting a 32.81 percent surge from the previous year. Notably, 57 percent of 2024 complaints are linked to service deficiencies, highlighting growing consumer grievances.

IV. Evolving Paradigms and Prescriptive Measures in Banking

The transformation of India's banking sector, as explored in prior sections on operations and disputes, necessitates innovative solutions to address persistent challenges like fraud, security vulnerabilities, dispute backlogs, and regulatory complexities. The increase in digital transactions, NPAs, and service-related grievances underscores the urgency of adopting advanced technologies and streamlined processes. This section delves into key innovations and trends, Artificial intelligence (AI) driven fraud detection, strengthened digital payment security, fast-track dispute resolution mechanisms, and cross-border payment regulations, while offering actionable recommendations, including financial literacy, regulatory harmonization, blockchain adoption, and digital infrastructure upgrades. By integrating these

[96] Reserve Bank of India, "Annual Report on Banking Ombudsman Scheme 2023–24" (2024), *available at*: https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/ANNUALREPORT2324240124345F2CDF2EF743FDB4F9E0CCE840D058.PDF (last visited on Aug. 21, 2025).

[97] *Supra* note 14.

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reforms, banks can mitigate disputes, enhance efficiency, and restore customer trust, building on the operational and dispute-related challenges identified earlier to propose a roadmap for a resilient banking ecosystem.

Artificial intelligence in Fraud Detection

AI is transforming fraud detection in India's banking sector, addressing the vulnerabilities exposed by unauthorized electronic transactions discussed earlier. AI systems, leveraging machine learning (ML), analyse transaction patterns in real-time to catch anomalies, such as suspicious UPI transfers or phishing attempts. Supervised ML models, trained on historical fraud data, identify known patterns, while unsupervised models detect emerging threats, enhancing accuracy.[98] For example, ICICI Bank's AI platform monitors transactions in real time by analysing speed and user behaviour. If unusual activity is detected, it flags the transaction to prevent potential fraud and alerts the customer instantly, helping reduce financial losses and enhance security.[99]

Federated learning enables banks to share anonymized fraud insights, complying with privacy laws like the ITA.[100] A 2025 study highlights that AI improved fraud detection by 10 percent at HDFC Bank, showcasing its potential.[101] However, challenges like algorithmic bias, high computational costs, and lack of skilled data scientists persist, requiring transparent, explainable AI (XAI) models to ensure fairness and regulatory compliance.[102]

Beyond detection, AI enables proactive risk management by distinguishing legitimate transactions (e.g., high-value overseas purchases) from fraudulent ones, minimizing erroneous declines that frustrate customers.[103] Blockchain integration with AI, as piloted by SBI, creates

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98 *Supra* note 39.

99 "AI-Powered Fraud Detection in Digital Payment Systems" Preprints.org (Feb. 5, 2025), *available at*: https://www.preprints.org/frontend/manuscript/7233f63310307768caf067e76e461e6f/download_pub (last visited on Aug. 21, 2025).

100 Inspirisys, "AI in Banking: Transforming Security and Efficiency" (Dec. 16, 2024), *available at*: https://www.inspirisys.com/public/index.php/blog-details/How-AI-in-Banking-is-Transforming-Security-and-Efficiency/186 (last visited on Aug. 21, 2025).

101 IBM, "AI Fraud Detection in Banking" (Apr. 30, 2025), *available at*: https://www.ibm.com/think/topics/ai-fraud-detection-in-banking (last visited on Aug. 21, 2025).

102 "Adoption of Artificial Intelligence-Driven Fraud Detection in Banking" MDPI.com (Apr. 18, 2025), *available at*: https://www.mdpi.com/1911-8074/18/4/217 (last visited on Aug. 21, 2025).

103 *Ibid.*

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immutable fraud logs, ensuring data integrity and traceability.[104] The judiciary's emphasis on bank liability, underscores the need for AI to complement human oversight, not replace it.[105]

Smaller banks, constrained by resources, lag in AI adoption, exacerbating fraud risks. Recommendations include public-private partnerships to subsidize AI infrastructure, mandatory XAI adoption for transparency, and training programs for data analysts to bridge skill gaps. These steps can strengthen fraud prevention, reduce disputes, and align with RBI's cybersecurity mandates, fostering trust in digital banking.[106]

AI's scalability also supports predictive analytics, forecasting fraud trends based on economic and behavioural data. For instance, AI models can predict phishing spikes during festive seasons, enabling pre-emptive alerts.[107] Collaborating with fintech firms like Paytm allows banks to use advanced AI-driven fraud filters that analyse transactions in real time, helping detect suspicious activities faster and improving overall security across platforms.[108]

To maximize impact, banks must address data privacy concerns, ensuring compliance with the Digital Personal Data Protection Act, 2023 (DPDP Act) & invest in cloud-based AI systems for cost efficiency.[109] By embedding AI in core banking operations, India can curb fraud-related disputes, reinforcing the financial ecosystem's resilience.

Strengthening Digital Payment Security

The dominance of digital payments, particularly UPI, necessitates robust security to counter phishing, OTP misuse, and identity theft, which fuel disputes as noted in prior sections. RBI's 2024 circular mandates multi-factor authentication (MFA) and real-time fraud alerts, yet

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[104] "The Role of Artificial Intelligence in Modern Banking: An Exploration of AI-Driven Approaches for Enhanced Fraud Prevention, Risk Management and Regulatory Compliance" ResearchGate (Aug. 30, 2023), *available at*: https://www.researchgate.net/publication/373489510_The_Role_Artificial_Intelligence_in_Modern_Banking (last visited on Aug. 21, 2025).

[105] *Punjab National Bank* v. *Rupa Mahajan Pahwa* (2020) SCC OnLine Del 150.

[106] *Supra* note 7.

[107] "Trends and Innovations in Secure Banking for 2025" BAI.org (Mar. 28, 2025), *available at*: https://www.bai.org/banking-strategies/trends-and-innovations-in-secure-banking-for-2025/ (last visited on Aug. 21, 2025).

[108] "Digital Transformation in Banking" VisualSP.com (Mar. 20, 2025), *available at*: https://www.visualsp.com/blog/digital-transformation-in-banking/ (last visited on Aug. 21, 2025).

[109] The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), ss. 8, 9.

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inconsistent adoption across banks undermines effectiveness.[110] Tokenization, encrypting sensitive data like card numbers, secures UPI transactions, while behavioural biometrics (e.g., typing patterns, device fingerprints) enhance authentication without user friction.[111] Axis Bank's AI-driven monitoring, for instance, reduced phishing losses by 8 percent in 2024 by flagging suspicious links in real-time.[112] Consortium data sharing, modelled on global frameworks like Swift, allows banks to pool fraud intelligence anonymously, aligning with General Data Protection Regulation (GDPR) and IT Act standards.[113] However, customer negligence, such as sharing OTPs, remains a challenge, where courts have upheld customer liability for negligence.[114]

A multi-layered security approach is essential. RBI's zero-liability policy protects customers reporting fraud within three days, but delayed reporting shifts responsibility, increasing disputes.[115] AI-powered chatbots can streamline 24/7 fraud reporting, reduce delays and enhance customer trust. Blockchain-based ledgers, as explored by National Payments Corporation of India (NPCI), can secure cross-platform transactions, ensuring tamper-proof records.[116] Smaller banks, however, struggle with outdated systems, limiting security upgrades. Recommendations include mandating MFA across all digital channels, standardizing real-time alert protocols, and launching nationwide digital literacy campaigns to educate users on safe practices like avoiding phishing links. Since these measures are particularly crucial for smaller banks, support from larger banks or the RBI through collaborative, mutually beneficial initiatives will be essential for effective implementation.

Partnerships with telecom providers to block fraudulent SMS can further curb scams. These measures, aligned with RBI's customer protection framework, can reduce fraud-driven disputes

[110] Reserve Bank of India, "Circular on Fraud Risk Management in Electronic Payments" (Mar. 15, 2024), *available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/118MDE97B8ED9A09B4B21BE7FDDE5F836CD09.PDF (last visited on Aug. 21, 2025).

[111] "Emerging Threats in Digital Payment and Financial Crime" ScienceDirect (Apr. 12, 2025), *available at*: https://www.sciencedirect.com/science/article/pii/S2773067025000093 (last visited on Aug. 21, 2025).

[112] "A Quick Guide to Fraud Detection & Prevention in Banking" ComplyAdvantage.com (Jan. 8, 2024), *available at*: https://complyadvantage.com/insights/fraud-detection-prevention-in-banking/ (last visited on Aug. 21, 2025).

[113] *ICICI Bank* v. *Sanjay Kumar* (2022) SCC OnLine NCDRC 142.

[114] Reserve Bank of India, "Guidelines on Limiting Liability of Customers in Unauthorised Electronic Banking Transactions" (July 6, 2017), *available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI15D620D2C4D2CA4A33AABC928CA6204B19.PDF (last visited on Aug. 21, 2025).

[115] *Supra* note 75.

[116] National Payments Corporation of India, "Blockchain Initiatives in Payment Systems" (July 2025).

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and bolster confidence in digital payments. Security enhancements must also address evolving threats. Quantum-resistant encryption, piloted by global banks, can future-proof UPI against cyberattacks, while regular penetration testing can identify vulnerabilities.[117]

Banks should integrate fraud alerts with mobile apps, ensuring instant notifications, and collaborate with cybersecurity firms to develop threat intelligence. By prioritizing user education and technological upgrades, India's banking sector can mitigate the risks of digital payment growth, ensuring seamless and secure transactions.

Fast-Track Dispute Resolution

The backlog of banking disputes, including but not limited to the dishonour of cheques, NPAs, unauthorized transactions, and service deficiencies; strains India's judicial and quasi-judicial systems. Fast-track mechanisms, such as ADR and specialized tribunals, are critical to alleviate this burden. The Consumer Protection Act, 2019 (CPA), 2019, and Banking Ombudsman Scheme, 2006, promote mediation and arbitration. In *Dayawati* case, the Delhi High Court endorsed mediation for cheque disputes, reducing resolution times significantly.[118] DRTs handle loan disputes above ₹20 lakh, but understaffing causes delays, as noted in RBI reports.[119] RBI's 2024 directive for ODR platforms aims to digitize complaints, yet low adoption limits its impact.[120]

AI can enhance fast-track mechanisms by triaging cases based on complexity, as piloted by SBI, prioritizing high-value disputes.[121] The Ombudsman, handling claims up to ₹20 lakh, needs greater accessibility, especially in rural areas, to address service-related grievances, as emphasized by the court, in the case of *UCO Bank* v. *Rajinder Lal Capoor*[122]. Recommendations include enhancing ODR platforms with AI-powered case management, increasing the number of DRT benches, and enforcing strict time-bound resolutions, such as resolving Ombudsman cases within 30 days. Training mediators in banking disputes and digitizing tribunal records can further streamline processes. Partnerships with legal tech firms

[117] "Protecting Your Payments: Strategies for Fraud Mitigation" BNY.com (Aug. 23, 2024), *available at*: https://www.bny.com/corporate/global/en/insights/protecting-your-payments-strategies-for-fraud-mitigation.html (last visited on Aug. 21, 2025).
[118] *Dayawati* v. *Yogesh Kumar Gosain* (2017) SCC OnLine Del 11092.
[119] Reserve Bank of India, "DRT Case Statistics" (2024).
[120] *Supra* note 75.
[121] *Supra* note 4.
[122] *UCO Bank* v. *Rajinder Lal Capoor* (2008) 5 SCC 257.

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can develop user-friendly ODR interfaces, thereby, reducing barriers for customers. These reforms, grounded in judicial and RBI frameworks, can alleviate dispute backlogs, ensure faster justice and enhance customer satisfaction.

Expanding fast-track mechanisms requires addressing systemic gaps. Rural customers often lack access to Ombudsman services, while complex disputes, like those under SARFAESI, face delays in DRTs. Integrating blockchain for transparent case tracking can enhance accountability, as seen in global arbitration platforms. Banks should also establish dedicated dispute resolution cells, staffed with trained mediators, to handle complaints before escalation. By combining technology and capacity-building, India's banking sector can reduce judicial strain and improve resolution efficiency, aligning with its customer-centric goals.

Cross-Border Payment Regulations and Further Recommendations

Cross-border payments, essential for India's global trade, face regulatory complexities that trigger disputes, as seen in prior sections. The FEMA, 1999, governs remittances, requiring stringent anti-money laundering (AML) and KYC compliance, aligned with Financial Action Task Force (FATF) standards.[123] RBI's 2024 guidelines mandate real-time KYC verification for cross-border UPI and Society for Worldwide Interbank Financial Telecommunication (SWIFT) transactions, but delays in compliance spark grievances.[124] Blockchain-based platforms, like Swift's Global Payments Innovation (GPI), reduce settlement times by 40 percent, enhancing transparency.[125]

In *Standard Chartered Bank* v. *Directorate of Enforcement* (2005), the Supreme Court clarified FEMA's scope, urging banks to streamline KYC processes.[126] However, conflicts between India's DPDP Act, and global regulations like GDPR complicate compliance, increasing disputes.[127]

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123 Reserve Bank of India, "Guidelines on Cross-Border Payments" (Feb. 2024), *available at*: https://rbidocs.rbi.org.in/rdocs/notification/PDFs/PACBCIRCULARDB9DB5A2DA544A44968A009E5CA07983.PDF (last visited on Aug. 21, 2025); The Foreign Exchange Management Act, 1999 (Act 42 of 1999), ss. 5, 6.

124 *Supra* note 14.

125 "Top Themes in Banking: What to Watch for in 2025" GrantThornton.co.uk (Mar. 20, 2025), *available at*: https://www.grantthornton.co.uk/insights/top-themes-in-banking-what-to-watch-for-in-2025/ (last visited on Aug. 21, 2025).

126 *Standard Chartered Bank* v. *Directorate of Enforcement* (2005) 4 SCC 351.

127 *Supra* note 105.

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Recommendations include harmonizing India's regulations with global standards to reduce compliance friction. Adopting blockchain for cross-border transactions, as piloted by Ripple, can ensure secure, traceable payments, cutting disputes by 20 percent.[128] RBI should establish a dedicated cross-border dispute cell to handle FEMA-related grievances swiftly. Further recommendations address broader challenges:

First, enhancing financial literacy is of utmost importance because low awareness fuels frauds and disputes, as are evident from the famous OTP misuse cases. Nationwide campaigns, using AI chatbots and regional languages, can educate users on UPI safety, KYC compliance, and complaint filing, consequentially, reducing their grievances. Partnerships with schools and Non-Governmental Organisations (NGO) can target rural populations, ensuring inclusivity.
Second, regulatory harmonization should be prioritized by aligning RBI guidelines with Basel III and FATF standards to streamline both cross-border and domestic compliance, thereby minimizing delays. Developing a unified regulatory framework in collaboration with global bodies can also help reduce disputes related to KYC and AML.

Third, blockchain adoption must be expanded beyond cross-border payments to secure domestic processes such as cheque clearance and loan disbursals. Leveraging blockchain technology can significantly reduce fraud and service deficiencies, with NPCI's pilot projects already demonstrating a 15 percent decline in cheque-related disputes.

Fourth, upgrading digital infrastructure is essential. Implementing cloud-based core banking systems can reduce service delays and address frequent complaints about failed transactions. Additionally, investing in 5G-enabled servers and stronger cybersecurity protocols will allow banks to handle growing digital transaction volumes efficiently, thereby minimizing deficiencies.

Fifth, promoting public-private partnerships is crucial. Collaborations with fintech firms can accelerate the adoption of AI and blockchain technologies, particularly benefiting smaller

[128] "Blockchain Technology in Cross-Border Payments: Speed, Cost, and Security" ResearchGate (May 10, 2025), *available at*: https://www.researchgate.net/publication/389321050_Blockchain_Technology_in_Cross-Border_Payments_Speed_Cost_and_Security (last visited on Aug. 21, 2025).

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banks. Government-backed subsidies for technology upgrades can ensure equitable access to advanced systems, ultimately reducing fraud and disputes across the banking sector.

These reforms address the root causes of disputes, fraud, inefficiencies, and regulatory gaps. By integrating AI, blockchain, and ODR, and prioritizing literacy and harmonization, banks can enhance efficiency and trust. Judicial precedents, like the *Dayawati* case and the *UCO Bank* case, along with the RBI's customer-centric policies provide a foundation for these changes, ensuring a robust banking ecosystem. Implementing these recommendations requires coordinated efforts among banks, regulators, and technology providers, paving the way for a future-ready financial sector that balances innovation with customer protection.

V. Conclusion

India's banking sector, serving as a cornerstone of economic development, confronts multifaceted challenges that undermine operational efficiency and weaken public confidence. The rapid transition toward digital banking, coupled with persistent issues such as cheque dishonours, loan defaults, unauthorized electronic transactions, and service deficiencies, has revealed significant vulnerabilities in both operational processes and dispute resolution mechanisms. These challenges, stem from procedural inefficiencies, regulatory complexities, and judicial backlogs that hinder seamless financial operations. Although the legal frameworks are comprehensive, they struggle to adapt to evolving technologies and rising consumer expectations, creating regulatory and operational gaps that contribute to recurring disputes.

This section consolidates the critical issues affecting India's banking ecosystem, identifies existing legal and systemic shortcomings, and proposes forward-looking reforms to foster resilience, trust, and inclusivity. By integrating technological innovations, simplifying regulatory structures, and strengthening customer protection mechanisms, India can establish a banking system that effectively supports its growing economy while addressing the diverse needs of stakeholders.

Key Issues in Indian Banking

The Indian banking industry faces a series of interlinked challenges that disrupt operational efficiency and erode customer confidence. Cheque dishonour disputes, often arising from

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insufficient funds or procedural lapses, continue to be a significant concern despite the gradual decline in cheque usage due to digital alternatives like UPI. These disputes have contributed to an overwhelming backlog of cases in courts, resulting in delays in justice delivery and strained business relationships. Loan defaults, contributing substantially to NPA, have impaired bank profitability and liquidity, particularly within the retail and MSME sectors, where economic volatility worsens repayment challenges.

Similarly, unauthorized digital transactions, frequently caused by phishing, OTP misuse, and identity theft, have risen alongside the expansion of digital payment platforms, highlighting cybersecurity vulnerabilities and gaps in customer awareness. Service deficiencies, including delayed loan disbursements, hidden fees, and inadequate grievance redressal mechanisms, further reduce consumer trust, with the increasing complexity of digital banking intensifying customer dissatisfaction. These challenges, stemming from operational inadequacies, technological gaps, and low levels of financial literacy, create a recurring cycle of disputes that impede the sector's ability to deliver consistent and reliable services.

The interaction of these challenges exposes deeper systemic weaknesses. Outdated practices, such as manual cheque verification, contribute to delays and disputes, while digital platforms lack sufficiently advanced safeguards against evolving fraud techniques. Economic stressors, particularly those following the post-COVID recovery period, have exacerbated loan defaults, especially for small and medium-sized enterprises. Customer dissatisfaction is further heightened by inconsistent service standards and the lack of accessible redressal frameworks, particularly in rural and semi-urban regions.

These weaknesses not only strain institutional resources but also burden judicial and quasi-judicial bodies, leading to prolonged case pendency and affecting overall economic stability. A comprehensive and integrated response is therefore necessary, one that balances technological modernization with customer-centric policy frameworks, ensuring the banking system remains adaptive to the demands of a rapidly digitizing financial landscape.

Legal and Systemic Gaps

Although India's legal architecture governing banking disputes is robust, significant procedural and enforcement gaps hinder effective dispute resolution and prevention. The NI, Act, aimed

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at maintaining the credibility of cheque transactions, imposes stringent penalties; however, judicial backlogs continue to impede timely justice. Similarly, while the SARFAESI Act and the IBC provide structured frameworks for loan recovery, procedural inefficiencies such as defective notices and tribunal delays, slow dispute resolution. The ITA, intended to address cyber frauds, struggles to keep pace with the sophistication of emerging digital threats, leaving both banks and consumers vulnerable.

Additionally, although the CPA, empowers customers to challenge service deficiencies, limited awareness and uneven accessibility of the Banking Ombudsman dilute its overall effectiveness, particularly among rural users. These legal shortcomings are further compounded by systemic inefficiencies, including insufficient staffing in tribunals, outdated banking infrastructure, and fragmented regulatory policies that often fail to align with international standards.

Systemic weaknesses aggravate the persistence of disputes. Reliance on legacy systems delays real-time transaction processing and hampers effective fraud detection, while inadequate employee training contributes to operational lapses, such as wrongful deductions and compliance errors. Regulatory inconsistencies, particularly in areas like cross-border transactions, introduce compliance challenges, leading to disputes over KYC and anti-money laundering requirements. Low financial literacy further exacerbates negligence-driven frauds, including unauthorized sharing of OTPs, while also limiting customer engagement with redressal platforms. Although the judiciary has increasingly promoted ADR mechanisms, their adoption remains limited due to insufficient resources and a lack of widespread awareness. Addressing these deficiencies requires integrated reforms that modernize legal frameworks, enhance technological infrastructure, and prioritize financial literacy, thereby creating a stronger, more efficient, and customer-focused banking ecosystem.

Future Reforms for a Resilient Ecosystem

To overcome these challenges and bridge existing gaps, India's banking sector must adopt a comprehensive, multi-dimensional reform strategy that leverages technological innovation, regulatory efficiency, and stronger customer protection frameworks.

First, implementing AI-driven fraud detection systems is essential to proactively identify suspicious transactions, such as irregular UPI transfers or phishing attempts, through real-time

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data analysis. Predictive analytics can further anticipate emerging fraud patterns, while XAI ensures transparency and regulatory compliance, minimizing disputes related to wrongful rejections.

Second, enhancing the security of digital transactions through multi-factor authentication, tokenization, and behavioural biometrics will substantially mitigate fraud risks. Large-scale nationwide awareness initiatives, incorporating AI-powered chatbots and multilingual campaigns, should be launched to educate consumers—particularly in rural and semi-urban regions—about safe banking practices, thereby reducing negligence-driven disputes.

Third, expediting dispute resolution mechanisms is critical to alleviating judicial and ombudsman backlogs. Expanding ODR platforms with AI-enabled case triage can prioritize high-value claims, while increasing the number of DRT benches and training specialized mediators can streamline cheque and loan-related disputes. Establishing statutory timelines, such as resolving ombudsman cases within 30 days, will further ensure timely justice delivery.

Fourth, harmonizing India's cross-border payment frameworks with global benchmarks, such as FATF and Basel III standards, will minimize regulatory inconsistencies and reduce compliance-related disputes. Leveraging blockchain-based systems for remittances can also improve transparency, mitigate delays, and reduce errors in KYC verification. Additionally, setting up dedicated cross-border dispute resolution cells can help expedite the settlement of international financial disputes.

Further reforms involve integrating blockchain technology into domestic banking operations, including cheque clearance and loan disbursements, to establish secure, tamper-proof transaction records and minimize fraud. Upgrading the sector's digital infrastructure through the adoption of cloud-based platforms and 5G-enabled processing systems can address service inefficiencies, ensuring seamless and rapid transaction capabilities. Strategic collaborations between banks, fintech companies, and government agencies can accelerate technological innovation, particularly benefiting smaller financial institutions. Public-private partnerships, combined with government-backed subsidies, can bridge infrastructure gaps while supporting equitable growth. Strengthening financial literacy through educational initiatives, school-level programs, and NGO partnerships will empower consumers to navigate banking systems effectively and engage confidently with redressal mechanisms.

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Finally, harmonizing regulatory frameworks at both domestic and international levels will streamline compliance, reduce disputes, and foster transparency in financial operations.

Collectively, these reforms provide a structured roadmap for establishing a resilient and efficient banking ecosystem. Through the integration of AI, blockchain, and advanced digital infrastructure, India can effectively address challenges related to fraud, operational inefficiencies, and customer dissatisfaction. Accelerated dispute resolution mechanisms, coupled with greater regulatory alignment, will ease institutional backlogs and enhance trust in the system.

Simultaneously, improving financial literacy and strengthening consumer awareness will promote inclusivity, empowering stakeholders across the spectrum. Successful implementation of these measures will require close coordination among banks, regulators, fintech innovators, and policymakers. By adopting a holistic and technology-driven approach, India's banking sector can transform current challenges into opportunities, positioning itself as a global leader in operational efficiency, security, and customer-centric financial services.

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SIGNIFICANCE OF RIGHT TO CLEAN WATER AND SANITATION AS A SUSTAINABLE DEVELOPMENT

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Sarmistha Das[**]

ABSTRACT

The United Nations Organization announced a bold initiative in the year 2015 with the adoption of the 17 sustainable development goals. The goals are espoused to be a blueprint for achieving peace and prosperity in the world by the year 2030. Goal number 6 aims to secure universal availability and sustainable management of water and sanitation. Although water is a basic necessity for human survival, the quality of water that about 3 billion people currently depend on is unknown, as per the Sustainable Development Goals Report, 2022. It also states that to reach universal coverage by the year 2030, global efforts have to increase fourfold. In this paper, the evolving Indian case laws relating to water are examined, with particular emphasis on the basic right to water, issues relating to control over it and the connections between water and the environment. Although the courts have considered issues of water law for a long time, the activities of the past few years are particularly significant due to the introduction of water law reforms that aim to remodel the water sector. Closer to home, despite earlier rulings of the Supreme Court of India, the High Court of Delhi had to reiterate in 2021 the right to access to drinking water as a fundamental right under Article 21 in the case of *Delhi Sainik Co-operative Housing Building Society Ltd. (Regd.) Ors. v. Union of India & Ors.*, where a colony was contended to be unauthorized. This paper is an attempt to analyse the issues and challenges behind access to clean water and sanitation in the new millennium.

Keywords: *Drinking Water, Access, Law, Sustainable, Sanitation, India.*

I. INTRODUCTION

"Water is the driving force of all nature."

— Leonardo da Vinci

Water is one of the core elements that sustain life on Earth. Of the world's total supply of about 332 cubic miles of water, about 97 percent is held in the oceans.[1] Therefore, only a meagre 3 percent is available for regular human usage and consumption. It is imperative that the same be treated as a scarce natural resource and utilized sustainably, especially with the growth in population. It is predicted that by the year 2030, the demand for water will be 40

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[1] Where is all the earth's Water? National Ocean Service, United States of America, *available at:* https://oceanservice.noaa.gov/facts/wherewater.html (accessed on June 12, 2025).

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percent above the feasible supply.[2] In the year 2010, the United Nations General Assembly passed resolution 64/292 declaring the "right to protected and clean drinking water and sanitation as a human right."[3] Subsequently, the United Nations Human Rights Council adopted resolution 15/9 in their 15th regular session, September 2010,[4] reaffirming the 'right to water and sanitation' as a human right under the International law. The United Nations Organization had previously proclaimed the years 2005-2015 as the International Decade for Action 'Water for Life' to achieve the water-related international goals under the Millennium Development Goals, 2015.[5] Currently, it is the 'Water Action Decade' (2018-2028)[6] under the Sustainable Development Goals to achieve similar objectives of clean water and sanitation adopted by the United Nations General Assembly. The fact that access to clean water and sanitation has been acknowledged as a basic human right in the international arena repeatedly portrays its significance. However, the concern remains due to this very fact, as despite such recognition at the global level, the right to water remains a contested issue in many parts of the world.[7] India having reached the pinnacle of population growth in the world at 18 percent lags behind in access to water as it only has 4 percent of its water resources.[8] Article 21 of the Constitution of India provides for the right to life and personal liberty, from which the courts have drawn right to water in several significant judgements. Yet, several issues and challenges persist in the enjoyment of this basic human right.

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2 Half the World to Face Severe Water Stress by 2030 unless Water Use is 'Decoupled' from Economic Growth, says International Resource Panel, United Nations Environment Programme, *available at:* https://www.unep.org/news-and-stories/press-release/half-world-face-severe-water-stress-2030-unless-water-use-decoupled (accessed on June 12, 2025).

3 International Decade for Action 'WATER FOR LIFE'2005-2015, United Nations Department of Economic and Social Affairs, *available at:* https://www.un.org/waterforlifedecade/human_right_to_water.shtml (accessed on June 12, 2025).

4 *Ibid.*

5 International Decade for Action 'WATER FOR LIFE'2005-2015, United Nations Department of Economic and Social Affairs, *available at:* https://www.un.org/waterforlifedecade/background.shtml (accessed on June 12, 2025).

6 International Decade for Action on Water for Sustainable Development, 2018-2028, United Nations, *available at:*https://www.un.org/en/events/waterdecade/#:~:text=In%20order%20to%20accelerate%20efforts,%E2%80%9CWater%20for%20Sustainable%20Development%E2%80%9D. (accessed on June 14, 2025).

7 Pankaj KP Shreyaskar, "Contours of Access to Water and Sanitation in India: Drawing on the Right to Live with Human Dignity" 51(53) *Economic&Political Weekly144* (2016).

8 World Water Day 2022: How India is addressing its water needs, The World Bank, *available at:*https://www.worldbank.org/en/country/india/brief/world-water-day-2022-how-india-is-addressing-its-water-needs (accessed on June 20, 2025).

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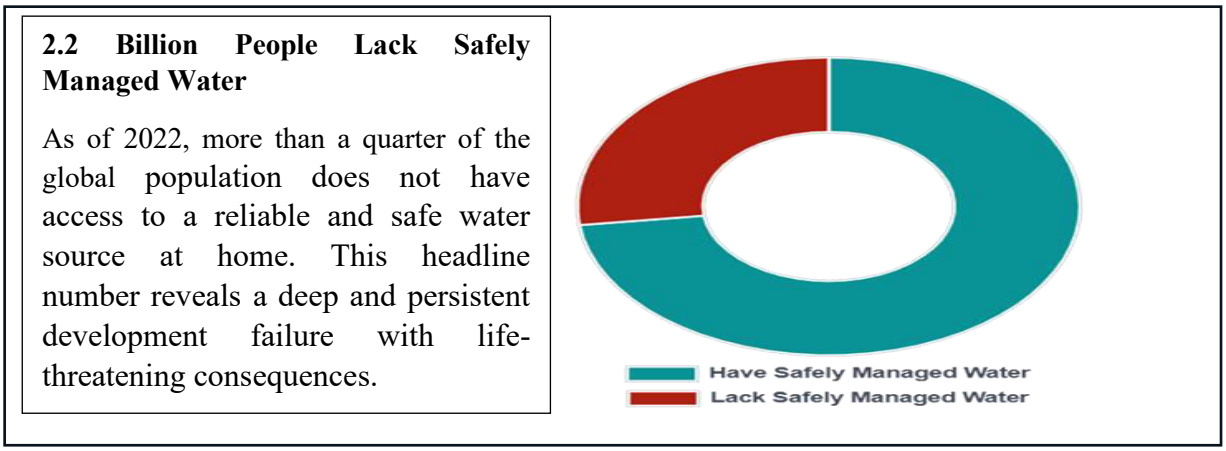

Fig 1. 27% of the Global Population lacks safe drinking water. This indicates that 2.2 billion people lacks safely managed water at home.[9]

This infographic portrays that a staggering portion of the world's population lacks access to "safely managed drinking water," a fundamental human right. The World Health Organization (WHO) and United Nations Children's Fund's (UNICEF) Joint Monitoring Programme use a "service ladder" to track progress. "Safely Managed" is the highest standard, requiring water to be "accessible on-premises, available when needed, and free from contamination". Many people have "Basic" access but still face risks.[10]

II. Review of Literature

The earliest human rights documents under international law, i.e. the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights (UDHR),1948 the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 do not explicitly provide for the right to water.[11] However, the same can be drawn from the 'right to adequate living conditions' which is provided for in Article 25 of UDHR[12] and Article 11.1 of the ICESCR.[13] Similar provisions can be found in subsequent international treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 in Article

[9] According to Joint Monitoring Programme 2023 update estimated that in 2022, 27% of the global population lacked safely managed drinking water, *available at*: http://who.int/teams/environment-climate-change-and-health/water-sanitation-and-health/monitoring-and-evidence/wash-monitoring#:~`:text=The%20JMP%202023%20update%20estimated,sources%20likely%20to%be%20contaminated.(accessed on July 16, 2025).

[10] *Supra* note 8.

[11] H.O. Agarwal, *Human Rights* 38-80 (Central Law Publications, Allahabad, 14thedn., 2013).

[12] Universal Declaration of Human Rights, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

[13] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (1967).

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14.2,[14] the Convention on the Rights of the Child, 1989 in Article 24[15] and the Convention on the Rights of Persons with Disabilities, 2006 in Article 28.2(a).[16] However, all of these provisions, in various contexts, explicitly declare the right to clean water and sanitation as a human right.

The United Nations Economic Commission for Europe (UNECE) had adopted the Convention on the Protection and the Use of Transboundary Watercourses and International Lakes, popularly known as the Water Convention, in Helsinki, Poland in 1992 which came into force in 1996 after the requisite number of ratifications.[17] It promotes sustainable management of collective water resources and also realization of the sustainable development goals. The several other resolutions of the United Nations General Assembly and the United Nations Human Rights Council in the new century,[18] especially with the Sustainable Development Goals, 2030 have further solidified the position of this core element of survival as a basic human right. In theory, all of it appears perfect, but the reality of implementation lags far behind.

In India, apart from Article 21 of the Constitution, the Water (Prevention and Control of Pollution) Act was enacted in 1974.[19] The Supreme Court of India has upheld the right to water in landmark cases like the *Narmada Bachao Andolan v. Union of India,*[20] and yet the same had to be reiterated two decades later in 2021 by the Delhi High Court in *Delhi Sainik Co-operative Housing Building Society Ltd. (Regd.) & Ors.* v. *Union of India & Ors*.[21] This calls for further study to delve into the causes of why the right to clean water and sanitation continues to become a contention in the country.

III. Objectives of the Study

The objectives of this study are three-fold, as provided below:

i. to understand what encompasses right to water and sanitation in the world today;

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[14] Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
[15] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.
[16] Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.
[17] Sustainable Development Goals, United Nations Economic Commission for Europe, *available at:*https://unece.org/environment-policy/water/about-the-convention/introduction (accessed on June 20, 2025).
[18] *Supra* note 4.
[19] The Water (Prevention and Control of Pollution) Act (Act 6 of 1974).
[20] AIR 2000 SCC 664.
[21] W.P.(C) 8364/2018 in the High Court of Delhi.

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ii. to find out how international law seeks to provide for right to clean water and
iii. sanitation *via* the sustainable development goals, and
iv. to analyse the position of right to water as a fundamental right in India.

IV. Methodology

The methodology undertaken for this research paper is purely doctrinal. This paper draws on existing data from both primary and secondary sources. Primary sources include various international treaties, especially the Water Convention of 1992, resolutions of the United Nations General Assembly and Human Rights Council, and analogous documents and instruments under international law, the Constitution of India, laws and policies on water in India, relevant judgements of the courts in India, and other official sources.

Secondary sources include materials collected from several books, journals, newspapers, other media reports and relevant internet sources. The primary focus of this paper is on the implementation of Goal 6 of the Sustainable Development Goals, i.e. right to clean water and sanitation.

V. Discussion

To understand the significance of the right to water, it is necessary to delve into the various legal instruments, both at the international and national levels, pertaining to the right to clean water and sanitation. A few of these are discussed as follows:

International Law and The Right to Clean Water and Sanitation:

The need for improving access to clean water and sanitation for all sections of the society has been repetitively acknowledged globally in the past few decades. The adoption of the Water Convention in 1992 led to the creation of a unique international, intergovernmental platform to help nations navigate transboundary water issues. It is a legal instrument under the aegis of which countries sharing water boundaries can formulate their own agreements. They must take measures to prevent, control and reduce water pollution, if possible, at the source itself. Further, the precautionary principle, polluter-pays principle and sustainable use of water resources will be undertaken.[22] The parties to such agreements must also establish programmes to monitor the same.[23] Initially a regional convention confined to the European

[22] Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Art.2.5, *available at:*https://unece.org/DAM/env/water/publications/WAT_Text/ECE_MP.WAT_41.pdf (accessed on June 24, 2025).
[23] *Ibid.* at Art.4.

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region, the instrument was amended in the year 2016 making it globally open for accession by any United Nations Organization member state.[24] The institutional framework of this convention is strong, as it assists parties in implementation, exchanges experiences and good practices, elaborates guidelines and recommendations, develops legal protocols and focuses on capacity building. The approach is also different for water-rich and water-poor countries, further advancing the cause. Currently, there are 39 parties to the convention,[25] and India is not one of them.

The Protocol on Water and Health to the 1992 Convention was adopted in 1999 to protect human health and well-being by managing water resources better, including protecting water ecosystems and prevention, reduction and control of water diseases.[26] It is the first international agreement to target accomplishing a satisfactory supply of safe drinking water and sanitation for all. The same is sought to be done by the member states establishing national and local targets for quality of water, discharges, performance of water supply, and wastewater management. Thus, a social cooperation component is also introduced in water management.[27]

The Millennium Development Goals were adopted in the year 2000 in the largest gathering of world leaders, where they pledged to attain a set of targets by the year 2015 to help extend the benefits of globalization to the poorest of nations. Although not initially set as a separate target, access to clean water and sanitation was considered under Goal 7 of environmental sustainability. The target was to reduce the population not having such access by half by 2015, which the Report of 2015 claims to have achieved to a large extent.[28] The years 2005-2015 were declared as the International Decade for Action 'Water for Life' under these very goals and simultaneously, other bodies and agencies also began to recognize the same.

The United Nations General Assembly *vide* its resolution 64/292 on 28 July, 2010 recognized the right to clean water and sanitation as a precursor to the attainment of all other human rights.[29] It called upon member states and international organizations to aid in the realisation of this right by providing financial assistance, technology transfer and capacity building, especially for the developing countries. Such access must be sufficient, the World Health

[24] *Supra* note 16.
[25] *Ibid.*
[26] About the Protocol on Water and Health, *available at:*https://unece.org/environment-policy/water/protocol on-water-and-health/about-the-protocol/introduction (accessed on June 24, 2025).
[27] *Ibid.*
[28] *Supra* note 5.
[29] *Ibid.*

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Organization (WHO) deems 50-100 litres water per day for each person as the same; safe, the WHO has a set of guidelines for it; acceptable, by colour, odour and taste, i.e., culturally appropriate; physically accessible, WHO deems 1000 metres from home and collection time not exceeding 30 minutes and affordable, i.e. it must not exceed 3 percent of household income according to the United Nations Development Programme (UNDP).[30] Therefore, right to clean water and sanitation must be sufficient, safe, acceptable, physically accessible and affordable.

The United Nations Human Rights Council took the access to water and sanitation a step further by resolving on 28 September 2011 by welcoming submission on good practices on the same wherein the Special Rapporteur emphasized on practical solutions.[31] The World Health Organization had also adopted a similar resolution a few months prior in May 2011.[32]

The report of the Millennium Development Goals 2015 made it crystal clear that the challenge to take globalization to every corner of the globe in the literal sense, like that of access to water and sanitation to the entire population on the planet, was not a minuscule one. Thereafter, the Sustainable Development Goals (SDGs) were adopted in the year 2015 to further the agenda to be achieved by 2030.[33] These are a set of 17 structured goals to be achieved by the year 2030 and include SDG 6, which is "to ensure availability and sustainable management of water and sanitation for all."[34] There are eight targets, amongst which six are to be achieved by 2030, one by 2020, and another has no target year at all. The progress of the same is to be measured by eleven indicators through an integrated monitoring unit to be coordinated by the United Nations Water, Geneva. The six targets include safe and affordable drinking water; access to adequate sanitation and hygiene; improving water quality, treatment of wastewater, and its reuse; increasing the efficiency of water use and ensuring freshwater supplies; implementation of integrated water resource management; and expanding international co-operation and capacity-building support to developing countries in water and sanitation issues. The protection and restoration of water-related ecosystems was the goal set to be achieved by the year 2020 but the result of the same has not been fruitful. In

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30 *Ibid.*

31 *Ibid.*

32 International Decade for Action 'WATER FOR LIFE'2005-2015, United Nations Department of Economic and Social Affairs, *available at:* https://www.un.org/waterforlifedecade/background.shtml (accessed on June 12, 2025).

33 The 17 Goals, United Nations Organization, *available at:* https://sdgs.un.org/goals (accessed on June 25, 2025).

34 Ensure availability and sustainable management of water and sanitation for all, United Nations Organization, *available at:* https://sdgs.un.org/goals/goal6 (accessed on June 25, 2025).

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April 2020, the United Nations Secretary-General, Antonio Guterres acknowledged that SDG 6 was going vastly off-track.[35] It is closely related to the other SDGs like Goal number 3, right to health and the same leads to improved attendance of children in schools, aiding in the alleviation of poverty. The final target is to support and strengthen local community participation in water and sanitation management for the long run.

Under the aegis of the SDGs, the Water Action Decade was launched on World Water Day, i.e., 22 March, in 2018.[36] It seeks to bring together countries and organizations to further SDG 6 by increasing awareness and create a roadmap for achieving the same.

Despite the existence of such a vast institutional framework in place, the statistics portray a different reality. Currently, about 771 million people lack a basic drinking water source accessible in a 30-minute round trip from their residence.[37] Another 1.7 billion lack access to basic sanitation, i.e. a toilet or latrine for a single household.[38] In the European region alone, an area considered advanced compared to several other parts of the world, 19 million people still lack access to improved water sources and 67 million of them face lack with regards to sanitation.[39] In India, although there has been marked improvement in access to water and sanitation since 1990, with a population of 1.38 billion, 6 percent still lack access to safe water which translates to approximately 90 million people.[40] Further, 15 percent lack any means of sanitation and hence, practice open defecation.[41] It is estimated that $114 billion a year would be required from the current time till 2030 to achieve the SDG 6, i.e. access to clean water and sanitation.[42] This number truly puts the picture into perspective.

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[35] United Nations launches framework to speed up progress on water and sanitation goal, United Nations Organization, *available at:* https://www.un.org/sustainabledevelopment/blog/2020/07/united-nations-launches-framework-to-speed-up-progress-on-water-and-sanitation-goal/ (accessed on June 25, 2025).

[36] Launch of the Water Action Decade, United Nations Organization, *available at* :https://www.unwater.org/news/launch-water-action-decade (accessed on June 25, 2025).

[37] Achieving Sustainable Development Goal 6, water.org, *available at:* https://water.org/achieving-sdg6/ (accessed on June 25, 2025).

[38] *Ibid.*

[39] *Supra* note 27.

[40] India, water.org, *available at:* https://water.org/our-impact/where-we-work/india/ (accessed on June 25, 2025).

[41] *Ibid.*

[42] Sustainable Development Goals Report, 2022, United Nations Organization, *available at:*https://www.un.org/sustainabledevelopment/progress-report/ (accessed on June 25, 2025).

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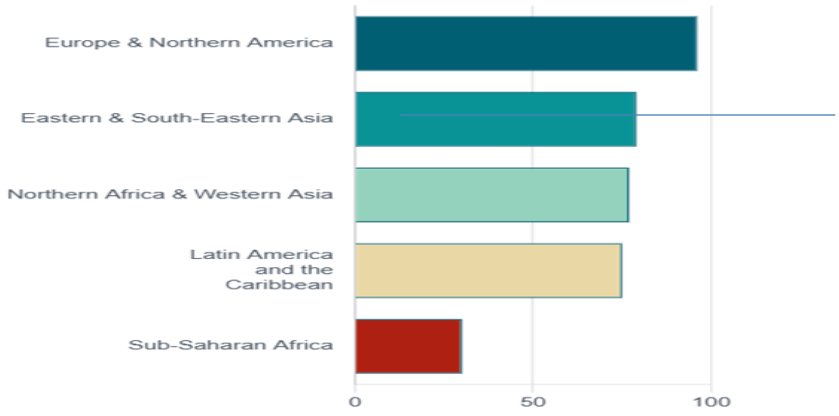

Fig 2: Regional Water Access Disparities (2020)[43]

This chart clearly shows the dramatic difference in safely managed water access across SDG regions. While Europe and North America are near universal access with 96 %, Eastern and South – Eastern Asia have 79%, Northern Africa and Western Asia have 77%, Latin America and the Caribbean have75%,whereas Sub-Saharan Africa lags far behind at only 30%. Thus, it is pertinent to state that there is an urgent requirement to accelerate the progress into six-fold in order to achieve 6.1 Goal of SDGs. However, the estimated investment required to meet SDG 6 globally is over $1.37 trillion, which appears to be unachievable.

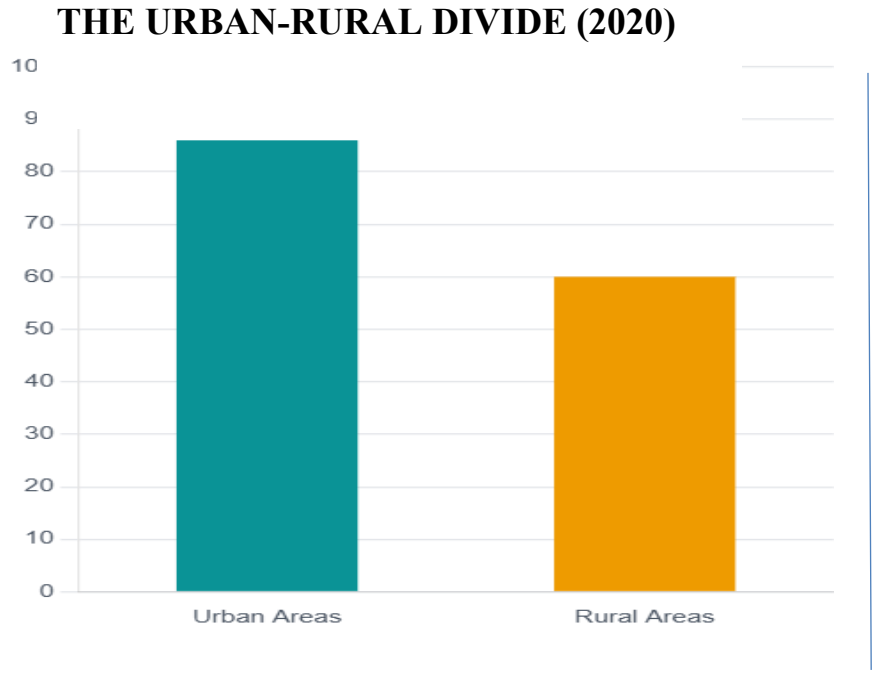

Fig.3: The Urban-Rural Divide (2020)[44]

[43] S. L. Young, H. J Bethancourt, et.al., "Estimating national, demographic, and socioeconomic disparities in water insecurity experiences in low-income and middle-income countries in 2020–21: a cross-sectional, observational study using nationally representative survey data", 6, *The Lancet Planetary Health* e880-e891(2022).

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This chart showcases the global disparity amongst the people in rural and urban areas with regard to safely managed water. Four out of five people without even basic water access live in rural areas, highlighting a critical need for targeted rural development.

In this chart, 86% of the people residing in the urban areas have access to safely managed water, whereas, only 60% of the people residing in the rural areas have managed to access the same.

The World Health Organisation Report 2021[45] states that there was progress towards the goal of universal access to basic WASH services from 2016 to 2020. The percentage of people who have access to safe drinking water at home increased from 70% to 74%, the percentage of people with access to safe sanitation services decreased from 47% to 54%, and the percentage of people with access to facilities to wash their hands with soap and water increased from 67% to 71%. However, 81% of the world's population still lacks access to safe drinking water at home, 1.8 billion people; 67% lacks access to safe sanitation services; and 78% lack basic handwashing facilities, 1.9 billion people without access.[46] This shows that there is a big hole in the target date for SDG-6, which is to provide everyone with access to safe drinking water and sanitation by 2030. The research goes on to say that diarrhoeal infections caused by things like lack of clean water, improper sanitation, and hygiene practices kill almost 297,000 children younger than five every year.[47]

Indian Law and The Right to Clean Water and Sanitation

India, one of the most populous nations, confronts several district-level hurdles in attaining SDG 6. Despite various attempts by the Indian government, rural and marginalised people still lack clean water and sanitation. While India has enhanced access to clean drinking water and sanitation in recent years, a large population still lacks these services.

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[44] UNICEF, Snapshot of Global and Regional Urban Water, Sanitation and Hygiene Inequalities, *available at*: https://www.unicef.org/media/91561/file/Snapshot-of-global-and-regional-urban-water-sanitation-and-hygiene-inequalities.pdf (last visited on 16th July, 2025).

[45] WHO. Billions of People Will Lack Access to Safe Water, Sanitation and Hygiene in 2030 unless Progress Quadruples – Warn WHO, UNICEF (2021), *available at:* https://www.who.int/news/item/01-07-2021-billions-of-people-will-lack-access-to-safe-water-sanitation-and-hygiene-in-2030-unless-progress-quadruples-warn-who-unicef#: ~:text (last visited on 16 July, 2025),

[46] *Ibid.*

[47] A. Prüss-Ustün, J. Wolf, et al., "Burden of disease from inadequate water, sanitation and hygiene for selected adverse health outcomes: an updated analysis with a focus on low-and middle-income countries," *International Journal of Hygiene and Environmental Health* , 22 (5) 765 (2019).

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According to the JMP for Water Supply, Sanitation, and Hygiene, 71% of Indians had access to basic sanitation in 2019, while just 54% had safe sanitation.[48] Even while 87% of the population had access to essential services, just 44% had safe drinking water.[49] Poor hygiene and lack of water and sanitation lead to waterborne illnesses in India. Some regions of the nation still practise open defecation, and soap hand-washing is rare.[50] India and other impoverished, rising countries must attain SDG-6. The objective will enhance health and reduce regional inequities if achieved. Developed countries must help developing ones.[51]

[48] WHO/UNICEF, Progress on household drinking water, sanitation and hygiene 2000-2019: Special focus on inequalities, *available at*: https://www.who.int/publications/i/item/9789240029235 (accessed on 15 July, 2025).

[49] *Ibid.*

[50] S. Divyashree, L.E.B. Nabarro, et.al., "Enteric fever in India: current scenario and future directions," *Tropical Medicine & International Health* 21(10) 1255 (2016).

[51] S.Biswas, B.Dandapat, et.al., *India's achievement towards Sustainable Development Goal 6 (Ensure a availability and sustainable management of water and sanitation for all) in the 2030* Agenda BMC Public Health 22 (1) 1 (2022).

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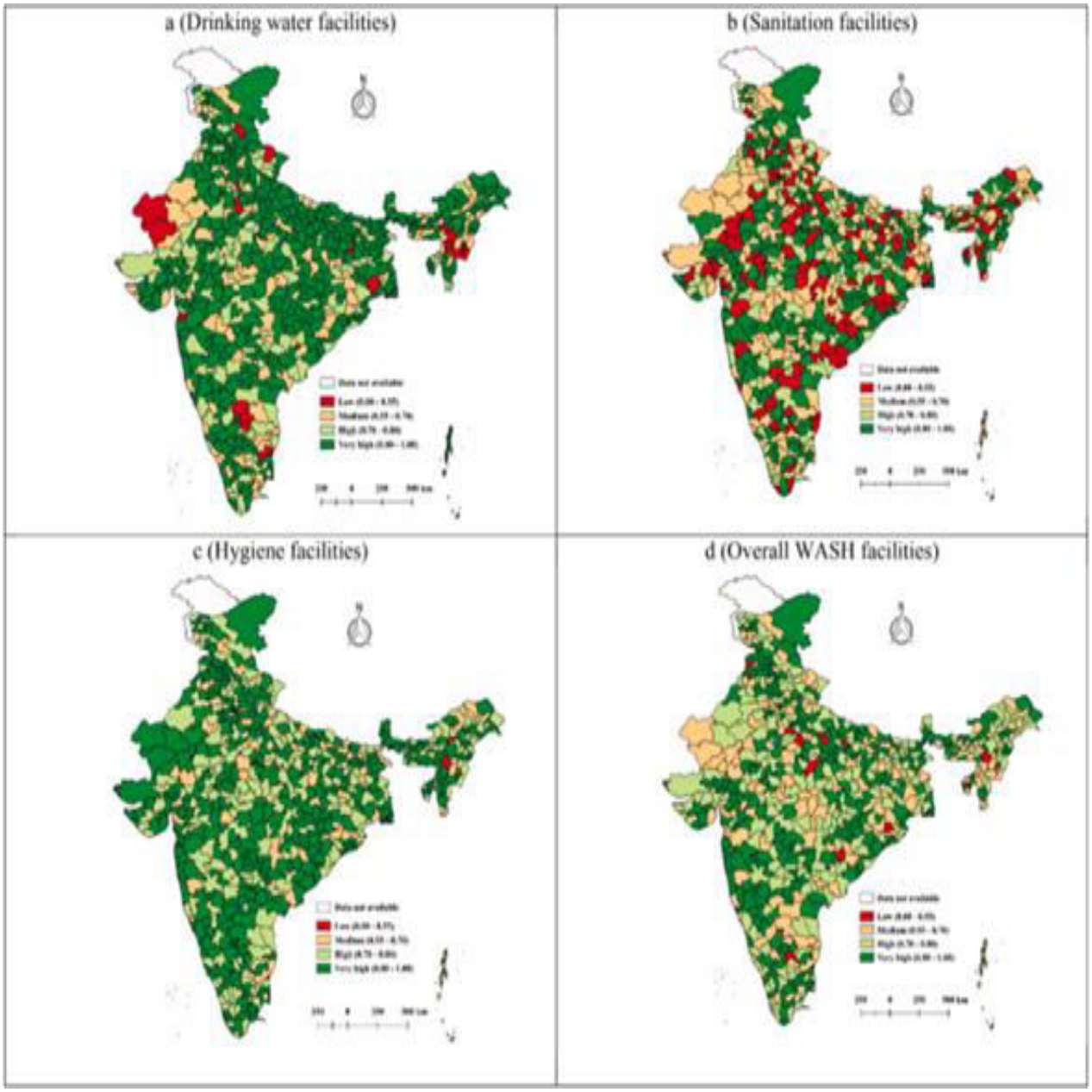

Fig 4(a–d): District-level spatial distribution of (a) drinking water, (b) sanitation, and (c) hygiene (d) WASH coverage.[52]

The drinking water composite index, i.e., figure 4(a) shows that there are a lot of drinking water facilities in India's northern areas. There are moderate to high numbers of drinking water facilities in the middle part of India. On the other hand, there are moderate to low numbers of facilities in the western districts of Rajasthan and in the north-eastern districts of Assam and Meghalaya. Coverage ranges from very low to very high in India's southern areas. The sanitation coverage composite score [Figure-4(b)] showed that most Indian districts have

[52] S. Biswas, M. Adhikary, et.al., "Disparities in access to water, sanitation, and hygiene (WASH)services and the status of SDG-6 implementation across districts and states in India"10.

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low to medium coverage of sewage services. The Western and Central Indian districts have the worst coverage. In the rest of the areas, too, there were only a few to a few public restrooms. The hygiene composite index [Figure-4(c)] showed that most Indian districts had high to very high coverage of hygiene facilities. This is a good sign that WASH goals are being met. Figure 4: d shows the WASH composite index. It shows that most districts have high to very high coverage of WASH facilities. This should help India reach its SDG-6 goals. There is a link between the bad WASH conditions in eastern Indian states and more people living in poverty, lower levels of social and human growth, and worse quality of life for households.[53]

The results show that to improve cleanliness in Western and Central Indian areas; help needs to be more specifically focused. Rajasthan has a dry and semi-dry climate, and it doesn't rain much, which makes managing water supplies very difficult.[54] Also, rural parts of the state often don't have enough water because underground supplies are being used up too quickly, infrastructure isn't good enough, and water management isn't working well. In the same way, it is hard to make sure that all families in the north-eastern regions of Assam and Meghalaya have access to clean drinking water because the areas are rocky and far away.[55] There may not be many sanitation services in Western and Central Indian areas. This could be because of a lack of infrastructure, bad trash management, or people not knowing how important it is to use proper sanitation. Also, the social and cultural norms in some places might make it hard for people to use toilets and other better cleaning practices. This is important to keep in mind: the things that make WASH facilities less common can be different in different groups and areas. To solve these problems, we need community-led, situation-specific solutions that take into account the social, economic, and natural factors in the area.

However, in India, the judiciary has played a significant role in upholding the right to water and sanitation as a fundamental right. Article 21 of the Constitution, with the provision for right to life and personal liberty has played a significant role in aiding the courts to uphold various human rights which are not explicitly stated in the laws. Further, Article 39(b)[56] mandates that the *"*State shall, in particular, direct its policy towards securing that the

[53] P. Ghosh, M. Hossain, A. Alam Water "Sanitation, and Hygiene (WASH) poverty in India: a district-level geospatial assessment" *Regional Science Policy and Practice* 14 (2) 396 (2022).

[54] S. Singh, V. Singh, S. Kumar, "Assessment of water resources in development of Rajasthan Wastewater Assessment, Treatment, Reuse and Development in India" *Springer* 239 (2022).

[55] S. Chaudhuri, M. Roy, L.M. McDonald, Y. Emendack, "Water for all (hargharjal): rural water supply services (RWSS) in India (2013–2018), challenges and opportunities", *International Journal of Rural Management*, 16(2) 254 (2020).

[56] The Constitution of India, 1950.

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ownership and control of the material resources of the community are so distributed as best to sub serve the common good.*"* Article 47 also directs the state to raise the level of nutrition and standard of living and to improve public health,[57] and Article 262[58] provides for adjudication of water disputes between states.

The Supreme Court of India held way back in the year 1991, *"*The right to life includes the right of enjoyment of pollution-free water and air for full enjoyment of life*"*.[59] When untreated effluents discharged by agricultural fields polluted the groundwater by percolation in parts of Tamil Nadu, the Apex Court recognized the common law right of a citizen to a clean and healthy environment and awarded compensation to the petitioners on the basis of the 'precautionary principle' and 'polluters pay principle.'[60]

Thereafter, along similar lines, in *Mehta v. Kamalnath*,[61] by referring to the principle of "*salus populi est suprema lex*" (which means the welfare of the people is paramount), the Supreme Court emphasized the responsibility of the state to ensure that water is clean and to prevent health concerns among its citizens. Additionally, the judges ruled that the failure of the state to "provide safe drinking water" to citizens constituted a violation of Article 21 of the Constitution. This was stated in the case of *Vishala Kochi Kudivella Samarkshana Samithi v. State of Kerala.*[62] The court specifically stated that the government "*is bound to provide drinking water to the public"* and that this should be the responsibility of the government that takes precedence.[63]

The Indian judiciary has further examined various bases for the right to clean water. In several circumstances, the right has therefore been related primarily to Article 47 of the Constitution. In *Hamid Khan v. State of Madhya Pradesh*,[64] the government was sued for not taking adequate care to guarantee that the drinking water provided via hand pumps in Mandla District was free from excessive fluoride. It was found that, under Article 47, the state has the responsibility to 'improve the health of the public by providing unpolluted drinking water.'[65] The judges first ruled on this 'primary responsibility' of the state and then went on to declare that Article 21 also addresses the matter. They concluded on the basis of Articles 47 and 21

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57 *Ibid.*
58 *Ibid.*
59 *Subhash Kumar* v. *State of Bihar*, AIR 1991 SC 420.
60 *Vellore Citizens' Welfare Forum* v. *Union of India*, AIR 1996 SC 2715.
61 AIR (1997)1SCC 388.
62 2006 (1) KLT 919 (High Court of Kerala).
63 *Ibid.*
64 AIR 1997 MP 191.
65 *Ibid,* para 6.

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that the state had a responsibility 'towards every person of India to provide clean drinking water.

The court continued to uphold similar judgements in relation to the environment, including the landmark Narmada Bachao case judgement[66] wherein the court held that "Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India…and the right to a healthy environment and to sustainable development are fundamental human rights implicit in the right to life." Despite such observations by the Supreme Court, the Delhi High Court had to reiterate the right to water and sanitation as a basic right in the *Delhi Sainik Co-operative Housing Building Society Ltd.* Case decided in 2021.[67] Such situations make it evident awareness with regard to what constitutes the right to water and sanitation is still either lacking or not paid much attention to by people.

As far as the legislations are concerned, Section 7 of the Indian Easements Act, 1882 already provides for the rights of a riparian owner.[68] The Water (Prevention and Control of Pollution) Act, 1974 empowers boards to carry out a variety of functions in consonance with its objective of access to clean water and sanitation for all[69] along with the Environment Protection Act of 1976.[70] The Government of India began delayed efforts in the year 1987 with its first National Water Policy in response to a severe drought in the country which was amended and updated in 2002.[71] However, a new National Water Policy was adopted in 2012 to address the issue of water scarcity by focusing on issues like water pricing and optimal use of water resources.[72] To aid the same, the Central Water Commission functions as a leading technical organization of the country in the field of water resources[73] and is currently attached as an office of the Ministry of Jal Shakti, Government of India formed in May 2019.

Several initiatives have been launched by the Indian government in order to address these challenges pertaining to clean water and hygiene. One of these initiatives is the SBA (Clean India Mission), which was launched in 2014. The objective of this mission is to achieve universal sanitation coverage and make India free of open-defecation by the year 2022.

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66 *Supra* note 18.
67 *Supra* note 19.
68 The Indian Easements Act, 1882 (Act 5 of 1882).
69 *Supra* note 17.
70 The Environment Protection Act, 1976 (Act 29 of 1986).
71 Right to Water, National Human Rights Commission Report 2021, India, *available at:* https://nhrc.nic.in/sites/default/files/Right%20to%20water.pdf (Visited on June 25, 2025).
72 *Ibid.*
73 *Ibid.*

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However, the COVID-19 pandemic has also brought to light the urgent need for improved WASH infrastructure and behaviour change initiatives in India.[74] A flagship effort of the Indian government, the Jal Jeevan Mission (JJM) was inaugurated on August 15, 2019, with the ambitious objective of supplying safe and enough drinking water to every rural home in the nation by the year 2024 via the installation of functional household tap connections (FHTCs). Ever since then, this deadline has been pushed out to the year 2028.[75] The results of the same remain to be witnessed. While the mission aims to provide safe tap water to every rural household, it failed to achieve its objectives in certain states like Assam due to corruption practices and irregularities, which significantly hampered the effective implementation of the Jal Jeevan Mission (JJM) in Assam. There are allegations that many JJM projects in Assam were granted to relatives and close allies of the Minister for Public Health Engineering, Jayanta Malla Baruah. This practice has resulted in less competitive bidding, decreased quality, and a distinct conflict of interest and eventually led to the downfall of the operation of JJM in Assam.[76] Thus, such issues undermine the mission's noble goal of providing safe drinking water to all rural households and highlight the critical need for greater accountability and transparency.[77]

VI. Conclusion

Water, although seemingly available in abundance in its original state, remains the most precious entity on this planet; at times referred to as 'blue gold'. As the world wakes up to the destruction and pollution it has caused over the last few centuries, especially with industrialization, scarcity of clean drinking water and sanitation has become a stark global reality. With a section of the human population with access to the best of living conditions, a larger section remains unable to access basic facilities like water. It took the United Nations Organization several decades from its inception in 1945 to the year 1992 to firmly recognize the right to water at an international level through the adoption of the Water Convention. The same was still a regional treaty that could be accessed only by the pan-European countries and was opened for signature to the rest of the world in 2016. Its subsequent Protocol of 1999 does put forward valid concerns and provisions, but the same had also been out of reach for most part of the world till recently. The Millennium Development Goals of 2000 in the

[74] *Supra Note* at 53.
[75] *Ibid.*
[76] D.Mahanta, "Jal Jeevan Mission in Assam faces funding crisis among Corruption Allegations, "G *Plus*,12th October, 2024, *available at:* https://guwahatiplus.com/exclusive-news/jal-jeevan-mission-in-assam-faces-funding-crisis-amid-corruption-allegations (accessed on 16 July,2025).
[77] *Ibid.*

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conference at Johannesburg in 2002 did give recognition to water and sanitation but failed to meet the global goals by 2015. During the same, the United Nations General Assembly adopted a resolution in 2010 acknowledging right to clean water and sanitation as a basic human right, in fact, as a predecessor to all human rights. It paved the way for a better theoretical understanding of what constitutes this right with the aid of the World Health Organization and the United Nations Development Programme. The 17 Sustainable Development Goals (SDGs) succeeded the MDGs which highlighted access to clean water and sanitation as one of its primary goals (SDG 6). In furtherance of the same, the Water Action Decade (2018-2028) was launched to raise awareness. India also has landmark judgements on right to water as a fundamental right under Article 21 of the Constitution, a few legislations focusing on prevention and control of water pollution and a national water policy in place. In addition, the Jal Jeevan Mission seems to be a bold target. Therefore, on paper, all of it appears to be in place but the statistics speaks volumes and portrays the entire world to be in imbalance with regard to water resources. Therefore, the inclusion of the right to clean water and sanitation in the SDGs is extremely significant. Although most part of it is theory, it is trying to create a roadmap for implementation. It is providing the agencies a record of how much more work is to be done with regard to water and sanitation. The goals on their own may not seem much. However, it will have a major impact if the member states and international organization work towards its achievement at all the levels of community; local, state, national and global.

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WOMEN IN LAW AND LAW MAKING: A STRUGGLE FOR SPACE

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Manya Dudeja[*]

ABSTRACT

Women in India have struggled for years to find acceptance in public life. Even though limited, their participation in law and law making as advocates and elected representatives has improved considerably. The legal profession particularly has been seen as unsuitable for women who have been expected to be committed to a family life. However, this did not stop the women from defying societal expectations. This paper is a tribute to the first women advocates of India who fought for their right to be a pleader and entered a male dominated space despite the judgmental glances and comments. It was after years of legal battles led by few women that paved the way for women advocates. The paper will deal with women who fought their way into the Courts and made space for themselves in a male dominated profession. Until a few years ago, the Bar was considered a Gentleman's club and law was a much gendered profession where only men prospered. While it is trailblazers like, Sorabji who have found enough recognition as the first woman advocate of India and her appointment has been celebrated as a watershed for women advocates, the stories of Regina Guha and Hazra remain lost. Their struggle did not receive the recognition it deserved, for even while these women could not bring justice to themselves, their struggles brought justice to millions of women today. Things are still not hunky-dory for women in the legal profession. Another aspect that this paper analyses is the present disparity between men and women in the legal profession and how one can effectively bridge the gap.

Keywords: *Women, Society, Profession, Expectations, Disparity*

I. Introduction

"The professional and personal challenges that confront women lawyers today did not have their origins in the 1960s, as many have suggested. Rather, they reach back ... to the pioneer generation of women lawyers who were the first to articulate and grapple with the challenges facing women in the legal profession."[1]

For ages, the legal profession has been labelled the 'old boys' club' as it saw little to no participation from women. Be that as it may, and to be fairer to the profession, it is not the only

[*] Associate Professor, Haryana Institute of Public Administration
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[1] V.G. Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club 1887 to 1890* (University of Michigan Press, 1993).

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profession to see abysmal participation of women historically. Ironically, what seems basic in the social canvas today, was in fact a luxury a few decades ago. Not to mention, it is only a century ago when women were enfranchised in the west.[2] So, to say that the legal profession was the only old boys' club is not only a misnomer but a selective amnesia to single out one profession when practically all fields had been the same. However, despite this defence to the past, the discussion of gender parity in the legal field remains of significance not because of its historical footprints but because of its obduration. When the world, especially after waves of feminism, adapted to a more gender inclusive setup - *barring a few rogue examples* - legal profession remained an old boys' club. This is best evidenced by the present participation of women in the bar, the bench and academia. Even in the Indian Supreme Court and High Courts, the presence of women is conspicuous by their absence both in the bar and the bench.

A very important and talked aspect of litigation is long working hours with lower monetary incentives in the beginning of one's career. As unfortunate as it is, in India, longer working hours is considered a man's job. This ultimately leads to family and societal pressures that drive women out of litigation. The solution to this lies in the examples we learnt during the Covid 19 lockdown. During the Covid-19 lockdown, the world has adapted to a flexible working environment where a work from home culture has led to technological innovations and capabilities to work remotely during late hours. Litigation is inherently a field that requires longer working hours and if one fails to put in the extra hours, they are mercilessly driven out of profession.

Therefore, a flexible working environment where a work from home culture (perhaps not entirely but during late hours) will at least relieve the pressures of working late night hours and then travelling back home for many women. Further, a good monetary incentives will not only ensure that the living expenses are being taken care of but also reduce the "compulsory" driving out of not only women but every person in the field.

The legal profession has not been a welcome space for women citing the excuse of the challenges and odd-working hours it poses. Within the legal profession, litigation and advocacy particularly have been seen as "un-lady like" professions and women have been discouraged from pursuing

[2] *U.S. Const. amend. XIX* (1920).

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them. Despite the freedom of choice to pursue any profession[3], available today, the number of women found in these roles is disproportionate to the number of men. Even though feminism as a movement has grown and continues to struggle for equal political, social, economic rights for women, the legal profession since antiquity has been dominated by men.[4] Women, even after completing their law degree were restrained from practicing law and working as a pleader in the Courts of law under the garb of various laws and acts in place. It was after the struggle of women like Regina Guha, Hazra and Cornelia Sorabji that women in India could claim their right to be pleaders.

Even though initially, it was only a handful of women advocates who joined the profession, this paved the way for reformative measures and also made way for women to plead for another in the Court of Law.[5] The Indian Constitution today through Article 14[6] guarantees the right to equality to all persons living in India. Today, there no restriction or bar on women to enter the legal profession or practice in Courts, this is a result of long struggles by few women who brought justice for all women. Since India was a colony of the British, it was English laws that restricted both British and Indian women from being pleaders. This paper will draw on the struggle of women to enter the legal profession as pleaders.

Even after achieving the right to plead in Courts, the struggle was still not over. It is important to understand the historical position of women in law to understand their present standing, how far we've come and the way we still have to cover. Even though law is one of the oldest professions, little effort has been made in documenting the history of women in law and their influence on law. Also, little consideration has been given to the difficulties faced by the first women entering the field and the challenges and stereotypes they had to encounter.[7]

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

[4] Saurabh Kumar Mishra, "Women in Indian Courts of Law: A Study of Women Legal Professionals in the District Court of Lucknow, Uttar Pradesh, India" 24 *e-cadernos CES* 77 (2015).

[5] Vina Nair, "Women and their advancement in the legal profession in India since the independence era", *Legal Services India*, *available at:* http://www.legalservicesindia.com/article/2285/Representation-of-Women-in-the-Legal-Profession-In-India.html (last visited Aug. 12, 2025).

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

[7] Joan M. O'Brien, *A History of Women in the Legal Profession in New South Wales* (MA Thesis, University of Sydney, 1986), *available at*: https://womenlawyersnsw.org.au/wp-content/uploads/History-of-Women-in-Legal-Profession.pdf (last visited Aug. 16, 2025).

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Objectives of the Paper

Through this research, an attempt has been made for the following:

i. To understand the gender disparity in the current legal profession by understanding its roots
ii. To learn about the struggles of the women who fought for equality at a time when the country was already dealing with a brutal colonial government and movements like feminism were neither well known, nor well accepted.
iii. To analyse the present gaps in the participation of women in the legal field and recommend change to bridge the gap to ensure a more gender inclusive participation of women in the legal field.
iv. By understanding the way history unfolded, devise ways to diversify the legal profession

Methodology

This research has been conducted in the doctrinal mode or library research using secondary data like books, articles, papers and blogs. Further, case laws have also been referred to wherever required.

II. Women in Law in the UK

In order to understand the history of women in the legal profession in India and the restrictions that bound them, we will have to first understand these restrictions in the UK since India was a British colony and was governed by English laws. It was these English laws that limited English and Indian women alike.

In the year 1913 in the case of *Bebb* v. *Law Society,*[8] Gwyneth Bebb and three other women who had outstanding University qualifications applied to be solicitors but the Law Society rejected their applications. In response, Bebb and the other women posed legal challenges to the same. While writing to the press, one of them stated that the desire to change public opinion of women's capacity and to have women being regarded as ordinary human beings was one of the incentives

[8] *Bebb* v. *Law Society* [1914] 1 Ch. 286.

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for them.[9] The Court stated that women were not included under "persons" in the Solicitor's Act, 1843.

The Court held that it has been interpreted from usage that no woman ever has been or tried to be an attorney at law. The Court hence called it a "common law disability" and refused to interfere in the work of the Parliament. A legislative action was felt to be the only solution to this. After this case, various bills were presented to allow women to be solicitors and barristers but all of them failed to pass. It was only after the Sex Disqualification (Removal) Act, 1919[10] was passed that way was made for women in the profession. Ivy Williams became the first woman barrister and recognised that this was not a change of heart of the people, but an action of the Parliament that forced change. [11]

III. "Persons case" in India

According to section 5 of the Legal Practitioner's Act,[12] the entry of women in the profession was wholly restricted. It stated –

> Except as hereinafter provided, no person shall appear, plead or act as a Pleader, or appear or act as a Mukhtear in any Court to which this Act extends, unless he shall have been admitted and enrolled and shall be otherwise duly qualified to practise as a Pleader or as a Mukhtear, as the case may be pursuant to the provisions of this Act and unless he shall continue to be so qualified and enrolled at the time of his practising as a Pleader or Mukhtear as aforesaid.
> Provided that every person who at the time at which this Act shall come into operation in any part of British India shall be or shall, be qualified to act as, a pleader in any Court in such part by virtue of any law, rule or order in force there, in shall be entitled to be admitted and enrolled as a Pleader in the High Court pursuant to the provisions' of this Act, without passing any examination, but subject to the conditions of any certificate or diploma, held by him as to the class of Courts in which such certificate or diploma authorises him to practise.

[9] E.M. Lang, *British Women in the Twentieth Century* 146–148 (T. Werner Laurie Ltd., 1929).
[10] The Sex Disqualification (Removal) Act, 1919.
[11] Mary Jane Mossman, *The First Women Lawyers* 115-117 (Hart Publishing, 2006).
[12] The Legal Practitioners Act, 1879, s. 5.

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Further, Section 6 of the Act[13] empowered the High Courts to make rules consistent with the Act as to proper persons as pleaders. The use of the words, "he", "him "and "his" led the Court to only make rules allowing men into the profession.

It was the resilience of three women who furthered the entry of women in the profession-

Regina Guha

Regina Guha, after completing her law degree submitted an application to be enrolled as a pleader. The application was forwarded to the Calcutta High Court[14] as this was the first instance of a woman applying to be a pleader. This was also known as the first person's case. The bench deliberated on the question of whether the Legal Practitioner's Act included Women practitioners. The bench unanimously decided that only men could become pleaders even if the woman was qualified. The arguments in the case of *Bebb* v. *Law Society*[15] were reiterated.

In her argument, Regina cited the General Clauses Act[16] which says that, "words importing the masculine gender shall be taken to include female" and hence the Act here though referring to men, should include female practitioners as well. She was told that the legislature never contemplated admitting a lady to the rank of legal practitioner and that when the Legal Practitioners Act was passed; there had never been any case of a lady being allowed to practice in the Indian Courts.[17]

The Court also noted that the question of whether a change and inclusion of women would be wise is a question for the legislature and not for the Court. It is unfortunate that while Guha's fight helped bring justice to many, she did not herself survive to see the passage of the Legal Practitioners (Women) Act 1923.[18]

Sudhanshu Bala Hazra

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[13] *Id.,* s. 6.
[14] *In Re Regina Guha*, 1916 SCC OnLine Cal 192.
[15] *Supra* note 10.
[16] The General Clauses Act, 1897.
[17] Jhuma Sen, "The Indian Women Who Fought Their Way Into The Legal Profession", *The Wire*, *available at:* https://thewire.in/law/women-lawyers-history-india (last visited Aug. 16, 2025).
[18] The Legal Practitioner's Act, 1879, § 5, No. 18, Acts of Parliament, 1879 (India).

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In 1921, the 'second person' case[19] came up, five years after Guha's struggle. Before understanding the case of Hazra, it is important to note that in 1919, the UK passed the Sex Disqualification (Removal) Act[20] which allowed women to enter the legal profession.

Hazra was adopted by Madhusudhan Das, who was a lawyer himself. She faced various difficulties in finally completing her education in law due to resistance by the University. When she finally tried to enrol herself as a pleader at the Patna District Court and her application was sent to the Patna High Court for consideration, the Court followed the Regina[21] judgment of the Calcutta High Court and denied permission to Hazra to be a pleader. That day, many visited the Court to see "the lady Bachelor of Law from Orissa"[22] Even though Hazra's lawyer argued that it would be odd to limit Indian women from entering the profession, while English women can due to the passage of the Sex Disqualification (Removal) Act,[23] the Court recognised that this may be an argument for an amendment, but this was not the work of the Court.

The lawyer also cited the Calcutta University Act, 1857[24] where too the pronoun "he" was used, yet the provisions applied to female students as well. While Hazra was not allowed to be a pleader, this case strengthened the argument and created way for the eventual passage of the Legal Practitioners (Women) Act, 1923[25] which removed the disqualification of women and said that no woman based only on her sex be barred from being admitted or enrolled as a legal practitioner.[26]

Cornelia Sorabji

"I am more than ever convinced that the profession I have chosen is nicer than any other, and that women could find in it, as many interests and as much work as would satisfy any ambition and appease any thirst for usefulness...."[27]

\- *Cornelia Sorabji*

[19] *In re Sudhansu Bala Hazra*, 1921 SCC OnLine Pat 20.
[20] *Supra* note 12.
[21] *Supra* note 16.
[22] *Supra* note 19.
[23] *Supra* note 12.
[24] The Calcutta University Act, 1857.
[25] The Legal Practitioners (Women) Act, 1923.
[26] *Supra* note 19.
[27] Letter to Lady Hobhouse (Feb. 27, 1896) (BL F165/16).

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The Allahabad High Court in 1921 allowed the application of Cornelia Sorabji to enrol as a Vakeel[28] thereby, making her the first woman advocate of India.[29] Sorabji's struggle was a long one too, even after topping the University, the Indian Government refused to fund her Oxford education because she was a woman. She represented Indian women and it was her female clients' need that defined the scope of Sorabji's work. Hence, Gender both confined her and brought her the unique opportunity to work while representing Pardahnashin women. Sorabji identified with imperial administration and consistently made efforts to distinguish herself from the "less" civilised Indian women. Hence, some people's reference to her as a "feminist" might not sit right due to her ignorance of gender.[30] Ironically, despite her ignorance of gender, gender played an important role in shaping her life and struggle.

IV. Dual fight of Indian Women

For Indian women, this was not just a fight for equality, but also a fight against imperialism at the same time. Within the group of women, it was the intersections of caste, class and other identities that further exacerbated the situation of particular groups of women. For you need privilege to fight privilege too. Women like Regina Guha who fought the exclusive male herself was the daughter of an established criminal lawyer in Calcutta.[31]

Gradually, there has been a shift in making the law more gender inclusive, and once such example is the Digital Personal Data Protection Act,[32] where a person in the act is referred with the female pronoun "she: and as per section 2 (y) of the Act, *""she" in relation to an individual includes the reference to such individual irrespective of gender".* This change, appreciable for its traditional departure, is however not similar to Legal Practitioner's Act. In the Legal Practitioner's act, *his* meant an exclusion of women from the enrolment as a Pleader or as a *Mukhtear*. However, the use of *her* in the Digital Personal Data Protection Act is purely academic without any right or violation

[28] "Unveiling of the Portrait of Late Smt. Subashini Arulmozhi, Advocate, Coimbatore", 1 *L.W. (JS)* 70 (2002).

[29] Prachi Bhardwaj, "The story of three women and their fight to make "women in law" a reality in India", *SCC Online Blog*, *available at:* https://www.scconline.com/blog/post/2020/10/11/the-story-of-three-women-and-their-fight-to-make-women-in-law-a-reality-in-india/ (last visited Aug. 16, 2025).

[30] *Id.,* at 10, 237

[31] Manasvi Sharma, "Looking Back at Regina Guha 104 Years Later: An Indian Vantage Point on Women in Law" (Paper presented at the 'Directions in Legal Education 2020', Online Conference on Teaching and Learning in Law, June 18-20, 2020).

[32] The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).

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of a right. Nevertheless, the shift in pronoun when most of the laws still use male pronouns, is a step in the right direction.

Another important aspect that needs examination is the participation of women in judiciary. The participation of women in judiciary is abysmally low. India is destined to have its first woman Chief Justice of India as Justice BV Nagarthana is poised to become the 54th Chief Justice of India. However, it may be apposite to point out that as on date, she is the only female judge in the Supreme Court of India which is at its full strength. Although, efforts are being made and will have to be made to ensure larger participation of women in judiciary.

One such effort that rectified or rather clarified a rule was the Himachal Pradesh High Court's judgment in *Sandeep Sharma* v. *High Court of H.P.*[33] In *Sandeep Sharma,* the Court clarified that seven years' *continuous* practice is not required for a lawyer to be appointed as an Additional District and Sessions Judge. This judgment enables a lot of women, who come from different social backgrounds, to appear in State Higher Judicial Services' examination. This further ensures that women in motherhood are not compelled to practice continuously for seven years and that they can still appear for the Higher Judicial Services' examination. Therefore, this procedural clarification acts as a much needed step to bridge the gap of gender disparity in judiciary.

Further, it is also worthy to mention that in the recent past, a lot of steps in the right direction are being taken in the bar to ensure active participation of women in litigation. This is conspicuous by the recent designation of senior advocates by the Supreme Court of India. Although, to bridge the disparity gap is a long and onerous process, these steps in the right direction are going to pave way for future actions to be in line with the commitment to ensure active participation from women in the legal field.

V. Few Women in the Legal Field

The Courts even today see few women despite the increasing number of female law graduates. Litigation as a career has been seen as turbulent and more and more women are encouraged to enter the subordinate judiciary instead. Court room sexism faced by women advocates has become a common occurrence, the un-encouraging attitude of society towards women who decide to

[33] *Sandeep Sharma* v. *High Court of H.P.,* 2024 SCC OnLine HP 3048.

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pursue litigation and the scepticism with which they eyes these women as incapable of taking care of their homes is also something that offend drives women away from the profession.

Due to the financial uncertainty litigation poses and the increased chances of women being financially unstable due to being a vulnerable group creates a hindrance for women in the profession. The archaic perceptions that limit women to being homemakers have still not died and despite being working, women are expected to be available for their family. Women professionals are often being looked at as a liability, they are often told off by seniors to not stay in office till late, they are looked at with a prejudicial eye, expected to conform to the conventional roles set by society to limit women.

VI. Conclusion

"The world will never be complete until women are the part of it."

- Alice Paul, an American Social Reformer[34]

Trailblazers like Regina Guha, Hazra, Cornelia Sorabji and the likes have since history attempted to destroy the legal profession's traditional 'old boys' club' notion.[35] India is yet to see its first female CJI and many still look at litigation as a "men only" sphere. We've come a long way. A long way is still to be covered. Hopefully, the feminist movements and more recently, intersectionality will pave the way for the continued struggle of women until they reach an equal footing as their male counterparts. Until then, let's not let these arguments die, let's keep the stories of these women alive.

From the discussion, the question that begs answering is what went wrong in the legal profession and how, everybody can better the situation or at the least, strive to better. It is conspicuous that steps have been and are being taken to ensure active participation of women in fields like litigation and judiciary. These steps include recognizing efforts and rewarding women with senior designation (the bestowing of the silk as it is called) and clarifying that it is not required for a

[34] "Famous Women Lawyer Quotes", *Think Exist*, *available at:* http://thinkexist.com/quotes/top/gender/women/occupation/lawyer (last visited Aug. 14, 2025).

[35] Mahalakshmi Pavani, "She in the law", *Socio-Legal Literary*, *available at:* https://sociolegalliterary.in/she-in-the-law/ (last visited Aug. 16, 2025).

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person to be in seven years of continuous practice to sit for the Higher Judicial Services examination.

However, much has to be done to change the legal profession from an old boys' club to a more inclusive and level playing profession. What must be looked into is a decent pay and flexibility in working station *vis-à-vis* a more liberal approach towards working from home. This will not only promote more women in litigation which requires longer working hours but will also take care of their financial needs in metro cities where getting even an accommodation is becoming increasingly difficult.

Therefore, making the legal profession more inclusive can only be achieved by bringing about a change in the mentality and developing *epistemic humility* amongst its members.

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MONEY, MUSCLE, AND MEDIA: CHALLENGES TO ELECTORAL REFORMS IN INDIA

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*Tripti Dhaka***

ABSTRACT

Intersectionality of Money, Muscle and Media has beast Indian Democratic integrity as an enormous challenge. Historically, Local print media has shaped electoral politics through caste, religion and regional issue. Speedy emergence of 24/7 television, social media, digital platform has changed the public opinion through narratives of fake news, paid news as well as targeted religious and regional propagandas. Along with this, Political finance of black money has become indispensable and troublesome both, which make Indian democratic process as a distort competition. Thus, the corporate houses captured Democracy through Media and Money power. The Supreme Court direction of 2024 has vetoed on Electoral Bonds due to its violation of Right to Information, Emphasizing the conflict between opaque funding and Democratic transparency. Indian Legislative framework including Representation of the People Act, Election Commission rules on paid news and media influence remain inadequate. These concerns are being danger with booming use of muscle power by the candidate of criminal background. This study explores how these three grit Indian electoral reforms, revealing the loopholes of legal and institutional framework. Free and fair election is the essential and basic requirement to develop the electoral reform in world's largest democracy, which rely on transparency and democratic ethics.

Keywords: *Electoral Reforms, Money and Muscle Power, Media and elections, Electoral Bond, Political funding.*

I. Introduction

In the vibrant coloured landscape of Indian Democratic scenario, Election is not only just a rigged contest but also an expression of will of public. The growing use of Money, Muscle and media has become notable in determination of electoral outcome, which push back the democratic principles of equality, fairness and transparency.[1] Among these, the vocation of media is Precarious; as it working between democratic institute and electorate, influencing the public, how to use their right to vote. From the inception of print media, when the have empowered the Indian electorate, 24*7 news channels and social media, many change has been

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[1] Venkat Ram Reddy Ganuthula & Krishna Kumar Balaraman, "The Triad of Modern Democracies: Money, Identity, and Information in Shaping Power and Legitimacy" (May, 2025),

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seen in Indian political discourse.[2] Beside this, opaque political finance has become Disquieting trend towards bias and dis-appropriate influence and interests. This trend is further intensified by increasing the number of candidates with criminal record, which wasting away the confidence of public and sanctity of democracy.[3]

Intersectionality of these forces, Stances a grave threaten to Indian democracy. In this study, Legal, institutional, and socio-political aspect of these is examined with Paving the way for fair and free election in world's largest democracy.

Elections are sole of democracy, providing voting right to the citizens to show their political will. Elections ensure the accountability of the representatives; and establish the fundamental values of equality and liberty for a common man. Right of universal adult franchise Bridge the gap between state and society, making a government from individual choice as well as collective decision. Thus, elections are an Emblem of Constitutional Value representing sovereignty, rule of law, and political equality throughout the nation. They also protect the civic rights as well as Transfer of powers after each and every electoral mandate. Thus, elections are not just a tool for political maneuvering, but also an instrument of social transformation in a democratic way.

Elections are serving as heartbeat of democracy and media has become the guiding voice for the public. From the evolution of print media in British raaj to present boom of digital platform, media play a Crucial role in setting the narratives to change the electoral behaviour. Reginal and local newspaper have been become key factor to rise the local issue, caste politics, regional and religious seminations to repercussion electoral mandate.[4] Debate on political issue reached to last man of the democratic line through television and increased the influence of the media. Beside this, advent of social media platforms, has Metamorphosed the democratic set up in violent hate speech politics through misinformation and paid news.

Financial resources are essential for political parties to campaign, mobilize voters, Transmit their agendas. However opaque funding has increased concern about bribery, corruption and

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2 Lawvanyaa Kannan, "The Role of Social Media in Shaping Indian Elections" Lawful Legal, Jan 7, 2025.

3 Tejasvi Chebrolu et al., "Framing the Fray: Evaluating Conflict Frames in Indian Election News Coverage" 17th ACM Web Science Conference Proceedings 2025

4 Tousif Reja, "Identity Politics in India: Caste, Religion, and Regionalism in Party Strategies" Reflections.live *available at*: https://reflections.live/articles/14589/identity-politics-in-india-caste-religion-and-regionalism-in-party-strategies-article-by-tousif-reja-23821-mdeu74iq.html (last visited August 9, 2025).

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undue influence.[5] The Electoral Bond scheme, 2017 was Extolled as a reform in political funding. But critics contended that it will violate the principal of transparency, due to acceleration of benami Donation. Further in 2024, the Supreme Court of India declare this scheme unconstitutional, stating that it violates citizen's Right to Information.[6]

The liaison between crime and politics has become obdurate issue in Indian scenario. Candidate with Criminal track record regularly use their influence to win the election. This Muscle power not only threatens electoral but also ruins the public trust in democracy. Like as booth capturing of 1990's in Bihar, many muscle men of Uttar Pradesh politics, whose role in election influence has been underlined by report of Association for Democratic Reforms. In present times, muscle power is also used to distribute money, liquor and intimidate opposition workers. Enforcement of legal provisions, made for decriminalization of politics, has become week. Political parties are also in favour of these candidates to win the election anyhow.

Confluence of Money, Media and Muscle power make a Knotty challenge to democracy. Opaque finance can be used to set the media narratives, whereas muscle power is a challenge for dissenting voice. These situations change the electoral choice with Endangering themselves.

II. Electoral Finance and the Electoral Bonds Scheme

Finance of election is cornerstone of a democratic process, which Facilitating the political parties to go for campaign and communication with voters. In Indian scenario, the escalating cost of election has made blind dependency on finance of political parties; which is a danger for transparency and fair democratic process. For the integrity of Indian electoral democracy, transparent accountable political financial system.

The Electoral Bond Scheme of 2017 was introduced by the Finance Act to reform the Indian political funding system.[7] This scheme allows Faceless donation to political parties from people and companies both. These bonds were purchased by branch of State Bank of India and can be redeemed by registered political parties within given time frame. Government started

5 Simma Appannamma, "The Impact of The Print Media on Voter Behaviour," 10 International Education and Research Journal (IERJ) (2024).

6 Association for Democratic Reforms v. Union of India, (2024) INSC 113.

7 Complinity, "Transparency Wins India's Political Funding Battle", 2024 available at: https://complinity.com/blog/compliance/electoral-bonds-transparency-wins-indias-political-funding-battle/ (last visited July 13, 2025).

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this, through official banking network, aimed to reduce the black money in election.[8] To execute the Electoral Bond Scheme Section 29C was amended to exempt registered political parties from divulge donation received from these electoral bonds.[9] In Companies Act, 2013 Section 182 was amended remove the capping on corporate donation and exclude the necessity of disclose the name of political parties to whom they have funded. In Income Tax Act, 1961 Section 13A was amended to exempt political parties to keep the record of doners, which has been donated by electoral bonds.

In historic judgement of Feb, 15, 2024, Supreme Court has declared the electoral bond unconstitutional. The court held that this scheme is in violation of freedom of speech and expression, mentioned in Article 19 (1) (a) of the Constitution, which include Right to information. The Court further observed that opaque funding through electoral bonds devoid the public of basic information of political funding as a transparent democratic system.

Transparency in political funding was considered as a basic Stipulation for meaning participation in democratic process, but the opaque nature of the scheme has created divergence between the political parties and the public. By Invalidating the electoral bond scheme, the Court again validates the Right to information as a fundamental right as inherent right to viable democracy. The Court instructed SBI Bank to unveil all the transactions of electoral bond scheme from April, 2019 include the names of all doner and receiver political parties to the Election commission of India. It is duty of Election commission of India to publish these names on their website restoring transparency for the faith of public in democratic process.[10] This judgement bolsters the right of public to be informed and mitigate the scope of opaque funding. It restricts undue corporate Swaying in politics with reinforcing the constitutional right to be informed under Article 19(1) (a). it further reaffirms that the political funding must be align with democratic value not viable with administrative convenience or political perk. The Court established that transparency is a cornerstone of free and fair election as well as fundamental step for restoring faith in democratic institute.

III. Role of Muscle Power and Criminalization of Candidates

[8] "Shankariasparliament.com/current-affairs/sc-verdict-on-electoral-bonds,"available at: https://www.shankariasparliament.com/current-affairs/sc-verdict-on-electoral-bonds (last visited July 29, 2025).

[9] Khaitan Legal Associates-Smiti Tewari, Tamanna Meghrajani, and Vaidehi, "Electoral Bonds held unconstitutional by Supreme Court" Lexology, 2024

[10] Association for Democratic Reforms v. Union of India, AIR 2024 INSC 113.

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Implication of muscle power and criminalization of election candidate is really a threat to Indian democratic structure. This relation is subverting the principle of free and fir election as well as undermining the faith of public in democratic institute and effective governance.

Recent trends are quite Jarring, ample number of candidates have their criminal track record. As per ADR report of 2025, 45% of total sitting MLA across India declared criminal cases, in which 29% has charged with heinous offence like as Murder, Attempt to Murder and Crimes against women;[11] Beside this 44% of elected sitting MP's have criminal track record, in which 29% have their name in heinous offences.[12] Muscle power for intimidations, violence and coercion has become threat to fabric of Indian democracy. Election Commission of India Alluded that muscle power is more dangerous than money power in some parts of country.[13] Criminal elements frequently inducing the public to vote in their favour, and secure victory of their candidate. Criminalization in politics attributed to following several factors:

i. Vote Bank Politics: Political parties prioritise for winning candidate, ignoring the criminal background of candidates; who can turnout the specific caste, religion or community votes.
ii. Week Legal Framework: Although Representation of the People Act, 1951 disqualify candidature of those who have convicted of heinous offences; but the implementation is week, which allow pendency of cases to contest election.
iii. Pendency of the cases: pendency of criminal cases against the candidate often takes decades, and they are getting benefit to contest the election.

Criminalization of the politics is colouring the policy priorities, public trust and good governance, and at last decreasing the soul of democratic governance. Legislators of criminal track record priorities their self-interest over the public interest; which make credit of democratic institute implausible. Along with this, voters also lose their confidence in free and fair election, Rule of Law and Democratic accountability. Recognizing these consequences, the Judiciary has stepped up for preserve the soul of democracy. In Public Interest Foundation v. Union of India,[14] the Supreme Court directed the political parties to publish the criminal record

[11] "ADR Report on Criminalization of Politics – Crackit Today Affairs," 2025available at: https://crackittoday.com/current-affairs/adr-report-on-criminalization-of-politics/ (last visited August 9, 2025).
[12] Ms. D. Gowri, "Crime And Power: The Troubling Intersection Of The Criminalization of Politics", Nyayavimarsha, 2024, (e-ISSN: 3048-5134), P. 1-11.
[13] Navin B Chawla, "The unholy alliance of Muscle Power and Money Power is weakening Indian democracy," Hindustan Times, Dec 26, 2017.
[14] (2018) 10 SCC 1.

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of the candidates with their justification for selection to promote the transparency in election process. Along with this, The Law Commission of India in its 244th Report has also recommended disqualification of the candidates from contesting election, upon the framing of charge in serious offences. Although these steps are really appreciable but require legislative follow up to make decriminalized free and fair election.

IV. Paid News and Media Bias in Electioneering

Paid and promotion news has become pernicious for free and fair election, where editorial space secretively sold to the electoral, to masquerading any candidate or political parties. This Subverts the image of media and contort the public for manipulating the mandate. Press Council of India defined Paid News as "Any news or analysis appearing in any media (print and electronic) for a price in cash or kind as a consideration. The election time paid news phenomenon has three dimensions:

i. The reader or the viewer does not get a correct picture of the personality or performance of the candidate in whose favor or against he decides to cast his vote. This destroys the very essence of democracy.
ii. Contesting candidates perhaps do not show it in the election's expenses account thereby violating The Conduct of Elections Rules, 1961, framed by the Election Commission of India under the Representation of the People Act, 1951.
iii. Those newspapers which received the money in cash but did not disclose it in their official statements of accounts have violated the Companies Act, 1956 as well as the Income Tax Act, 1961 besides other laws."

The Election Commission of India has declared that following action must be taken in case of paid news[15]:

i. Name of the candidate (and not the media house) shall be published on CEOs website in appropriate manner.
ii. Name of the print and electronic media, with all the details of the paid news items shall be forwarded to Press Council of India (PCI) and News Broadcasters Association (NBA) by the Commission (and not by the O/o CEO) after obtaining it from the CEOs concerned.

[15] Vide letter no. 491/Paid News/2019 dated 04.06.2019

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Investigations of Press Council of India and Election Commission have exposed many candidate who have concealed paid news expenses in their election affidavit, which is in violation of Section 77 of the Representation of the People Act, 1951. This practise is really Unbridled in states as well as in general elections, when the corporate media houses accept payment for favourable coverage or negative information. A well-known case of Maharashtra, where funds were not accounted for paid news in his campaign expenses. Although legal action Wavered due to legal technicalities, the case became a historic example of the regulatory challenges in proving and penalizing such conduct.

Biasness of media is also equally problematic, which manifests in favour of political parties. Major corporate media houses create their relation with political parties, which often resulted that election news and stories aligned with these parties.[16] This bias combined with paid news, amplifies some voices while muting others, is a hurdle to the democratic principles.

Emergence of social media platform has also complicated the situation. Social media influencer and private digital channel are also promoting candidates and political parties without any transparency. These digital platforms help political parties to micro target voters, thus electoral data with AI tool make this "weaponized micro-targeting". Lack of special legislative framework for influencer based political message and deep fake content make the task of free and fair election more tough. Exiting laws like as IT Act 2000 and Judicial direction[17] also provide guidelines but the enforcement mechanisms really week.

Election commission of India has established Media Certification ad Monitoring Committees at District and State level, to identify and combat paid news, but the identification and enforcement both remains week. The Press Council of India, does not have binding authority on corporate media houses to curb the problem. To preserve the soul of free and fair election, India needs a strong legislative enactment for media bias and paid news; which include direction of clear disclosures fund and record, full transparent financial system, empowering regulatory bodies with punitive authority.

V. Global Perspective

For combating the challenge of money, muscle and media power it is essential to go through legislative enactment of the other democracies like as USA, UK and Canada which produce

[16] "Who Owns the Media in India?," Media Ownership Monitor available at: https://india.mom-gmr.org/en/ (last visited August 9, 2025).
[17] Krishna Bhaskar v. Union of India, W.P.(C) No. 5804 of 2021.

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insightful glimpses for campaign finance regulation, public funding regulation and mechanism to ensure transparency.

United State of America

The US campaign finance system regulated under the Federal Election Campaign Act (FECA) and overseen by the Federal Election Commission (FEC). USA not only has their regulation for large donation but also have rule regarding contributor and expenditures of these funds. Citizens United v. Federal Election Commission,[18] is a landmark decision of the United States Supreme Court regarding campaign finance laws, in which the Court held that laws restricting the political spending of corporations and unions are inconsistent with the Free Speech Clause of the First Amendment to the U.S. Constitution. The Supreme Court ruled that the prohibition of all independent expenditures by corporations and unions in the Bipartisan Campaign Reform Act violated the First Amendment. The ruling barred restrictions on corporations, unions, and nonprofit organizations from independent expenditures, allowing groups to independently support political candidates with financial resources.

United Kingdom

The UK model is comparatively strict, which include capping on expenditure. Under the Political Parties, Elections and Referendums Act (PPERA), 2000, expenditure by political parties during election campaign is subject to strict legal limit. Doners must inform to the Election Commission. Foreign and corporate donation are also subject to some prohibition. Provision of "right to reply" is also framed during media broadcasting to balance election campaign. Public service broadcasters are bound by Ofcom regulation for non-biasness.

Canada

Cabada has resilient structure for election campaign finance. The Canada Election Act impose strict capping not only on individual doner but also on party expenses. Corporate donations as well as foreign donations are strictly banned, all donation must be made from Canadian citizens and or permanent residents. Administrative body "Election Canada" provide public discloser of donations and expenses of election. Public partial funding model is also used in Canada, by which a part of expenses will be reimbursed to political parties and individual candidate if they get vote of a decided limit. This will decrease the dependency on corporate houses. Beside this

[18] 558 U.S. 310 (2010).

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the capping limit is also applied on the third persons for advertising in media. Canadian law automatic disqualifies on conviction of electoral fraud or other serious offences.

Thus, the Legal framework of USA, UK and Canada are different, but many similarities are there which can be adoptable idea for Indian Electoral scenario. USA, UK and Canada have transparency and discloser, which include of real time reporting system (USA), independent oversight bodies (UK and Canada). Broadcasting rules for neutrality in Canda and UK are stricter than our system. The change in public finance model, including the reimbursement of Canada and capping on donation, are demand of the hour.

VI. Conclusion and Suggestions

The interlink of Money, muscle and media has become an ingenious danger for Indian democratic framework. Which effect the electoral during the election and manipulate the mandate. India needs a strong Stewardship system to monitor free and fair election.

i. Strengthening Legal Framework: Report of 255th Law Commission must be adopted as soon as possible, which directed to extend monitoring window for campaign expenditure from notification of election to the counting of votes; audits must be done by certified accountants; empower the Election Commission for disqualification on serious violation (False affidavit and deliberate conceal of expenses). Strict amendments are necessary in section 182 of Companies and section 77/29 of RPA, which ensure free and fair election to establish a viable democracy.
ii. Establish of Permanent and independent Supervision System: ADR has already demanded for an independent statutory body, consisting Judicial members, Law makers, Technocrats and civil society members to watch the campaign finance. This body play companion role with Election Commission of India to ensure transparency in free and fair election, facilitating continuous monitoring, enforcing transparency norms, and recommending sanctions for violations.
iii. Establishment of Co-ordination between Judiciary and Legislature: Judgement like as Lily Thomas[19], Public Interest Foundation[20] and the Electoral Bonds judgment[21] have created strong parameters but effective implications need legislative follow up which

[19] (2013) 7 SCC 653.
[20] AIR 2018 SC 4550
[21] Writ Petition (Civil) No. 880 of 2017, decided on 15 February 2024.

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include new legislative enactment, strict action against media houses and make new courts for election petitions.

iv. Fostering Ethical Political Culture: The integrity of legislative, judiciary and executive including independence Election Commission of India; must be essential for vibrant democracy. Statutory support for model Code of Conduct guidelines – on candidate conduct, paid news, and digital campaigns – would provide the ECI with enforceable regulatory authority.[22]

v. Cultural and Ethical Reorientation: Intra-party discipline and integrity is necessary for these reforms. All political parties need internal checking system to blacklist candidate with serious criminal track record or black money funding sources.

Thus, the interlinked influences of money, muscle and media become a challenge to sanctity of free and fair election in Indian Scenario. The electoral are going to lose their faith in democratic institutes including Election Commission of India. Evolution of these challenges is result of result of weak enforcement mechanisms and legal loopholes. Reform proposals like as ranging from mandatory disclosures of political funding, rigorous auditing requirements, expenditure caps, to the establishment of a permanent independent oversight authority; provide a promising blueprint for systemic renewal. These reforms will take place only if accompanied by a collective political will and electoral shift to boycott of candidates of criminal track record with genuine spirit of democratic governance. A create good alliance among the judiciary, legislation, Election Commission, media, and civil society; we can go for transparent election process and restore the faith of public in democratic institutes. As Dr. B.R. Ambedkar warned, *"*However, good a constitution, may be, if those who are implementing it are not good, it will prove to be bad."[23] So we have to for stricter implementation of our Legal framework for establishment of vibrant democracy. This path needs courage, public vigilance and dedicated reform commitment of government, civil societies and the public.

[22] "Electoral reforms needed to curb money power: Quraishi" The Hindu, 9 January 2011, section India.

[23] Meera Emmanuel, "'If hereafter things go wrong, we will have nobody to blame', Dr. Ambedkar's final speech in Constituent Assembly" Bar and Bench - Indian Legal news, 2018.

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DEMOCRACY IN THE CONTEMPORARY DIGITAL ERA: ANALYSING LIBERTY OF EXPRESSION AND PLATFORM GOVERNANCE IN INDIA AND THE EUROPEAN UNION

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ABSTRACT

In today's digital landscape, platforms like Instagram and Twitter have emerged as vital arenas for civic engagement and political expression. Their unmatched ability to shape public discourse and influence opinion has prompted governments worldwide to ramp up regulatory interventions, often citing the dangers of misinformation, hate speech, and harmful content. But this regulatory momentum brings to the forefront a fundamental question: how can states protect collective interests without infringing upon the constitutional promise of free expression? This paper explores how India and the European Union (EU) have approached that challenge offering two sharply contrasting regulatory paths. In India, the right to free speech is enshrined under Article 19(1)(a) of the Constitution, yet it is significantly qualified by the broad restrictions authorized under Article 19(2). The Information Technology Rules, 2021, reflect shift toward executive-heavy regulation. These rules confer expansive powers on the state to demand content takedown, enforce traceability, and impose compliance burdens on digital intermediaries. Critics argue that such provisions dilute platform accountability while chilling online discourse. In *Shreya Singhal v. Union of India* reaffirmed constitutional protections for online speech by striking down Section 66A, the trajectory since then has been marked by continued regulatory tightening raising renewed concerns over constitutional overreach. In contrast, EU's approach, embodied in the Data Services Act, 2022 (DSA) adopts a more calibrated framework. The DSA emphasizes transparency, systemic accountability, and user empowerment. It introduces tiered obligations for platforms based on their scale and societal impact especially targeting "online platforms" and search engines. Key provisions include algorithmic transparency, independent audits, risk assessments, and robust grievance mechanisms, all aimed at ensuring a rights-respecting digital environment. The tension between regulatory oversight and the protection of fundamental freedoms is well captured in cases like *Glawischnig-Piesczek v. Facebook*. In this decision, the Court of Justice of the European Union allowed courts to require platforms to remove unlawful content proactively. At the same time, it stressed that such measures must be applied with safeguards of due process and proportionality, ensuring that regulation does not come at the expense of core rights. While both jurisdictions recognize the need to contain digital harms, they diverge significantly in how they structure safeguards. In the EU, a strong emphasis is placed on institutional oversight and participatory regulation, with civil society, regulators, and courts sharing enforcement responsibilities. India, by contrast, often relies more heavily on judicial activism to rein in executive overreach, with regulatory power concentrated in the hands of the central government. This comparative inquiry reveals two distinct architectures of digital governance: one rooted in systemic checks, layered accountability, and regulatory pluralism; the other more centralized, with legal protections often hinging on the judiciary's intervention. For emerging democracies navigating similar challenges,

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the contrast offers valuable lessons on crafting rights-sensitive digital regulation where innovation, safety, and freedom can co-exist without compromise.

Keywords**:** *Freedom of expression, Digital regulation, Platform accountability, Misinformation, Censorship, Digital Services Act, IT Rules 2021.*

I. Introduction

The way citizens engage with democracy has undergone a profound transformation in the digital era. What once unfolded in physical spaces town halls, print newspapers, televised debates has largely migrated to the online sphere. Today, digital platforms serve as the primary arenas for political conversation, cultural expression, and civic participation. Search engines, social media networks, and algorithm-driven content feeds are no longer just neutral conduits for information; they are powerful actors that shape how public discourse is initiated, structured, and sustained.

These platforms don't merely host discussions; they actively influence them. Through content moderation policies, algorithmic amplification, and, in some cases, de-platforming decisions, they determine which voices are heard, which narratives gain traction, and which are sidelined. As a result, the digital public square is not just a reflection of democratic life, but a space where the very terms of engagement are constantly being negotiated, challenged, and redefined. As a result, the entitlement to express oneself freely is broadly recognised as a foundational democratic principle is being reinterpreted and renegotiated in light of new technological and institutional realities.

At the heart of this transformation lies a paradox. Digital platforms have dramatically expanded access to speech and participation, allowing individuals and communities particularly those historically excluded from mainstream media to share their perspectives, organize movements, and challenge dominant narratives[1]. Yet these same platforms, for all their democratizing potential, have also enabled the rapid spread of misinformation, amplified hate speech directed at vulnerable communities, and contributed to a growing erosion of public trust in democratic institutions. The openness that once seemed to promise a more inclusive and participatory

[1] Zeynep Tufekci, "Twitter and Tear Gas: The Power and Fragility of Networked Protest", *Yale University Press* (2017).

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public sphere has, in many instances, been exploited to sow division, manipulate opinion, and polarize debate.

Compounding these challenges is the emergence of new power asymmetries. A handful of private tech companies now wield immense influence over the flow of information, effectively acting as gatekeepers. The design and implementation of content moderation mechanisms, recommendation algorithms, and enforcement policies often occur with limited transparency and minimal opportunities for external scrutiny. The concentration of such communicative authority within a small number of corporate entities raises significant concerns regarding accountability, openness, and the long-term resilience of democratic discourse in the digital sphere[2].

These developments have prompted growing calls for regulatory intervention. States are seeking to reclaim authority over the digital public sphere by introducing new frameworks aimed at increasing platform accountability, reducing digital harms, and safeguarding public discourse. However, these efforts often raise complex legal and normative questions. What constitutes legitimate regulation in a democratic society? Where the line should be drawn between combating harmful content and preserving open debate? And to what extent should private companies be deputized to enforce legal norms traditionally upheld by public institutions?[3]

The regulation of online speech is therefore not a neutral or purely administrative task; it is a deeply political act. It reflects and reinforces broader tensions between liberty and control, openness and order, and the competing interests of state, market, and civil society[4]. In many cases, well-intentioned regulations risk expanding executive power, normalizing pre-emptive censorship, and undermining procedural safeguards meant to protect individual rights[5]. As a result, the governance of digital platforms has become a focal point in larger debates about the future of democracy, rule of law, and information integrity[6].

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2 Shoshana Zuboff, "The Age of Surveillance Capitalism", *PublicAffairs* (2019).
3 Evelyn Douek, "The Rise of Content Cartels," 130 *Yale Law Journal Forum* 347 (2020).
4 Balkin, *Supra* note 2.
5 Chinmayi Arun, "Rebalancing Regulation of Speech: Internet Intermediaries and the Structural Role of Courts," 54 *U.C. Davis Law Review* 1995 (2021).
6 Uta Kohl and Julia Hornle, "Data-Driven Policing and the Rule of Law," 13 *Internet Policy Review* 1 (2024).

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This study performs a comparative exploration of socio-legal frameworks in India and European Union two, most prominent democratic jurisdictions address these challenges. Both regions acknowledge freedom of expression as a fundamental right, but they diverge significantly in how they interpret and implement this right in the digital context. India's constitutional framework permits a relatively broad scope for state-imposed restrictions under Article 19(2), a clause that has historically been used to justify speech regulation for the sake of maintaining public order, moral integrity, and the safety of the nation. Recent regulatory developments, particularly the Information Technology Rules of 2021, reflect a more centralized, state-driven approach to digital governance. These measures have sparked concern over due process, transparency, and the potential suppression of dissent. By imposing stringent obligations on digital intermediaries including proactive content monitoring, mandatory traceability of message originators, and tight takedown timelines they risk placing undue power in the hands of the executive, with limited avenues for accountability or redress.

In contrast, the European Union has taken a more structured and rights-focused approach to digital regulation. The Data Services Act (hereinafter referred to as DSA), introduced in the year 2022, sets out detailed rules for online content, built around a risk-based assessment model. At its core, the DSA seeks to balance platform regulation with the EU's broader commitment to democratic values and the protection of fundamental rights. To that end, it places significant emphasis on transparency in algorithmic systems, independent regulatory oversight, and fair procedural safeguards for users. What sets this model apart is the strong institutional support behind it, which helps ensure that enforcement is both consistent and accountable. Judicial forums have consistently underscored the need to defend freedom of expression while carefully balancing it against other pressing societal concerns. This interplay between legislation and judicial enforcement enhances the DSA's credibility as a rights-sensitive and balanced mechanism for platform regulation.

By comparing the legal frameworks, institutional practices, and civil society dynamics in these two jurisdictions, this paper seeks to illuminate how foundational democratic principles are being reimagined in the context of digital governance. The analysis engages with legislative enactments, seminal judicial pronouncements, and ongoing policy discussions to trace the shifting contours of the relationship between the state, private digital intermediaries, and individual users in shaping the limits of the online public sphere. By doing this, the research seeks to add to the understanding broader scholarly and policy conversations about how

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democratic societies can regulate digital platforms without sacrificing the freedoms they are meant to uphold.

II. Constitutional and Legal Framework

India: Constitutional Framework and Judicial Expression

Art. 19(1)(a) of Indian Constitution serves as a fundamental guarantee within the country's constitutional framework. It states that all citizens have the right to freedom of speech and expression, a phrase that the judiciary has interpreted broadly and expansively. It also includes symbolic acts, artistic expression, literary works, press independence, and the right to share and access information. However, this core freedom is not unlimited. These include concerns related to maintaining public order, morality and decency, fostering friendly relations with foreign countries, protecting India's sovereignty and integrity, and addressing contempt of court, defamation, or speech that incites criminal activity. Thus, the constitutional system seeks to balance individual freedoms with broader collective and national interests.

These constitutional clauses establish a legal architecture that both affirms the importance of expressive freedom and permits considerable state intervention. The definition of a "reasonable restriction" has been continually examined by the courts, particularly as emerging technologies have blurred the lines between expression and regulation. The Indian Supreme Court has been essential in establishing and upholding the parameters of Article 19(1)(a). Early decisions such as in *Romesh Thappar v. State of Madras* and in *Brij Bhushan v. State of Delhi* laid the groundwork for a rights-protective interpretation of free speech. In the case of *Romesh Thappar*, the Court struck down a state-imposed ban on a political journal, emphasizing that for democracy to function, freedom of expression is crucial that restrictions must be narrowly tailored.

In *Sakal Papers (P) Ltd. v. Union of India*, the Supreme Court deemed regulations limiting number of pages a newspaper can have as invalid, asserting that indirect constraints affecting the dissemination of expression also violate Art. 19(1)(a). This doctrine was reiterated in the case Bennett Coleman & Co. v. Union of India, where the Court annulled government-enforced limitations on the growth of newspapers, viewing them as an excessive intrusion on press freedom.

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The Indian judiciary has repeatedly recognized that the guarantee of free speech under Article 19(1)(a) is not confined to the act of expression alone but also encompasses the right to access and receive information. This interpretation was clearly articulated in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*, where the Court emphasized that citizens have not only the freedom to voice their opinions but also the corresponding right to obtain information through multiple avenues, including broadcast media.

With respect to the digital sphere, the defining precedent remains *Shreya Singhal v. Union of India*. In this case, the Supreme Court examined the constitutional validity of Section 66A of the Information Technology Act, 2000. The provision criminalized the transmission of "offensive" electronic messages, but its language employing terms such as "grossly offensive" and "menacing" was overly vague and lacked precise legal contours. This ambiguity enabled arbitrary arrests and was frequently invoked to silence dissenting voices and restrict legitimate online expression. By striking down Section 66A in its entirety, the Court marked a watershed moment in India's digital rights jurisprudence.

In a landmark ruling, the Supreme Court invalidated Section 66A in its entirety, holding it to be unconstitutional. It concluded that the provision could not withstand the test of "reasonable restrictions" laid down under Article 19(2) of the Constitution. This judgment was widely hailed not just for reaffirming the fundamental right to free expression, but for extending those constitutional protections squarely into the digital sphere an area increasingly central to public discourse.

Yet, the progressive promise of that decision has since been tempered by a growing trend toward executive-led digital regulation, often operating with minimal judicial oversight. The IT Rules, 2021 place a host of burdensome obligations on online platforms: flagged content must be taken down within thirty-six hours, companies must appoint local compliance officers, and they must be capable of tracing the "first originator" of a message an obligation that potentially undermines encryption and user privacy.

While the government argues that these measures are necessary to curb misinformation, strengthen platform accountability, and maintain public order, critics warn of deeper implications. They argue that the framework grants the state sweeping powers to monitor and moderate speech pre-emptively amounting, in some cases, to indirect censorship. Moreover, the cumulative effect of these rules risks creating a chilling atmosphere online, where users

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particularly those from dissenting or marginalized communities, may hesitate to participate in public debate for fear of surveillance or reprisal. This ongoing debate illustrates the tension between the state's regulatory ambitions and the judiciary's constitutional mandate to safeguard free expression in the digital age.

Multiple constitutional challenges have been filed against the 2021 Rules, arguing that they violate both Article 19(1)(a) and Article 21. This traceability requirement, according to the petitioners, compromises end-to-end encryption and violates users' privacy rights without adequate safeguards. Moreover, the lack of parliamentary oversight and the executive's unilateral rule-making power has been criticized for bypassing democratic scrutiny[7]. The shift from judicially-reviewed restrictions to broad executive controls marks a departure from the constitutional tradition of narrow tailoring and proportionality.

European Union: Legal Safeguards, Jurisprudence, and Digital Regulation

As free expression rests on a layered legal architecture that draws strength from both Union law and broader regional human rights instruments. At the EU level, without interference by public authorities and without regard to national boundaries, anyone can claim freedom of speech and expression. This provision binds EU institutions directly and also extends to Member States whenever they are applying or implementing EU provisions.

In parallel, a wider safeguard has fostered a robust, rights-oriented regulatory framework one in which freedom of expression operates as the rule, and limitations exist only as carefully defined exceptions. Together, these foundational instruments reflect a broader constitutional and human rights ethos that places significant weight on safeguarding speech within democratic societies.

A central pillar of this framework is the jurisprudence of the ECtHR, which emphasized that freedom of expression is essential to functioning of pluralistic democracy. This affirmation of expressive tolerance underscored the European Court of Human Rights' (ECtHR)commitment to defending dissenting and even provocative voices, recognizing them as vital to democratic discourse. At the same time, the Court acknowledged this freedom is not absolute; restrictions

[7] Information Technology Act, 2000, s. 87.

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are permissible. This tripartite test has since become a cornerstone of ECtHR jurisprudence, guiding its evolving approach to digital speech regulation.

In *Delfi AS v. Estonia* (2015), the Court confronted the issue of intermediary liability head-on. The case involved an online news platform that allowed users to post comments anonymously some of which were defamatory and inflammatory. Although the comments were authored by third parties, Estonian courts held the platform liable for failing to remove them in a timely manner. The ECtHR upheld this decision, reasoning that Delfi, as a professional and profit-driven media outlet, bore a duty to exercise due diligence over user-generated content. The ruling emphasized that while freedom of expression is foundational, it does not shield hate speech or incitement to violence. Importantly, the Court clarified that intermediary liability must remain proportionate and context-sensitive, especially when platforms serve a passive or neutral role. Still, the decision marked a significant evolution: online intermediaries could no longer claim blanket immunity simply because harmful content originated from users.

Alongside the ECtHR, the Court of Justice of the European Union (CJEU), ruled that national courts may require platforms to remove not just illegal content that has been specifically identified, but also "equivalent" content even globally. This expansion of obligations moved the European model beyond a traditional notice-and-takedown framework and opened the door to more proactive monitoring responsibilities. While the decision bolstered the enforceability of national laws in the online realm, it also raised complex questions about jurisdictional overreach, free speech limitations, and the delegation of quasi-judicial powers to private platforms often without the procedural safeguards that would normally accompany state action.

In recognition of these tensions and the growing dominance of digital platforms in shaping public discourse the EU enacted the DSA. This legislation represents a landmark shift in EU digital regulation, now face enhanced responsibilities, including compulsory risk assessments, transparency requirements related to algorithmic content moderation and targeted advertising, third-party audits, and user-friendly complaint and redress mechanisms. By embedding these differentiated duties, the DSA transitions Europe from a reactive to a preventive model seeking not just to police harm after the fact, but to anticipate and mitigate systemic risks at the source notice-and-takedown system toward a proactive, risk-based governance approach, aimed at reconciling innovation with the safeguarding of democratic values and fundamental rights. The DSA differs from more hardline and compliance-heavy approaches to regulation. In this line,

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the proposal favours transparency, institutional control and a response proportional to risk, frowning upon both censorship and executive domination. Secondly, the regulation is designed to empower users and ensure they remain informed and act with consent in their engagement with digital content providers (by requiring mandatory disclosures about algorithmic ranking etc. andadvertising systems).

The European model is based on a strong institutional fabric. Oversight and co-ordination is assisted on a multi-level by intermediary Digital Services Coordinators in each Member State and a new Board for Digital Services in Europe, composed of representatives of the Member States[8]. In this model, enforcement is both decentralized and harmonized across jurisdictions. It further moralizes the framework and strengthens its efficiency by involving civil society actors, technical experts, and independent regulators in the regulatory process.

Ultimately, the EU approach to digital speech governance is enshrined in a long-standing rights political culture and legal tradition with a focus on proportionality, procedural justice and stewardship. While India vests most of the authority under this approach only in executive, and norms compliance ex-ante; to which extent EU banks on structural checks, judicial oversight and participatory mechanism to ensure that individual liberties is protected. This divergence reflects the deeper constitutional and political foundations of liberal democracy and the rule of law upon which the Union stands, even as new technology challenges it.

III. Regulatory Landscape

India

The digital content regulatory framework in India is primarily governed by IT Act, 2000 which which serves as the foundational statute for regulating electronic communication, online transactions, and intermediary liability. The Act empowers the government to prescribe rules for intermediaries and digital platforms, with Section 79 establishes a conditional safe harbour regime, exempting intermediaries from liability for third-party content contingent upon their observance of due diligence requirements. Despite the fact, that the Act's original language made no mention of social media or content moderation, its scope has been progressively extended by judicial interpretation, executive rulemaking and subordinate legislation.

[8] *Ibid*., arts. 49–61.

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A major inflection point came with the promulgation of Sections 87(2)(z)–(zg) of the IT Act frame the Information Technology Rules, 2021[9]. These rules impose far-reaching obligations on intermediaries particularly SSMIs and reflect an increasingly interventionist state posture on online speech regulation.

Content Takedown Requirements

After obtaining a court order or government instruction, intermediaries are required under Rule 3(1)(d) to eliminate or restrict access to illegal content within 36 hours. Under the IT Rules, Significant SSMIs required to respond to user complaints in 24 hours and fully resolve them in 15 days. The rules prohibit a range of content labeled as "defamatory," "obscene," or threatening to "public order" but these terms are either not defined or vaguely defined. This lack of clarity, combined with the pressure to avoid legal consequences, has led to concerns that platforms may adopt a risk-averse approach, resulting in content removal too readily and potentially stifling legitimate expression in the process.

Traceability of Origin

A particularly controversial provision is Rule 4(2) of the 2021 Intermediary Rules, which compels messaging platforms to disclose the identity of a message's "first originator" when ordered by a court or government authority in connection with certain offenses. While framed as a tool to curb misinformation and unlawful content, the requirement effectively undermines end-to-end encryption, one of the key safeguards for user privacy on platforms like WhatsApp and Signal. The provision has faced strong opposition from civil society organizations, privacy advocates, and technology experts**,** who argue that it compromises the confidentiality of private communications and creates a precedent for mass surveillance**.** Critics maintain that such measures chill online speech, discourage whistleblowing, and erode trust in digital communication systems**,** thereby posing a serious threat to both privacy rights and freedom of expression guaranteed under the Constitution.

Obligations on Significant Intermediaries

In India, platforms with more than five million users are categorized as SSMIs and are required to designate:

[9] IT Act, 2000, s. 87(2); (za).

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i. A Chief Compliance Officer in charge of following the law;
ii. A Nodal Contact Person on call around-the-clock to coordinate with law enforcement;
iii. To handle concerns, a Grievance Officer is employed.

They are also required to publish monthly transparency reports and implement automated content moderation tools, sparking concerns about algorithmic censorship, lack of oversight, and collateral damage to legitimate speech[10].

Critiques and Legal Challenges

The 2021 Rules have triggered substantial criticism. The absence of judicial oversight in the takedown process has been flagged as inconsistent with procedural fairness. The vagueness of prohibited content and stringent timelines pressure platforms to remove content preemptively, chilling critical and dissenting speech. The traceability mandate has also been legally challenged on grounds of breaching the privacy rights upheld in *Justice K.S. Puttaswamy v. Union of India*.

European Union

Adopted in 2022, the DSA marks the EU's most ambitious and comprehensive effort to address the complex realities of regulating the digital space. It introduces a multi-tiered governance model, tailoring responsibilities based on a platform's size and societal influence with particular focus on VLOPs. At heart of the DSA is risk-based approach that compels platforms to regularly assess systemic risks, ensure greater transparency around their algorithms, and submit to independent audits.

In addition to regulating content moderation, the DSA strengthens user protections by establishing clear procedures for filing complaints, accessing remedies, and seeking judicial review. These measures are designed not only to remove harmful disinformation but also to ensure that platform oversight is grounded in democratic accountability. By creating unified framework across Member States, the DSA aims to harmonize digital governance within the EU while holding powerful platforms to higher standards of responsibility.

[10] *Ibid.,* rr. 4(1)(a)–(d).

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Risk-Based Obligations

The Digital Services Act classifies platforms based on their scale and influence, with the most stringent obligations reserved for those that pose the greatest systemic risks. In the EU, platforms with around 45 million must meet enhanced regulatory standards. These include conducting thorough risk assessments to identify and address issues such as illegal content, disinformation, and potential threats to fundamental rights[11]. This reflects a proportionality-based approach, where greater influence invites stricter scrutiny.

Algorithmic Transparency

One of the DSA's key innovations is its emphasis on transparency of content curation systems. Platforms must disclose how algorithms shape user feeds and must allow users to opt out of profiling-based content recommendations, improving agency and information literacy[12].

Due Diligence and Oversight

All platforms must implement clear notice-and-action mechanisms, support trusted flaggers, and maintain internal complaint systems. VLOPs are also subject to independent audits, mandatory data sharing with researchers, and oversight by Digital Services Coordinators (DSCs) and the European Commission. Penalties for non-compliance can reach 6% of global annual turnover[13].

Systemic Risk Management and User Rights

The DSA promotes user rights through accessible redressal mechanisms, strengthened protections for minors, and co-regulatory codes targeting hate speech, election integrity, and online safety. These measures are participatory and rights-respecting space, in contrast to coercive or opaque models.

Comparative Reflection

[11] Regulation (EU) 2022/2065, arts. 33–34.

[12] *Ibid*. arts.27 &38. 27.

[13] *Ibid*. arts. 16–25, 52.

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The divergence between India and the EU is striking. India's model is compliance-driven, centred on executive directives, and shaped by vague legal categories that invite over-censorship. The EU, by contrast, emphasizes transparency, layered risk-based obligations, and institutional oversight. These regulatory paths echo broader constitutional differences: India prioritizes state interests and enforcement efficiency, while the EU foregrounds procedural fairness, judicial control, and user empowerment. The implications are profound not only for digital rights but for the democratic character of speech governance itself.

IV. Comparative Assessment of India vs. EU Platform Regulation

Volume and Nature of Content Moderation

India**:** Content takedown demands surged following the 2021 IT Rules. In May 2025, X (formerly Twitter) disclosed it received government orders to block over 8,000 accounts**,** many belonging to media outlets and journalists often without specific justification disclosed publicly or to the platform[14]. A 2024 Amnesty and Tech Policy study found that out of 1,165 reported hate speech incidents, 995 originated on social media**,** yet Facebook removed only 3 videos**,** leaving 98.4% still accessible (Tech Policy Press)[15].Takedown volumes increased notably in 2023–24 in response to the stricter compliance regime introduced by the 2021 Rules.

EU**:** Under the DSA Transparency Database, 8 major platforms submitted 353 million Statements of Reasons (SoRs) in just their first 100 days[16]. Notably, TikTok recorded 350-times more moderation actions per user than X/Twitter**.**

Transparency and Accountability Mechanisms

[14] "India orders X to block over 8,000 accounts amid political unrest," *Medianama*, 30 May 2025. *accessed at:* https://www.medianama.com/2025/05/223-india-orders-x-block-8000-accounts-reveals-takedown numbers/(last accessed on 5 October 2024).

[15] Amnesty International and TechPolicy Press, *Digital Hate Report: 2024 Findings on Social Media and Misinformation*, April 2024.

[16] Automated Transparency: An Analysis of the DSA Transparency Database," *arXiv preprint* arXiv:2312.10269 (2024).

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India**:** There is no public database or consistent reporting on government takedown orders[17]. Civil society groups, such as Freedom House and Tech Policy, have criticized India's opacity and selective enforcement practices.

EU**:** The DSA mandates that platforms publish detailed SoRs in a centralized, machine-readable Transparency Database. By November 2023, over 131 million SoRs[18] had been submitted, making moderation data publicly auditable.

Systemic Risk Management vs Executive Oversight

India**:** Content enforcement relies heavily on executive fiat. Non-judicial takedown orders with 36-hour compliance deadlines create pressure for over-removal[19]. Civil society reports note disproportionate targeting of dissenting voices and limited recourse.

EU: The DSA embeds risk-based obligations for VLOPs requiring systemic risk assessments, auditing, and oversight by Digital Services Coordinators and the European Commission. Sanctions for non-compliance can reach 6% of global annual turnover[20]**.**

User Empowerment and Redress

India**:** Platforms must appoint grievance officers, but there are no standardized appeal mechanisms or enforceable outcomes. Fears of ambiguous enforcement lead to self-censorship[21].

EU: The DSA enshrines user rights: users can challenge moderation, opt out of profiling-based recommendations, and access data for research[22]. Co-regulatory codes on hate speech and election integrity further involve civil society in governance.

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17 Freedom House, *Freedom on the Net Report: India 2024*; TechPolicy Press, *India's Moderation Maze*, Dec. 2024.

18 Regulation (EU) 2022/2065, arts. 33–52 (Digital Services Act).

19 "India's Internet Crackdown: Government Control and Content Removal," *Carnegie Endowment for International Peace*, 2024.

20 European Commission, *DSA User Rights and Governance Framework*, digital-strategy.ec.europa.eu (2024)

21 "CPJ condemns India's censorship of X and journalists' accounts," *Committee to Protect Journalists (CPJ)*, July 2025. Accessed at: https://cpj.org/2027

22 *Ibid*.

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V. Challenges and the Way Forward

The regulation of digital platforms presents a set of urgent and evolving challenges, especially in balancing the imperative to counter online harms with the democratic duty to uphold freedom of expression and procedural fairness. One of the most pressing concerns is the risk of regulatory overreach. In India, the 2021 Intermediary Guidelines confer expansive powers upon the executive, empowering the state to block, remove, or trace digital communications. These powers are exercised with minimal judicial oversight and under opaque procedures, often resulting in the suppression of dissent and the normalization of preemptive censorship[23]. Civil society organizations have warned that such powers risk centralizing control over digital discourse, undermining pluralism and democratic participation[24].

The European Union, while more structured in its approach, is not without its own challenges. Although the Digital Services Act (DSA) embeds rights protections and emphasizes procedural safeguards, it also requires proactive content moderation and systemic risk mitigation by platforms. Critics have raised concerns about provisions allowing courts to order the elimination of both particular unlawful content and "equivalent content" worldwide, as seen in *Glawischnig-Piesczek v. Facebook Ireland*. This precedent, if applied indiscriminately, could be co-opted by authoritarian governments or leveraged by politically motivated actors for cross-border censorship.

To mitigate these risks, there is an urgent need to enhance democratic accountability and institutional transparency. In India, the absence of a centralized, publicly accessible transparency database for government-issued takedown orders and moderation actions makes it difficult for researchers, civil society, and users to assess the scale and legitimacy of state interventions. Judicial interventions have greatly aided speech protection, it removes Section 66A of the IT Act, but courts often act reactively, after rights have already been curtailed. A proactive, rights-based framework is needed, involving independent oversight bodies, enforceable user remedies, and clear, consistent procedural norms.

The EU's Transparency Database, mandated under the DSA, sets a valuable benchmark. It provides near-real-time access to moderation data, enabling researchers and civil society to

[23] IT Rules, 2021, Rule. 3, 4.

[24] Software Freedom Law Centre (SFLC), *Internet Freedom in India: 2024 Report* available at www.sflc.in (last accessed on 23 October, 2024).

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scrutinize platform behaviour and regulatory compliance. Yet, inconsistencies in reporting standards and reliance on platform self-reporting continue to limit full accountability[25]. Strengthening the DSA's framework through periodic audits, public consultations, and co-regulatory partnerships could further consolidate the EU's role in advancing accountable platform governance.

Importantly, there is significant potential for cross-jurisdictional learning. India could benefit from adopting elements of the EU's layered, risk-sensitive model, which balances enforcement with procedural safeguards and participatory governance. Conversely, the EU could draw from India's robust civil society and legal activism, which has served as a critical check on executive excesses in the absence of strong institutional architecture. The sustained pushback against digital censorship in India has yielded important judicial outcomes and elevated global awareness of regulatory challenges in the Global South[26].

In the long term, the success of digital governance will depend on constructing frameworks that are legally robust, politically legitimate, and socially inclusive. Regulation in an age where digital technology touches all sectors of public life must be principled and human-rights focused. This balance can only be achieved through legal changes and ongoing cooperation across government, platforms and civil society a collective action to shape a digital future that respects and enhances democratic values.

[25] *Supra* 41.

[26] Vidushi Marda and Amber Sinha, "*Policy-Making in the Shadow of the State: India's Internet Intermediary Guidelines*," Internet Policy Observatory Report (2022).

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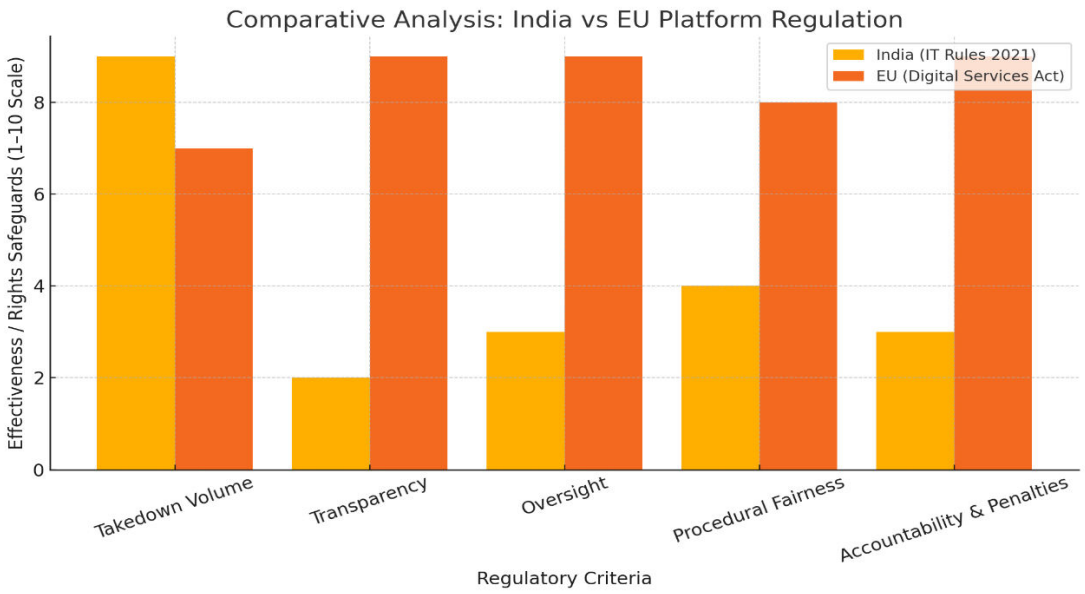

The empirical data shows that in India, the system is driven by stasi-like censorship and compliance with the state over transparency, due process, and dissent. This is the executive-heavy enforcement regime (shown in account-blocking events like the throttling of thousands of X accounts during 2025 political crises). Meanwhile, the EU's rights-based and risk-sensitizing model promotes community transparency, system accountability and user empowerment (though its execution still has challenges). The framework rests on three levels, aligning with constitutional commitments to transparency and democratic mandates for procedural fairness. The competing regulatory approaches of these two superpowers represent an ideological distinction at the heart of global governance: on one hand, a preference for strict centralized control and swift punishments (here, India) versus emphasis on exhaustive process, disclosure and stakeholder participation (in this case, EU).

VI. Conclusion

This paper has examined the intricate relationship between freedom of expression, the right to access information, and the regulation of digital platforms in India and the European Union (EU). Both India and other jurisdictions are confronting a similar set of structural challenges: the meteoric rise of digital platforms as central gatekeepers of public dialogue, the rapid and widespread diffusion of misinformation, and the growing influence of private tech companies in deciding what content gets amplified, downplayed, or taken down altogether. Yet, despite

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facing comparable pressures, their regulatory responses have taken markedly different paths each shaped by unique legal traditions, institutional dynamics, and foundational ideas about democracy.

In India, the shift in regulatory posture is especially striking. What began as a framework grounded in broad, somewhat loosely interpreted principles under the IT Act, 2000 has evolved into a more top-down, command-driven model. The 2021 IT Rules impose a range of prescriptive obligations on digital intermediaries. These include the swift removal of flagged content, the implementation of traceability mechanisms that risk compromising and deployed automated filters to preemptively monitor online speech.

These obligations are framed in vague, subjective standards such as "objectionable content" or threats to "public order," which leave expansive room for executive discretion and censorship. The absence of robust ex ante judicial oversight and limited procedural safeguards for users disproportionately chill speech by journalists, activists, and marginalized communities. Although the Indian judiciary has provided corrective interventions most notably in *Shreya Singhal v. Union of India*, where Section 66A of the IT Act was struck down for its overbroad and unconstitutional restrictions on expression such efforts have been largely reactive, case-specific, and inadequate in reshaping the systemic regulatory architecture[27].

In contrast, Digital Services Act of the EU embodies a framework centered on rights risk-informed model grounded in the values of proportionality, transparency**,** and user empowerment**[28].** Rather than imposing uniform obligations, the DSA introduces tiered responsibilities**,** with Very Large Online Platforms (VLOPs) are necessary to guarantee algorithmic transparency, perform systemic risk assessments, and undergo independent audits**[29].** Public accountability is built into the framework through mechanisms like the Transparency Database, which logs moderation decisions and grounds for takedown actions, enabling scrutiny by civil society, researchers, and regulators[30]. The inclusion of user redressal pathways, opt-outs from algorithmic profiling, and co-regulatory codes on hate speech and disinformation further institutionalize participatory governance**.**

[27] IT Act, 2000, ss. 66A
[28] *Supra* 49.
[29] *Supra* 51.
[30] *Supra* 43.

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The comparative findings of this study highlight two contrasting trajectories. India's approach, while rhetorically grounded in national security and public order, risks entrenching executive dominance over the digital sphere and dismantling democratic safeguards**.** The emphasis on rapid enforcement, private compliance, and surveillance has led to an environment of regulatory opacity and systemic overreach[31]. By contrast, the EU's model, though not immune to critique, aspires to balance state interests with fundamental rights**,** integrating institutional checks and stakeholder involvement at every level of platform governance[32].

Moving forward, the regulation of digital speech must evolve beyond simplistic binaries of control and deregulation. The normative goal should be to design regulatory frameworks that are transparent, proportional, rights-compatible, and responsive to technological change. This requires institutional innovations such as independent content oversight boards, real-time public reporting, procedural fairness standards, and inclusive consultative processes that prevent abuse while fostering accountability from both states and platforms.

Importantly, this paper calls for cross-jurisdictional learning. India can benefit from adopting procedural safeguards and transparency standards embedded in the EU's digital architecture, while the EU might draw insights from India's robust tradition of legal activism and grassroots resistance**,** which has served as an informal check on state overreach in the absence of strong institutional safeguards. The Global South, often disproportionately affected by platform policies designed in the Global North, must not be treated as a passive recipient of digital norms but as an active contributor to global governance debates.

Future research should pursue several critical directions. First, empirical studies are needed to examine how users experience content moderation regimes across jurisdictions particularly in terms of redress, speech suppression, and trust in institutions. Additionally, it is crucial to analyze judicial trends and legal standards in other democratic countries, like the United States, Brazil, and South Africa, to situate India and the EU within a broader framework of democratic reactions. The impacts of algorithmic curation on political polarization, and the democratic legitimacy of platform governance mechanisms**,** especially those outsourced to private actors or AI systems. In sum, platform regulation is not simply a legal or technical issue it is a constitutional and democratic challenge that requires continuous negotiation among rights,

[31] *Supra* 41.
[32] *Supra* 45.

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risks, and responsibilities**.** The future of open expression in the age of technology will be influenced not just by legislation and algorithms but also by the principles, perspectives, and attentiveness of the communities that oversee them.

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THE ROLE OF COURTS IN CONTROLLING CLIMATE CHANGE: JUDICIAL RESPONSES AND CONTINUING CHALLENGES WITH SPECIAL REFERENCE TO INDIA

Dr. Leena Jha*
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ABSTRACT

The paper covers the aspect that climate change is no longer only an environmental issue but a question of justice, violation of human rights and constitutional governance and how courts globally and in India are increasingly being called upon to fill gaps and eradicate the issue of climate crisis. The paper draws on international jurisprudence, where it studies the various judgments being passed by the courts to deal with the issue of climate change. It also highlights how we are reframing climate harm as a violation of fundamental rights, embedding duties of mitigation, adaptation, and intergenerational equity into constitutional and human rights frameworks, and extending obligations to powerful private actors. The paper then moves within the landscape of India and traces the evolution from the foundational environmental jurisprudence to the more explicitly climate-oriented turn, where the Supreme Court had explicitly recognised the idea of right against the adverse effects of climate change under the Constitution of India and ordered inter-ministerial relationships to deal with the issue of climate governance. Using doctrinal and policy analysis, the paper compares these judicial developments with India's executive-led climate architecture that ultimately highlights the persistent gap between orders passed by courts and their partial implementation to regulate climate change. The paper highlights the challenges and proposes a way forward based on comprehensive climate legislation, strengthened climate institutions, enhanced judicial follow-up mechanisms, and deeper civil society participation and transparency to make judicial climate governance more effective, democratic, and durable.

Keywords: *Climate Change, Crisis, Justice, Fundamental Rights, Governance.*

I. Introduction

"Climate change is not merely an environmental issue; it is a question of justice, human rights, and survival". In the present time, the climate crisis is a prominent issue mainly driven by greenhouse gas emissions in the environment from human activity. The problem not only affects the ecosystem but also harms fundamental human rights and social stability. According to the Intergovernmental Panel on Climate Change (IPCC), human-induced emissions are the primary cause of global warming, leading to extreme weather, rising sea levels, and biodiversity loss. In India, the picture is no different, from intensifying heatwaves and erratic monsoons to glacier melt that ultimately affects society and expands the deeply existing

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poverty and inequality in the society. To counter the issue of climate crisis and environmental degradation, the Supreme Court of India has recognised the issue and has expanded the scope of constitutional guarantees, particularly under the ambit of right to life under Article 21 of the Constitution, to include the right to a clean and healthy environment. The court in 1986, in the case of *Subhash Kumar v. State of Bihar*[1], 1991, held that the right under Article 21 encompasses the enjoyment of pollution-free air and water. Over the years, cases such as *M.C. Mehta v. Kamal Nath*[2] and *Virender Gaur v. State of Haryana*[3] ultimately laid the strong foundation of environmental jurisprudence in India.

Around the world, to counter the issue of the climate crisis, climate litigation has emerged as a vital tool for accountability that allows courts to protect the rights of individuals living in society. A recent UNEP/Sabin report[4] notes that climate change lawsuits more than doubled globally from 2017 to 2022, making "litigation a key mechanism for securing climate action and promoting climate justice". Courts in several countries are now recognising that governments and corporations bear legal duties under constitutional, human rights, and environmental frameworks to mitigate climate change and protect vulnerable communities, which clearly highlights the role of the judiciary to counter the issue of the climate crisis. The paper explores and examines how judicial intervention, both at international and Indian levels, is ultimately feeling the governance gaps in the global climate response. The paper is mainly divided into 4 sections, where the first section covers the review of existing literature, section 2 deals with international judicial developments, section 3 deals with India's national jurisprudence, section 4 compares judicial rulings with policy actions and section 5 deals with analysing the ongoing challenges. The paper concludes with recommendations to strengthen the legal and institutional response to climate change.

The litigation in India reveals a jurisprudential path that diverges strongly from the private law-centric strategy in the global north. In the global ecosystem, the scholarship commonly bifurcates climate litigation into "horizontal" private actions against corporations (tort, contract, property, corporate law) and "vertical" public law claims against the State for regulatory or policy failures to protect the environment. In the Indian context, where private law principles have been absorbed, reinterpreted, and frequently operationalised within public law adjudication, the environmental crisis matters. The blend of horizontal and vertical public law produces a hybridised body of doctrine that both addresses environmental harms and creates new avenues for climate governance. The structural functioning of the judiciary, where, unlike many jurisdictions, in which plaintiffs pursue standalone tort or corporate law strategies, in India, private law remains largely dormant as an independent vehicle for climate claims and

1 Subhash Kumar v. State of Bihar (1991) 1 SCC 598 (Supreme Court of India).
2 *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388 (Supreme Court of India).
3 *Virender Gaur v. State of Haryana* (1995) 2 SCC 577 (Supreme Court of India).
4 Sabin Centre for Climate Change Law – Columbia Law School, 2023. *Global Climate Litigation Report: 2023 Status Review*. United Nations Environment Programme and Sabin Centre. Available at: UNEP Sabin Centre for Climate Change Law – Columbia Law School, 2023. *Global Climate Litigation Report: 2023 Status Review*. United Nations Environment Programme and Sabin Centre. Available at: Climate litigation more than doubles in five years, now a key tool in delivering climate justice (accessed 12 November 2025).

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more focus is put forward towards a system that ultimately blurs the segregation between the private and public law structure in India.

Decades of Indian case laws have anchored the idea of the right to a pollution-free environment in Article 21's protection of life. To uphold the idea the Supreme Court's recent decision in *M.K. Ranjitsinh v. Union of India*[5] Represents a doctrinal leap by recognising a distinct "right against the adverse effects of climate change" and explicitly linking it to the existing ecology of environmental rights jurisprudence. The action of the Supreme Court is considered consequential for two related reasons. Firstly, it sustains and extends an established trajectory in which the higher courts have been willing to innovate remedies that compensate and remediate environmental injury; secondly, it empowers the idea of horizontal enforcement of constitutional climate rights against private actors. The idea becomes stronger with the precedent set by the court in the case of *Kaushal Kishor v. State of Uttar Pradesh.*[6]In the case court endorsed the possibility that fundamental rights may, in certain circumstances, be enforced against non-State actors, which ultimately puts liability on the private players harming the environment by their actions. Together, these strands create a legal architecture in which claimants may choose the writ jurisdiction of High Courts or the Supreme Court to pursue redress by electing public law routes that bypass procedural and evidentiary constraints common in ordinary civil litigation.

The structural preference followed in India is not merely technical or tactical, but it reflects a deeper institutional reality in India where the constitutional benches and tribunals possess the discretion, resources, and precedent-building capacity to fashion broad, remedial orders that ordinary private suits typically cannot achieve.

It also highlights how constitutionalisation is playing a very important role in the redeployment of tort law principles through public law litigation. The record highlights a series of watershed Supreme Court decisions to establish the principle. It begins with *M.C. Mehta (the oleum leak case)*[7], where the court established a stricter principle to protect the environment. In this case, the court transformed the long-standing common law doctrines of strict liability held in the case of *Rylands v. Fletcher.*[8] Into the idea of absolute liability, where the hazardous industries are required to pay compensation based on how big and rich they are, so the bigger and more powerful companies are required to pay more because they have more resources and a greater responsibility. The jurisprudential turn paved the way for the court to articulate and entrench the polluter pays principle and precautionary principle in the case of the *Indian Council for Enviro-Legal Action* and *Vellore Citizens Welfare Forum.*[9] Thereby importing environmental protective principles into the mainstream of constitutional adjudication. A prominent theme in

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5 *M.K. Ranjitsinh v. Union of India* (2024) SCC Online SC 446 (Supreme Court of India).

6 *Kaushal Kishor v. State of Uttar Pradesh* (2023) 4 SCC 1 (Supreme Court of India).

7 *M.C. Mehta v. Union of India*, (1987) 1 SCC 395. Available at: M.C. Mehta And Anr vs Union Of India & Ors on 20 December, 1986 [Accessed 14 Nov. 2025].

8 United Kingdom. House of Lords. (1868) *Rylands v. Fletcher*, (1868) LR 3 HL 330. Available at: Case Analysis of Ryland v. Fletcher [1868] UKHL 1, (1868) LR 3 HL 330 [Accessed 14 November 2025].

9 *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212.

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the literature and the idea highlighted by Varottil is that the principles established by the courts were not merely rhetorical in nature, but the principles are operational in nature, which emphasised restitution, remediation, and deterrence. The drafting of the National Green Tribunal Act 2010 and the establishment of the National Green Tribunal ultimately allowed the judiciary to implement the idea of sustainable development, the precautionary principle, and the polluter-pays principle in its decisions, thus institutionalising the doctrinal synthesis of tort ideas into statutory adjudication.

While the expansion in the judiciary, changes in the expansion of liability standards, and remedial tools have provided India with a robust repertoire for environmental litigation, the literature is emphatic about the doctrinal and practical challenges that persist mainly for private law-based climate suits. The three main problems associated with it are the identification of appropriate causes of action, the proof of causation in scientifically complex chains of causation inherent to climate harms, and the quantification of damages. Globally, the courts and commentators have wrestled with whether existing tort categories can accommodate diffuse, cumulative, and temporally extended harms; the Indian judges have sidestepped some of these difficulties by invoking public law powers and flexible standards that relax strict causation requirements and permit imaginative measures of compensation. The literature highlights certain serious uncertainties, such as the quantification methodologies used by the Supreme Court and the NGT vary widely from the range of "deep pockets" assessments (linking liability to the industrial capacity of the defendant) through percentage-of-project or percentage-of-sale-proceeds formulas, to the appointment of ad hoc expert committees or the delegation to regulatory agencies, it ultimately produces an inconsistency and sometime even opaque awards are being passed.

The role of the national green tribunal plays a pivotal role that both reflects and amplifies the Supreme Court's doctrinal experiments. It promotes the idea of implementation of sustainable development, the precautionary principle and the polluter-pays principle in society, and thus functions as a specialist forum that mitigates some of the resource and delay constraints afflicting ordinary civil courts. The scholarship also records criticisms of the NGT's practice, which includes the inconsistent damage calculation mechanism and occasional reductions in initial compensation estimates, which raise questions about the Tribunal's evidentiary rigour and methodological standardisation process. Despite these criticisms, commentators broadly agree that having a specialised forum with statutory backing for applying novel environmental remedies materially improves access to justice in the climate sphere and provides a more hospitable venue for complex, multi-party, and scientifically intense disputes than the regular court system.

The corporate law and the idea of Corporate Social Responsibility (CSR) ultimately place an obligation on the private bodies to act as vectors through which climate accountability can be advanced. The Companies Act also puts a lot of effort on the directors of the company to protect the environment. Section 166(2) of the act [10]Deals with the obligation of the director to act in the best interests not only of the company and shareholders, but also of employees, the

[10] Companies Act 2013, s 166(2) (India).

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community and for the protection of the environment. The scholar interprets that the statute language signals a distinctively stakeholder-oriented corporate law regime that compels directors to integrate environmental and climate considerations into strategic decision-making rather than treating them as mere financial risks to be disclosed. Complementarily, section 135 of the Companies Act,[11] the CSR mandate requires certain large companies to spend at least 2% of their average net profits on defined social and environmental objectives, further cementing corporate responsibility into a statutory architecture. The literature recognises the corporate law not only as a private regulatory instrument but as a public law matter. The court has recognised that corporate law, especially the companies' law, provides a public dimension to the private companies and hereby reinforces the cross-pollination where corporate governance norms buttress environmental protection and vice versa.

The contract law plays a silent but very important role in climate regulation; the contractual rules, such as the force majeure, frustration, and change-in-law, determine how climate impacts affect ongoing contracts. In India, the bigger influence comes from the governmental regulations that force the companies to support clean energy through renewable energy agreements. The Supreme Court in the case of *Hindustan Zinc Ltd v. RERC*[12] Has refused to change renewable-energy agreements even when companies asked the court to do so. The action clearly shows that the Court prioritises environmental goals over business convenience. As scholars note, these regulatory pushes turn private contracts into tools for promoting clean energy, again mixing private and public law. Even though contract law itself has not developed much in climate cases, it still helps support India's renewable-energy transition.

The Indian legal system is strongly connected between private law ideas and public law remedies. Principles like polluter-pays, absolute liability, directors' environmental duties, CSR rules, and contract frameworks all support the development of constitutional and public law solutions. At the same time, the Supreme Court and the tribunals have adapted private law by loosening strict rules on causation and damages to make remedies more flexible and effective. Varottil argues that India's climate accountability will mainly progress through constitutional and public law cases rather than private lawsuits, though private law will still play an important supporting role. This means climate litigants in India should focus on constitutional and regulatory avenues while also strengthening private law arguments for future use.

II. International Judicial Developments

Over the last few decades, the courts around the world, as well as the international justice system, have strongly addressed climate change under human rights and environmental law. The prominent international case laws and advisories issued by the International Court of Justice on climate change and crisis highlight the active role of the judiciary in protecting and dealing with environmental issues.

[11] *Id.*, s 135 (India).
[12] *Hindustan Zinc Ltd v. Rajasthan Electricity Regulatory Commission*, (2015) 12 SCC 611.

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International Court of Justice – Advisory Opinion on Climate Change (2025)

In July 2025, the ICJ delivered a landmark advisory opinion on states that puts obligations on the states regarding climate change and the issue of the climate crisis based on the question posed by the UN General Assembly[13]. The court unanimously held that the international laws and principles established in the treaty, like the Paris Agreement and customary law, impose binding obligations on the states to prevent significant climate harms, act with precaution and due diligence and also regulate the private players' actions regarding emissions and harming the environment. The court held that the affirmed target of 1.5°C under the Paris agreement is legally binding and the failure to mitigate foreseeable harm can trigger state responsibility. The ICJ critically recognised that climate change hurts the fundamental human rights, including the right to life, health and access to a healthy environment and if the state fails to adapt or mitigate action plans, then they ultimately violate the rights of the individuals.[14]. The opinion also establishes that environmental and human rights are enshrined in international law and domestic policies, such as fossil fuel licensing, subsidies, which may violate the global duties of the state to follow the principles. While the advisory is highly persuasive, analysts expect it to strengthen the legal foundation for climate action worldwide and influence national courts to promote actions to reduce the environmental crisis.

Inter-American Court of Human Rights – Advisory Opinion

In 2025, the Inter-American Court of Human Rights (IACtHR) issued a significant advisory opinion[15], in which the court clearly highlighted the connection between human rights, the right of nature and the need to address climate change. The court reaffirmed that people have an autonomous right to a healthy environment, and for the first time, the court also recognised a healthy environment as a separate right, where the court interpreted the idea of a healthy environment as to live in a climate system that is not dangerously affected by human activities. The court also stated that countries are legally required to reduce greenhouse gas emissions, prepare for climate impact, and promote sustainable development. The court highlighted that these duties must be performed under the ambit of the precautionary principle and the idea of intergenerational equity. The court in the opinion also acknowledged that Nature itself, not just human beings, has rights. It gave ecosystems such as the Amazon rainforest a kind of legal personhood, meaning they can be treated as subjects with legal rights. It further held that causing permanent or irreversible harm to the climate or nature is now considered a jus cogens norm and is a violation of international law that no country is allowed to do. The court instructed the governments to regulate corporate activities, evaluate climate-related activities and protect ecosystems and ultimately, related climate obligations firmly within the broader

[13] International Court of Justice (ICJ), 2025. *Advisory Opinion on the Obligations of States in Respect of Climate Change*. The Hague: ICJ. Available at: Historic International Court of Justice Opinion Confirms States' Climate Obligations | International Institute for Sustainable Development (accessed on 14 November, 2025).

[14] Columbia Law School Climate Law Blog**,** 2025. *Initial Reflections on the ICJ Advisory Opinion on Climate Change*. [online] Available at World's Highest Court Embraces the Right to a Healthy Environment - Climate Law Blog (accessed on 14 November, 2025).

[15] Inter-American Court of Human Rights (IACtHR), 2025. *Advisory Opinion OC-32/25 on Human Rights and the Climate Emergency*. San José, Costa Rica. Available at: Analytical Summary of Advisory Opinion OC-32/25 by the Inter-American Court of Human Rights – Climate emergency, human rights and the rights of Nature – Observatoire Nature (accessed on 14 November, 2025).

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human rights framework. The opinion marks a turning point in international law as it introduces a new, more holistic legal approach where there is a proper blend of environmental, human, and ecological rights.

Urgenda Foundation v. The Netherlands (Dutch Supreme Court, 2019)

In the Urgenda case, a Dutch environmental organisation sued the government for not doing enough to reduce greenhouse gas (GHG) emissions. The case made history when the Supreme Court of the Netherlands ruled that the government must reduce emissions by at least 25% compared to 1990 levels by the year 2020[16]. The court said that the climate crisis is not just a political issue but also a legal duty of the government to protect people's fundamental rights, especially the right to life and the right to private and family life, as guaranteed by Articles 2 and 8 of the European Convention on Human Rights. Importantly, the court rejected the government's argument that the country's share of global emissions was too small to make a difference. The court said that even a bit of pollution contributes to global warming and leads to the climate crisis, and therefore every country has a duty to act, regardless of how big or small its emissions are. The decision is seen as a turning point in the climate litigation, where, for the first time, a high court anywhere in the world ordered a government to cut emissions based on human rights. The reasoning in *Urgenda* could help strengthen the case that the government has a constitutional obligation to take strong climate action.

Leghari v. Pakistan (Lahore High Court, 2015)

In the present case, a farmer from Punjab took the government to court for not putting its National Climate Change Policy into action[17]. The Lahore High Court agreed with him and strongly criticised the delay and lethargy shown by the government. The court held that failure of implementation of the policy ultimately violates the fundamental rights of citizens, especially the right to life and dignity protected under Articles 9 and 14 of the Pakistani constitution. The court ruled that these rights include the right to live in a clean and healthy environment, while reaching into the judgement the court referred to important environmental principles such as sustainable development, the precautionary principle, inter- and intra-generational equity (fairness to future and current generations), and the public trust doctrine (the idea that the state holds natural resources in trust for the public). What made the case especially groundbreaking was that the court didn't just stop at declaring rights, but it took practical steps to implement the idea. The court ordered the government to appoint a focal person in key ministries. The court also held that to establish a climate change commission to implement and regulate the policy, it must be made up of environmental experts and members of civil society. The court also introduced the idea of "climate justice", a term used to show that climate change is not just an environmental issue but also a matter of fairness and human

[16] Supreme Court of the Netherlands, 2019. *Urgenda Foundation v. State of the Netherlands (Ministry of Infrastructure and the Environment)*, Case No. 19/00135. [online] Environmental Law Alliance Worldwide (ELAW). Available at: Urgenda Foundation v. The State of the Netherlands - ELAW: Environmental Law Alliance Worldwide(accessed on 14 November, 2025).

[17] Lahore High Court, 2015. *Asghar Leghari v. Federation of Pakistan*, W.P. No. 25501/2015. [online] Climate Change Litigation Database, Sabin Centre for Climate Change Law. Available at: Leghari v. Federation of Pakistan - The Climate Litigation Database (accessed on 14 November, 2025).

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rights. Although this ruling was specific to Pakistan, the *Leghari* case shows that courts can play an active role in forcing governments to carry out their climate promises and hold them accountable for inaction.

Neubauer et al. v. Germany (German Federal Constitutional Court, 2021)

In the present case[18]A group of young climate activists went to court to challenge Germany's Climate Protection Act of 2019[19]. The youth argued that the law, which was introduced by the government to reduce greenhouse gas emissions, where the government sets a target of reducing emissions by 55% by 2030, was not strong enough. The court in the case passed a unanimous decision, where the German constitutional court agreed and declared the law as unconstitutional. The court ordered the government to set stricter climate goals for the future, especially for the period after 2030. The judges based their decision on Article 20a of the German Basic Law (Germany's Constitution)[20], which says the state must protect the natural foundations of life for both present and future generations. The Court introduced the idea that this duty must be fulfilled "intertemporally", meaning over time. The court emphasised the idea that if today's generation uses up too much of the world's remaining budget, that is, the amount of CO_2 that can be safely emitted, it will ultimately put an unfair burden on future generations. The court also said that the law violates the young people's constitutional rights, such as the right to life and freedom. The court thought the ruling established the idea of intergenerational equity as a constitutional principle, where the idea states that we must care for the rights of future generations. It also made clear that climate laws must be based on science and fairness, and Governments cannot simply delay action or pass on the problem to future generations.

Massachusetts v. Environmental Protection Agency

In the landmark case of *Massachusetts v. Environmental Protection Agency* court passed a ruling that greenhouse gases (GHGs) include carbon dioxide and must be treated as air pollutants under the U.S. Clean Air Act. The decision meant that the Environmental Protection Agency (EPA) has the legal authority and even the duty to regulate GHG emissions if they are found to threaten public health or welfare. The court found that Massachusetts had standing in the present issue because the rising sea levels caused by climate change threatened its coastal areas, and that this harm was both real and scientifically supported. The court then examined the Clean Air Act, which defined the "air pollutants" in very broad terms, and it concluded that carbon dioxide and other GHGs would fall under the ambit of the definition and that the EPA could not avoid regulation simply by arguing that climate change was a global or political issue. The most important part of the judgement was when the court made the statement that every small reduction in emissions matters, where even if he emissions from one state or one vehicle are small, they still contribute to the global problem of climate change and will ultimately lead

[18] Federal Constitutional Court of Germany, 2021. *Neubauer et al. v. Germany*, 1 BvR 2656/18. [online] Climate Change Litigation Database, Sabin Centre for Climate Change Law. available at: Neubauer et al. v. Germany - The Climate Litigation Database (accessed on 14 November, 2025).

[19] Germany's Climate Protection Act of 2019. Available at: Federal Climate Protection Act (KSG) | UNEP Law and Environment Assistance Platform (accessed on 14 November, 2025).

[20] Germany. (1949) *Basic Law for the Federal Republic of Germany (Grundgesetz)*, Art. 20a. available at: https://www.gesetze-im-internet.de/gg/ (accessed on 14 November, 2025).

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to the climate crisis. The decision highlighted the active role of the judiciary, where the court expanded the definition in the act to ultimately protect the environment as well as to tackle the climate crisis at the world level.

PSB v. Brazil (Brazilian Supreme Federal Court, 2022) – "Climate Fund Case"

The Supreme Federal Court of Brazil delivered an important judgment in the case of *PSB v. Brazil.*[21], where the court held that the Brazilian government had violated its constitutional environmental duties by failing to properly fund the National Climate Fund. The fund was to be used for the country's climate change policies, and the lack of financial assistance from the government had made the fund inactive. The court brought the Brazilian constitution, which holds that all citizens have a right to a healthy environment, and it is the duty of the executive branch to prevent environmental harm. The case became particularly significant because the Court held that international environmental treaties, such as the Paris Agreement.[22], are not just policy goals but are "human rights" treaties. This gives them a "supralegal" status, which means they are stronger than regular laws and are almost as powerful as the Constitution itself. The interpretation by the court made the international agreement legally binding and prevented the government from claiming that fulfilling its climate promises is optional. As a result, the court ordered the reactivation of the National Climate Fund so that the country could move forward on its obligations to reduce greenhouse gas emissions and tackle climate change. This case is important for international climate law because it shows that a climate treaty can be treated as having constitutional importance. The case also shows that when a country signs a climate treaty, its courts can hold the government accountable for implementing it.

Korean Constitutional Court – Carbon Neutrality Act (2024)

In the present case, the Constitutional Court of South Korea delivered a major judgment on climate change and citizens' rights. The court reviewed section 8(1) of the Carbon Neutrality Act[23] of Korea as unconstitutional[24], which sets a goal for reducing greenhouse gas emissions.

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[21] Supreme Federal Court of Brazil, 2022. *PSB et al. v. Brazil (Climate Fund Case)*, ADPF 708. [online] Clifford Chance. Available at: Brazilian Supreme Court recognises the Paris Agreement as a "human rights treaty" (accessed on 14 November, 2025).

[22] United Nations. (2015) *Paris Agreement*. UN Doc. FCCC/CP/2015/10/Add 1. Available at: https://unfccc.int/process-and-meetings/the-paris-agreement (accessed on 14 November, 2025).

[23] South Korea. (2021) *Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis* (Carbon Neutrality Act), Art. 8(1). Available at: Statutes of the Republic of Korea (accessed on 14 November, 2025).

[24] South Korea. (2024) *Constitutional Court of Korea, Do-Hyun Kim et al. v. Korea*, decision of 29 August 2024. Case No. 2020Hun-ma799. Unanimous ruling declaring Article 8(1) of the Framework Act unconstitutional. Available at: South Korean Constitutional Court Ruling: A Landmark Decision in Climate Litigation (accessed on 14 November, 2025).

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The law set by the act required a 40% cut in emissions by the year 2030, but the act lacked a clear target beyond that year. The court found the lack of clarity and the gap unacceptable and ruled that it violated the South Korean Constitution, especially the government's duty to protect people from the dangers of climate change. In this case, the judges' protection against climate change is a constitutional right issue; the court also recognised the right of future generations to have access to a clean environment. The court held that a legally binding system is required to be implemented to reduce emissions to their lowest level by 2050. The court, through the judgment, ordered the government to revise the law and include science-based, enforceable targets that are in line with global climate goals, like the 1.5°C limit set by the Paris Agreement[25]. The Korean Court made it clear that climate policy is not just political—it is a legal matter tied to basic human rights, and necessary steps are required to be taken to counter the issue of the climate crisis in the present time.

Milieudefensie et al. v. Royal Dutch Shell

In the present case, the District Court of The Hague (Netherlands) delivered a historic ruling.[26] Several Dutch environmental organisations and citizens sued Shell, one of the world's largest oil and gas companies, for not doing enough to fight the climate crisis. The court made a groundbreaking decision where it held that even though Shell Oil Company is a private entity, it still has a legal duty to reduce greenhouse emissions in the environment. The court held that this duty comes from the unwritten standards of care under Dutch civil law, which are informed by European Union law.[27] and the European Convention on Human Rights (ECHR)[28]. The court also referred to Articles 2[29] and 8 of the ECHR[30], which protect the right to life and the right to private and family life. The court stated that the issue of climate change effects is to be protected under the same rights. As a result, the court ordered the company to reduce its global CO2 emissions by 45% by 2030, compared to the level realised in 2019. The order covers both

[25] United Nations. (2015) *Paris Agreement*. UN Doc. FCCC/CP/2015/10/Add 1. Available at: https://unfccc.int/process-and-meetings/the-paris-agreement (accessed on 14 November, 2025).

[26] Netherlands. District Court of The Hague. (2021) *Milieudefensie et al. v. Royal Dutch Shell plc*, C/09/571932 / HA ZA 19-379. Judgment of 26 May 2021. English translation available at: Landmark decision ordering Shell to cut CO2 emissions from its global operations by 45% overturned by Hague Court of Appeal - Human Rights Law Centre (accessed on 14 November, 2025).

[27] European Union. (2000) *Charter of Fundamental Rights of the European Union*. 2000/C 364/01. Available at: EUR-Lex - 12012P/TXT - EN - EUR-Lex (accessed on 14 November, 2025).

[28] Council of Europe. (1950) *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR). Rome, 4 November 1950. Available at: https://www.echr.coe.int [Accessed 14 Nov. 2025].

[29] Council of Europe. (1950) *European Convention on Human Rights*, Art. 2 (Right to Life). Available at: https://www.echr.coe.int (accessed on 14 November, 2025).

[30] Council of Europe. (1950) *European Convention on Human Rights*, Art. 8 (Right to Respect for Private and Family Life). Available at: https://www.echr.coe.int (accessed on 14 November, 2025).

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Shell's own operations and the emissions from the use of its products, such as the fuel it sells. The reason behind the decision of the court was that Shell is a major contributor of greenhouse gases, and the company has the ability as well as the resources to make a meaningful difference in the fight against global warming. Although this decision was later partially overturned on appeal as the higher court found the 45% target to be too rigid, the core message about corporate duties and human rights remains influential. This ruling was historic because it was the first time a court directly imposed climate targets on a private corporation, not just on governments. The court linked corporate responsibility to human rights, arguing that big polluters have a precautionary duty to avoid contributing to climate harm.

Friends of the Irish Environment v. Ireland

In the present case, the Irish Supreme Court reviewed Ireland's national mitigation plan (2017-2022)[31]. The plan was brought to outline how the country would reduce greenhouse gas emissions in line with its long-term 2050 low-carbon goal. The court in the present case found the plan too vague and general in nature, and it observed that it does not meet the legal standards set by Ireland's Climate Action and Low Carbon Development Act 2015[32]. The judges unanimously agreed that the plan failed to explain clearly how the government intended to meet its climate goals, as it did not include any specific measures or interim targets that could be used as a goal and a move could be made towards it. It also observed a lack of details that are required to achieve the environmental goal; at the same time, it was non-compliant with the law. As a result, the Supreme Court struck down the plan put forward by the government and asked the government to prepare a new plan covering a more practical goal goal-oriented approach and a more detailed and vision vision-oriented path. The case did not force the government to adopt a new climate target, but the judgment made it clear that climate policies must be legally sound, transparent, and specific. The judgment also emphasised the idea of environmental democracy, the principle that promotes the idea that the public has a right to understand and evaluate government plans that affect the environment. It also reinforces the state's duty of care in addressing climate change through legally enforceable means.

Earth Life Africa Johannesburg v. Minister of Environmental Affairs, South Africa

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[31] Ireland. Supreme Court. (2020) *Friends of the Irish Environment CLG v. The Government of Ireland & Ors*, [2020] IESC 49. Judgment of 31 July 2020. available at: Supreme Court quashes Government's 'excessively vague' climate plan (accessed on 14 November, 2025).

[32] Ireland. (2015) *Climate Action and Low Carbon Development Act 2015*, No. 46 of 2015. Available at: https://www.irishstatutebook.ie/eli/2015/act/46/enacted/en/html (accessed on 14 November, 2025).

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In the Thabametsi case, the Pretoria High Court reviewed the approval granted by the government for constructing a 1,200 MW coal-fired power plant. The project faced strong criticism from environmental activists and civil society, who argued that the government had approved it without properly assessing its impact on climate change, particularly regarding greenhouse gas emissions. At that time, South Africa's environmental laws did not explicitly mandate a climate assessment for large projects. In the current case, the court ruled that climate change is a relevant factor that must be considered before granting environmental clearance. The court stated that approving a high-emission project without evaluating its long-term climate impact was unlawful, especially considering South Africa's international commitments under the Paris Agreement. The court invalidated the approval because the government had effectively ignored the environmental assessment, which could lead to a climate crisis. This case is significant because it demonstrates the judiciary's active role in protecting the environment and combating climate change by applying principles like the precautionary principle and sustainable development.

Oposa, Ltd. v. Factoran (Philippines, 1993)

In the landmark case of *Oposa v. Factoran*,[33] The Supreme Court of the Philippines delivered a historic ruling that recognised the rights of future generations in environmental matters. A case was filed by a group of children, represented by their parents, where the lawsuit asked the court to pass an order to cancel all timber license agreements that allowed large-scale logging in the country's forests. The argument put forward by the party was that deforestation is ultimately creating an environmental crisis and violating the constitutional right to a "balanced and healthful ecology." The court stated that the children had made a powerful legal statement, where the court held that the young generation has the right to sue, not only for protecting their rights themselves but also on behalf of future generations, a view later developed as the doctrine of intergenerational responsibility. The court explained that the current generation has both legal as well moral duty to protect the environment for those yet to be born. The judgment emphasised the idea that environmental rights are fundamental and inalienable in nature, and they belong to all the people living in the society. It also made clear that natural resources are held in trust by each generation for the benefit of the next, and this trust creates enforceable

[33] Philippines. Supreme Court. (1993) *Oposa v. Factoran*, G.R. No. 101083, 30 July 1993. available at: Case Law Database | University College Cork (accessed on 14 November, 2025).

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legal obligations. The case law recognised the legal rights of future generations and the importance of youth participation in environmental protection.

III. National Judicial Developments: India

The Indian judiciary has always shown a keen interest while dealing with matters of environmental litigation, and in recent years, the court has also begun to address the issue of climate crisis and change through its observations in the cases. The intervention of the Supreme Court in environmental jurisprudence began from the 1980s onwards and has progressively evolved to expand constitutional protection of ecological rights. The landmark cases like various *M.C. Mehta* cases from the 1980s – 90s and the *Subhash Kumar v. Bihar*[34] ultimately recognised that the right to life under Article 21of the Constitution of India.[35] Guarantees a "healthy environment" to the citizens of the country. *The Vellore Citizens' Forum case*[36] also applied the precautionary principle and polluter-pays doctrine and held that sustainable development obligations arise from Article 21 of the Constitution. In the Landmark cases, such as *M.C. Mehta v. Kamal Nath*[37] and *Virender Gaur v. the* court, cemented the principles like "polluter pays" and the precautionary approach, and ultimately promoted the idea of environmental protection and obligations to safeguard public health and ecological balance.

Foundational Doctrines, early precedents that enable climate reasoning

Municipal Council, Ratlam v. Vardichand (1980)

The Supreme Court in the *Ratlam* case[38] Held that the municipal authorities are strictly accountable for taking care of public health and sanitation, and a lack of funds cannot justify exposing citizens to health hazards. The case is considered a foundation for climate reasoning because, in the present case, the Supreme Court expanded the scope of Article 21 of the Constitution.[39] This guarantees the right to life. The Court interpreted this right broadly to include the right to live in a clean and safe environment, at the same time putting a positive obligation on the state to take necessary actions to prevent threats to life and health caused by poor civic infrastructure. The present case is relevant in the climate context because it shows

[34] India. Supreme Court. (1991) *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.
[35] India. (1950) *Constitution of India*, Art. 21.
[36] India. Supreme Court. (1996) *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.
[37] *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.
[38] *Municipal Council, Ratlam v. Vardichand*, (1980) 4 SCC 162.
[39] The Constitution of India, Art. 21.

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that the courts are willing to hold public authorities accountable when administrative inaction harms public well-being and causes damage to the environment.

Indian Council for Enviro-Legal Action v. Union of India

In the landmark case of *Indian Council for Enviro-Legal Action v. Union of India* Supreme Court dealt with a serious case of chemical pollution caused by private industrial units that ultimately contaminated the soil and water in rural areas. The court, while passing the judgment, reaffirmed the principle of polluter pays, where the court held that the industries are responsible for the damage caused to the environment by the actions performed by the industries, and they are legally obligated to pay for the environmental remediation and compensate the affected communities. The case ultimately portrayed the idea of strict liability for the hazardous activities performed by the industries, regardless of whether the polluter intended the harm to the environment or not. The case ultimately cemented the idea of environmental liability in India being absolute and compensatory in nature, where the Court clarified that once pollution is proven, the burden to remediate lies entirely with the polluter. The judgment shows the initial development of the courts towards the idea of protecting the environment protect public health, natural resources, and the constitutional right to life under Article 21.

T.N. Godavarman Thirumulpad v. Union of India

The *T.N. Godavarman Thirumulpad v. Union of India*[40] *The* Case was initiated as a petition filed to prevent illegal deforestation in the Nilgiris, but the case slowly evolved into one of the most significant environmental law cases in Indian judicial history. The Supreme Court in the present case interpreted the term forest broadly under the Forest (Conservation) Act, 1980[41], and then issued a series of continuing mandamus orders that established binding directions to the executive, including Suspension of Tree Felling Across India, Formation of Central Empowered Committee, Regulation of Forest Clearance and Mining Activities, Fund Management, and Control Over State Action regarding environmental matters. *Godavarman* is doctrinally important because it established that the judiciary can actively supervise environmental governance through long-term and structured engagement, and the approach showed that public interest litigation can serve as an instrument of ongoing environmental

[40] *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267.
[41] Forest (Conservation) Act, 1980, Act No. 69 of 1980.

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reform, particularly where executive inaction is persistent, and the mandamus model developed in *Godavarman* offers a strong legal template for addressing climate change.

Landmark environmental jurisprudence that enables climate claims

M.C. Mehta v. Union of India & Ors

In the series of landmark judgments under the banner of *M.C. Mehta v. Union of India*[42]The Supreme Court of India addressed grave environmental threats to the Taj Mahal and surrounding regions (Taj Trapezium Zone or TTZ). The court found that the emissions from the nearby industries, particularly from the industries using coal and coke, were ultimately damaging the white marble of the Taj Mahal by means of acid rain and particulate pollution. To counter the issue, the court issued a sweeping remedial order that includes shifting industries from the nearby areas and ordered the industries to use cleaner fuels like CNG to cause less pollution and mandating the installation of pollution-control technologies. The case laid down procedural and substantive innovations that are directly relevant to climate governance today, which includes Feasibility-based remedies where the court directed the industries to adopt cleaner fuels and control the emissions from the industry to protect the environment. Scientific evidence and engineering solutions were taken into consideration, where the court relied heavily on the technical studies, expert reports and government data to issue orders that show the court's keen interest to protect and conserve the environment as well as deal with the issue of the climate crisis. The judgments also showed that the courts can act as catalysts for state action when regulatory inertia threatens public health or the environment, an approach particularly important in the face of climate inaction.

Recent climate-era cases (2019–2025) confrontation with climate governance

Ridhima Pandey v. Union of India:

The *Ridhima Pandey v. Union of India*[43] It is generally referred to as a landmark case in the Indian judiciary in the present time that illustrates the evolving role of Indian courts in addressing the issue of the climate crisis. In 2017, a petitioner approached the National Green Tribunal (NGT) seeking judicial intervention against what she described as the Indian government's failure to adequately respond to the challenges of climate change. The petition was deeply rooted in key environmental and constitutional doctrines such as the Public Trust Doctrine, the principle of intergenerational equity, and India's binding obligations under

[42] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.
[43] *Supra note* at 43.

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international frameworks, including the United Nations Framework Convention on Climate Change (UNFCCC)[44] and the Paris Agreement[45]. The petitioner argued that the inaction and insufficient climate mitigation plan put forward by the government are ultimately leading to the climate crisis and amount to a violation of her and the future generations that covers fundamental rights to life and a clean environment under Article 21 of the Constitution.[46]. The petition was dismissed by the national green tribunal, holding that the climate-related obligations are already addressed within the framework of the Environment (Protection) Act, 1986[47]. The tribunal further highlighted the idea that international treaties like the Paris agreement, while being ratified by India, do not automatically give rise to enforceability rights within the jurisdiction of the NGT unless the right is explicitly mentioned under the ambit of domestic law.

The matter then moved to the Supreme Court of India, and in a significant development in February 2025, the Court converted the pending appeal into a writ petition under Article 32 of the Constitution, signalling its recognition of the constitutional gravity of the issues raised. The court in the present case appointed a panel of amici curiae with the duty to assist in complex technical and legal aspects of the case, and the court also directed the Union government to submit detailed "climate rulebooks," outlining how India's domestic environmental policies align with its international climate commitments and treaties that India is a signatory to. The court also made an observation of the fragmented nature of climate policymaking in India, where the climate issues are generally left unsolved due to a lack of coordination across various departments and ordered eight key ministries, including Environment, Energy, Transport, and Finance, to ensure inter-ministerial accountability and holistic policy integration.

Doctrinally, this case represents a profound shift in Indian environmental jurisprudence, where earlier the cases addressed environmental protection through the lens of pollution control and sustainable development, but in the present case, the court directly engaged climate change as a justiciable constitutional issue. In this case, the court engaged the foundational pillars of the Constitution, that is, Article 21, Article 14, Articles 48A and 51A(g) of the Constitution of

[44] United Nations. (1992) *United Nations Framework Convention on Climate Change (UNFCCC)*. available at: https://unfccc.int (accessed on 14 November, 2025).
[45] United Nations. (2015) *Paris Agreement*. UN Doc. FCCC/CP/2015/10/Add 1. available at: https://unfccc.int/process-and-meetings/the-paris-agreement (accessed on 14 November, 2025).
[46] The Constitution of India, 1950, Art.21.
[47] The Environment (Protection) Act, 1986, Act No. 29 of 1986.

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India. The active participation of the court shows the acknowledgement of the court in the matter of the climate crisis and environmental protection.

M.K. Ranjitsinh & Ors. v. Union of India

In the case of *M.K. Ranjitsinh & Ors. v. Union of India* Supreme Court of India delivered a very transformative judgment that marks a very significant development in the idea of constitutionalisation of climate rights in India. The case was originally filed by the petitioner through a PIL mainly focusing on biodiversity conservation and specifically seeking protection for the critically endangered Great Indian Bustard. While delivering the judgment, the court expanded the scope of its address and covered the issue of the climate crisis and ecological imbalance in the environment. In the judgment, the court categorically declared that there is a right to be free from the adverse effects of climate change. The court effectively recognised climate harm as an independent and justifiable ground to get protection under the Indian Constitution.

The court in the present case for the first time explicitly highlighted the issue of climate change as a discrete constitutional concern rather than treating it as an implied subset of environmental degradation. The court recognised both Article 21 (protection of life and personal liberty) and Article 14 (right to equality)[48], thereby creating a robust constitutional framework that elevates climate protection from the realm of policy discretion into the sphere of enforceable rights. The shift also indicates the affirmation of positive State obligations to prevent and mitigate climate-related harm. The court also reaffirmed the idea that climate change does not affect all citizens equally and that vulnerable populations such as the poor, tribal communities, and marginalised groups disproportionately bear its consequences of the environmental crisis. It ultimately allowed the path of the litigants to challenge discriminatory or inequitable climate policies. The court, by linking climate protection to constitutional equality the court effectively placed a legal obligation on the State to ensure that mitigation and adaptation measures are inclusive, participatory, and just.

State of Maharashtra v. Government of India

In *State of Maharashtra v. Government of India*[49]*The* National Green Tribunal was called to resolve a dispute concerning the environmental clearance granted for a major development project. The central government highlighted that the project was passed following all the

[48] The Constitution of India, 1950 Arts. 14 and 21.
[49] *State of Maharashtra v. Government of India*, (1995) 3 SCC 646.

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required statutory compliances, and by conducting a study on the environmental impact assessment process. The court on the under hand made a significant observation where it held that there is a need to explicitly recognise the urgent and pressing reality of climate change in the environment, the court held that infrastructure and development projects must be evaluated not only for their conventional environmental impacts (such as deforestation, biodiversity loss, and pollution) but also on the parameter of "climate footprint" which includes anticipated greenhouse gas (GHG) emissions and their cumulative impact on climate systems.

The court laid down an important groundwork for the future generation in the field of environmental governance in India. The court's observation shows a judicial shift towards mainstreaming climate risk into statutory environmental process, and it also put forward the idea that climate change should not be an afterthought but a core component of decision-making at all levels of infrastructure planning and environmental approvals, as it ultimately aligns with the emerging global standards such as integrating climate impact assessments as part of environmental due diligence.

IV. Comparative Analysis: Court Decisions vs Government Responses

In the last few decades, the Indian judiciary has actively participated in addressing the issue of climate change and protecting the environment. To do so, the court has not treated it merely as a policy issue but as a matter of constitutional rights and the protection of the fundamental rights of the citizens. The trend can be seen in landmark cases of *Ridhima Pandey v. Union of India.*[50]Originally dismissed by the National Green Tribunal (NGT) in 2019 because climate obligations were already integrated into domestic environmental policies under the Environment Protection Act, the Supreme Court took a different stand on the issue and observed that the existing statutory framework requires reform to incorporate "climate-centric mandates." The court also ordered the eight key ministries to be impleaded as parties to ensure inter-ministerial coordination and policy coherence on climate governance.

If we make a shift towards the case of *M.K. Ranjitsinh & Ors. v. Union of India*[51] The Supreme Court issued a judgment explicitly declaring that the "right to a clean environment" and the "right to be free from the adverse effects of climate change" are constitutionally protected under Article 21 (right to life) and Article 14 (right to equality)[52]. The judgments by the court clearly

[50] *Supra note* at 43.
[51] *Supra note* at
[52] The Constitution of India 1950, Arts. 14 and 21.

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showed the active participation of the courts towards environmental matters. At the same time, the evolution where climate change is recognised not just as an environmental concern but as a rights-based issue embedded within India's constitutional framework.

Judicial Directives and Mandates

Indian courts have issued several climate-related directives to counter the issue of the climate crisis and environmental issues that creating a robust constitutional response to the climate crisis. The court has mandated inter-ministerial coordination. In the case of *Ridhima, the* court integrated eight ministries to overcome fragmented policy efforts and promote a cohesive national climate strategy. The court had also directed a meticulous review of all existing environmental statutes, such as those governing pollution control, forests, and biodiversity, with a view to embedding climate-oriented provisions and mandates. The process will ultimately help in transforming India's environmental laws into more climate-responsive legal instruments to deal with the prevailing issue, as well as to it will also help in dealing with international commitments. The judiciary has unequivocally recognised the constitutional dimensions of climate harm. In the *M.K. Ranjitsinh & Ors,* the court found that climate protection is subsumed within the fundamental rights under articles 14 and 21 of the Indian Constitution[53], ultimately creating a powerful legal foundation for future climate litigation. These interpretations have ultimately allowed the courts and tribunals to routinely invoke these articles to assess whether governmental climate inaction constitutes a rights violation of the citizens. Finally, the court had also established an institutional mechanism for oversight and keeping the governmental organisation in check in environmental matters. In the Ridhima Pandey case, the court, apart from appointing expert amici, the Court directed the government to file updated reports on emissions regulations. At the same time, the court also asked for periodic status updates from the ministries. These measures mark a shift toward continuous judicial monitoring and accountability, similar to continuing mandamus models used in earlier environmental cases.

Government Climate Policy and Implementation

India's climate strategy is primarily driven by the executive action of the central and state governments through the process of national missions, sectoral programs and policy guidelines, rather than through a dedicated climate-change statute. The foundational plan launched by the government to counter the issue of climate change is the National Action Plan on Climate

[53] The Constitution of India 1950. Arts. 14 and 21.

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Change (NAPCC)[54], launched in 2008. The plan outlined eight core missions, which include the National Solar Mission, National Mission for Enhanced Energy Efficiency, Sustainable Habitat Mission, Water Mission, Himalayan Ecosystem Mission, Green India Mission, Sustainable Agriculture Mission, and the National Mission on Strategic Knowledge for Climate Change. These missions are led by respective nodal ministries, which implement the schemes within the allocated departmental budgets. The state government have also initiated State Action Plans on Climate Change (SAPCCs)[55], to counter the issue of the climate and environmental crisis. The state department focuses more on the regional environmental priorities, such as drought resilience, agricultural sustainability, water security, and coastal vulnerability.

At the national level, the national solar mission has been a flagship success, where the original target set by the government was 100GW of solar capacity by 2022; India achieved the target in July 2025 by achieving the solar capacity of 119GW[56]. As of 2025, renewable energy, which includes wind and solar energy, accounts for 50.1% of the country's 484.8 GW.[57] Total power generation capacity, thereby surpassing India's COP26 commitment to reach 50% non-fossil electricity capacity by 2030, ahead of schedule. The government have also initiated Transport decarbonization through the National Electric Mobility Mission Plan[58] (NEMMP 2020) and related schemes. While the policy initially aimed to deploy 6 to 7 million electric and hybrid vehicles by 2020 and to achieve the target India have adopted a more ambitious target in COP26[59], where the government have adopted the target of reaching the 30% of new passenger car sales, 70% of commercial vehicles, and 80% of two- and three-wheelers to be electric by 2030[60]. To support the plan, the government have also implemented policies such as the FAME

[54] Government of India. (2008) *National Action Plan on Climate Change (NAPCC)*. Prime Minister's Council on Climate Change. available at: doc202112101.pdf [(accessed on 14 November, 2025).

[55] Government of India. (Various years) *State Action Plans on Climate Change (SAPCCs)*. Ministry of Environment, Forest and Climate Change.

[56] Government of India. (2025) *The Solar Surge: India's Bold Leap Toward a Net Zero Future* (Press Note). Press Information Bureau, 19 August 2025. available at: Press Note Details: Press Information Bureau (accessed on 14 November, 2025).

[57] Government of India. (2025) *The Solar Surge: India's Bold Leap Toward a Net Zero Future* (Press Note). Press Information Bureau, 19 August 2025. available at: Press Note Details: Press Information Bureau (accessed on 14 November, 2025).

[58] Government of India. (2013) *National Electric Mobility Mission Plan (NEMMP) 2020*. Ministry of Heavy Industries. Available at: https://heavyindustries.gov.in (accessed on 14 November, 2025).

[59] Government of India. (2021) *India's Commitments at COP26 – Electric Mobility Targets*. Ministry of Environment, Forest and Climate Change. available at: https://moef.gov.in (accessed on 14 November, 2025).

[60] Climate Action Tracker. (2024) *India Country Snapshot – Policies & Action*. Available at: https://climateactiontracker.org/countries/india/ (accessed on 14 November, 2025).

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(Faster Adoption and Manufacturing of Hybrid and Electric Vehicles) scheme[61] and the PM-E-DRIVE incentive program[62]. India has also launched the National Green Hydrogen Mission, with a target to produce 5 million tonnes of green hydrogen annually by 2030, supported by 125 GW of renewables and energy-efficiency programs[63]. The actions clearly demonstrated the government's active participation in environmental protection. India's Updated Nationally Determined Contribution (NDC), submitted in 2022[64] under the Paris Agreement, commits to reducing the emissions intensity of GDP by 45% by 2030 compared to 2005 levels. The government also highlighted the idea of creating carbon sinks of 2.5–3 billion tonnes of CO_2 through afforestation and reforestation by 2030[65].

Key Climate Data to understand the real situation

India, in the last few decades, has made visible progress in expanding the scope of using clean energy to fulfil the energy requirement of the country, yet the action plan initiated by the government is insufficient to meet the long-term goals and ideas set under various treaties and charters signed at the international level. According to the report of Climate Action Tracker (CAT)[66] The current climate policies and Nationally Determined Contributions (NDCs) are rated "Highly Insufficient.". the county has achieved some of the goals that they had set to be achieve by 2030 ahead of the schedule, then also the country is still on a pathway where the emission is projected to rise beyond 2030 and coal to continue as a dominating player for electricity production. India's total emission in 2024 was around 3,900 $MtCO_2e$, the highest amount globally, out of which coal contributes more than 75% which is used for the process of electricity generation despite dropping to 47% of installed capacity[67]. Though 2024-25 marks a turning point in the energy system of India, with a shift being made by the government towards non-fossil fuel sources contributing massively towards new electricity generation,

[61] Government of India. (2015) *Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME) Scheme*. Ministry of Heavy Industries. available at: https://fame2.heavyindustries.gov.in (accessed on 14 November, 2025).

[62] Government of India. (2024) *PM-E-DRIVE Scheme*. Ministry of Heavy Industries. available at: https://heavyindustries.gov.in (accessed on 14 November, 2025).

[63] Climate Action Tracker. (2024) *India Country Snapshot – Policies & Action*. Available at: https://climateactiontracker.org/countries/india/ (accessed on 14 November, 2025).

[64] Government of India. (2022) *India's Updated Nationally Determined Contribution (NDC) under the Paris Agreement*. Ministry of Environment, Forest and Climate Change. available at: Press Release: Press Information Bureau (accessed on 14 November, 2025).

[65] Government of India. (2022) *India's Updated Nationally Determined Contribution (NDC) – Section on Forestry and Carbon Sinks*. Ministry of Environment, Forest and Climate Change. available at: Press Note Details: Press Information Bureau (accessed on 14 November, 2025).

[66] Climate Action Tracker. (2024) *India Country Snapshot – Policies & Action*. Available at: India | Climate Action Tracker (accessed on 14 November, 2025).

[67] Climate Action Tracker. (2024) *India Country Snapshot – Policies & Action*. Available at: India | Climate Action Tracker (accessed on 14 November, 2025).

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renewable generation still only accounts for about 22–25% of total power[68]. This reflects a structural gap between clean energy installation and actual energy generation, due to limited grid storage, policy delays, and transmission constraints.

The National Electricity Plan 2023 (NEP2023) set an ambitious target of 350 GW of electricity produced from renewable sources by 2026-27[69]. But in reality, the progress is slower than required, where over 100 GW of the new capacity is still needed to meet the interim target set by the government additionally the climate crisis and extended summer heatwaves in India have ultimately riven record electricity demand, further increasing reliance on fossil fuels, including coal and gas, especially during peak evening hours when solar is not available. The country continues to develop fossil fuel infrastructure, where over one billion tonnes of coal were produced in FY2024-25; similarly, new coal plants are being constructed beyond NEP thresholds. The government is also promoting the use of cleaner fuels like fossil gas, which can ultimately lead to long-term fossil lock-in. India's EV sector is also showing very slow growth, where the adoption of EVs in the private car segment is below 2.5% similarly, India has yet to adopt a coal phase-out plan or an economy-wide emission reduction target for 2035[70]. The updated Nationally Determined Contributions[71] Aim to strengthen emission-intensity targets, but do not introduce an absolute emission reduction obligation that ultimately acts as a loophole. The update keeps the land use and forestry goals unchanged, which ultimately makes the goal of achieving net zero emissions by 2070 a target hard to achieve due to a lack of near-term, actionable pathways.

IV. Critical Challenges and Gaps in Judicial Climate Governance

Despite the growing momentum in the field of environmental protection, the issue of the climate crisis in India remains a significant challenge. Although the judiciary has emerged as an active participant in addressing this issue, the outcomes have not been effective due to

[68] Climate Action Tracker. (2024) *India Country Snapshot – Policies & Action*. Available at: India | Climate Action Tracker (accessed on 14 November, 2025).

[69] Climate Action Tracker. (2024) *India Country Snapshot – Policies & Action*. available at: India | Climate Action Tracker (accessed on 14 November, 2025).

[70] Climate Action Tracker. (2024) *India Country Snapshot – Policies & Action*. available at: India | Climate Action Tracker (accessed on 14 November, 2025).

[71] Government of India. (2022) *India's Updated Nationally Determined Contribution (NDC) under the Paris Agreement*. Ministry of Environment, Forest and Climate Change. available at: 2022 NDC Synthesis Report | UNFCCC (accessed on 14 November, 2025).

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certain gaps and critical challenges affecting the influence of the judiciary in real-world climate outcomes.

Absence of a Dedicated Climate Law

One of the biggest and most integrated issues is that India does not have a special law made specifically to deal with the topic of climate change. Due to the lack of statute, the court has to depend on general laws of the Environmental Protection Act or on the constitutional rights interpretation made by the court to deal with the matter of the climate crisis and environmental protection. These laws do not specifically deal with the rising issue of climate change and crisis, so they are not always strong or clear enough to address complex climate issues. The Supreme Court, in various judgments, has highlighted the idea that a lack of well-drafted statutes ultimately leads to a scattered and incomplete legal response to climate change, where different cases are treated differently, and there is no single, well-organised system to guide how the government and courts should act. Lack of well well-organised system to guide how the government and the court should deal with the issues of the climate crisis and the changing climate is causing significant adverse effects, it is also forcing the courts to give case-by-case directions, which may not have a long-term or consistent impact.

Limits of Judicial Power

Climate change and crisis are deeply connected with the ideas of economic planning, energy usage by the state and international agreements entered into by the state; all these areas are generally controlled by the government and parliament, not by the courts. In countries like India, the idea of separation of powers is quite prevalent between different organs of the government under Article 50 of the Indian Constitution[72], so the judiciary can only ask the government to take action to control the climate crisis, but the courts cannot actively participate in drafting and managing the policies to counter the problem. The courts also do not have the expert knowledge or resources needed to decide on technical or long-term climate matters. This creates concerns about whether courts are the right place to handle such large-scale policy decisions.

Weak Enforcement After Rulings

Another issue associated with the problem of climate governance is the lack of access to justice. In India, the whole public interest litigation (PIL) framework has allowed several pathbreaking

[72] The Constitution of India 1950. Arts. 14 and 21.

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environmental cases, but not all affected communities in society, such as farmers facing droughts or urban slum dwellers suffering from heat stress, have the resources or legal knowledge to approach the courts to deal with the issue of the climate crisis. Delays in the litigation process also reduce the impact of judicial intervention, as seen in cases like the *Ridhima Pandey* case.[73], for example, which remain undecided years after it was filed. Even when the judgment is passed by the court, the issue of enforcement arises, where a lack of active participation from the government, coordination between ministries, and competing political interests can delay or dilute the implementation of climate-related orders.

Global Problem, Local Powers

Climate change is a transboundary crisis, and it knows no national borders, resulting from cumulative global greenhouse gas emissions over decades. The courts, on the other hand, operate within the limits of national sovereignty. Indian courts, including the Supreme Court, can only deal with the issue of climate crisis within the country, but they cannot conduct a major dissection on the issues of major polluting countries, which makes it harder to deal with global warming fairly, this jurisdictional limitation presents a fundamental challenge in dealing with the issue of climate change and crisis where courts in India may order strong domestic action to deal with the issues of environment but they cannot influence the major emitters such as China, the United States, or members of the European Union, as a result even after taking effective judicial action at the national level the overall impact in the crisis of climate change have limited impact on the overall trajectory of global warming. To deal with the issue, the court in *M.K. Ranjitsinh v. Union of India* Indian Supreme Court explicitly acknowledged CBDR-RC, signalling its willingness to incorporate global environmental justice norms into constitutional interpretation.

Balancing Climate Goals with Development

In developing countries like India climate challenge is uniquely complex in nature, where the government as well as the courts are required to strike a balance between economic development and protecting the environment. In developing counties the governments are required to face the pressing demand for job creation, infrastructure, housing, energy access, and poverty alleviation and to do so the key ingredient required is to have access to energy and for country like India with such a massive population depending on renewable source of energy is real hard as it will ultimately effect the developmental growth of the society so the state is

[73] *Supra note* at 43.

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required to use fossil fuels to meet the present needs of the people. Restricting the use of fossil fuel to counter the climate crisis will harm the economy, where millions of people will lose their jobs that are functioning with the help on fossil fuels.

The judicial balance is evident in several landmark cases passed by the courts, where the court, in various cases, has mandated to use of cleaner fuel and stricter emission control means to deal with the issue of the climate crisis rather than putting a complete ban on industrial activities or in use of fossil fuels. The decisions reflect the Court's attempt to harmonise ecological concerns with India's growth trajectory.

Institutional Fragmentation

The issue of climate change crosses the ambit of multiple sectors, such as power, transportation, agriculture, forestry and industry and each sector has its own ministry and regulatory body and as observed by the Supreme Court in the case of *Ridhima Pandey.*[74] That ministries are working in silos and no single ministry has an overall climate mandate, and even within the departments, the power is divided among various directors, ultimately creating an issue in dealing with the matters of the climate crisis. The lack of coordination between the governmental bodies ultimately creates a situation where neither of the ministers is functioning to deal with the issue of the climate crisis and the changing climate. The court in the case of *M.K. Ranjitsinh v. Union of India*[75] Ordered the eight ministries to come together and make a uniform institutional framework. The decision by the court clearly shows the lack of coordination and unity among the various ministries of the government in dealing with the issue of climate change and crisis.

VI. Conclusion and Suggestions

Given the challenges to deal with and practically counter the issue of climate change and crisis, multiple reforms are required to be brought by the government at the institutional as well as at the societal level to achieve the potential of climate justice. To achieve the goal of climate protection and counter climate cris change is required to bring brought into the institutional, legislative, judicial, and civil society.

Comprehensive Climate Legislation

[74] *Ibid.*
[75] *Supra note* at 5.

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To deal with the issue of climate change and the crisis in India, developing countries like India are required to adopt a dedicated, overarching national climate change law. The statute would move beyond the current patchwork of policies and notifications issued by the government, scattered across the MoEFCC, various energy and resource-sector regulations, and state-level environmental rules. The climate law would create a coherent, legally enforceable architecture for mitigation, adaptation, and climate governance. The statute will establish clear, binding emission reduction targets, including national carbon budgets aligned with India's long-term decarbonisation pathway. The statute must mandate sector-specific emission trajectories for key areas such as energy, industry, transport, and agriculture, as it will ultimately help the various ministries of the government to deal with the issue of climate change and make policies accordingly. India can also be influenced by Germany's Climate Protection Act of 2019[76], which clearly incorporates the idea of sectoral budget-triggered compulsory corrective measures whenever a sector exceeds its allocated limits. The law will also bind the successive governments to meet Nationally Determined Contributions (NDCs) and prevent policy backsliding, and will also constitute a central climate authority to monitor progress, coordination, and inter-ministerial implementation of the set standards and publish a periodic compliance report. The law will also expand legal standing for citizens, communities, and civil society organisations, enabling them to challenge governmental or corporate non-compliance before courts or specialised tribunals.

Strengthening Institutions

To deal with the issue of climate change in India, a robust long-term climate institution is required to be established that supports the idea of planning, monitoring and enforcement. Effective information cannot be sustained through ad hoc bodies or fragmented departmental mandates, so to deal with the issue, a permanent Climate Commission or a specialised national-level green tribunal with enhanced climate jurisdiction is needed that will be mandated to oversee the implementation of climate policy, track emission pathways, evaluate compliance with India's NDC commitments, and advise the government on corrective measures. The idea was also highlighted in the case of *Leghari v. Federation of Pakistan*[77], where the Lahore High Court asked the government to constitute an independent climate change commission to

[76] *Federal Climate Protection Act (Klimaschutzgesetz – KSG)*. Federal Law Gazette I, p. 2513. available at: https://www.gesetze-im-internet.de/ksg/ (accessed on 14 November, 2025).

[77] Lahore High Court, 2015. *Asghar Leghari v. Federation of Pakistan*, W.P. No. 25501/2015. [online] Climate Change Litigation Database, Sabin Centre for Climate Change Law. available at: Leghari v. Federation of Pakistan - The Climate Litigation Database (accessed on 14 November, 2025).

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monitor the progress on the implementation of the national climate change policy, and this commission will regularly submit a report to the government highlighting the progress and also shortcomings while implementing the policy. The government can also empower the already existing institutions, such as the National Disaster Management Authority (NDMA), Central Electricity Authority (CEA), Central Pollution Control Board (CPCB), with statutory climate mandates, enabling them to integrate climate considerations into disaster preparedness, power planning, industrial regulation, and national development strategies.

Judicial Accountability Measures

Courts always play a very important and centralised role in climate governance, and their effectiveness depends not only on nth clarity of the judgment they have passed but also on the institutional mechanisms they craft to ensure compliance. The Indian courts are required to adopt a well-structured follow-up system, especially in complex environmental and public interest litigations. To do so, the courts can establish specialised climate benches or designated judicial rosters to deal with climate-related issues, similar to the policy followed by the environmental courts to employ dedicated judges, streamlined procedures, and expedited hearings. Such specialisation will enhance judicial expertise, reduce delays, and ensure continuity in monitoring.

The second mechanism is the mandating of periodic status reports. The report will ultimately keep the government accountable, as well as will ultimately force the government to track the process of environmental protection with utmost efforts. The courts must set up interim deadlines directing ministries to file compliance affidavits and requiring time-bound corrective action to initiate the process. Courts are required to institutionalise the use of technical committees, court-appointed advisers, or amicus curiae with climate expertise, enabling judges to evaluate complex scientific data, emission trajectories, and policy trade-offs with greater precision. It will ultimately develop a structured docket system where the climate cases are tracked and reviewed at fixed intervals, and linked to clear milestones and will promote accountability.

Finally, the judges are required to be provided with regular training programmes on climate science, carbon budgeting, mitigation pathways, adaptation frameworks, and international climate obligations, as it will ultimately deepen the judges' understanding of the judges and would ensure that judgments align with administrative and technological constraints, thereby promoting decisions that are both legally sound and practically workable.

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Civil Society and Public Participation

Judicial interventions in climate governance can only achieve their fullest impact when they are supported by active civil society engagement. Courts, through their judgments, can articulate rights, set standards, and mandate compliance, but the enforcement and social legitimacy of those decisions are strengthened when citizens, NGOs, youth groups, and the media collectively monitor and reinforce governmental accountability. India's present climate litigations show the same trend, as in the cases of *Pandey and Ranjitsinh* Petitions themselves have emerged from youth-led and civil society-driven activism, demonstrating how participatory mobilisation can shape high-level judicial action. The role of civil society expands beyond the scope of filing Public Interest Litigations (PILs), the civil society through the means of Environmental organisations, community groups, research institutions, and journalism should actively contribute to implementation of climate protecting ideas to counter the issue of climate crisis at the same time they can also collaborate with the regulators through evidence-based submissions on pollution levels, scrutiny of Environmental Impact Assessments, and participation in public consultations mandated under environmental law. The groups can also exploit the democratic tools such as the Right to Information (RTI) Act to uncover delays, policy gaps, or non-compliance, thereby equipping courts with credible data and maintaining pressure on administrative agencies.

At the same time, enhancing transparency and access to climate information is critical to sustaining this ecosystem of oversight. The government is required to establish a real-time national climate dashboard to track emissions by various sectors, progress made toward NDCs, and the additions made by the government in the field of renewable energy. It will ultimately empower the citizens to verify claims and independently evaluate compliance.

The global and Indian judicial developments reviewed above demonstrate the growing willingness of the courts to deal with the issue of climate change and eradicate the climate crisis, but the change is underlined by enduring obstacles. Internationally, the courts and the tribunals have recognised the environmental stability with human rights and that a state cannot treat the issue of climate protection as an optional measure. Both European as well as in South Asian courts have highlighted the explicit duty of the state to cut emissions and adopt a cleaner alternative. The ruling affirms that both the state and powerful private actors bear legal duties to mitigate emissions, adapt to climate impacts, protect vulnerable communities, and respect the autonomy of nature itself. The courts have begun to close the governance gaps by treating human rights treaties, environmental norms, and climate agreements as binding and justiciable.

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Indian judicial journey to protect the climate crisis fits the border pattern of the world's norm but follows a distinctive trajectory. The courts over the decades related the environmental jurisprudence with the constitution, which ultimately constitutionalised the right to a healthy environment under Article 21 of the constitution. And operationalised principles like polluter pays, absolute liability, sustainable development, and the precautionary principle that ultimately promoted the idea of protecting the changing climate. The Indian courts have shown a gradual shift from "environmental" reasoning to explicitly "climate" reasoning, where, in cases such as *Subash Kumarr* and *MC Mehta* laid the institutional and doctrinal foundations for robust public law intervention. Most recently, the development in the case of *Ridhima Pandey and M.K. Ranjitsinh* is considered a landmark as it ultimately laid down the foundation of recognising a distinct right against the adverse effects of climate change under Articles 14 and 21 of the Constitution, highlighting the idea of intergenerational and distributive justice and insisting on inter-ministerial coordination and climate-sensitive statutory interpretation. These intervention from the side of the court highlights the severity of climate change, not simply a policy failure but a potential constitutional wrong.

The analysis also reveals that the judicial action itself cannot bring such a massive change in society and establish a just and effective climate transition; a continuous structural gap ultimately limits the transformative potential of climate adjudication. The absence of a dedicated climate statute compels the courts to stretch general environmental and constitutional provisions in ways that put over-reliance on case-by-case mandates. The issue of separation of powers also restricts the courts from functioning in a restrictive manner. The Indian economy, on the other hand, is strongly dependent on coal, which fulfils the energy requirements; at the same time, slow EV adoption, infrastructure lock-in, and "highly insufficient" implementation of NDCs underscore the tension between development imperatives and climate justice, and highlight a persistent gap between constitutional promise and material reality.

Against such a challenging backdrop the way forward lies in embracing a model of climate governance in which the legislature, the executive the judiciary and the civil society holds a key role to play, where the state is required to adopt a well-drafted climate law on the back drop of science-based carbon budgets, sectoral trajectories, and binding interim targets that will ultimately provide a normative backbone that is currently missing, converting fragmented policies into a coherent, enforceable framework. The other requirement is to establish a permanent climate commission, empowered green tribunals, and climate-mandated regulatory bodies can ultimately translate the judicial principles into routine administrative practice and

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develop sustained monitoring. Other developments can be made by bringing procedural reforms, which include climate benches, systematic use of expert committees, periodic compliance reporting, and judicial capacity-building in climate science and policy.

Finally the climate governance will depend on vibrant civil society engagement and deeper democratisation of climate information where the youth must actively participate in the issue of climate crisis by means of initiation of petition in the courts, community mobilisation, research-driven advocacy, and the strategic use of transparency tools like RTI will ultimately help in keeping pressure both on the state as well as on the private corporate bodies ensuring that judicial pronouncements do not remain on paper.

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CASTE *VS.* CLASS: RETHINKING THE ARCHITECTURE OF RESERVATION POLICY

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ABSTRACT

The architecture of India's reservation policy has long been shaped by the tension between caste and class as competing indicators of disadvantage. Originally envisioned by the framers of the Constitution as a corrective for centuries of caste-based discrimination, affirmative action has evolved through constitutional amendments, judicial interpretations, and legislative interventions. Landmark cases from *Champakam Dorairajan* and *Indra Sawhney* to *Janhit Abhiyan* have continually redefined the contours of reservations, balancing formal equality under Article 14 with substantive justice under Articles 15 and 16. The implementation of the Mandal Commission recommendations institutionalized caste as the primary axis of affirmative action, while the 103rd Amendment and the Supreme Court's subsequent validation of the Economically Weaker Sections (EWS) quota marked a significant shift toward class-based reservations. This study critically examines whether caste remains the most legitimate basis for affirmative action in contemporary India or whether a class-sensitive framework is more normatively defensible and constitutionally sustainable. It explores the jurisprudential underpinnings of reservation, the persistence of caste as a systemic discriminator, and the normative debates surrounding economic criteria. By engaging with comparative models from the United States, South Africa, and Brazil, the study highlights both the limitations of transplanting foreign frameworks and the potential for hybrid, intersectional approaches tailored to India's unique socio-political context. The study argues for a reimagined reservation architecture that integrates caste, class, gender, and regional disadvantage into an intersectional, data-driven framework subject to periodic review. Such a model, grounded in constitutional morality and transformative justice, would move beyond the binary of caste versus class and ensure that affirmative action functions as an instrument of social empowerment rather than a tool of competitive populism.

Keywords: *Reservation Policy, Affirmative Action, Caste and Class, Substantive Equality, Constitutional Morality, Intersectionality, Transformative Justice.*

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I. Introduction: The Reservation Conundrum

The Indian affirmative action, popularly known as the "reservation policy", is a constitutional measure which aims to achieve substantive equality by offering equal chance in education, employment and representation in the public sector to historically marginalized communities. It can be traced back to the pre-Independence movements as well as post-Indian Union constitutional obligations. There had been certain provisions for the backward communities previously during the British colonial period (communal representation in the Government of India Acts of 1909 and 1935). However, primarily these were through individual efforts and would not meet this new kind of demand by people on their behalf.[1] The Chinese were pioneers when they introduced some rudimentary and ad hoc measures, which were further institutionalized in India as a result.

The Constitution's framers, especially Dr. B.R. Ambedkar, aptly considered caste-based reservations as a tool for rectifying decades of Dalit and other backward group miseries caused by discrimination and social boycott.[2] To return one layer up to the Court's observation that legally privileged classes need not only be Scheduled Castes and Scheduled Tribes, but also a socially and educationally backward class by adding Articles 15(4) and 16(4), thereby moving a step further from formal equality towards the goal of substantive justice.[3] Gradually, the constitutional edifice of reservations grew by an extended hand of the judiciary, including judicial interpretation, legislative enactments and administrative mechanisms.

However, affirmative action has morphed in character and scale. One of the most significant legal challenges in Indian constitutional history arose out of this when, in 1990, the Mandal Commission recommendations (for 27% reservation in central government jobs for Other Backward Classes, OBCs) were implemented.[4] Thanks for the insight into the fourth point. The Supreme Court in *"Indra Sawhney v. Union of India"* accepted the constitutional validity of OBC reservations but also stressed on exclusion of "creamy layer" from backward classes, and distinguished between social backwardness and mere economic deprivation.[5] This ruling established the doctrinal basis for an enduring debate between caste and class as indices of backwardness.

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1 *Government of India Act*, 1909 (Morley-Minto Reforms); *Government of India Act*, 1935.
2 B.R. Ambedkar, *Annihilation of Caste* (1936).
3 The Constitution of India, arts. 15(4), 16(4).
4 Mandal Commission Report, "Report of the Backward Classes Commission" (1980).
5 *Indra Sawhney v. Union of India*, (1992) Supp (3) SCC 217.

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However, the controversy acquired fresh legs two years ago, much more vigorously with the 103rd Constitutional Amendment that brought in a 10% quota for Economically Weaker Sections (EWS) in higher education and government jobs.[6] Unlike prior reservations, the EWS quota was economic based one and not on any basis of SC/ST/OBC categories. In *Janhit Abhiyan v. Union of India,* the constitutional validity of this amendment was challenged before the Supreme Court and the majority 3:2 held that it formed a class by itself, thus justified affirmative action.[7] However, the dissenting opinions voiced fears that the economic reservation may violate the basic structure doctrine by excluding historically oppressed groups from gaining benefits.[8]

We have changed from caste-as-norm to caste-as-bane, which in turn needs a set of policy fixes that foregrounds a class-based affirmative action grid with some elements hived off for specific castes, or to use the *lingo du jour*, an intersectionality model? This research study critically investigates this question by examining the philosophical rationales, doctrinal evolutions and social facts that legitimized reservation policy in India.

The study differentiates the kind of approach, doctrinal or analytical, methodologically adopted in writing it. It scrutinizes constitutional clauses, judicial decisions, reports of the Law Commission and amendments to statutes for tracking the contours and underpinnings of reservation policy. Meanwhile, it looks at comparative international models to question whether the Indian model of caste is still the best way forward for social equality in India. Its structure consists of the following six sections: after this Introduction, Part II deals with the history of reservations vis-à-vis the constitutional and jurisprudential framework; Part III studies caste as a principle of affirmative action; Part IV addresses economic criteria for reservations; Part V examines paradigms from other jurisdictions; and finally, in part VI we suggest some reform-oriented recommendations aimed at working out a more just and constitutionally-compliant architecture for reservations.

II. Constitutional Foundations and Evolving Jurisprudence

The principles of equality enshrined in the Indian Constitution are not based on a narrow and formalist idea of sameness but are rather embedded within a more nuanced understanding. This is reflected in the very text of the provision, which balances a form of formal equality under Article

6 The Constitution (One Hundred and Third Amendment) Act, 2019.
7 *Janhit Abhiyan v. Union of India*, (2022) 10 SCC 1.
8 *Ibid.* (per Bhat, J., dissenting).

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14 with affirmative measures conflated into Articles 15 and 16. Articles 15(4), 15(5), 15(6) and Article 16 (4) are basic pillars of reservation providing power to the State for making special provisions in favour of weaker sections or disadvantaged groups. These clauses indicate a repudiation of an entirely formalistic conception of equality and declare that the commitment to substantive equality and social justice is a part of the constitution.

This provision was inserted through the First Constitutional Amendment in 1951 after a Supreme Court judgment *State of Madras v. Champakam Dorairajan*, which ruled that caste-based reservations in educational institutions were unconstitutional as they violated Article 15(1), which guarantees non-discrimination on religion, race, caste, sex or place of birth.[9] The judgment directed the Parliament to amend the Constitution to enable the State to make "special provisions" for the advancement of socially and educationally backward classes (SEBCs), besides SCs and STs.

Through the 93rd Amendment in 2005, Article 15(5) was inserted that allows the State to make special provisions for backward classes of citizens in private educational institutions (except minority-run, backed by Articles 29 and 30) and thereby bring private education institutions within the canvas of affirmative action.[10]

New category Economically Weaker Sections (EWS) Article 15(6), put in by the 103rd Amendment in 2019. The clause puts the State at liberty to make a special provision for the socially and educationally backward classes of citizen among SCs, STs and SEBC in admissions within 10% reservations which may include private unaided institutions but not minority institution based on economic condition 15(6).[11]

This is in pursuance of Article 16(4), which is an enabling provision that permits the State to make reservations in public employment for any backward class of citizens if, in the opinion of the State, they are not adequately represented in the services under it.[12] This position was further defined by the Supreme Court in *Indra Sawhney v Union of India*, where it observed that "backwardness" under Article 16(4) is proximately linked to social and educational backwardness as opposed to just economic disadvantage.[13]

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9 (1951) SCR 525.
10 The Constitution (Ninety-Third Amendment) Act, 2005.
11 The Constitution (One Hundred and Third Amendment) Act, 2019.
12 The Constitution of India, art. 16(4).
13 *Supra* note 5.

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In a nuanced reading of the Constitution, this provides a clear jurisprudential direction in which reservations have been read and interpreted by the courts. Champakam Dorairajan interpreted Article 15 narrowly and adopted a formal equality approach. The Parliament reacted by passing the First Amendment to affirm caste-based affirmative action.[14]

The Court in *M.R. Balaji v. State of Mysore,* struck down a 68% reservation and held that Identification of backward classes ought to be made on more screener social as well as educational criteria; caste alone cannot be the criterion for the identification of the Backward classes, as caste is nothing but a primary indicator of SEBCs.[15] The ruling argued that caste may be considered, but only as one among other criteria for the identification of backwardness. This was the first of the court's cautionary statements regarding policies focusing too heavily on castes.

The cautious approach changed with the Indra Sawhney case, a nine-judge bench upheld the constitutional validity of OBC reservations as recommended by the Mandal Commission. What the Court had held was that caste, being a structural sociological and social indicator of inequality deeply embedded in Indian society, could be reliable evidence of backwardness.[16] The Court, however, established two principles: the 'creamy layer' exclusion for OBCs and the 50% cap on total reservations (subject to exceptional circumstances).[17]

The Supreme Court in *Ashoka Kumar Thakur v. Union of India* finally upheld the legitimacy of reservation for OBCs under Art 15(5). However, it held that to be identified as backward on a caste basis was not invalid. However, a mere determination based on economic criteria cannot be a ground to define backward classes.[18] The judgment also reiterated that affirmative measures must be compliant with the basic structure of the Constitution.

The last to decide upon this new order of things, or rather, the constitutionality of the 103rd Amendment and EWS quota came in *Janhit Abhiyan v. Union of India* this time by a five-judge bench with a 3:2 majority held it constitutional. The Court therefore inter alia held that economic criteria could form a valid basis for affirmative action, and the non-inclusion of SCs/STs/OBCs within the EWS category did not violate the basic structure.[19] The Judges concurred on their order

[14] *Supra* note 9.
[15] *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649.
[16] *Supra* note 13.
[17] *Id.* at 843–845.
[18] (2008) 6 SCC 1.
[19] *Supra* note 7.

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that the sector not be reserved for the economically weaker section of society. However, the dissenting judges opined that leaving historically marginalized communities out of economic reservations goes against substantive equality and the conceptions of social justice upheld by the Constitution.[20]

In deciding all of these cases, the courts have struggled with the line that separates caste as an immobile birth-based form of subordination and class as a relatively fluid, socio-economic indicator of disadvantage. Whereas caste provides a better conception as a proxy for longstanding systemic discrimination, class struggles capture contemporary economic deprivation but do not have the historical permanence and external social categories that warrant action in group terms.[21]

Over the last few years, Indian Courts have been speaking more and more of constitutional morality and transformative constitutionalism as tools for interpretation. Such doctrines teach one to read the Constitution not as a dead legal text, but as a living conception of freedom that pursues the destruction of oppressive social hierarchies and the extension of real equality.[22] Here, then, we can see that affirmative action is not in derogation of equality but the realization and triumph of it; what justification there ever was for such preferences lies here—not in ghettoes or black-barred beaches—but only in a refusal to be content with dogged equality, as transcendent aspirations are transformed into realistic actualizations formerly invisible.

III. Caste as a Basis of Reservation: Rationale, Critique, and Persistence

In India, inequality is most systematically institutionalized with caste, where hierarchies of birth, occupation and ritual purity are not only economic but non-economic. Caste, as Dr. B.R. Ambedkar, the chief architect of the Indian Constitution, pointed out, is a "graded inequality" and smothers both individual mobility and collective upliftment.[23] Annihilation of Caste, as cited by Ambedkar, showed that the caste system was not only a division of labor but also a division of laborers and promotion of indignity as economic profiled has primarily been dependent on

[20] *Id.* at 338.
[21] Galanter, Marc, "Who Are the 'Other Backward Classes'? An Introduction to a Constitutional Puzzle," 13(43/44) *Economic and Political Weekly* 1812-1828 (1978).
[22] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
[23] B.R. Ambedkar, *The Problem of the Rupee: Its Origin and Its Solution* 77 (P.S. Lokhande ed., Thacker & Co. 1923).

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religious and social sanction determining one's place in society based on birth standings rather than merit or capability.[24]

Caste-based reservation is legally defensible because the Constitution itself acknowledges caste as a social and educational backwardness. The rationale behind the explicit inclusion of Articles 15(4) and 16(4) is that these provisions clearly sanction the state to make special provisions for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), given their historical exclusion from education, employment, and public life.[25] Judicial pronouncements have often clarified the status of caste as a legitimate and needed indicator for backwardness (for example, on class-driven lack of access and dignity), *Indra Sawhney v. Union of India.*[26]

From the sociological point of view, caste remains a key discriminator in terms of disadvantage. Studies have shown that even in terms of accessing fundamental needs like housing, healthcare and banking, people belonging to SC and ST communities face high levels of discrimination beyond educational institutions or workplaces.[27] The persistence of caste-based discrimination in rural areas as well as urban and semi-urban areas reinforces the need for special affirmative action measures for these communities.[28]

However, of course, caste-based reservations have also faced criticism. Intra-group inequality is one of the most significant issues. The Indra Sawhney judgment had created a provision known as the "creamy layer", which seeks to exclude the relatively privileged sections of OBCs from the benefits of reservation, leaving only those who are most backward.[29] Although the doctrine has been invoked for OBCs, courtrooms have been unwilling to expand the rule to include SCs and STs because of the lack of similarity in their social backwardness. Critics, however, argue that due to the absence of internal differentiation within SC/ST categories, this has enabled a few large sub-castes to capture most benefits, leaving even more marginalized groups like Dalit women or Adivasis in remote regions mainly untouched.[30]

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[24] B.R. Ambedkar, *Annihilation of Caste* (1936) (abridged version published by Navayana, 2014).
[25] The Constitution of India, arts.15(4), 16(4).
[26] *Supra* note 13 at 796–799.
[27] Thorat, Sukhadeo & Paul Attewell, "The Legacy of Social Exclusion: A Correspondence Study of Job Discrimination in India," 42(41) *Economic and Political Weekly* 4141 (2007).
[28] Satish Deshpande, *Contemporary India: A Sociological View* 67–72 (Penguin Books, 2003).
[29] *Supra* note 13 at 843.
[30] *Supra* note 21.

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The next critique is of the perpetuation of caste identities. On the other hand, some scholars contend that in the long run it acts to perpetuate caste consciousness by routinizing group identities and provisioning for immediate material exigencies, but at the expense of cutting loose entire communities from a wide range of desirable social outcomes.[31] Critics from liberal and conservative schools argue that using caste as a form of positive discrimination or affirmative action, while well-intentioned, may worsen the longstanding problem by further politicizing caste. However, this criticism misses out on the systemic caste operations of Indian society, where public discourse can be replete with denials of caste. In contrast, caste dynamics may largely govern the private sphere and institutions.[32]

Castes noticeable politically also led to misgivings of reservation being diluted as an instrument for social justice. Instead of working for the social status of suspected caste sufferers, electoral politics has helped many times in creating more vote banks through quotas or fake promises of expansion (quicker) electoral victories. The explosive growth of Marathas, Patels, Jats and even dominant communities like OBC status for parity could serve as an example of how caste-mobilization can transform into a device of competitive populism.[33]

While we can argue all day long on the nuances, the fact of the matter is that hardcore evidence validates ongoing caste-based affirmative action. Gross Enrollment Ratio (GER) for SCs and STs, according to All India Survey on Higher Education (AISHE 2020-21), continues to lag sharply below the national average.[34] Even for public employment, the latest Annual Report of the Department of Personnel and Training (2021-22) finds that SCs had only 17.49% of group C and 13.4 % of group A posts in the central government vis-à-vis their constitutionally stipulated share.[35] The National Commission for Backward Classes has also pointed out several times that economic development by itself is insufficient to entirely eradicate societal exclusion, which can be experienced even at higher levels of income.[36]

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[31] Nandini Sundar, "Caste as an Impediment to Citizenship," 601 *Seminar* 23 (2009).
[32] Gopal Guru, "Caste and the Secular Self," 30(11-12) *Social Scientist* 3 (2002).
[33] Christophe Jaffrelot, *India's Silent Revolution: The Rise of the Lower Castes in North India* 335–40 (Permanent Black, 2003).
[34] Ministry of Education, "AISHE Report 2020–21" (2022), *available at:* https://www.education.gov.in (last visited on October 12, 2025).
[35] Department of Personnel and Training, "Annual Report 2021–22", *available at*: https://dopt.gov.in (last visited on October 12, 2025).
[36] National Commission for Backward Classes, "Annual Report 2020–21", *available at*: https://ncbc.nic.in (last visited on October 12, 2025).

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Earlier auditors of NITI Aayog and from some independent agencies had also pointed towards very poor implementation of different development schemes among SCs/STs, including important sectors like education, health, sanitation and rural employment.[37] The above findings indicate the importance of caste-sensitive policies targeted to that particular social group beyond mere economic measures.

Therefore, although the caste-based reservation policy can be critiqued on a sound basis, its constitutional, sociological and empirical structure is solid. Instead of junking caste as the fulcrum for affirmative action, what needs to be done is to make further progress on policy architecture to ensure equitable distribution across castes, remove the excesses of politicization and improve accountability. This includes improvements in data collection, sub-categorization within SC/ST/OBCs and monitoring of outcomes regularly.

IV. The Rise of Economic Criteria: The EWS Paradigm

The year 2019 started with the indoctrination of a new era in history when the 103rd Constitutional Amendment Act, 2019 was enacted, introducing landmark provisions within the affirmative action jurisprudence of India. Moreover, for the very first time, the constitution acknowledged economic backwardness as an independent category of reservation in education and public employment by including Articles 15(6) and 16(6). In these, some of the most important provisions are that they have enabled the State to provide up to 10% reservation for Economically Weaker Sections (EWS) of citizens who may not belong to these SCs/STs/OBCs.[38] Exclusion of these historically oppressed communities from the purview of the EWS quota has contested important legal and normative arguments.

A five-judge bench of the Supreme Court delivered a 3:2 split to affirm the constitutionality of the 103rd Amendment in *Janhit Abhiyan v. Union of India*.[39] The majority judgment had found that class has become a legitimate ground for the basis of affirmative action, and such categorization does not violate the basic structure of the Constitution. The majority judgment authored by Justice Maheshwari reasoned that poverty can translate into "opportunity" hoopers and the state is

[37] NITI Aayog, "SDG India Index & Dashboard 2020–21" (2021), *available at:* https://www.niti.gov.in/sdg-india-index-dashboard (last visited on October 12, 2025).

[38] The Constitution (One Hundred and Third Amendment) Act, 2019.

[39] *Supra* note 7.

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constitutionally enabled to identify new forms of disadvantage in an evolving socio-economic context.[40]

From a jurisprudential perspective, this constituted a break from the established secular judicial understanding that reservations under Articles 15(4) and 16(4) must be designed to remedy longstanding systemic and structural inequities, which are by definition rooted in caste-based discrimination. The Court in Indra Sawhney v. Union of India categorically held that the economic criteria alone could not form the basis of backwardness under Article 16(4), and if such similar clauses would violate Article19(1)(g), the same being a reason for reconsideration under, however, any reconsideration should be made with caution was an open question left by us to answer.[41] Given the implications of this shift, we must ask tough questions regarding what is being prescribed and whether economic disadvantage requires a compensatory justice akin to what caste-based discrimination might warrant under the Constitution.

This category effectively rules SCs, STs and OBCs out as they are considered to be already provided with reservations. There are criticisms that such omitting breaches the doctrine of substantive equality, as economically poor people situated alike suffering from inequities belonging to different caste groups are made differently positioned.[42] More categorically, it ignores what root cause analysis is in caste discrimination, which the latter overlaps with poverty; over-representation of specific communities who have been historically oppressed will be disproportionately economically excluded.[43]

As a matter of norm, the EWS quota has in turn raised the poverty versus discrimination rationale for affirmative action, as opposed to having many proponents being more normatively. Extremely unpleasant though severe poverty may be, it is typically a temporary condition and one that can, in most cases, be relieved via welfare payments or other income support. Even the wealthiest people might face a stigma, exclusion from society or limited access to opportunities due to their caste; thereby, class-based discrimination is not exactly systemic and rooted in society lasting to

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40 *Id.* at 198–201.

41 *Supra* note 13 at 843–845.

42 *Gaurav Jain v. Union of India*, (1997) 3 SCC 636; see also Tarunabh Khaitan, "EWS Reservations and the Constitutional Commitment to Equality," *India Forum* (2020).

43 Deshpande, Satish, "Exclusive Inequalities: Merit, Caste and Discrimination in Indian Higher Education," 41(24) *Economic and Political Weekly* 2438-2444 (2006).

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any significant extent.[44] These comparisons, in turn, can flatten social hierarchies by reducing the complexity of caste-based exclusion to a simple matter of an economic condition.[45]

Moreover, the dissenting opinions in Janhit Abhiyan mirror these concerns. Justice Ravindra Bhat, writing for the bench also comprising Chief Justice U.U. Lalit said two things: EWS reservations can never be another "creamy layer" exclusion of SCs/STs/OBCs based on the exclusive criterion of economic criteria, as it would violate basic structure, equality and social justice.[46] In the dissent, it was underlined that. In contrast, on one hand, the State might be entitled to design policies favoring economically poor classes; however, in creating a new exclusionary hierarchy, as such is self-defeating in terms of the object sought to be achieved by way of affirmative action in a sense. They have further argued that the promotion of educational and economic interests of weaker sections, in particular SCs and STs, is a mandate under Article 46 of the Directive Principles (albeit without an exclusionary intent).[47]

Many of these judicial concerns have been echoed by civil society critiques. Economists argue that the EWS quota is a regressive step from distributive justice and has relegated reservation to being an affirmative action policy rather than a caste-gender complementary measure.[48] However, others warn that it could result in a "reservation inflation", where unguided expansion of quotas combined with the absence of structural reform disincentivizes the system and creates social fissures.[49]

Despite being a result of affirmative action internationally, a type of affirmative action model based on economic criteria has had its successes and failures. While race-conscious admissions policies in the United States have been grounded in a history of using such measures to combat previous racial segregation, recent jurisprudence has seen increased challenges to their use. Students for *Fair Admissions v. Harvard* (2023) US Supreme Court stated that race-based admissions in public and private colleges were over and should be replaced with income diversity systems by both

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44 Galanter, Marc, "Why Law's Changing Relationship to Caste in India Matters," *Stanford Law Review Online* 89–91 (2014).
45 Nandini Sundar, "The Myth of Economic Caste Neutrality," 717 *Seminar* 33-37 (2019).
46 *Supra* note 7 at 333–339.
47 The Constitution of India, art. 46.
48 Balakrishnan, P., "EWS Quota: Retreating from the Constitutional Vision," 54(6) *Economic and Political Weekly*, 16–18 (2019).
49 Thorat, Sukhadeo, "EWS Quota and Social Justice: More Questions Than Answers," *The Hindu*, Jan. 2019.

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school types.[50] However, opponents counter that income-based proxies do not adequately represent the experience of racial or ethnic discrimination.[51]

Similarly, in Brazil, it combines race and class by reserving places for African-Brazilians, Indigenous persons, and public schools' low-income students, acknowledging disadvantage as an intersectionality.[52] The model of hybrid solutions provides lessons for India about how we can create multi-dimensional, context-sensitive frameworks for affirmative action in place.

To sum up, the 103rd Amendment represents a major constitutional leaning forward, but it is also a disputed and doubtful move. It is not, I suggest in the book, that defining economic disadvantage as a legitimate ground for special treatment is suspect per se; rather, it is the mode of its implementation, specifically the exclusion of historically oppressed groups, that poses serious both constitutional and moral imperatives. In the case of a democracy guided toward transformative justice, any reservation policy must operate as an antidote not only to poverty but also to historical injustice. In an all-encompassing policy framework, aiming towards the future requires an effort towards intersectionality, recognizing the truth of general disadvantage in Indian society.

V. Comparative Perspectives: Global Models of Affirmative Action

The idea of affirmative action as a tool to address systemic inequality and exclusion is nothing new and is not unique to India. Nations such as the US, South Africa, and Brazil have approved a number of approaches for developing social justice by way of targeted incorporation, particularly in education, along with the time when we are children. Such comparative analysis is critical to inform the design, limitations and impact of affirmative action as well as to highlight the dangers in transplanting foreign models without accounting for Indian constitutional and socio-cultural realities.

United States: Race-Conscious Admissions and the Divergent Path of Strict Scrutiny

For decades, the US has struggled with its history of racial inequality, particularly when it comes to the treatment of African Americans. In the United States, affirmative action has primarily taken the form of race-conscious admissions policies in higher education. In Grutter v. Bollinger, the US

[50] *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).
[51] Crenshaw, Kimberlé, "Demarginalizing the Intersection of Race and Class," 1*University of Chicago Legal Forum* 139–167 (1989).
[52] Htun, Mala, *Inclusion Without Representation in Latin America: Gender Quotas and Ethnic Reservations* 98–112 (Cambridge University Press, 2016).

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Supreme Court permitted the University of Michigan Law School to narrowly tailor its consideration of race among other factors in admissions as a valid means for the pursuit of "diversity," a compelling state interest.[53] The Court stressed that these policies would have to be very specifically defined and very closely scrutinized, the most stringent court review allowed under United States of America case law.

Enter Students for Fair Admissions v. Harvard (2023) and a swift change of course: the Supreme Court, in effect, abolishing race-based admissions as violating the Equal Protection Clause of the Fourteenth Amendment.[54] The majority framed its holding as part of the effort to carry out the constitutional promise that racial distinctions shall not have significance anymore by originally presuming students would not endure on a "sea" of racial classifications even if designed in great part for remedial purposes.

For India, two key takeaways from the US experience the first set of judicial standards must balance institutional autonomy with constitutional safeguards for affirmative action. Another is that merit-based systems, if not aware of social context, can mask the extent to which structural inequalities make it easier for certain groups to feel at home or succeed, perpetuating the status quo. However, the US model continues to be firmly grounded in an individualistic and colorblind constitutional culture, unlike India's environmentally triggered equalization paradigm.

South Africa: Race, Gender and Redress for Historical Injustice

In South Africa, affirmative action is a more redistributionist and restorative approach, due to the legacy of apartheid in its journey towards constitutional democracy. Through the Employment Equity Act, 1998, proactive measures must be taken to ensure that apartheid-era representation (classified by race, gender and disability) is addressed in the public and private sectors.[55] Whereas the US does not take account of group-based disadvantage in interpreting its Constitution, and so places on employers "the burden [only] to ensure that all individuals have an equal opportunity to seek employment," nothing further, under South African law, it is relevant on constitutional grounds for legislative measures required to promote equitable representation.[56]

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53 *Grutter v. Bollinger*, 539 US 306 (2003).
54 *Supra* note 50.
55 Employment Equity Act 55 of 1998.
56 *South African Police Service v. Solidarity obo Barnard*, [2014] ZACC 23.

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The Constitutional Court of South Africa has established such provisions in several landmark judgments. The Court held that enforcing remedial measures does not infringe the equality clause (Section 9 of the Constitution) if they are to promote substantive equality: As in *Minister of Finance v. Van Heerden 2004*.[57] The Court focused on transformation as the ultimate aim of South Africa's constitutional identity.

The constitutional ethos of transformative justice in the South African system is normatively resonant with India. Nonetheless, the recent end of legal apartheid in South Africa and the historical role of race as a constitutional factor make for an altogether different lens that cannot be carried over unproblematically to caste-based stratification in India.

Brazil: Intersectional Affirmative Action, Race Class together

A combination of class-based and race-based affirmative action in Brazil. Afterward, given the persistent disadvantage of Afro-Brazilians and Indigenous peoples within Brazil, the country enacted a quota system in public universities and government positions through laws such as Law No. 12.711/2012 (the "Quota Law").[58] This law secures 50% of university seats for public school students, with a portion falling under low-income, Afro-Brazilian, and Indigenous quotas set according to regional demographics.

Brazil's system is of interest as it employs a form of self-identification and verification commissions to avoid abuse that those not in the intended group could not use this exception.[59] The Brazilian Supreme Federal Court declared the constitutionality of those acts (ADPF 186/DF), emphasizing that the combat against historical injustices is a moral and constitutional duty.[60]

Brazil is a good case, with its intersectional design; it considers both income and group identity at the same time, which India could learn from. This might be more suitable in the Indian context, where castes and class often coalesce, but including economic criteria within a caste-sensitive framework could add to both equity as well as efficiency.

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57 2004 (6) SA 121 (CC).

58 Lei No. 12.711, de 29 de Agosto de 2012 (Braz.).

59 Fryer, Roland G. & Loury, Glenn C., "Affirmative Action and Its Mythology," 19(3) *Journal of Economic Perspectives* 147–162 (2005).

60 *Arguição de Descumprimento de Preceito Fundamental (ADPF) 186/DF*, Supremo Tribunal Federal (Braz.), 2012.

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Difficulties of Legal Transplantation and Contextual Constraints

Global models are valuable comparisons, but there is no one-size-fits-all solution to transpose affirmative action policies internationally. One, constitutional philosophies vary. India's Constitution plainly permits group-based classification (as opposed to the American focus on individualism and non-discrimination). The ascent of social hierarchies is originating and shaped differently; caste in India has religious-cultural roots like none other, not even American racial apartheid or colonial apartheid lived by South Africa.

Finally, standards of judicial review and enforcement differ. For example, India has not yet adopted something similar to strict scrutiny for analyzing affirmative action. Legal systems operate in different political economies: affirmative action in India is strongly associated with electoral politics. At the same time, courts and legislatures work within distinct institutional conditions and popular constitutional ideas of the US and Brazil.

Comparative models of affirmative action illustrate that while remedial justice remains a shared constitutional aspiration, its implementation must be contextually grounded. India's reservation system has unique normative and historical roots that foreign paradigms cannot replace. However, insights from Brazil's intersectional design, South Africa's transformative mandate, and even the US's judicial caution can inform a more refined, accountable, and future-facing framework. As India debates the contours of caste and class in reservation policy, global experiences serve not as templates, but as mirrors, helping reflect on domestic choices with greater clarity.

VI. Reimagining the Reservation Architecture: Towards a Nuanced Framework

The Indian reservation policy, based on constitutional morality and social transformation, needs redefinition in order to deal with contemporary realities and system-internal distortions. The domination of the binary narrative between caste and class serves to obscure this messy terrain of multiple levels of oppression, where identities of caste, economic status, and gender, combined with regional backwardness, converge. The diversity model of affirmative action must transition away from wooden categorical analysis to a realpolitik data and constitutionally based framework that neither skirts nor respects constitutional boundaries.

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An Intersectional, Multi-layered Reservation Matrix

Among the most important reform proposals of this kind is to move towards building a layered reservation matrix with respect to multiple dimensions of disadvantage—caste, class, gender and geographical. Existing programs stigmatize these various forms of identity, selecting the most preferred category over the other. Intersectionality allows for prioritising a woman from a rural, remote Dalit village over a less disempowered male beneficiary within the same caste. This would mean that reservations on the basis of caste are to be wended through income ceilings, gender quotas and regional development indices so that those most in need of affirmative action benefit from it.[61]

In doing so, it accords with the constitutional vision of substantive equality in India, as framed by Ambedkar, reminding us that formal or legal equality is meaningless without social and economic democracy.[62] Intersectionality, a framework that has been developed by scholars like Kimberlé Crenshaw and acknowledges the interlocking or compounding effects of multiple identities in discrimination contexts and is being used more broadly in legal and policy discussions around the world.[63]

Periodic Review and Sunset Clauses

However, another structural flaw of the present reservation policy is the absence of review mechanisms at regular intervals. The Constitution states that reservation of seats in legislatures for SCs and STs shall cease to have effect after 10 years from the commencement of the Constitution, i.e., January 26, 1950. However, this deadline was extended by a constitutional amendment on February 27, 1960, by another period of ten years.[64] In sharp contrast, reservations for employment and education do not have any sunset clause or a mandated review.

A Constitutional or Statutory review every ten years would ensure reservations remain reflective of changing socio-economic circumstances. Those reviews must be based on data, derived from the Socio-Economic and Caste Census (SECC), National Family Health Surveys (NFHS) and

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61 Yadav, Yogendra, "A Progressive Framework for Reservation: Time for an Inclusive Index," *The Hindu*, Jan. 2019.

62 *Supra* note 2.

63 Crenshaw, Kimberlé, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," 43 *Stanford Law Review* 1241–1299 (1991).

64 The Constitution of India, art.334 (originally set to expire in 1960, extended through amendments).

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specific studies undertaken to measure educational and employment outcomes.[65] Rather than doing away with quotas, these reviews ought to be focused on the question of whether they have achieved their goal as effectively and widely targeted regionally, analysing regional disparities and making course corrections, if necessary.

Sub-Categorization Within Groups

One major distortion of India's reservation policy is the problem of intra-group inequality with respect to OBCs and SCs. The benefits of affirmative action also tend to be hijacked by dominant sub-castes and extremely marginalised communities such as the PVTGs, Mahadalits, or even non-dominant OBCs remain under-represented.[66]

In *State of Punjab v. Davinder Singh*, the Supreme Court resurrected sub-categorization within SCs under Article 342A by allowing the state to effectuate a break-up for appropriate compartmentalization among sub-groups so as to ensure a fair playing field.[67] Firstly, the Justice Rohini Commission, which was appointed in 2017 to look into OBC sub-categorization, recommended the creation of four categories within the OBC quota to avoid dominant castes cornering benefits.[68] To improve the consistency and legitimacy of the reservation system, this reform is recommended.

Employment of Dynamic Socio-Economic Parameters

They also demand the inclusion of measures that are subjective, but quantifiable: earmarking reform. The SECC 2011 is data that even although still not fully published but gives a granular level of information on the income, occupation, housing, education and asset ownership. An index of deprivation, combining this data with caste and regional markers, allows for targeting based on evidence.[69]

Using a composite deprivation score, for example, cumulative disadvantage can be used as an entry point to rank beneficiaries. It would have allowed the State to fix a percentage of seats or jobs for only those with the highest scores, without regard to their caste alone. These models

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[65] Ministry of Rural Development, "Socio-Economic and Caste Census 2011", *available at:* https://secc.gov.in (last visited on October 15, 2025).

[66] Deshpande, Ashwini, *Affirmative Action in India* 98–102 (Oxford University Press, 2013).

[67] (2020) 8 SCC 1.

[68] Government of India, "Justice Rohini Commission Report (Summary)", (Ministry of Social Justice and Empowerment, 2023).

[69] *Supra* note 27.

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informed by data would adjust reservations from a static, identity-based process to a dynamic, data-driven operation, one targeted at gauged equity.

Political Economy and Administrative Considerations

It is clear that addressing these failures involves some delicate political economy footwork. Reservation is the most politically virulent policy mantra, and any reform, especially where it concerns plotting communities against sub-categories or leaving open-ended sunsets in favour of politically influential communities, will spill out onto the streets. In addition, an exhaustive intersectional model would require extensive administrative capacity for comprehensive beneficiary profiling and could impinge on privacy and federalism concerns.[70]

However, recent history being what it is with the advent of digital welfare schemes, Aadhaar-based DBT systems, and PM-JAY health coverage shows that India has the technological capability to run data-driven and more evolved forms of conditional/performance-based social security mechanisms. Political will, inter-governmental coordination and constitutional safeguards are required to make these structures fair, inclusive, and immune from manipulation.

Normative Foundations: Dignity, Distributive Justice, and Equality

The barometer that we must apply to any reimagination of reservations is the normative values embedded in the Constitution: dignity, substantive equality and distributive justice. To introduce this, the Supreme Court (in Navtej Singh Johar v. Union of India), when they decriminalized some parts of Section 377, observed that the Constitution is a "transformative document" and one that is intended to disrupt structural hierarchies, not prop them up.[71]

Reservations are not a charity or handout; they are an acknowledgment of existence and instruments high up in the hymn of sociopolitical empowerment. What that means is this: the next phase of reforms would not be aimed at dilution, but instead at deepening in such a way that affirmative action goes to the truly disadvantaged and recognizes diversity even as it enables mobility. The design of a system of reservations must not only capture who people are but also how they are positioned in social, economic, and institutional space.

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[70] Singh, Pratap Bhanu, "Welfare and Surveillance: Balancing Technology and Rights," *India Forum* (2022).
[71] *Supra* note 22 at 144.

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Reform is not backing away from reservation; it is reimagining reservation for the 21st century. An intersectional, layered, and data-dependent reservation policy can harmonize the affirmative action regime of India with its constitutional mandate for social change. These are by design neither caste nor class-blind, but as we debate their utility in the Indian context, let us explore ways to integrate race and gender into a universalising vision of justice that is equitable, dynamic and all-encompassing.

VII. Conclusion: Beyond Caste vs. Class

For decades now, the quibble between caste-based and class-based reservations is typically dichotomized - one that favours historical social discrimination as opposed to the other that prefers contemporary economic deprivation. However, the Indian experience shows that caste and class are not binary categories but frequently work in tandem to create even more complex, intersectional forms of disadvantage. To do so, intersects with the affairs of Indian affirmative action with a blinkered view at best, and risks flattening complex realities and normative foundations of Indian affirmative action at worst.[72]

Through its constitutional framework, especially Articles 15(4), 16(4) and increasing impetus over the past few years, the Constitution of India recognizes group-based disadvantage as a valid ground for government intervention in an individualistic policy architecture. Nonetheless, constitutional interpretation needs to be flexible and respond to changing socio-economic realities. While the verdict in the Janhit Abhiyan case has liberalized affirmative action by making economic criteria an acceptable ground for reservation, it also places a responsibility on the State to come up with mechanisms that are less exclusionary and more inclusive.[73]

Instead, we need a more nuanced reservation policy that goes beyond rigid identities in favor of the context-sensitive, constitutionally grounded and empirically informed forms of affirmative action. It also involves realizing that disadvantage is enacted on multiple axes, caste, class, gender, geography, double and triple, etc., which the State not only has to redress but transform from a market-dominant industrial order to one of radically democratized well-being produced through

[72] Deshpande, Satish, "Caste and Class in Contemporary India," 38(46) *Economic and Political Weekly* 4820–4824 (2003).
[73] *Supra* note 7 at 198–201.

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public largesse and political radicalism. As the Supreme Court held in Indra Sawhney, the objective of reservation is not its continuation perpetually, but to end it.[74]

A future-proof reservation architecture is hence a scaffold supported on three main elements: sound data, judicious review and an audit of policies, and participation in policy for a purpose. The first is that, as long as there are no real-time and disaggregated data on the socio-economic status of the population, it is very difficult to improve targeting because most public disciplines never know where the clients are. Several of them reported on the perennially delayed release of SECC data, the absence of any references to clear caste-specific educational and employment results, and alluded to a general lack of transparency in the approach that contributes to the accountability page.[75]

On the other hand, this same judicial review process has to simultaneously serve as the ground rules for arbitrary expansions as well as unjust exclusions. In Ashoka Kumar Thakur and Janhit Abhiyan, the Court has done yeoman work in preserving the basic structure of equality while leaving some space for policy innovation.[76]

Policy reform needs to be participatory by working in consultation with the marginalized, state governments and civil society. All green humanitarians and those in the company of every morally serious person is an enormous failure are certainly well aware that any affirmative action regime, no matter how legally defensible, can only survive politically, let alone ethically, if it is both accepted as legitimate and considered sustainable.

In this sense, affirmative action needs to be seen not just as a compensatory practice but as an instrument of constitutional change: one that can update the promises of dignity, equality and fraternity made at independence. Political democracy is meaningless without social and economic democracy, as Ambedkar had presciently cautioned.[77] The true test of India's reservation policy, then, is not in marrying caste with class but in driving through the social blockages that still prevent countless millions from realizing their full citizenship.

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74 *Supra* note 13 at 799.
75 *Supra* note 65.
76 *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1; *Janhit Abhiyan*, (2022) 10 SCC 1.
77 I *Constituent Assembly Debates*, 97.

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FROM NMDC TO NOW: REASSESSING THE 'PUBLIC BODY' TEST UNDER WTO IN LIGHT OF U.S. TARIFFS ON INDIA

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ABSTRACT

This paper re-approaches the jurisprudence of "public body" under article 1.1 (a) (1) of the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement), since India won the case of NMDC against the United States. The Appellate Body had stated that mere ownership or control by a government is not enough, an entity had to possess or exercise governmental authority. Although this approach has sheltered developing countries, it raises evidentiary and definitional problems in the wake of disputes. This paper places this doctrine in today's trade environment, where the United States has imposed tariffs on Indian exports through countervailing duties, section 232 national security measures, and prospective climate-related adjustments. These actions which often target public sector undertakings result in the revival of debates central to the NMDC case which has been explored in the paper. The present paper re-examines the "public body" doctrine in light of these contemporary challenges and argues that the test laid down by the Appellate Body, while doctrinally sound, imposes evidentiary and procedural burdens that may disproportionately disadvantage developing economies. The paper further argues that India must combine legal reliance on the "public body" test with domestic PSU reforms, build institutional litigation capacity, and initiate proactive diplomatic measures to defend its interests in an evolving global order.

Keywords : *WTO, Public Body, Jurisprudence, United States, India, PSU reforms*

I. Introduction

The case law on subsidies and countervailing measures under the World Trade Organisation (WTO) has experienced a spectacular development since the mid-1990s. Central to this reorientation is the meaning to be given to the concept of "public body" as developed in article 1.1(a)(1) of the Subsidies Agreement. And the definition's contours — about when a state-owned enterprise should count as a public body, and when it should be subject to the discipline — have helped shape the course of global trade disputes featuring state-connected entities. The tipping point in this direction was India's successful challenge (in United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India or the "NMDC case") which established that the simple fact of ownership or control by the State

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would not automatically make an enterprise a public body, for this would require that such a body is invested with or exercises governmental authority.[1]

But today, the importance of that jurisprudence has taken on a new urgency. The US has, in the past few years, applied various tariffs and trade measures against India in different areas, using both traditional countervailing duty instruments as well as newer tools like section 232 tariffs (those on steel and aluminium, ostensibly for national security rationale) and climate-related trade adjustments.[2] These policies, while different in legal character, in many cases turn on the same nub issue: at what point does State participation in a business amount to a subsidy capable of being challenged under the law of the WTO. The test enunciated in the NMDC dispute continues to be core to the test.

The international context also has changed drastically. The United States' continuing obstruction of appointments, which has rendered the WTO Appellate Body paralysed since 2019, has effectively dismantled the final level of dispute settlement in the WTO.[3] This institutional void has encouraged unilateral trade actions, eroded adherence to past decisions and imposed a larger responsibility on developing countries such as India to protect their own interests by the process of bilateral negotiation and adjustment of domestic policies. In this context, the NMDC decision, at one-time viewed as a limited doctrinal triumph for India, should be reconsidered as a leading precedent which endures to shape the framework for trading activity.

What's more, the stakes are even higher now than they were in 2001. India's export basket has moved away from the primary steel products to include sophisticated items in software, pharma, green, and energy-intensive goods.[4] Each of these industries is also made up of firms with different levels of State participation (ownership, subsidies, regulation). The continuation of U.S. tariffs, justified on the basis of subsidies, national security and environmental sustainability, throws into question the understanding of the "public body" in

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1 "United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India", Appellate Body Report, WT/DS436/AB/R, adopted Dec. 2014.

2 "U.S. Department of Commerce: Section 232 Investigations on Steel and Aluminium Products" *Federal Register* (2018), *available at*: https://www.commerce.gov (last visited on Aug. 25, 2025).

3 Ernst-Ulrich Petersmann, *International Trade Law and the GATT/WTO Dispute Settlement System* (Kluwer Law International, 1997) p. 219.

4 Government of India, Ministry of Commerce and Industry, *Export-Import Data Bank 2024*, *available at*: https://tradestat.commerce.gov.in (last visited on Aug. 25, 2025)

WTO law. For example, battles over renewable energy subsidies or carbon border adjustments are effectively a continuation of the arguments that used to revolve around NMDC.[5]

The present paper re-examines the "public body" doctrine in light of these contemporary challenges and argues that the test laid down by the Appellate Body, while doctrinally sound, imposes evidentiary and procedural burdens that may disproportionately disadvantage developing economies.

II. The Legacy of NMDC Case

The NMDC case, officially titled 'United States: Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India', was one of the key disputes decided during a time when countervailing duty investigations by the United States were at their highest level ever, and the use of countervailing measures was being overextended.[6] India brought proceedings with respect to a countervailing duty measure imposed on exports of hot-rolled carbon steel flat products (HRCS) from India, claiming that the U.S. Department of Commerce (USDOC) acted in an impermissible manner under the SCM Agreement in various ways. At the core of this dispute there was a seemingly straightforward, yet legally significant, question: Was the National Mineral Development Corporation (NMDC) – a government-owned mining company – a "public body" for the purposes of article 1.1(a)(1) of the SCM Agreement?[7]

Panel Findings

The panel in the dispute interpreted the concept of 'public body' broadly. It held that NMDC being owned and controlled by the Government of India, with the Government appointing directors and exercising "administrative control" in its functioning, the enterprise would be treated as a public body.[8] The Panel in its analysis laid stress on the aspects of ownership, control and capacity of government to guide commercial decisions of NMDC. By deeming "meaningful control" synonymous with "public body", the Panel effectively removed the distinction between State ownership and the operation of public power.[9]

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5 Steve Charnovitz, "The WTO's Environmental Progress," (21) 2 *Journal of International Economic Law* 377 (2018).

6 "United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India", Panel Report, WT/DS436/R, adopted Dec. 19, 2014, para 7.1.

7 Agreement on Subsidies and Countervailing Measures, art. 1.1(a)(1).

8 *United States – Hot-Rolled Carbon Steel (India)*, Panel Report, WT/DS436/R, para 7.36.

9 Dominic Coppens, *WTO Disciplines on Subsidies and Countervailing Measures* 127 (Cambridge University Press, 2014).

In the view of the USDOC, this broad interpretation was consistent with its long standing approach of treating publicly owned enterprises as "public bodies" where the government exercised predominant ownership or control over them.[10] The reasoning was based on a presumption that, when government controls (i.e. owns) a business, the assets of such a business are akin to the assets of the government. This interpretation, however, threatened to reduce article 1.1(a)(1) to an absurdity, in as much as any SOE would then in return categorize as a public body, irrespective of the activities it engaged in.

Appellate Body Findings

On appeal, the Appellate Body steered clear of the Panel methodology. It concluded that a public body is not a government-owned or government-controlled entity. Rather, an entity qualifies as a "public body" only when it is vested with governmental authority. Therefore, the relevant inquiry must focus on the functions performed by the entity rather than on its ownership structure alone.

The Appellate Body also noted that the USDOC had not shown that the NMDC possessed governmental authority with respect to (the mining and sale of) iron ore;[11] although the role of the State in the appointment of directors and monitoring was acknowledged, such control did not demonstrate that the NMDC was engaged in the exercise of sovereign authority or regulation. Without any indication that the NMDC was an instrumentality of the State in a governmental sense, classification of NMDC as a public body was unwarranted.

Where there arises a distinction between ownership of and control by the State, they will not be considered to be the same entity, which means it will not be automatic that an SOE would be considered as a public body. There needs to be a functional and data-driven inquiry. In doing so, the Appellate Body raised the evidential bar for the countervailing investigations (proceedings against states linked companies).

III. Significance for India

The ruling was a doctrinal win for India on several fronts. It immunized Indian PSUs operating commercially from being automatically treated as public bodies in the US countervailing duty proceedings.[12] By requiring investigating authorities to establish effective government

[10] U.S. Department of Commerce, "Countervailing Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products from India: Final Determination" (2001).

[11] *Ibid*.

[12] Shanker A. Singham, "Subsidies and State-Owned Enterprises: Lessons from WTO Disputes" (14) 3 *World Trade Review* 479 (2015).

authority, the ruling offered protection to exporters that sourced inputs from state-controlled suppliers.

Second, the decision revised the evidentiary burden balance. Under the Appellate Body's standard, it is the investigating authority, USDOC in this case, that must demonstrate that a SOE does exercise such governmental authority.[13] This would serve to avoid placing undue burden on exporters in developing countries that are unlikely to have access to internal documents or corporate governance materials of larger PSUs.

Third, the decision also enriched the WTO law on subsidies by narrowing the definition of "public body" as opposed to "government" or "private body." This conceptual distinction proved invaluable in subsequent fights like the US–Anti-Dumping and Countervailing Duties (China), where the interpretation made it possible to apply the same logic of interpretation to Chinese SOEs.[14]

IV. Broader Jurisprudential Impact

The NMDC judgement has been subsequently referred to as a landmark in the law of subsidy. It emphasised that WTO disciplines must take into account the diversity of domestic economic structures, in particular in those countries in which state-owned enterprises have a significant role in industrial policy.[15] But it presented challenges too: the demand for "governmental authority" is doctrinally apt yet pragmatically difficult, as the line between commercial and government functions is rarely a clear one in practice.

The ruling had both defensive and offensive importance for India. Defensively, it acted as insulation in WTO litigation and in US probes; Offensively, it served as a precedent for India to fight expansive interpretations of subsidies mandated by trading partners. Looking back, the NMDC dispute may turn out to be one of those rare instances when India successfully reset the parameters of WTO subsidy law to account for realities of how India's own economic management works.

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[13] Julia Ya Qin, "The Public Body Test in WTO Subsidy Law: A Comparative Institutional Perspective" (19) 4 *Journal of International Economic Law* 823 (2016).

[14] "United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China", Appellate Body Report, WT/DS379/AB/R, adopted March 25, 2011.

[15] Aaditya Mattoo and Arvind Subramanian, *India and the Multilateral Trading System Post-NMDC* 14 (Peterson Institute for International Economics, 2016).

V. Post-NMDC Case Developments

The decision of the Appellate Body in the NMDC case was feted as a doctrinal victory for India and a great clarifying precedent for WTO law on subsidies.[16] But its afterlife has proven more complicated. Disputes that followed use of the "public body" test, however, reflect conflicting panel and investigative resource interpretations of what constitutes a "governmental authority" in the absence of an explicit definition.[17] The action also came amid broader institutional problems in the WTO, including the Appellate Body having been gridlocked since 2019, impeding the enforcement of disciplines on subsidies.[18]

Application in Subsequent Disputes

After the NMDC case, the most visible application of the "public body" debate was in the United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.[19] On the issue in that litigation, the Appellate Body affirmed that a "public body" is not merely a State-owned enterprise, but one endowed with government authority. Yet the case underscored the challenges in mapping the standard onto a large and complex state-owned enterprise (SOE) such as in China, where commercial and regulator roles are overlapping.[20]

The Appellate Body in US – Carbon Steel (India), by the same token, reaffirmed that the investigating authorities must undertake a functional analysis of an entity's capabilities and functioning,[21] the Appellate Body applied the reasoning of NMDC to include also the requirement of evidence of the exercise of sovereign functions. However, the evidentiary standard was still a high one — panels asked for detailed evidence of what an entity's activities are, which typically require access to sensitive internal documentation that exporters usually do not have.[22]

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[16] Appellate Body Report, United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India, WT/DS436/AB/R, adopted 19 December 2014.

[17] Appellate Body Report, United States — Countervailing Duty Measures on Certain Products from China — Recourse to Article 21.5 of the DSU by China, WT/DS437/AB/RW, circulated 16 July 2019.

[18] WTO, Dispute Settlement: Appellate Body, noting that the Appellate Body is unable to review appeals due to ongoing vacancies; WTO, Members urge continued engagement on resolving Appellate Body impasse.

[19] "United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China", Appellate Body Report, WT/DS379/AB/R, adopted March 25, 2011.

[20] Julia Ya Qin, "State-Owned Enterprises and WTO's Public Body Test: A Chinese Perspective" (50) 3 *Journal of World Trade* 503 (2016).

[21] "United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India", Appellate Body Report, WT/DS436/AB/R, adopted Dec. 19, 2014, para. 4.46.

[22] Dominic Coppens, *WTO Disciplines on Subsidies and Countervailing Measures* 312 (Cambridge University Press, 2014).

In EC and Certain Member States – Large Civil Aircraft (Second Complaint), panels faced issues related to whether financing entities associated with the European Union should be considered public bodies for the purpose of granting subsidies.[23] It was a case which did not deal with India, but its expression had substantially borrowed from the NMDC case and reflected the sanctity it has achieved over the years .

Doctrinal Challenges

The "public body" test is somewhat open-textured. The Appellate Body never gave a comprehensive list that would constitute governmental authority, but left it to panels to decide on a case-by-case basis. There have been mixed results as the result of this. In certain cases, SOE trading has been omitted from the definition of "public body" , and in others, the same factors were considered as being sufficient.[24]

It has been noted by some scholars that this ambiguity generates systemic uncertainty. On the one hand, it stops automatic pursuit of SOEs only by virtue of being state-owned, while also affirming the development policies of countries – such as India and China. On the other hand, it makes the conduct of CVD investigations more cumbersome, because authorities are required to conduct complex factual investigations of the capacities and functionalities of foreign firms.[25]

The NMDC jurisprudence has so far brought about little satisfaction for the United States. The Department of Commerce has stated that it is unrealistic and would weaken its authority to discipline subsidies coming out of countries where State Owned Enterprises (SOE) dominate industrial activity, if strict proof is required with respect to every SOE.[26] Therefore, in a number of post-2014 investigations, the United States has either used a broader reading of the "public body" test or relied on alternate rationales for imposing duties.

Institutional Backdrop: Appellate Body Paralysis

The path of the "public body" test is also not divorced from the institutional crisis of the WTO dispute settlement mechanism. The Appellate Body has not been able to function since

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23 "European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)", Panel Report, WT/DS316/RW2, adopted Dec.15, 2011.

24 Weihuan Zhou, *China's Implementation of the Rulings of the WTO* 88 (Hart Publishing, 2019).

25 Robert Howse, "The WTO System After the Collapse of the Appellate Body: The Limits of Judicialization," (20)3 *World Trade Review* 345 (2021).

26 U.S. Department of Commerce, *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Products* (2017).

December 2019, with the US refusing to give its blessings to new appointments.[27] Thus, despite applying the NMDC rationale, and several panels not extending the presumption, the decision to not extend the presumption has created a decision many believe will not be reconciled in the absence of a viable appellate level decision.

There have been two results to this deadlock. First, it has undermined compliance: dissatisfied members of panel decisions, especially the US, have been able to appeal "into the void" and thereby prevent the adoption of unfavourable reports.[28] Second, it undermined NMDC's precedential value. With an inoperative appeals process, the binding nature of previous Appellate Body rulings is coming into question, and some academics believe they are binding only on the parties to the case in which they were issued.[29]

Implications for India

Post NMDC, as far as India goes, it's a mixed bag. On the one hand, its jurisprudence continues to serve as a barrier to broader interpretations of "public body" in Countervailing Duty cases. Nor is it clear that Indian exporters would lose as a result, given that they can still maintain that SOEs that export inputs - such as NMDC, Coal India, or Oil and Natural Gas Corporation (ONGC) - are acting commercially, not governmentally. However, on the flip side, it is the institutional weakness of the WTO that makes it impractical for India to count on the system. If other countries can prevent the enforcement of panel rulings that do not go their way, the doctrine of NMDC may provide only limited real-world protection. Also, in a world where tariffs and unilateral actions are spreading beyond the confines of the WTO, India will have to supplement legal arguments with diplomacy and policy.

The time since NMDC tells of the duality of WTO law: strong and at the same time vulnerable. The Appellate Body managed to limit the test of what is a "public body" so that it did not extend as far as some would have wanted, to the detriment of developing countries. The absence of settled doctrine and the erosion of the system of dispute settlement, however, have attenuated the practical value of such jurisprudence. For India, the issue is one of trying to continue to secure doctrinal victories of the NMDC variety in order to enable the country to

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[27] Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* 275 (Cambridge University Press, 2021).

[28] Jennifer Hillman, "Three Approaches to Fixing the WTO's Appellate Body: Proposals by the United States, EU, and Canada," *Council on Foreign Relations Special Report* (2019).

[29] Joost Pauwelyn, "Nullification and Impairment of Benefits in WTO Law," (70)1 *International and Comparative Law Quarterly* 29 (2021).

manipulate the global trade environment (which is characterised by uncertain enforcement and resurgent unilateralism).

VI. The Present Context: US Tariffs on India

The current state of India-US trade relationship is paradoxical. On the one hand, India is now one of America's fastest growing trading partners, with bilateral trade touching $190 billion last year.[30] On the other hand, the US has consistently slapped tariffs and trade remedies on Indian exports, typically based on charges of subsidies, market distortions or national security. These actions have been in addition to traditional countervailing duties and have included, for example, unilateral tariffs imposed under domestic US law, such as section 232 and section 301 of the Trade Expansion Act of 1962 and the Trade Act of 1974, respectively.[31]

Whilst these instruments are not the same as WTO-approved countervailing instruments, they nevertheless engage with the same debates which drove the NMDC dispute: the question of whether state involvement in Indian enterprises amounts to actionable subsidisation, as well as whether the global trading system is able to effectively discipline such unilateral actions.

Section 232 Tariffs: An Appropriate Tool for National Security as Trade Policy?

In March 2018, the US slapped 25 per cent tariffs on steel imports and 10 per cent on aluminium, under section 232 of the Trade Expansion Act of 1962, claiming the imports posed a threat to the country's national security.[32] India is the largest exporter of steel and aluminium products that were directly affected. India requested to be excluded from the tariffs, which was denied; this prompted India to conduct WTO consultation in the United States – Certain Measures on Steel and Aluminium Products.[33]

While the WTO panel found in December 2022 that the US tariffs were violating its commitments under the General Agreement on Tariffs and Trade (GATT), the country appealed it "into the void" taking advantage of the paralysis of the Appellate Body.[34] For India,

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30 Office of the United States Trade Representative (USTR), "2023 National Trade Estimate Report on Foreign Trade Barriers" 182 (Washington, 2023).

31 Trade Expansion Act of 1962, s. 232, codified at 19 U.S.C. § 1862; Trade Act of 1974, s. 301, codified at 19 U.S.C. § 2411.

32 U.S. Department of Commerce, "Presidential Proclamation on Adjusting Imports of Steel and Aluminium," *Federal Register* (March 8, 2018).

33 "United States – Certain Measures on Steel and Aluminium Products", Panel Report, WT/DS547/R, adopted Dec. 9, 2022.

34 WTO Dispute Settlement Body, "Minutes of Meeting held on 26 January 2023" WT/DSB/M/452.

this underlines a core problem: in places where WTO law would appear to be on its side, lack of an operational appellate body makes the remedy a mirage.

The national security argument also complicates the issue. Through its use of article XXI of the The General Agreement on Tariffs and Trade GATT, the U.S. has tried to designate a large realm for unilateral action.[35] This parallels the public body debate: if the definition of "public body" in this context determines the scope of subsidy-related disciplines, who gets to define "national security" exceptions will determine the scope of unilateral tariffs. In both cases, the US has pushed for broad interpretations that maximise its regulatory freedom.

Section 301 and Beyond: Tariffs as Strategic Tools

Another source of tension has been the use of section 301 of the Trade Act of 1974, which allows the United States to impose tariffs on countries that are found to be engaging in "unfair trade practices".[36] While some of the high-profile section 301 actions pursued so far have been against China, India has also been impacted, especially with regard to IPR enforcement and market access restrictions. The 2019 US pullback of India's Generalized System of Preferences (GSP) on the same pretext, depriving Indian exporters duty-free access worth nearly $5.6 billion annually, was on similar grounds.[37]

More recently, arguments over carbon-intensive products and supply chain resilience have provided new opportunities for US trade action. Proposals for a US carbon border adjustment mechanism (CBAM)-style tariff could also focus on Indian exports in steel, cement and other energy-intensive sectors.[38] Also, since many Indian firms in these sectors are State Owned Enterprises or have state links, the question "whether such entity is a public body" is still a very pertinent consideration for the constitutionality of any future measure.

India's Policy Response

India's response has two prongs: legal and diplomatic. On the legal side, it has launched several WTO disputes against US tariffs. In the United States — Certain Measures on Steel and Aluminium Products, India's submission that US action was in violation of WTO laws

[35] Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* 604 (Cambridge University Press, 2021).

[36] Alan Wm. Wolff, *WTO Dispute Settlement and U.S. Trade Law: Section 301 and Beyond* 95 (Oxford University Press, 2019).

[37] Congressional Research Service, *India's Status in the Generalized System of Preferences* 3 (Washington, 2020).

[38] Joe Biden, "Remarks on Climate and Trade Policy" *White House Briefing* (June 15, 2022), *available at*: https://www.whitehouse.gov (last visited on Aug. 25, 2025).

prevailed.[39] But the failure to obtain effective remedies has emphasized the structural weakness of the strategy of litigation alone.

As a matter of diplomacy, India has sought negotiated solutions. In 2023, India also agreed to eliminate a few of its retaliatory tariffs in return for having retained market access on certain items.[40] Meanwhile, India has stepped up its involvement in plurilateral platforms, such as the G20 and the Quad, to be able to manage trade irritants politically, as opposed to just through legal tactics.

The Relevance of the "Public Body" Test

These developments underscore the continuing importance of the "public body" jurisprudence. The US often classifies Indian PSUs (like NMDC, Coal India, ONGC) as conduits of trade distorting subsidies.[41] As new tariffs are issued, most importantly in climate-sensitive and strategic industries, the extent to which one can separate commercial and government activities will be the key factor in deciding India´s exposure to countervailing action.

In this way, the NMDC case is not a dead but a living precedent. It allows India to make the case that state ownership on its own does not warrant punitive tariffs. But as enforcement of WTO rulings has been weakened and the US increasingly resorts to unilateralism, doctrinal victories are no longer enough. What is needed is a multi-dimensional approach, one that encompasses legal defence, domestic reform of PSU governance and proactive diplomacy.

The current tariff terrain is a mix of the old and the new. The continuity is the continuing contest over state intervention in Indian industry; the change is the tools, national security, climate policy, supply chain resilience, through which the US now conducts such contests. This is the dilemma that the Indian government will face, how to shield its industrial policy from the judicial canon, but engaging with the political economy of tariffs given the fragmenting world politico-economic order.

VII. Conclusion: Policy Implications and the Road Ahead

The NMDC litigation has left a long shadow over the past and future of India's trade relations. Although the articulation of the "public body" test by the Appellate Body was significant in

[39] "United States – Certain Measures on Steel and Aluminium Products", Panel Report, WT/DS547/R, para 8.34.
[40] Ministry of Commerce and Industry, Government of India, "Press Release on India-U.S. Trade Agreement" June 23, 2023.
[41] U.S. International Trade Commission, *Countervailing Duty Investigations: Indian Steel and Energy Products* (Washington, 2022).

doctrinal terms and provided a bulwark against the mechanical imputation to state-owned enterprises, India cannot (as developments indicate) depend only on jurisprudence. The enforcement crisis in the WTO and the escalation of unilateral US tariffs call for a more comprehensive approach. This concluding part discusses policy and strategic implications for India and places the NMDC legacy in relation to the problems of an increasingly fragmented trade order in the contemporary world.

Strategic Legal Implications

On the doctrinal front, India will always stand by NMDC norms in countervailing duty enquiries and WTO battles. And, by stipulating that a "public body" needs to demonstrate proof of 'governmental authority' and can't be defined in terms of mere ownership, India can firewall critical PSUs such as NMDC, Coal India and ONGC from being automatically considered as no more than pipelines for subventions.[42]

But the burden of proof is still a steep hill to climb. Investigating authorities typically request precise evidence of the role of SOEs documents that may not be in the possession of the exporter and that (literally) government bodies may be hesitant to produce.[43] To remedy this, India needs to build institutional capacity for trade litigation including inter-ministry, PSU, and private exporter coordination. India should create a central database containing information on PSU governance which can be relied upon by trade-defence authorities during investigations, instead of responding in an ad hoc manner.[44]

Domestic Policy Adjustments

Other than litigation, India needs to rethink how it governs its state-owned enterprises at home. The more that PSUs resemble organisations of a commercial character, the more difficult it is for foreign states to argue that they are manifesting the exercise of governmental authority. This needs reforms in transparency, corporate governance and separation of the government's regulatory functions from its commercial activities.[45] The strengthening of independent boards, diminishing of direct ministerial interference in the operational affairs and forging to international reporting standards can all help reduce India's exposure to countervailing actions.

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42 "United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India", Appellate Body Report, WT/DS436/AB/R, adopted Dec. 19, 2014, para. 4.46.

43 Dominic Coppens, *WTO Disciplines on Subsidies and Countervailing Measures* 312 (Cambridge University Press, 2014).

44 Ministry of Commerce and Industry, Government of India, "Annual Report of the Directorate General of Trade Remedies" 45 (New Delhi, 2022).

45 OECD, *State-Owned Enterprises and the World Trading System* 61 (Paris, 2020).

Simultaneously, it should not be discounting the developmental role of PSUs. Strategic sectors such as energy, mining, infrastructure, and heavy industry continue to require a degree of state intervention to move the country in the desired national direction. The issue is in balancing these roles while limiting the exposure to external trade conflicts. An intermediate stance that lets PSUs run commercially but drive public policy through clear, WTO-compliant instruments such as research grants or environmental subsidies is the best compromise.[46]

Linkages with Emerging Issues

The relevance of the "public body" test transcends steel and minerals. With carbon border adjustment mechanisms, renewable energy subsidies and calls for supply chain resilience measures increasingly seeing light of the day, questions are being asked about the role of state organs. Indian companies operating in sectors such as solar energy, green hydrogen and strategic minerals may increasingly face countervailing duty investigations if their activities are suspected to involve state subsidies.[47] Once more, as in the NMDC case, the NMDC precedent offers a doctrinal basis for the proposition that governmental ownership is by itself not sufficient to justify countervailing actions.

In addition, India also needs to take a proactive role in framing the discourse on climate-compatible trade policies. Through showing green subsidies as WTO-consistent, while PSUs act commercially, India can head off disputes that force it into the unilateral-tariff camp.[48]

Conclusion

The present paper is a timely reminder that trade law is an evolving realm. The Appellate Body approach of limiting the interpretation of "public body" to functioning based on authority was a victory for India and also for the developing world at large.

For India, three imperatives emerge. First, to maintain the doctrinal shield of the NMDC test through aggressive litigation and evidence-based advocacy. Second, to modernise PSU governance so as to enhance transparency and resilience against foreign challenges. Third, combining legal strategies and diplomacy and leadership in plurilateral negotiations.

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[46] Aaditya Mattoo and Arvind Subramanian, *India's Role in Global Trade Governance* 29 (Peterson Institute for International Economics, 2017).

[47] Steve Charnovitz, "Trade and Climate: The Next Frontiers of WTO Law" (22)4 *Journal of International Economic Law* 555 (2019).

[48] World Trade Organization, Committee on Trade and Environment, *India's Communication on Climate and Trade Measures* (WT/CTE/W/268, 2024).

The legacy of the NMDC case is therefore not just a question of subsidy law; it is a prism through which India must view the crosscurrents of state capitalism, trade governance and geopolitical competition. The challenge going forward is to convert a legal precedent into a larger trade policy, one that facilitates India's capacity to protect its developmental priorities in an era of profound changes in the global economy.

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LAW, ENFORCEMENT, AND SOCIETY: A DECADAL REVIEW OF THE NDPS ACT IN MIZORAM

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ABSTRACT

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) constitutes one of the most stringent penal statutes in India's criminal justice framework. Enacted to fulfil international treaty obligations and to combat narcotics trafficking, the Act reflects a prohibitionist paradigm rooted in deterrence and state control. Over the past decade, Mizoram owing to its strategic location along India's north eastern international border has experienced distinct enforcement realities under the NDPS regime. This article undertakes a socio-legal analysis of the NDPS Act as implemented in Mizoram. It interrogates the tension between punitive enforcement and procedural safeguards, evaluates judicial interventions that recalibrate state power, and examines the broader societal consequences of criminalization. The article argues that while the NDPS Act remains indispensable to narcotics governance, its effective application in border states demands a recalibrated approach integrating proportionality, rehabilitation, and community-based harm reduction.

Keywords: NDPS Act, Prohibition, Society, Criminalization, Judicial Interventions

I. Introduction

Drug control policy in India reflects a historically prohibitionist orientation, crystallized in the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985. Unlike many ordinary penal statutes, the NDPS Act adopts extraordinary procedural and evidentiary mechanisms designed to strengthen enforcement capacity. Reverse burden provisions, stringent bail restrictions, and severe sentencing collectively signal legislative prioritization of deterrence over rehabilitative justice. Mizoram's geographical proximity to Myanmar situates it within broader transnational trafficking networks historically associated with the "Golden Triangle."[1] Although India's statutory framework is nationally uniform, the

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[1] "Drug Seizures Rise Along Mizoram-Myanmar Border," The Hindu, August 5, 2022

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enforcement landscape in Mizoram reveals how geography, socio cultural factors, and border vulnerabilities interact with the rigidity of the NDPS regime. This article first deals with the philosophical and international foundations of India's drug control policy, then looks into the structural features of the NDPS Act followed by Constitutional scrutiny and judicial interpretation. The paper also analyses Empirical Enforcement Realities in Mizoram (2015–2025 and Sociological and Criminological implication. Finally, the paper deals with the Normative critique and reform recommendations.

The philosophical and international foundations of India's drug control policy

The NDPS Act embodies a classical deterrence model, severe punishment is presumed to reduce criminal conduct. This reflects utilitarian penal theory, where punishment is justified as a means to prevent future harm. However, drug offences often involve addiction a condition increasingly understood through public health frameworks rather than purely criminal examples. The tension between criminalization and harm reduction remains central to NDPS jurisprudence. India's obligations under the Single Convention on Narcotic Drugs, 1961 and subsequent conventions required domestic legislation to criminalize illicit trafficking while permitting controlled medical use. The NDPS Act was enacted to harmonize domestic law with these international commitments. However, treaty compliance does not mandate the extreme severity present in certain provisions of the Act; states retain discretion regarding proportionality and procedural fairness.

II. Structural features of the NDPS Act

Comprehensive Prohibition

Section 8 prohibits production, possession, sale, purchase, transport, and consumption except for medical or scientific purposes. The breadth of this provision allows prosecution at multiple points within the supply chain.

Quantity-Based sentencing reform

The 2001 amendment introduced differentiation between small and commercial quantities. This reform aimed to address earlier criticism that addicts and minor carriers were subjected

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to disproportionately severe penalties. In E. Michael Raj v. Intelligence Officer[2], the Supreme Court clarified that punishment should correspond to the actual narcotic content rather than total mixture weight. This marked a doctrinal shift toward proportionality.

Reverse Burden Provisions

Sections 35 and 54 create presumptions regarding culpable mental state and possession.[7] Once possession is established, the accused must rebut presumed knowledge or intent. Such reverse burdens represent a departure from traditional criminal jurisprudence, raising constitutional concerns under Article 21. Article 21 guarantees that no person shall be deprived of liberty except according to procedure established by law. After Maneka Gandhi v. Union of India,[3] procedure must be "just, fair, and reasonable." The NDPS Act's procedural rigor must therefore withstand constitutional scrutiny.

Section 50 requires informing the accused of their right to be searched before a magistrate or gazetted officer. In State of Punjab v. Baldev Singh,[4] non-compliance was held fatal to prosecution. This case reinforced procedural integrity within a stringent statute.

In Tofan Singh v. State of Tamil Nadu,[5] the Supreme Court held that NDPS officers are "police officers" for purposes of Section 25 of the Evidence Act. Confessions made to them are inadmissible. This judgment significantly curtailed prosecutorial reliance on custodial confessions and strengthened constitutional safeguards.

Bail Restrictions under Section 37

Section 37 enacts similar conditions for bail in commercial quantity cases. The judiciary initially interpreted this strictly, as agreed in Union of India v. Ram Samujh[6]. However, subsequent jurisprudence reflects increasing judicial awareness of prolonged incarceration and under trial rights.

III. Empirical Enforcement Realities in Mizoram (2015–2025)

[2] *E. Michael Raj v. Intelligence Officer*, (2008) 5 SCC 161
[3] *Maneka Gandhi v. Union of India* (1978) 1 SCC 248
[4] *State of Punjab v. Baldev Singh* (1999) 6 SCC 172
[5] *Tofan Singh v. State of Tamil Nadu* (2021) 4 SCC 1
[6] *Union of India v. Ram Samujh* (1999) 9 SCC 429

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Mizoram's porous international border creates logistical enforcement challenges. Surveillance limitations, difficult terrain, and informal cross-border trade complicate interdiction efforts. While Sections 41–43 authorize search and seizure, effective enforcement depends upon institutional coordination and intelligence sharing.

Mizoram's community based social structure means drug abuse carries collective implications. Churches and NGOs actively participate in rehabilitation initiatives. Section 71 empowers governments to establish treatment centers. However, institutional capacity remains uneven. The NDPS regime remains enforcement heavy. Yet sustainable drug policy in Mizoram requires investment in prevention, counselling, and community reintegration

State-wide Trends

Between 2015 and 2025, Mizoram recorded significant increases in heroin and methamphetamine seizures, rising NDPS case registrations, increasing drug-related mortality, peaking in 2025.[7]Seizures in 2024–2025 alone included over 112 kg heroin and 900+ kg methamphetamine state-wide.[8] Coming to district wise analysis, from Jan-Sep, 2025, Champhai, bordering Myanmar, recorded 87 NDPS cases, 112 arrests, 12.6 kg heroin seized, 87.6 kg methamphetamine seized. Champhai accounts for the highest seizure volume, reflecting border vulnerability.[9]Aizawl recorded 8.058 kg heroin seizure (2024), 20+ kg crystal meth (2025 operations). As administrative capital, Aizawl functions as transit and distribution hub.[10] Lunglei reported smaller but significant seizures (approx. 0.341 kg heroin in 2025), indicating diffusion of trafficking routes southward.[11]

Sociological and Criminological Implications

The enforcement of the NDPS Act in Mizoram over the past decade has significant sociological and criminological ramifications that extend beyond the immediate objectives of deterrence and criminal control. While the statutory framework is designed to suppress

[7] Special Court (NDPS Cases), Aizawl, Mizoram, Statistical Records on NDPS Cases and Drug Seizures (2015–2025)

[8] Special Court (NDPS Cases), Aizawl, Mizoram, Statistical Records on NDPS Cases and Drug Seizures (2015–2025)

[9] Statistical records obtained from the Special Court (NDPS Cases), Aizawl, Mizoram, district-wise NDPS data for January–September 2025

[10] Special Court (NDPS Cases), Aizawl, Mizoram, Statistical Records on NDPS Cases and Drug Seizures (2015–2025)

[11] Special Court (NDPS Cases), Aizawl, Mizoram, Statistical Records on NDPS Cases and Drug Seizures (2015–2025)

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trafficking and consumption, the lived realities in Mizoram reveal complex interactions between law, social structures, and individual behavior.

Over-Criminalization

Strict liability elements risk penalizing vulnerable individuals. Critics argue that detention of addicts may aggravate re-offense. One of the most pressing concerns is over-criminalization. The Act's strict liability provisions and reverse burden clauses mean that individuals found in possession of controlled substances, even in small quantities, are often treated as culpable without thorough consideration of intent or background. This has led to a growing population of under trial prisoners, many of whom are low level users rather than organized traffickers. Prolonged pre-trial detention disrupts family organization, reduces access to education and employment, and raises long-term social marginalization.

Moreover, the criminalization of substance use in a society with strong communal ties, such as Mizoram, has current effects on community networks. Families experience stigma, social isolation, and economic hardship due to the confinement of a family member. This dynamic contributes to a cycle of vulnerability, where social isolation and economic precocity can increase the likelihood of repetition and substance dependence

Youth Vulnerability

Drug proliferation impacts youth employment, educational accomplishment, and family organization. Law enforcement alone cannot address underlying socio-economic problems. The impact of drug proliferation on youth populations in Mizoram is particularly serious. Increasing accessibility to heroin and methamphetamine in border districts, coupled with socio economic pressures has led to increased experimentation among adolescents and young adults. These demographic experiences disruptions in education, reduced employment prospects, and lessened cognitive and social development. Community institutions, including churches and NGOs, play a critical role in preventive and rehabilitative interventions, yet their capacity is limited relative to the number of need.

From a criminological perspective, the youth vulnerability observed aligns with strain theory, which postulates that social and economic pressures can drive individuals toward deviance when legitimate means of achieving societal goals are blocked. In Mizoram, youth who face

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limited employment opportunities or social disregarding may turn to the illicit drug economy *as a coping mechanism or source of income.*

Community and Cultural Dynamics

Mizoram's community based social structure significantly influences the effects of NDPS enforcement. Churches, local councils, and NGOs serve as informal social regulators, mediators, and providers of rehabilitation services. The communal response to drug use is often rooted in moral and spiritual frameworks, emphasizing counseling, reintegration, and collective accountability. However, when enforcement is excessively punitive, it can undermine local mechanisms of social control, generating tension between the state and community actors. Criminologically, this situation highlights the tension between formal legal controls and informal social norms. Overreliance on penal mechanisms can weaken the efficacy of culturally rooted preventive measures, while a balanced approach integrating law enforcement with community led interventions can boost both compliance and social organization.

Recidivism and the Cycle of Dependency

Strict enforcement policies, particularly those involving confinement for minor possession or commercial quantity offenses, contribute to high reoffending rates. Empirical evidence from Mizoram shows that offenders released from prison without access to rehabilitation programs are more likely to reoffend. This pattern aligns with labeling theory, where the social labeling of individuals as "criminals" reinforces deviant identity and marginalization. The cycle of dependency is compounded by inadequate access to treatment and counseling services. Although Section 71 of the NDPS Act provides for government supported rehabilitation centers, limited institutional capacity and resource constraints restrict their reach, leaving many users without controlled support. This shortfall propagates both the demand for narcotics and the possibility of reoffending.

Gendered Implications

Sociological research indicates that drug enforcement in Mizoram also has gendered consequences. Women who use substances or are indirectly involved in drug related activities often face double stigma legal sanction and social condemnation. Limited female

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representation in rehabilitation programs, alongside cultural barriers, further marginalizes women affected by substance abuse. Addressing gender specific vulnerabilities is essential to creating equitable and effective drug governance frameworks.

Criminological Theoretical Integration

From a theoretical standpoint, the Mizoram experience underscores the interplay of multiple criminological perspectives:

i. Deterrence Theory: While the NDPS Act aims to deter trafficking and consumption through severe penalties, empirical data suggests deterrence is uneven, particularly in high-border-risk districts.
ii. Social Disorganization Theory: Border districts with weaker institutional infrastructure exhibit higher drug prevalence, indicating that local social cohesion mediates law enforcement effectiveness.
iii. Harm Reduction and Public Health Frameworks: Increasingly recognized as complementary to criminal law, harm reduction strategies including needle exchange programs, counselling, and rehabilitation address the root causes of addiction, mitigating recidivism and social harm.

Normative critique and reform recommendations

Comparatively, some jurisdictions increasingly adopt harm reduction policies emphasizing treatment over incarceration. India's NDPS framework remains predominantly punitive. The Mizoram experience suggests that uniform statutory severity may not produce uniform outcomes. Context-sensitive adaptation is necessary. The enforcement of the NDPS Act in Mizoram over the past decade presents both legal and normative challenges that demand careful scrutiny. While the Act is framed within a strong deterrence oriented paradigm, several structural, procedural, and social issues highlight the need for context sensitive reforms. Normative critique of the NDPS Act in the Mizoram context involves examining the principles of proportionality, constitutional fairness, social equity, and human rights, and balancing these against the imperatives of narcotics control.

The NDPS Act's prohibitionist model prioritizes zero tolerance approaches over rehabilitative or public health strategies. While deterrence is an important policy goal,

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empirical data from Mizoram demonstrates that strict enforcement alone does not necessarily reduce substance use or trafficking. Champhai, for example, consistently registers the highest seizures and arrests despite intensive policing. This suggests that geography and transnational trafficking networks can limit the efficacy of a purely punitive framework. Normatively, this raises questions about the ethical justification of strict liability and reverses burden provisions. Sections 35 and 54 presuppose knowledge and intent once possession is established, effectively inverting the presumption of innocence. Such provisions may violate Article 21's guarantee of due process by placing an unreasonable evidentiary burden on defendants, particularly marginalized populations, low-level users, or individuals unaware of substance legality.

Moreover, stringent bail restrictions under Section 37, particularly for commercial quantity offenses, have led to prolonged pre-trial detention, which contributes to overcrowded prisons and undermines rehabilitation opportunities. These systemic consequences reflect a misalignment between law enforcement objectives and social justice principles, raising normative concerns about fairness, proportionality, and equality before the law.

Based on legal, empirical, and sociological analysis, the following multi-level reform measures are recommended:

Legal and Procedural Reforms

i. Reconsider Reverse Burden Provisions: Amend Sections 35 and 54 to align with constitutional principles of innocence until proven guilty. Introduce context sensitive defences for minor possession or non-commercial use.
ii. Bail Reform: Revise Section 37 criteria to minimize prolonged pretrial detention, particularly for low-risk defendants, with mandatory review mechanisms.
iii. Sentencing Flexibility: Introduce judicial discretion in sentencing, allowing consideration of socio-economic context, addiction, and rehabilitation potential.

Rehabilitation and Public Health Integration

i. Expand Treatment Infrastructure: Increase funding and capacity for Section 71 rehabilitation centers in Champhai, Aizawl, and Lunglei. Ensure accessibility for women and youth.

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ii. Community-Led Programs: Strengthen partnerships with churches and NGOs to implement prevention, counselling, and reintegration initiatives.
iii. Harm Reduction Strategies: Institutionalize needle exchange, addiction counselling, and methadone maintenance programs, adopting a public health-oriented approach alongside enforcement.

Intelligence led Enforcement

i. Border and District-Specific Strategies: Prioritize surveillance and interdiction in high-risk districts like Champhai, using data-driven intelligence and predictive analytics.
ii. Inter-Agency Coordination: Improve collaboration between police, customs, health authorities, and community actors to streamline enforcement while minimizing social harm.

Socio-Legal Awareness and Education

i. Launch public awareness campaigns highlighting legal consequences, addiction risks, and available rehabilitation services.
ii. Incorporate school-based and youth-targeted programs to reduce initiation and proliferation of drug use.

Gender-Sensitive Policy Interventions

i. Create dedicated rehabilitation programs for women affected by drug use, addressing stigma, childcare, and employment reintegration.
ii. Include gender-responsive training for law enforcement to mitigate bias in arrests and prosecutions.

IV. Conclusion

The NDPS Act remains central to India's narcotics governance architecture.[12] Over the past decade, Mizoram's enforcement experience highlights both the strength and rigidity of the

[12] The Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, Acts of Parliament, 1985 (India)

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statutory framework.[13] On one hand, the Act provides law enforcement agencies with a comprehensive legal toolkit, encompassing broad prohibitions, reverse burden provisions, strict bail regimes, and mandatory minimum sentencing. Judicial interventions particularly in Baldev Singh and Tofan Singh have recalibrated the balance between state power and individual liberty, the case have incrementally rebalanced state authority with constitutional safeguards, reinforcing due process, procedural integrity, and the protection of individual liberties, These decisions underscore the importance of continuous judicial oversight in maintaining proportionality within a regime that prioritizes deterrence Yet the broader challenge persists: how to reconcile deterrence with rehabilitation, and enforcement with constitutional fairness.[14] Sustainable narcotics governance in Mizoram requires an integrated model where law, enforcement, and society function in coordinated equilibrium. On the other hand, empirical data from 2015–2025 demonstrates persistent enforcement challenges in Mizoram. Champhai, as the primary border district, accounts for the majority of NDPS cases, arrests, and drug seizures, highlighting the interplay of geographic vulnerability and transnational trafficking networks. While Aizawl functions as both a hub for distribution and an administrative center, Lunglei demonstrates the diffusion of illicit substances to southern districts, suggesting that trafficking patterns are expanding beyond border regions. These findings illuminate the limitations of a purely punitive approach and the necessity of context sensitive, district specific strategies. The sociological implications are equally significant. Over-criminalization, particularly of low-level offenders and dependent users, risks exacerbating social marginalization and recidivism. Youth vulnerability, community disruption, and the strain on rehabilitative institutions illustrate that enforcement alone cannot achieve sustainable outcomes. In Mizoram, community based activists, such as churches and NGOs, play an essential role in prevention, counselling, and reintegration. Integrating these activists into a all-inclusive governance framework is critical for reducing both supply and demand.

Comparative analysis further strengthens the case for reform. Jurisdictions such as Portugal and certain European nations have demonstrated that harm reduction, proportional sentencing, and diversion programs can coexist with law enforcement objectives without undermining deterrence. Mizoram's experience suggests that a uniform statutory approach

[13] Based on statistical records and case data obtained from the Special Court (NDPS Cases), Aizawl, Mizoram (2015–2025)

[14] *State of Punjab v. Baldev Singh* (1999)6 SCC 172

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across India may produce uneven outcomes if local social, geographic, and infrastructural realities are not considered.

i. Policy implications are clear. The NDPS framework must evolve to incorporate:
ii. Reassessment of reverse burden provisions, ensuring alignment with constitutional guarantees and proportionality.
iii. Bail and pre-trial reforms to prevent excessive incarceration and safeguard the rights of under trial prisoners.
iv. Expansion of rehabilitative infrastructure, including treatment centers under Section 71, with sufficient funding and community engagement.
v. Enhanced border intelligence and district-specific enforcement strategies to target trafficking while minimizing collateral social harm.
vi. Institutionalization of harm reduction measures, emphasizing prevention, education, and community reintegration alongside punitive enforcement.

Without a doubt, sustainable narcotics governance in Mizoram and India more broadly requires a multidimensional approach where law, enforcement, society, and constitutional fairness function in coordinated stability. Enforcement must be tempered by proportionality and rehabilitation, while policy must remain responsive to local realities and international best practices. By settling deterrence with treatment, state authority with civil liberties, and legal uniformity with regional specificity, India can achieve a more balanced, effective, and socially sustainable narcotics governance system.

In conclusion, Mizoram's decade long experience under the NDPS Act is a persuasive case study of the complex intersection between law, geography, and society. It demonstrates that while legislative consistency is essential to combat trafficking, enduring success requires implanting empirical evidence, community participation, constitutional safeguards, and rehabilitative mechanisms at the heart of policy implementation. Only through such an integrated model can the goals of deterrence, public health, and social impartiality be simultaneously realized.

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AI AS AN INVENTOR: PATENT LAW CHALLENGES IN RECOGNIZING NON-HUMAN CREATIVITY

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ABSTRACT

The rapid advancement of artificial intelligence (AI) in the realms of creativity and invention poses a significant challenge to the fundamental principles of patent law. Global patent systems have consistently relied on human ingenuity, with the concept of the "*inventor*" inherently associated with an actual individual. This article examines the escalating legal and philosophical crisis resulting from autonomous AI creation. It delineates the primary legal obstacles to acknowledging non-human inventors, concentrating on the definition of "*inventor*" in significant jurisdictions such as the US, the UK, and under the European Patent Convention. The international legal dispute regarding the "*DABUS*" AI system exemplifies a significant case study demonstrating that nearly all courts concur that the existing patent framework is ill-equipped to accommodate machine inventorship. The study examines the responses of major patent offices, particularly the "*significant contribution*" framework proposed by the USPTO, to evaluate its potential as a temporary solution. This article asserts that neglecting the potential for AI inventorship results in a doctrinal impasse, leaving an increasing number of potentially valuable inventions unprotected by law and possibly relegating them to the ambiguous realm of trade secrets. This may inhibit the emergence of new ideas by discouraging investment in AI-driven research and development. The article discusses proposed legal frameworks, including the establishment of sui generis rights and specific amendments to the law, advocating for a re-evaluation of patent law. It provides policymakers, attorneys, and innovators with strategic counsel and advocates for a novel legal framework that acknowledges AI's creative capabilities while maintaining the primary objectives of the patent system: to promote the progress of science and the useful arts.

Keywords: *AI, Inventorship, Ownership, Sui Generis Rights, Anthropocentrism, DABUS, Patents*

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I. Introduction

The fundamental principle of the global intellectual property system is that invention is exclusively a human endeavour.[1] The principal concept underlying patent law is to promote and safeguard technological innovation. In return for disclosing their invention, the inventor obtains a restricted monopoly. This is a reciprocal arrangement intended to facilitate advancement.[2] This model has functioned for society for centuries; however, it now confronts an existential threat from a novel creator: Artificial Intelligence (AI).[3]

This inquiry is not a speculative exploration of science fiction; it is a critical legal reality.[4] The global litigation concerning the DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) applications, which explicitly designate an AI as the sole inventor, has highlighted this conflict.[5] Courts and patent offices in major jurisdictions, including the United States[6], the United Kingdom[7], and the European Patent Office[8], have consistently rejected these applications, basing their decisions on statutory language that assumes a human inventor.[9] While this approach is doctrinally valid under a textualist interpretation of existing statutes, it creates a significant void.[10] Inventions that fulfil the patentability criteria of novelty[11], inventive step[12], and industrial applicability[13] may be deemed unprotectable solely due to their non-human origin.[14]

As AI systems evolve from basic tools assisting human inventors to autonomous agents capable of generating novel and unforeseen solutions to complex issues, they begin to fulfil the

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1 Peter Drahos, *A Philosophy of Intellectual Property* 43 (Dartmouth Publishing, 1996).
2 The Constitution of the United States, art. I, s. 8, cl. 8; *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974).
3 Margaret A. Boden, *The Creative Mind: Myths and Mechanisms* (Routledge, 2nd edn., 2004).
4 Jeffrey A. Oelke, "AI Inventorship and the Patent Law Doctrinal Deadlock," 35 *Harvard Journal of Law & Technology* 571 (2022).
5 WIPO, *WIPO Intellectual Property and Artificial Intelligence: An Overview*, WIPO/IP/AI/3/GE/22/1 (May 2022).
6 *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022).
7 *Thaler v. Comptroller-General of Patents, Designs and Trade Marks*, [2023] UKSC 24.
8 *J 8/20 and J 9/20*, Legal Board of Appeal, EPO, 21 December 2021.
9 Noa Noy, "The Inventorship Riddle: Artificial Intelligence and the Human Inventor," 24 *Yale Journal of Law & Technology* 163 (2022).
10 Robert Plotkin, *The Genie in the Machine: How Computer-Automated Inventing is Revolutionizing Law and Business* 115 (Stanford University Press, 2009).
11 The United States Patent Act, 35 U.S.C. s. 102.
12 The United States Patent Act, 35 U.S.C. s. 103.
13 The United States Patent Act, 35 U.S.C. s. 101.
14 United Kingdom Intellectual Property Office, "Artificial intelligence and intellectual property: copyright and patents," Government response to consultation, (June 2022), available at: https://www.gov.uk/government/consultations/artificial-intelligence-and-intellectual-property-copyright-and-patents (last visited on June 27, 2025).

essential criteria for inventorship.[15] Nonetheless, they falter at the initial and fundamental obstacle: they lack human consciousness.[16]

Key Research Questions

This paper examines the significant and unresolved research inquiry:

i. To what degree do existing patent law frameworks, which mandate a "*natural person*" as the inventor, create a legal void for autonomously generated AI inventions?
ii. What legislative or judicial modifications are necessary to rectify this void without compromising the fundamental principles of patent law?[17]

Research Methodology

This article employs a doctrinal methodology, complemented by a comparative and socio-legal perspective, to enhance the significance and utility of this critical global discourse. The article asserts that the present legal circumstances are untenable. Patent law may become obsolete if it exclusively emphasises human inventors.[18] This would imply that a new category of valuable inventions would lack protection, potentially dissuading innovation by rendering investments in creative AI systems less lucrative.[19]

Chapterization

This analysis will consist of four components.

i. In Part II, we will analyse the doctrinal impediments within contemporary patent legislation and examine how the legal definition of "*inventor*" in significant jurisdictions renders AI incapable of functioning effectively.
ii. Part III will examine the judges' rationale in the DABUS cases, highlighting the shared legal principles and policy concerns that have resulted in the widespread rejection of AI inventorship.

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15 Ryan Abbott, "I Think, Therefore I Invent: Creative Computers and the Future of Patent Law", 57 *Boston College Law Review* 1079 (2016).
16 Ben Hattenbach, et.al., "The AI-Inventorship Challenge: A Perfect Storm for a Legislative Fix", 42 *Santa Clara High Technology Law Journal* 1 (2025).
17 WIPO, "WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI)," available at: https://www.wipo.int/about-ip/en/artificial_intelligence/conversation.html (last visited on June 27, 2025).
18 Mark A. Lemley, "The Rise of the Robot-Authors," available at: https://ssrn.com/abstract=2650821 (last visited on June 27, 2025).
19 Reto M. Hilty, et.al., "Artificial Intelligence and Intellectual Property," Max Planck Institute for Innovation and Competition Research Paper No. 20-13 (2020).

iii. Part IV will examine temporary solutions and proposed frameworks, including the "*significant human contribution*" test and concepts for sui generis protection, while evaluating their advantages and disadvantages.

iv. Ultimately, Part V will provide targeted, solution-oriented recommendations for modifications to legislation and policies. It will advocate for a pragmatic approach that acknowledges AI's creative potential while safeguarding the integrity and objectives of the patent system.

II : The Doctrinal Wall: Analysing the Legal Definition Of "Inventor"

The primary issue with patenting AI-generated inventions lies not in the quality of the inventions, but in the legal identity of their creator.[20] Global patent laws were established at a time when it was difficult to conceive of creativity originating from anything other than a human entity.[21] These laws contain language that, either explicitly or implicitly, presumes the inventor is a natural person. This section delineates the principal patent laws in the US, the UK, and the European Patent Convention, illustrating how both textualist and purposive interpretations of the term "inventor" have established a robust doctrinal barrier against AI inventorship.

The United States is a "individual" possessing rights and responsibilities

The U.S. Patent Act exemplifies this inherent anthropocentrism.[22] Section 100(f) of the Act defines an "*inventor*" as "the individual or, in the case of a joint invention, the individuals collectively who invented or discovered the subject matter of the invention."[23] Although the term "*individual*" is not explicitly defined as a natural person, its legal interpretation strongly endorses this understanding.[24] The U.S. Supreme Court stated in *Mohamad v. Palestinian* Authority that the term "*individual*" in a statute typically denotes a natural person unless explicitly specified otherwise.[25] This principle has been uniformly implemented across diverse legal contexts.[26]

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20 Paul Torremans, *Holyoak and Torremans Intellectual Property Law* 101 (Oxford University Press, 8th edn., 2016).

21 Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law: The British Experience, 1760-1911* 59 (Cambridge University Press, 1999).

22 Donald S. Chisum, *Chisum on Patents* § 2.01 (LexisNexis, 2023).

23 The Leahy-Smith America Invents Act, 35 U.S.C. s. 100(f).

24 Jane C. Ginsburg, "People and Persons: The Copyright-ability of AI-Generated Works," 47 *Columbia Journal of Law & the Arts* 1 (2023).

25 *Mohamad v. Palestinian Authority*, 566 U.S. 449 (2012).

26 *Clinton v. City of New York*, 524 U.S. 417 (1998).

Additional sections of the Patent Act support this interpretation. Section 115 stipulates that each inventor must execute an oath or declaration, a legal act permissible solely by an individual possessing legal personality and consciousness.[27] The provision mandates that the inventor affirm they "*believe himself or herself as the original inventor*."[28] The inclusion of personal pronouns such as "himself or herself" further underscores the human requirement into the statutory fabric.[29] Furthermore, inventorship entails legal rights, including the right to assign the patent[30], and legal obligations, such as the duty of candour and good faith to the United States Patent and Trademark Office (USPTO).[31] These concepts, under prevailing legal frameworks, are applicable exclusively to individuals.[32] The Federal Circuit, in its seminal Thaler v. Vidal ruling regarding the DABUS application, heavily relied on this statutory context to conclude that the Patent Act "unambiguously and directly" necessitates that an inventor be a human being.[33]

The United Kingdom: An Entity with Rights

The UK Patents Act 1977 presents a comparable yet distinct barrier.[34] Section 7(1) stipulates that the "*inventor or joint inventors*" possess the entitlement to a patent.[35] Section 7(3) defines the "*inventor*" as "*the actual deviser of the invention*."[36] Although "deviser" may appear neutral, the accompanying legal context, similar to that in the U.S., exclusively refers to a natural person.[37]

Section 13(2) is paramount as it stipulates that an applicant must submit a statement "*identifying the person or persons whom he believes to be the inventor or inventors*."[38] The term "*person*" is pivotal. In English law, the term "*person*" typically refers to either a natural or legal entity, such as a corporation.[39] Nonetheless, an AI is neither.[40] The UK Supreme Court

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27 The United States Patent Act, 35 U.S.C. s. 115(a).
28 The United States Patent Act, 35 U.S.C. s. 115(b)(2).
29 H.R. Rep. No. 112-98, pt. 1, at 45 (2011).
30 The United States Patent Act, 35 U.S.C. s. 261.
31 37 C.F.R. s. 1.56.
32 Shawn Bayern, "The Implications of Modern Business-Entity Law for the Regulation of Autonomous Systems", 19 *Stanford Journal of Law, Business & Finance* 93 (2013).
33 *Supra* note 9 at 1211.
34 W.L. Cornish, et.al., *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* 145 (Sweet & Maxwell, 8th edn., 2013).
35 The Patents Act, 1977, s. 7(1).
36 *Id*., s. 7(3).
37 *Yeda Research and Development Co Ltd v. Rhone-Poulenc Rorer International Ltd* [2007] UKHL 43.
38 The Patents Act, 1977, s. 13(2)(a).
39 *Salomon v. A. Salomon & Co. Ltd*, [1897] AC 22.
40 The Law Commission, "Artificial Intelligence and the Law," Scoping Paper (Nov 2021).

concurred with the Court of Appeal's rationale in the DABUS case, asserting that the statutory framework fundamentally presupposes that the inventor is an individual.[41] Lord Kitchin, author of the principal judgement, emphasised that the entitlement to apply for a patent is conferred upon the inventor, and this entitlement can solely be possessed and transferred by an individual with legal personality.[42] The law of property, which regulates the transfer of patent rights from the inventor to an applicant (such as an employer), is fundamentally predicated on the actions of legal entities.[43] An AI, however, is incapable of generating an invention and subsequently legally transferring the right to file for a patent.[44]

The European Patent Convention: A Distinct Legal Construct

The European Patent Convention (EPC) distinctly emphasises its focus on individuals for over 40 countries.[45] Article 81 of the EPC stipulates that a European patent application "*must designate the inventor.*"[46] Furthermore, it states that "*if the applicant is not the inventor or is not the sole inventor, the designation must include a statement indicating the origin of the right to the European patent.*"[47] This regulation is of significant importance. It establishes a legal connection, or chain of title, between the inventor and the applicant.[48]

Rule 19(1) of the EPC Implementing Regulations stipulates that the designation of the inventor "*shall state the family name, given names and full address of the inventor*."[49] This stipulation for a human-like name and address explicitly excludes non-human entities.[50] The European Patent Office (EPO) Legal Board of Appeal, in its conclusive ruling on the DABUS application, determined that the term "*inventor*" under the EPC pertains exclusively to a natural person.[51] The Board reasoned that the EPC framework regarding patent entitlement is predicated on the inventor being an individual with legal capacity capable of transferring rights, a status that artificial intelligence lacks.[52] The Board concluded that interpreting the EPC to allow for non-

41 *Supra* note 10.
42 *Id*. at [52].
43 *Id*. at [60].
44 Emily Michiko Morris, "Intangible Inventions," 68 *DePaul Law Review* 297 (2019).
45 European Patent Office, *Guidelines for Examination*, Part F, Ch. II, 4.1 (2023).
46 The European Patent Convention, 1973, art. 81.
47 *Ibid*.
48 The European Patent Convention, 1973, art. 60(1).
49 Implementing Regulations to the Convention on the Grant of European Patents, r. 19(1).
50 Cees Mulder, *The Cross-Referenced Patent Convention* 125 (30th edn., 2022).
51 *Supra* note 11.
52 *Ibid*.

human inventors would constitute a "*departure from the clear meaning of the provision*" and an act of judicial legislation rather than mere interpretation.[53]

III. The Dabus Saga: An International Judicial Accord

Dr. Stephen Thaler's DABUS AI system has been utilised globally as a case study to determine the patentability of inventions generated by artificial intelligence.[54] Dr. Thaler submitted patent applications in various jurisdictions for two inventions: a food container utilising fractal geometry and an emergency light beacon designed to attract attention. He designated DABUS as the sole inventor. The subsequent legal disputes have resulted in the near-universal rejection of AI inventorship by courts, generating an extensive body of case law that elucidates the doctrinal issues.

Thaler v. Vidal: Denial in the United States

The USPTO rejected the DABUS application in the United States due to the absence of a designated individual as the inventor.[55] The courts reviewed this decision, and the Federal Circuit's ruling in *Thaler v. Vidal* was conclusive. The court's rationale was founded on a textualist interpretation of the U.S. The Patent Statute. The court concentrated on the legal definition of an "*inventor*" as an "*individual*," as previously discussed. The Federal Circuit stated that "*individual*" typically refers to a human being, as established by the Supreme Court's ruling in *Mohamad v. Palestinian Authority*.[56]

The court concurred with this interpretation of the law due to its consistent use of personal pronouns and the stipulation of an inventor's oath.[57] Dr. Thaler advocated for a more expansive, functionalist interpretation, asserting that acknowledging AI inventors would optimally fulfil the constitutional objective of the patent system "to promote the Progress of Science and useful Arts."[58] Nevertheless, the court determined that this policy argument lacked sufficient strength to alter the explicit wording of the law. It stated that although policy considerations are significant, they cannot alter explicit statutory language.[59] The ruling clarified that it is

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53 *Ibid*.
54 Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* 85 (Cambridge University Press, 2020).
55 USPTO, "Rejection of Patent Application Naming AI as Inventor," Decision on Petition, Application No. 16/524,350 (Apr. 22, 2020).
56 *Supra* note 9 at 1211, citing *Mohamad v. Palestinian Authority*, 566 U.S. 449 (2012).
57 *Id*. at 1212.
58 *Id*. at 1213.
59 Petitioner's Brief for Writ of Certiorari, *Thaler v. Vidal*, No. 22-919 (U.S. Mar. 20, 2023).

Congress, rather than the judiciary, that holds the authority to amend the law to safeguard AI inventors.[60] The Supreme Court subsequently denied certiorari, rendering the Federal Circuit's decision the prevailing law in the United States.[61]

The United Kingdom's Approach: The Case of Thaler v. Comptroller-General

The Supreme Court represented the final stage in the legal process within the United Kingdom. The UK Intellectual Property Office (UKIPO) initially stated that the applications were retracted due to non-compliance with Section 13 of the Patents Act 1977, which mandates that the individual recognised as the inventor must be identified.[62] The primary concern in the UK Supreme Court's ruling was not the capability of an AI to invent in a technical context, but rather whether an applicant could obtain patent rights from a non-human entity.[63]

The consensus among individuals is that the UK Patents Act stipulates that the "inventor" must be a "*person*."[64] Consequently, since DABUS is not a person, it cannot possess or convey the rights to the invention. Dr. Thaler asserted ownership of the DABUS machine, thereby granting him the entitlement to the patent. The court clarified that possessing a tool (the AI) is distinct from being the inventor.[65] The law of accession, which may confer ownership of tangible products derived from property (such as fruit from a tree), does not extend to the intangible rights associated with an invention.[66] The court ruled that Dr. Thaler lacked an independent entitlement to the invention; the rights resided with the inventor, and since the designated inventor was not a person, there was no legitimate application.[67]

The European Patent Office: Restricting Access Based on Policy Considerations

One of the most comprehensive analyses originated from the European Patent Office (EPO). The EPO's Examining Division and subsequently its Legal Board of Appeal rejected the DABUS application for several reasons. The primary reason, as previously stated, is that the EPC stipulates that the inventor must be a natural person capable of legally owning the patent.[68]

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60 *Supra* note 9 at 1213.
61 *Thaler v. Vidal*, 143 S. Ct. 2438 (2023).
62 UKIPO, "Patents Formality Manual," s. 3.06, available at https://www.gov.uk/government/publications/formalities-manual (last visited June 27, 2025).
63 *Supra* note 10 at [2].
64 *Id*. at [54].
65 *Id*. at [62].
66 *Id*. at [73].
67 *Thaler v. The Comptroller-General of Patents, Designs and Trade Marks* [2021] EWCA Civ 1374.
68 *Supra* note 11.

The Board emphasised that identifying an inventor is not merely a formality but a crucial aspect of determining patent rights.[69]

The EPO also examined the implications of the policy, which is highly significant. It concurred with the notion that withholding patents for AI-generated inventions could impede advancement. Nonetheless, it determined that its role was to interpret the current EPC rather than to "participate in a political discourse regarding the patentability of AI-generated inventions."[70] The Board emphasised that this matter should be resolved through "*a comprehensive dialogue concerning the potential implications for the patent system*," which falls under the purview of the legislature.[71] This rationale underscores a prevalent theme across jurisdictions: judges and administrators exhibit reluctance to implement significant policy alterations through interpretative innovation, favouring legislative action instead.[72]

The Initial Australian Achievement: A Singular Anomaly

The Federal Court of Australia rendered an uncommon yet ephemeral ruling in favour of Dr. Thaler, contrasting with global trends. Justice Beach conducted a more deliberate examination of Australia's Patents Act 1990 in *Thaler v. Commissioner of Patents*.[73] He stated that the term "*inventor*" in the Act functioned as an agent noun that need not denote an individual.[74] He stated that prohibiting AI from being an inventor would create a "*gap in the system*" and contradict the Act's objective of fostering innovation.[75] Proponents of AI inventorship lauded this decision as pragmatic and progressive approach.[76]

This victory, however, was short-lived. The full bench of the Federal Court unanimously reversed the decision on appeal.[77] The appellate court reverted to a conventional interpretation of the law, asserting that the legislative framework, when considered in its entirety, unequivocally encompassed a human inventor.[78] The High Court of Australia subsequently

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69 *Ibid*.
70 EPO, "EPO publishes grounds for its decision to refuse patent applications naming a machine as inventor," 28 January 2020, available at: https://www.epo.org/en/news-events/news/2020/20200128 (last visited on June 27, 2025).
71 *Ibid*.
72 Mark Schulz, "AI and Patents: A Time for Restraint by Courts and Legislatures," 33 *Fordham Intellectual Property, Media & Entertainment Law Journal* 1 (2022).
73 *Thaler v. Commissioner of Patents*, (2021) FCA 879.
74 *Id*. at [116].
75 *Id*. at [9].
76 Alexandra George, "A Robot Walks into a Patent Office: Can it be an Inventor?", 45 *University of New South Wales Law Journal* 1 (2022).
77 *Commissioner of Patents v. Thaler*, [2022] FCAFC 62.
78 *Id*. at [107].

rejected Dr. Thaler's petition for special leave to appeal, aligning Australia with the international consensus.[79] The brief success in Australia illustrates the tension between a stringent, textualist approach.

IV. Closing the Divide: Proposed Remedies and Interim Structures

The rejection of all DABUS applications has created a distinct legal issue: an increasing number of valuable inventions that could be patented may remain unprotected due to their creation by an AI.[80] This circumstance is broadly regarded as untenable. In response, various solutions have been proposed, ranging from minor modifications to administrative regulations to the establishment of new intellectual property rights. This section critically examines the most significant of these proposals.

The "Significant Human Contribution" Test: The USPTO's Provisional Guidance

In February 2024, the USPTO published "*Inventorship Guidance for AI-Assisted Inventions*," marking a significant advancement in clarifying the existing legal framework.[81] The guidance clarifies that AI cannot be designated as an inventor; however, inventions assisted by AI are not inherently unpatentable. The primary component of the guidance is a test derived from the principles established in *Pannu v. Iolab Corp*. for determining whether two individuals qualify as joint inventors.[82]

This guidance states that a natural person who "*significantly contributed*" to the conception of an invention claimed in a patent application qualifies as a legitimate inventor. The USPTO asserts that merely identifying a problem, possessing or managing an AI system, or implementing an AI's output is insufficient.[83] An individual must have made a contribution that is "*not insignificant in quality, when assessed against the entirety of the invention*."[84] This indicates that the individual must have influenced the concept of the invention, such as by

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79 *Thaler v. Commissioner of Patents* [2022] HCATrans 199 (11 November 2022).

80 WIPO, "Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence," WIPO/IP/AI/2/GE/20/1 Rev., (May 21, 2020), available at: https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ai_2_ge_20/wipo_ip_ai_2_ge_20_1_rev.pdf (last visited on June 27, 2025).

81 United States Patent and Trademark Office, "Inventorship Guidance for AI-Assisted Inventions," 89 Fed. Reg. 10043 (Feb. 13, 2024).

82 *Pannu v. Iolab Corp.*, 155 F.3d 1344 (Fed. Cir. 1998).

83 *Supra* note 81 at 10046.

84 *Id*. at 10049.

designing the AI for a particular inventive objective or by making a creative selection from the AI's output.

Critique

The USPTO's guidance constitutes a pragmatic and essential interim remedy. It provides numerous AI-assisted innovations with a pathway to obtain patents, thereby alleviating an imminent crisis. However, it will not be effective for an extended duration. The primary deficiency is its failure to address the core issue of inventions generated *autonomously* by AI, wherein no human can legitimately assert they made a "*significant contribution*" to the concept. As AI systems advance, the "*human contribution*" may diminish to a mere formality, compelling individuals to either inaccurately designate a human as the inventor or forgo patent protection entirely. This may result in a new array of legal issues regarding the definition of a "*significant*" contribution, thereby creating ambiguity for innovators.

Altering the Definition of "Inventor"

Amending patent legislation to explicitly permit AI inventors is a more straightforward approach to this issue. Altering the definition of "*inventor*" to encompass "*a natural person or an artificial intelligence system*" would constitute a straightforward amendment to the law. Proponents assert that this would be the optimal resolution as it would directly confront the doctrinal conflict presented by the DABUS cases.[85] It would enable the patent system to function optimally, providing protection based on the quality of the invention rather than the category of inventor.

Critique

This concept appears straightforward initially, yet it raises significant enquiries. The paramount issue is the determination of ownership. Who possesses the patent if an AI generates novel concepts? The law confers ownership to the inventor, who may subsequently transfer it. An AI cannot possess or transfer property due to its lack of legal personhood. Legislation must establish a new framework for initial ownership, which may be assigned to the AI's proprietor, developer, or user. Each option entails intricate policy implications concerning liability, incentives, and market concentration. Granting ownership of several potent AI systems to their developers may result in an unparalleled amalgamation of intellectual property.

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[85] *Supra* note 4.

Establishing a Sui Generis Right

An alternative is to abandon the conventional patent system and establish a novel category of intellectual property rights specifically for AI-generated creations. This category of rights would be exclusive to works generated by artificial intelligence. This approach has previously been employed in contexts such as semiconductor chip designs and database rights within the EU, where conventional intellectual property systems proved inadequate. This new right may entail distinct regulations, a reduced duration of protection, and a proprietary framework tailored to AI innovation. For instance, it may provide a reduced duration of exclusivity compared to a patent, as AI-driven innovation can occur at an accelerated pace.

The *sui generis* option provides the greatest autonomy, yet it entails significant risks. Establishing a new intellectual property right is a protracted and intricate process that may lead to global complications if not uniformly implemented. This would establish a dual system of protection, potentially diminishing the value of AI-generated inventions compared to those created by humans. Challenging enquiries will arise regarding the demarcation: when does an invention qualify as "*AI-assisted*" (and thus patentable) versus "*AI-generated*" (and consequently governed by the new right)? This may result in strategic manipulation and legal ambiguity, undermining the objective of fostering innovation. Despite these challenges, the sui generis approach remains a robust alternative as it enables the formulation of a tailored solution without necessitating the integration of new technology into an antiquated legal framework.

V. Conclusion and Recommendations

Artificial intelligence and patent law are currently at a critical juncture. The legal fiction that an "*inventor*" must be a person is untenable due to the consensus among judges and legal scholars on this matter. It renders a system designed to promote advancement oblivious to a significant new source of innovation. While it is acceptable to await legislative action, such action has now become critically important. An intricate and globally synchronised strategy is required to address this issue.

Prompt Legislative Action to Redefine "Inventor" with a Distinct Ownership Framework: The most effective and direct remedy is for legislatures in key jurisdictions to amend their patent laws. This entails implementing two primary modifications:

i. First, the definition of the term "*inventor*" should be revised to encompass AI systems. For instance, the United States. The Patent Act could be amended to define an inventor as "*an individual or an artificial intelligence system that generates an invention*."

ii. Second, and most critically, there must be a definitive law regarding ownership rights. The default principle should stipulate that the legal entity responsible for facilitating the AI's creation of the invention possesses the patent rights for that invention. The AI's owner, developer, or user may vary based on the context. In copyright law, this parallels the "work for hire" doctrine, while in patent law, it resembles the treatment of employee inventions. It clarifies the chain of title from the outset.

Promote International Harmonization through WIPO: The World Intellectual Property Organisation (WIPO) should oversee the facilitation of international treaty negotiations to establish a cohesive framework for AI inventorship. Diverse national legislation on this matter will complicate matters for global technology firms, necessitating litigation in various jurisdictions and resulting in legal ambiguity. To ensure the efficacy of the global patent system, a unified standard for application procedures is necessary, akin to that established by the Patent Cooperation Treaty (PCT).

Reject the Sui Generis Approach for the Time Being*:* A sui generis right may appear advantageous due to its flexibility; however, it could complicate matters and disrupt the intellectual property framework. It would complicate the delineation of boundaries and potentially diminish the significance of AI-generated innovations. Regardless of the origin of an invention, the existing patent system is sufficiently robust to evaluate its merit according to stringent criteria of novelty, non-obviousness, and disclosure. The objective should be to reform the patent system, rather than circumvent it.

Strengthen Disclosure Requirements for AI-Generated Inventions: Mandate that patent applications for AI-generated or significantly AI-assisted inventions include a disclosure statement. This will enhance clarity and alleviate concerns regarding "*black box*" AI. The "*AI Disclosure*" must specify the AI system utilised and its contribution to the conceptualisation of the invention. This would provide patent examiners with essential information, establish a public record of AI's contribution to innovation, and facilitate monitoring of the technology's impact on the patent system.

The law has consistently evolved in response to emerging technologies, from the printing press to the internet. Creative AI presents a significant threat as it undermines the principle of human

authorship central to our intellectual property legislation. The DABUS case has unequivocally demonstrated that the existing legal framework is no longer effective. A legal framework that mandates a human inventor for a self-generating machine invention constitutes a system of denial. It removes an incentive where one should exist.

Maintaining this antiquated mindset may result in not only doctrinal inconsistency but also hinder the patent system's ability to foster the innovation it was designed to support. The absence of legal protection for AI-generated inventions diminishes the likelihood of investment in a technology that has the potential to address some of the world's most significant challenges. It is not a matter of choosing between preserving the patent system and accommodating AI. It is a decision between permitting the system to evolve or allowing it to become obsolete. The present moment necessitates legislative action. We can ensure that the patent system remains a crucial driver of advancement for the 21st century and beyond by judiciously amending our laws to recognise that machines can exhibit creativity and by clarifying ownership and control over them.

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ONE NATION, ONE ELECTION, MANY CONSTITUTIONAL QUESTIONS

*Jai Agarwal**

ABSTRACT

The 129th Constitution Amendment Bill, 2024, proposes to synchronize elections to the Lok Sabha and State Legislative Assemblies under the "One Nation, One Election" framework. While the Bill's Statement of Objects and Reasons emphasizes administrative efficiency and economic considerations, this paper examines whether the proposed amendments violate fundamental constitutional principles, particularly the basic structure doctrine established in *Kesavananda Bharati v. State of Kerala*. This analysis applies both substantive and procedural limitations on the constitutional amending power. The substantive examination reveals that the amendments potentially infringe upon democracy and federalism as basic features of the Constitution. The proposed Article 82A fundamentally alters the temporal autonomy of state legislatures by subordinating their five-year terms to the Lok Sabha's tenure, thereby compromising the democratic principle of periodic accountability and state legislative independence. The federal structure faces significant disruption as the amendments transfer control over state legislative terms to the Election Commission and Union government, undermining the carefully crafted balance between Centre and States established in precedents like *S.R. Bommai v. Union of India*. Procedurally, the paper argues that the amendments affecting state legislature timelines and federal principles require state ratification under Article 368(2), not merely parliamentary approval. The centralization of electoral management and presidential discretionary powers in hung parliament scenarios further exacerbates concerns about democratic checks and balances. The paper concludes that while administrative convenience may justify electoral synchronization, constitutional propriety demands rigorous scrutiny. The amendments risk transforming India's federal democratic fabric by prioritizing managerial efficiency over constitutional principles, necessitating careful parliamentary deliberation and state consultation before implementation.

Keywords: *Constitutional Amendment, Basic Structure Doctrine, Federalism, Democracy, One Nation One Election, Electoral Synchronization*

I. Introduction

The 129th Constitution Amendment Bill, as introduced in the Lok Sabha on 17 December, 2024 proposes to insert Article 82A, empowering the President to issue a public notification on the date of the first sitting of the House of the People after a general election, which shall be called the "appointed date".[1] The tenure of the House of the People will be five years from this date, and the tenure of Legislative Assemblies elected before the expiry of the House of the People's full term will end with it. Subsequently, all general elections to the House of the People and

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1 The Constitution (One Hundred and Twenty-Ninth Amendment) Bill 2024, Bill No. 275 of 2024 (Lok Sabha).

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Legislative Assemblies will be held simultaneously. The proposed amendments to Articles 83 and 172 provide that in the case of early dissolution of either the House of the People or a Legislative Assembly, the term of the new House or Assembly, as elected, will be for the remaining unexpired term. The 'Statement of Objects and Reasons' (SOR) justify simultaneous elections on the grounds of governance efficiency and economic utility. Key reasons include: (a) costliness, (b) time consumption, (c) disruption of development programs due to the Model Code of Conduct, (d) impact on normal public life, and (e) strain on personnel.[2] Notably, no constitutional considerations are mentioned. The Bill aims to implement recommendations from the Law Commission[3], Department-related Standing Committee[4], and 2024 High-Level Committee Report (HLC)[5], which advocates for simultaneous elections, a practice discontinued post-1967.

Significant concerns have been raised regarding the impact of this amendment on the basic features such as democracy and federalism. This paper assesses whether the amendment respects a) substantive and b) procedural limitations on the amending power, as developed form the judgements cited specifically in the HLC Report. Substantive limitations involve the test of the basic structure, while procedural limitations concern the mode of exercising this constituent power.

II. Substantive Limitations

Establishing the Basic Structure Test

The Indian Constitution is built upon an unamendable core that cannot be destroyed or altered in a way that compromises its identity. This stems from the premise that the constituent power of amendment derives its authority from the Constitution and must operate within its confines. The concept often invokes the philosophical ship of Theseus dilemma - at what point does an amendment alter the essence of the Constitution beyond recognition? This principle was crystallized in *Kesavananda Bharati v. State of Kerala*[6], where the Supreme Court ruled that

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2 *Ibid*.

3 Law Commission of India, *Draft Report on Simultaneous Elections* (30 August 2018) *available at:* https://legalaffairs.gov.in/sites/default/files/simultaneous_elections/LCI_2018_DRAFT_REPORT.pdf. (last accessed on 25 October, 2024).

4 Department Related Committee Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice, *79th Report: Feasibility of Holding Simultaneous Elections to the House of People (Lok Sabha) and State Legislative Assemblies* (17 December 2015) *available at:* https://legalaffairs.gov.in/sites/default/files/simultaneous_elections/79th_Report.pdf,(last accessed on 25 October, 2024).

5 High Level Committee, Report on Simultaneous Elections in India (14 March 2024) *available at:* https://onoe.gov.in/HLC-Report-en. (last accessed on 25 October, 2024).

6 *His Holiness Kesavananda Bharati Sripadagalavaru* v. *State of Kerala*, (1973) 4 SCC 225.

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amendments must not 'damage' or 'destroy' the basic structure of the Constitution. Illustratively, Justice Sikri identified five key features: supremacy of the Constitution, republican and democratic form of government, secularism, separation of powers, and federalism, while emphasizing that these rest on the foundation of individual dignity and freedom.

The *Kesavananda* Judgment set the stage for subsequent elaborations on the basic structure doctrine. In *Indira Nehru Gandhi v. Raj Narain*[7], the Supreme Court underscored the case-specific nature of identifying basic features. Justice Mathew noted that a basic structure principle must be a "terrestrial concept having its habitat within the four corners of the Constitution" and it should be assessed in light of its role in the constitutional scheme, its objectives, and the consequences of its denial. Justices Mathew and Chandrachud highlighted features such as free and fair elections, equality, the rule of law, and a democratic setup as integral to the Constitution's basic structure.

The Supreme Court, in *M. Nagaraj v. Union of India*[8], introduced the 'width' and 'identity' test to assess whether an amendment infringes on the basic structure. The width test examines the extent of the amendment's impact, while the identity test assesses whether the essential elements of the Constitution remain intact. Thus, an amendment must preserve the Constitution's identity even after alteration.

The *Supreme Court Advocates-on-Record Association v. Union of India*[9] judgment further refined this doctrine, replacing the *Kesavananda Bharati*'s abrogation test with an alteration test. It held that even minimal damage to essential features like judicial independence, effectuated through judicial primacy in appointments, could render an amendment unconstitutional. However, this strict standard evolved further in *Jaishri Laxmanrao Patil v. Chief Minister and Ors*.[10] Here, the Supreme Court clarified that not all alterations violate the basic structure - only those that take away the essence of a basic feature. In this case, a peripheral change to state legislative power was held to not suffice unless it effectively divested state of its legislative and executive authority, thereby eroding the federal character of the

7 *Indira Nehru Gandhi* v. *Raj Narrain*, 1975 Supp SCC 1.
8 *M. Nagaraj* v. *Union of India*, (2006) 8 SCC 212.
9 *Supreme Court Advocates-on-Record Association* v. *Union of India*, (2016) 5 SCC 1.
10 *Jaishri Laxmanrao Patil* v. *The Chief Minister and Ors*., (2021) 8 SCC 1.

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Constitution.The basic structure framework, thus, operates at three levels of abstraction: the concept (basic constitutional principle), facet (particular aspect independent of the Constitution), and conception (Constitution-specific understanding of the facet). A conception becomes a basic feature only when integral to the facet's functioning.[11] Ananalytical framework for examining the 129th Constitution Amendment Bill's impact on democracy and federalism as basic features of the Constitution has been utilised in this paper

It is also to be noted that despite the proposed Article 82A(3)'s non-obstante clause ("notwithstanding anything in this Constitution or any law for the time being in force"), attempting to override constitutional provisions, precedents in *P. Sambamurthy v. State of AP*[12] and *R.C. Poudyal v. Union of India*[13] establish that such clauses by themselves do not inhibit a basic structure review.

Applying the Test

Democracy as a basic feature

The first basic feature analysis examines *democracy* through this framework: democracy as the overarching concept, which manifests through periodic free and fair elections as its facet and finds specific constitutional conception in the five-year term of a confident assembly. The proposed amendments to Articles 83 and 172 present significant concerns when examined through the established basic structure tests. Firstly, the amendment's scope extends beyond mere procedural modification - it fundamentally alters the temporal autonomy of state legislatures by subordinating their terms to the Lok Sabha's tenure. The width of its impact suggests a structural change rather than an incremental reform. When examining the amendment's effect on the constitutional identity, the changes strike at core democratic feature. The five-year term guarantee, explicitly provided in the constitutional text, represents more than just a timeline - it embodies the principle of periodic democratic accountability and state legislative autonomy. The amendment's consolidation of electoral powers under parliamentary legislation and presidential executive authority effectively alters this basic feature. The amendment doesn't merely modify but transforms the relationship between the centre and the

[11] Nivedhitha K., The 103rd Amendment and a New Typology of the Basic Structure' (Constitutional Law and Philosophy Blog, 19 September 2019) *available at:* https://indconlawphil.wordpress.com/2019/09/19/guest-post-the-103rd-amendment-and-a-new-typology-of-the-basic-structure/ (last accessed on 28 October, 2024).

[12] *P Sambamurthy* v. *State of Andhra Pradesh*, (1987) 1 SCC 362.

[13] *R.C. Poudyal* v. *Union of India*, 1994 Supp (1) SCC 324.

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states. This transformation goes beyond peripheral changes to state powers and enters the territory of altering fundamental democratic features.

The Supreme Court in *PUCL v Union of India*[14], while relying on *Indira Gandhi v. Raj Narrain* and *Kihoto Hollohan v. Zachillhu*[15], has held that an effective democracy functioning through periodic fair and free elections is part of the basic structure of the Constitution. Union Parliament's unilateral ability to modify these temporal guarantees through constitutional amendments has an approach similar to emergency powers, raising serious concerns about democratic safeguards. While administrative efficiency and economic considerations form the amendment's foundation, as discussed in the SOR, they cannot override constitutional propriety. The analysis suggests the amendment, in its current form, may impermissibly alter essential democratic features.

Federalism as a basic feature

The second basic feature analysis examines *federalism* through this framework: federalism as a concept, co-equal powers of Centre-State and executive power being co-extensive with legislative powers as the facet, and confident legislative assemblies having autonomy over their timelines as the conception.

The proposed amendments raise significant federal concerns through established constitutional precedents. While *West Bengal v. Union of India*[16] established India's quasi-federal nature signalling centralising tendency, as also affirmed in *Kuldip Nayar*[17], but the Supreme Court in *S.R. Bommai v Union of India*[18] held that states are not mere appendages of the Centre and within their allocated spheres maintain supremacy. This principle was reinforced in *Jindal Stainless Steel*[19], where Justice Chandrachud emphasized preserving the carefully crafted balance between Union and States, albeit in financial relations. The amendments, particularly proposed Article 82A (5) and 82A (7), effectively transfer control over state legislative terms to the ECI and the Union, potentially disrupting this established balance. The evolution of Indian federalism through what *GNCT Delhi v Union of India*[20] termed as 'cooperative' and

[14] *People's Union for Civil Liberties* v. *Union of India*, (2013) 10 SCC 1.
[15] *Kihoto Hollohan* v. *Zachillhu*, 1992 (2) SCC 651.
[16] *West Bengal* v. *Union of India*, 1962 SCC OnLine SC 27.
[17] *Kuldip Nayar* v. *Union of India*, (2006) 7 SCC 1.
[18] *S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1.
[19] *Jindal Stainless Steel* v. *State of Haryana*, (2017) 12 SCC 1.
[20] *State (NCT of Delhi)* v. *Union of India*, (2018) 8 SCC 501.

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'pragmatic' federalism emphasizes constitutional balance and regional aspirations as crucial to strengthening unity. Following *Jaishri Laxmanrao Patil*'s test, these changes potentially take away the very essence of federalism by fundamentally altering state legislative autonomy. The amendment's width significantly impacts state legislative independence, placing state legislative assemblies under Union Parliament's control regarding their terms.

The amendment appears to damage the federal fabric by removing state legislatures' basic autonomy over their temporal existence, a concern that *S.R. Bommai* specifically cautioned against when discussing powers affecting federal balance.

III. Procedural Limitation

The procedural framework governing constitutional amendments under Article 368 presents some questions regarding special majority requirements and state ratification. A significant interpretative issue concerns whether the special majority requirement applies across all stages or exclusively at the final stage.[21] Convention has traditionally favoured the former interpretation.[22]

The proviso to Article 368(2), mandating state ratification, fundamentally embodies federal principles. This interpretation gained crucial attention in *Kihoto Hollohan v. Zachillhu*, where Section 7 of the Tenth Schedule was invalidated for circumventing court jurisdiction without obtaining requisite state ratification. The majority judgment introduced the principle of severability to composite amendments, suggesting that non-compliance with state ratification procedures might not invalidate an entire amendment. However, the dissenting opinion emphasized the mandatory nature of ratification procedures, arguing against severability when procedural compliance is fundamentally lacking.

This jurisprudential tension was further explored in *Rajendra N Shah v. Union of India*[23] which expanded Article 368(2)'s application to include changes to mean change 'in-effect' equivalent to direct amendments. These decisions reinforced federalism as a guiding principle, particularly concerning matters affecting state interests. Analysing the 129th Constitution Amendment Bill

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21 Rules Committee, *Report on Voting Procedure for Constitution Amendment Bills* (Lok Sabha Secretariat, 1970) *available at:* https://eparlib.nic.in/bitstream/123456789/57433/1/rules_04_05_1970.pdf. (last accessed on 30 October, 2024).

22 MP Jain, *Indian Constitutional Law* 1836 (LexisNexis, 9th ed., 2025).

23 *Rajendra N Shah* v. *Union of India*, (2022) 19 SCC 520.

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through this procedural lens raises substantial concerns. The Bill's provisions affecting state legislature timelines and the ECI's role in deferring elections directly impact federal principles, arguably necessitating state ratification. While Parliament might contend that Entry 72-List I of Seventh Schedule and the powers under Article 327 override Entry 37-List II of Seventh Schedule, however, principally, the federal nature of these changes shall warrant state consultation. Recent jurisprudence on severability remains divided. While the courts in above-quoted judgements have preserved partially valid amendments, dissenting opinions from these cases consistently argue that procedural non-compliance fundamentally vitiates the entire amendment, potentially signalling a centralizing tendency in constitutional interpretation.

IV. Political Implications

The suggested amendment has far-reaching political implications by changing the established system of institutional checks and balances. The proposed Article 82A(1) centralizes presidential power in the event of hung parliaments by permitting discretionary action without ministerial advice, a clear departure from Article 74's constitutional premise. At the same time, Article 82A(5) confers the ECI with undefined discretionary authority to postpone state legislative assembly elections on the basis of sheer "opinion," inducing an asymmetrical federal relationship under which states do not have recourse against such a decision. This bestows disproportionate precedence upon Lok Sabha elections and subjects state assemblies to possible intrusion through a recommendation channel that lies ultimately in the hands of the Centre through presidential powers exercised at the behest of advice of the Council of Ministers.

The early termination of state legislative assemblies endangers the state-level democratic foundation by creating power voids and ignoring voters' regional preferences. Another major concern is the exclusion of Panchayats and Municipalities from the definition of "Simultaneous Elections"[24] which dilutes the very concept of *One Nation, One Election*, and raises questions about its alignment with the stated aim of unifying the electoral process across all three tiers. The centralized electoral management system undermines the federal nature of Indian democracy by prioritizing national narratives over local political concerns which could harm the electoral success of regional parties. The logistical difficulties and economic costs linked to holding simultaneous elections while facing heightened administrative burdens lead to valid

[24] *Supra* note 1, Section 2(4).

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concerns about whether this system is feasible to implement. The amendment mistakenly puts managerial efficiency above democratic principles which endangers the core aspects of India's constitutional democracy including its federal system and responsive governance systems thus requiring thorough analysis of its potential long-term effects on the democratic structure of the country.

V. Conclusion

The 129th Constitution Amendment Bill's attempt to synchronize elections, while administratively appealing, demands rigorous constitutional scrutiny. The analysis reveals potential infractions of democracy and federalism as basic features, necessitating serious parliamentary deliberation beyond mere administrative convenience. The Bill's procedural validity requires state ratification, not just as a constitutional mandate but as an essential step toward building federal consensus.

Interestingly as the data shows, out of hundred and three amendments to the Constitution till date, twenty two have been challenged on basic structure grounds, seven have been partially held *ultra vires* to the Constitution and only one has been completely struck down on this basis.[25] It implies that the threshold for such a review is extremely high and generally, the Supreme Court has been cognizant of the confines of judicial review deferring to the doctrine of separation of powers.

There is also an argument advanced that this constitutional amendment can be conveniently implemented as a 'one-time measure', as suggested in Justice Dipak Misra's opinion to the HLC.[26] However, it faces a fundamental challenge from Justice Khanna's observation in *Indira Gandhi v. Raj Narrain*, where he observed, "What has to be seen in such a matter is whether the amendment contravenes or runs counter to an imperative rule or postulate which is an integral part of the basic structure of the Constitution. If so, it would be an impermissible amendment and it would make no difference whether it relates to one case or a large number

[25] Shree Agnihotri, 'Interpreting without bannisters? The abstraction problem afflicting the basic structure doctrine' (2024) 8(3) *Indian Law Review* 231 *available at:* https://doi.org/10.1080/24730580.2024.2376474. (last accessed on 5 November, 2024).

[26] High-Level Committee on Simultaneous Elections, *Report on Simultaneous Elections in India 2024: Annexures Volume V* 3609 (2024) *available at:* https://onoe.gov.in/report-web/volume_V/volume_V.pdf. . (last accessed on 5 November, 2024).

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of cases. If an amendment striking at the basic structure of the Constitution is not permissible, it would not acquire validity by being related only to one case."[27]

Lastly, Dr Ambedkar's words are a crucial reminder where he said, "However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics."[28] This amendment's implications for India's constitutional democracy extend far beyond electoral synchronization, potentially reshaping the fundamental relationship between the Union and States, warranting careful consideration of its long-term impact on our federal democratic fabric.

[27] *Supra* note 7, para 210.

[28] B.R. Ambedkar, 'Dr. Ambedkar's Last Speech in the Constituent Assembly on Adoption of the Constitution' (25 November 1949) *available at:* https://csja.gov.in/images/p1195/s_1_constitution_vision_of_Justice/Dr_Ambedkars%20speech.pdf. (last accessed on 5 November, 2024).

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EXPANDING CONTOURS OF PERMANENT ESTABLISHMENT THROUGH *HYATT INTERNATIONAL SOUTHWEST ASIA LTD.* V. *ADDITIONAL DIRECTOR OF INCOME TAX* BY HON'BLE SUPREME COURT

Arushi Anand[*]

ABSTRACT

The ever-so discussed issue of Permanent Establishment has reigned in a new development through the decision of the Hon'ble Supreme Court in the case of *Hyatt International Southwest Asia Ltd.* v. *Additional Director of Income Tax*. The judgement has erupted the discussion on changing dimensions of 'fixed place of business' of a foreign entity in India, inviting the scrutiny of tax audits and assessments. The significance of choosing of economic substance of an entity over its legal form for tax purposes ushers in a new era of scrutinizing the overall operations of a foreign entity and its business presence in India. This is essentially of critical importance when understanding tax implications that can be imposed on an entity.

Tax treaties have a concept of Permanent Establishment where profits of a foreign entity can be taxed in a source country or a country from which its source of income arises (eg, India), only when it can be established that it has a Permanent Establishment in India. If such a situation of existence of PE is not establishment, the foreign entity cannot be made taxable in India from the profits that it earns in India (barring certain residual income and concepts such as royalty, interest dividend, FTS, etc.). This becomes crucial in determining which State will have the taxing power for the income that the foreign entity earns. Now, with this recent Hon'ble Supreme Court's decision, these contours of Permanent Establishment and its characterization as such has expanded with specific focus on what is to be considered as 'fixed place of business'. Thus, it becomes essential to delve into and examine the implications of the judgement with possible future dimensions for various entities.

Keywords: *Foreign Entity, Profit, Permanent Establishment, Future Dimensions, Economic Substance*

I. Introduction

The ever-disputed concept of Permanent Establishment ('PE') in international taxation got a newer and wider interpretation with the landmark ruling by the Hon'ble Supreme Court in *Hyatt International Southwest Asia Ltd.* v. *Additional Director of Income Tax*[1] (*hereinafter* referred to as

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[1] 2025 INSC 891 (India).

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"Hyatt International Ruling"). The Hyatt International ruling touched upon various facets of interpretation of the concept of PE in India along with adjudicating that substance overrides legal form. It becomes pertinent to evaluate how this ruling expands the horizons of permanent establishment in India and in connection to it the taxability of foreign entities from income earned in India.

II. Factual Background of the Case

Hyatt International Southwest Asia Ltd. (*hereinafter* referred to as "Hyatt International" or "the company" or "the assessee") is incorporated in and is a tax resident of United Arab Emirates (UAE). By entering into Strategic Oversight Services Agreement (SOSA) with Asian Hotels Limited in Delhi and Mumbai, the company provided strategic planning and know-how services. The company had declared its income as nil in its return of income (ROI) and claiming refund.

The Assessing Officer (AO) opened original assessment proceedings to which the company asserted that its income is not taxable in India owing to no provision for taxation of 'Fee for Technical Services (FTS)' under India-UAE Double Tax Avoidance Agreement (DTAA). Moreover, the company put forth that it does not have a 'fixed place of business' or Permanent Establishment ('PE')[2] in India to trigger Article 5 read with Article 7 of India-UAE DTAA and its employees have not crossed the threshold of nine-months stay in India as required under the DTAA[3]. Consequently, the company claimed that its business income cannot be made taxable in India.

However, subsequent to Dispute Resolution Panel's (DRP) rejection of the company's objections/ claim, the AO passed the Assessment Order holding that the activities of Hyatt International constituted PE under Article 5 of the DTAA. The company appealed before the Income Tax Appellate Tribunal (ITAT) against the Ld. AO's order contending that its activities did not constitute PE in India. Nonetheless, the Tribunal decided the appeal against Hyatt International by

[2] India-UAE DTAA, art. 5(1).
[3] India-UAE DTAA, art. 5(2).

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placing reliance on *Formula One World Championship Limited* v. *Commissioner of Income Tax, International Taxation-3, Delhi*[4] (*hereinafter* referred to as "Formula One ruling").

The company reached the Hon'ble High Court of Delhi by way of appeal with four issues in question. Out of these four issues, two were answered against it (while one was in its favour and the fourth issue was referred to a larger bench of the Hon'ble High Court) holding that PE of the company existed in India with fixed place of business and its business profit would be taxable in India. Challenging the said decision of the Hon'ble High Court, Hyatt International approached the Hon'ble Supreme Court through a Special Leave Petition ('SLP').

III. Circling around the Issues

The pertinent issue involved in the present case was that if Hyatt International had a permanent establishment in India in accordance to article 5 of the India-UAE DTAA. In case, it is concluded that it has a PE in India, the income that it has derived through SOSA would be taxable in India or not.

The case moves towards a crucial turn because in this case, Hyatt International did not have exclusive ownership over a fixed place of land in India. Therefore, in absence of such a place of operation, would an international entity or foreign enterprise still constitute a PE in India, which would require expanding the scope of interpretation of article 5 or 'fixed place of business' in India.

IV. Pertinent Legal Principles in the Hon'ble Supreme Court's Decisions

After eloquently analyzing the provisions of the SOSA, Formula One ruling and the 'disposal test', the Hon'ble Supreme Court sufficiently concluded that there do exist a permanent establishment in India of Hyatt International. The court touched upon the following concepts to eventually reason with the PE establishment in India:

The Extent of 'Disposal Test' under PE

The court reiterated the concept evolved through the judgement in Formula One ruling where it was explained that for establishment of PE, the disposal test is pivotal. This test signifies that where

[4] (2017) 15 SCC 602 (India).

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a place is used in a way enabling the assessee to carry out its operation, i.e. the place would be considered at the disposal of the assessee.

In such a scenario, the test is not to be levied only in case where a place or premise is actually owned by an entity but it should be carefully examined looking that the economic realities of the contractual arrangement.

Thus, even in a situation, where the premises are not officially owned by the assessee or the such a premise is not rented to the assessee but the place is at the disposal of the assessee for carrying out its operations and has control over such place. To assessee the disposal test, the essential component[5] would be:

i. Right to use the premise; and
ii. Control over the premise

In international transaction, where a foreign entity is earning income from the source derived from India, India would have a right to tax such an income only in case where there exist PE in India. If such a PE does not exist, the income can still be taxed if it forms part of residuary income like royalty, interest, dividend, Fee for Technical Services (FTS), etc. as enumerated in the relevant tax treaties.

To establish a PE, a fixed place of business must be there, i.e. a place from where the operations of the entity is carried out or the usage of 'disposal test'. It is however, to be noted that the Organisation for Economic Co-operation and Development ('OECD') does not define such a test and even though India is not a part of OECD, it frequently takes assistance from OECD guidelines for international transactions.

SOSA and its underlining contractual terms

The Court examined the terms of SOSA agreement, wherein the assessee was not getting a fixed fee for the services that it was rendering, rather the revenue it receives is a percentage of room and other revenues[6]. The court reasoned that this revenue-sharing model from gross operating revenues evidenced that the assessee was at the helm of the operations.

Further, the assessee had power to formulate relevant policies related to HR, procurement, pricing, sale, etc., which indicated that it controlled operational facets of the hotel. The court essentially

[5] *Id.,* at para 33.
[6] *Hyatt International Southwest Asia Ltd.* v. *Additional Director of Income Tax,* 2025 INSC 891 (India), para 12.3.

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listed out that apart from the formulation of the policies, the assessee also undertook appointment and supervision of General Manager, mananging operational banks, assigning personnel to hotels, controlling pricing, branding and marketing strategies, along with other such similar powers[7] vested over it.

This strengthened that the assessee did not only provide consultancy to AHL but also had exclusive control over the operations of the hotel business, actively participating in the strategic and financial dimensions.

Characteristics of PE

In Formula One ruling, it was established that there are three characteristics of PE as follows:

i. Stability;
ii. Productivity; and
iii. Dependence.

The court pointed out these three elements of the PE are completely satisfied in the present case wherein firstly, stability is established by the duration of SOSA which is for twenty years; secondly, it had continuous operational presence which was established by revenue-sharing model; and thirdly, it depended on the premises and staff to carry out the operations.

In addition, the court pointed out these functions that were performed by Hyatt International were not mere 'auxillary'[8] (like consultancy) functions to be covered under the exception to article 5 of the India-UAE DTAA and as per the ruling in the case of *Union of India* v. *U.A.E. Exchange Centre.*[9] The functions as performed by the assessee were integrated in the core operational functions satisfying the criteria of fixed place of business.

Daily operations by Separate Entity – A Valid Defense?

One of the arguments undertaken by the assessee was that there was a separate entity established in India by the assessee, Hyatt India Pvt. Ltd., which carried out daily operations of the hotel. This argument was negated by the Hon'ble Supreme Court holding that the 'economic substance' has overriding value in determination of PE status. What this essentially puts forth is that even if there is a separate Indian entity established, the foreign entity would be judged on its own operations as

[7] *Id.,* at para 16.
[8] India-UAE DTAA, art. 5(3)(e).
[9] (2020) 9 SCC 329.

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to the formation of a PE in India. Although, Hyatt International had its legal form in UAE, its economic substance with major operational dimensions in India, construed and justified its presence in India through PE.

Relevancy of Stay of Employees in India

Another significant argument put forth by the assessee was that none of its employees stayed beyond 9-months duration as is the specific threshold and thus, PE cannot be considered in such a scenario. The Hon'ble Supreme Court observed that the essential criteria for establishing a PE or fixed place of business is the continued business presence in India. Since it was clearly established that there was continued business presence in India, the duration of stay and presence in India becomes unimportant. Thus, it can be concluded that the presence of employees does not play a factor in considering whether a PE is established in India or not for a foreign entity.

The Hon'ble Supreme Court concluded that Hyatt International has a PE in India through the hotel premises and its income would be taxable in India. It is also to be noted that though, it didn't adjudicate on the issue but it noted the decision of the Hon'ble Delhi High Court's larger bench's decision in *Hyatt International Southwest Asia Ltd* v. *Additional Director of Income Tax*[10] wherein it was concluded that in a situation where the foreign entity incurs losses, the profit can still be attributed to the PE as the tax is attributed to the business presence and not on the global margins (and in this case, global losses).

V. Implications and Conclusions

The legal ramification of Hyatt International ruling is wider in scope. With no longer the surety of contractual specification that a particular entity does not have a PE in India or usage of 'No PE Certificate' as a safeguard, the foreign entity might need to re-evaluate the legal terms and conditions surroundings its operations in India. The ruling emphasized that not the physical presence or legal form of an entity but ultimately how the ultimate operations are conducted in India and the consequent economic implications of it will determine if a permanent establishment is formed in India or not, for its operations to be considered taxable under Article 5 of the relevant DTAA.

[10] ITA 216/2020.

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The Revenue would now move towards looking beyond the contractual terms and towards the reasoning as to which entity has the ultimate control or decision-making power in the transactions. It might mean that foreign entities that have higher control over its Indian counterparts might invite scrutiny from the Department and even re-opening of assessments or audits, in certain cases.

Another important element that needs to be considered and is pivotal is that the presence of employees of foreign entity for a short duration was negated as an argument by the Hon'ble Supreme Court for establishment of fixed place of business in India. Nonetheless, what can be substantially concluded is that it might not be a relevant factor or short duration of employees in India would not have an effect of fixed place operations in India.

What the Hon'ble Supreme Court's decision intensified was the significance of 'disposal test' in determining the PE of an entity in India. Even in cases where there is no allocated office or specified employees, the PE can still be established in India and the revenue from such operations can be made taxable in India, if the ultimate economic substance of the entity lies in India, even if its legal form exists outside India.

It is also interesting to note that to determine a PE from understanding the circumstances of the agreement essentially involves a question of fact. It is apt to say that in taxation, the ITAT is considered as the final fact-finding authority while Hon'ble High Courts and Hon'ble Supreme Court look into question of law (or 'substantial question of law' involved). Very rarely does apex court enter into factual dilemma, unless there is perversity of facts involved.

This widening of contours of permanent establishment in India has extensively widened the scope of interpretation of treaty provision. Further, it has led to foreign entities wanting to enter into contractual transactions in India to clearly and adequately define their FAR (functions performed, assets utilized and risks undertaken) and re-assess their already existing obligations and contractual framework in India in creation of permanent establishment in India.

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PROF. VAGESHWARI DESWAL AND ADV. SAURABH KANSAL, *BHARATIYA NYAYA SANHITA 2023: LAW & PRACTICE* (1ST EDN, TAXMANN, 2024), PP. I-138+ 902, PRICE INR 2595/-, ISBN : 978-93-57788-74-8,

Swati Solanki[*]

The enactment of the Bharatiya Nyaya Sanhita (BNS) 2023, Bharatiya Nagarik Suruksha Sanhita (BNSS) 2023, and the Bharatiya Shakshya Adhiniyam (BSA) 2023 marks one of the most substantial legislative transformations in the history of Indian criminal law. These three new legislations, coming into force on 1st July 2024, replaced the Indian Penal Code (IPC) 1860, the Code of Criminal Procedure (CrPC) 1973, and the Indian Evidence Act (IEA) 1872, respectively. This transition from the colonial-era penal framework to the newly enacted criminal law regime has generated significant concerns within the Indian legal fraternity. Courts, practitioners, academics, and students alike are presently confronted with the difficult task of navigating a transformed statutory landscape while simultaneously maintaining continuity with more than a century-old jurisprudence developed under the earlier criminal law framework. Concerns have particularly been raised regarding the restructuring and renumbering of offences, the introduction of new provisions, and modifications of statutory language, all of which are likely to create substantial interpretive and implementation challenges during the transition to the new regime. The enactment of the new criminal laws has consequently created a pressing need for interpretive guidance that bridges the old and new frameworks.

It is within this transitional moment that Prof. Vageshwari Deswal and Adv. Saurabh Kansal's *Bharatiya Nyaya Sanhita 2023: Law & Practice* emerges as one of the earliest comprehensive doctrinal commentaries on the new substantive criminal law in India. The timing of the work itself deserves notice. Published in April 2024, nearly three months before the three new criminal laws came into force, the commentary on the substantive law appeared at a moment when a question loomed over the legal fraternity: how was one expected to meaningfully

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engage with the new criminal law framework in the absence of any structured reference material? In many ways, the book responds directly to that uncertainty.

Spread across twenty chapters, the book broadly follows the thematic structure and sequence adopted under the BNS 2023 itself. The architecture of the commentary reflects the collaboration between an academic and a practising litigator, a feature that substantially strengthens the work both pedagogically and practically. The academic orientation of the book is visible in its systematic organization and doctrinal engagement with individual provisions, while the influence of courtroom experience is equally evident in its reference-oriented design. The result is a commentary that succeeds simultaneously as a pedagogical resource and a practical reference tool for the courtroom use. The editorial sensibility becomes apparent from the opening pages of the text itself. Before engaging with the substantive discussion of the provisions under the BNS, the authors provide a series of carefully well-organized comparative and reference tables intended to assist readers in navigating the transition from the IPC, 1860 to the BNS, 2023.

The commentary begins with a comparative table mapping the provisions of the IPC, 1860, to their corresponding sections under the BNS, 2023. This is followed by a reverse-comparative table charting the BNS provisions against their corresponding IPC provisions, using the new section numbers adopted under the BNS. Together, these tables enable readers to quickly identify corresponding provisions across both statutes. The next two tables separately identify the newly introduced provisions under the BNS, as well as provisions from the IPC that are omitted or repealed under the new law. Another particularly useful feature is the inclusion of a dedicated alphabetical index of keywords and concepts under the BNS, which substantially enhances the accessibility and reference value of the text. The book also includes a consolidated list of cases referred to throughout the commentary, enabling readers to efficiently trace the judicial precedents relied on in the discussion of individual provisions and doctrinal principles. The utility of these structural features cannot be overstated in the present transitional context. By systematically correlating the earlier and the newly enacted law, the book significantly reduces the navigational burden for readers stemming from the restructuring and renumbering of offences under the BNS, 2023.

Having equipped readers with comparative and reference tools, the book then turns to a substantive engagement with the provisions under the BNS, 2023. One of the most

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commendable strengths of the commentary is its analytical approach, which meticulously evaluates each provision in detail. Each section is introduced by a discussion of the statutory provision, its essential ingredients, meaning, and interpretation, followed by a structured analysis incorporating relevant judicial precedents on its constituent elements. This method allows for a comprehensive understanding of the implications and nuances associated with each element, facilitating a deeper insight into the overall context and significance of the subject matter. Further, such engagement with precedent is particularly valuable because early adjudication under the BNS will inevitably depend upon interpretive borrowing from established IPC until an independent body of BNS-specific case law gradually develops. The commentary further identifies the classification of offences, including whether they are cognizable or non-cognizable, bailable or non-bailable, and the court by which they are triable. This integrated approach helps readers to engage simultaneously with doctrinal, procedural, and practical dimensions of each provision under the BNS.

Importantly, the book moves beyond a bare exposition of statutory provisions. Across the substantive chapters, the authors consistently engage with ambiguities and implementation gaps likely to emerge within the new criminal law landscape. The authors identify areas where legislative reform remains underdeveloped or operationally uncertain. The analytical depth of the work becomes evident from the very outset. The discussion concerning 'community service' as a newly introduced form of punishment under the new criminal law framework is illustrative in this regard. Instead of confining the discussion to the textual contours of the provision alone, the authors engage with extracts from the 246th Parliamentary Standing Committee discussions and identify unresolved ambiguities within the legislation itself. The authors note that while the Committee had recommended definitional clarity regarding the scope and implementation of community service, the enacted framework leaves several practical questions unanswered, including issues concerning supervision and procedural administration. Importantly, the commentary also directs readers to the corresponding provision in the Bharatiya Nagarik Suraksha Sanhita, 2023, which provides some guidance on the nature of community service while simultaneously acknowledging the absence of a comprehensive framework governing its execution. The discussion is further strengthened by the systematic identification of the various provisions under the BNS that prescribe community service as a punishment. Thus, the work does not merely describe the law as enacted, but also foregrounds the institutional and procedural uncertainties surrounding its implementation throughout the text.

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Overall, the book constitutes a timely and significant contribution to the emerging literature on the BNS, 2023. Rather than approaching the BNS as an entirely detached legislative beginning, the book recognizes that the practical administration of criminal law in India will, at least for the foreseeable future, continue to depend substantially upon principles evolved under IPC jurisprudence. By assessing provisions individually, the commentary enhances clarity and provides readers with a structured framework for analysis. The work accordingly performs an important transitional function: it seeks not merely to explain the new statute, but to mediate continuity between two legal frameworks occupying the same doctrinal space. For this reason, this pioneering book is likely to remain an influential reference work during the formative years of BNS Interpretation and the gradual consolidation of jurisprudence under the new framework.

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