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EDITOR IN-CHIEF NOTE

To publish a peer-reviewed journal in a quick succession is a challenge. This challenge was accepted by Prof (Dr.) Vageshwari Deswal, the Editor of this journal.

I am delighted to present before the readers the eighth 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 Prof. 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
Professor In-Charge, Law Centre-II
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EDITOR'S NOTE

The law does not operate in isolation, it continuously engages with newly emerging concerns reflective of the changing societal dimensions. The present edition of the Delhi *Journal of Contemporary Law* seeks to meaningfully contribute to the ongoing debates by providing informed legal scholarship that provides deep and critical insights into present day issues..

The articles featured herein explore a diverse range of subjects ranging from terrorism and the intersection of national security imperatives with civil liberties; to the role of paralegals in enhancing access to justice. There is an article on ushering reforms in the criminal justice system by focussing on humane approach towards offender rehabilitation. Education law receives attention through an examination of Delhi School Fee regulation Act, 2025 and the state's role in balancing institutional autonomy with the interests of students and parents. Environmental governance remains a central concern in contemporary jurisprudence and the volume has an interesting article on contribution of the National Green Tribunal (NGT) towards sustainable development. The changing nature of work is explored through a study of overtime work culture and its legal implications. Another article examines the responsibility of State to protect vulnerable workers from hazardous conditions.

This volume also ventures into the evolving domain of intellectual property law as artistic expression increasingly occupies public spaces in the form of street art and the volume also explores questions of authorship and fair compensation in the context of rights of dubbing artists. Global security concerns have been raised in the context of contentious pre-emptive strikes on nuclear facilities.

On behalf of the editorial team I convey our heartfelt gratitude to our Prof-in-charge Professor Anupam Jha for his unwavering support. I also extend my sincere gratitude to the authors, reviewers and my entire editorial team whose dedication have made this publication see the light of the day. Given the wide range of issues covered in this volume, I hope that it will benefit academicians, students, legal practitioners, research scholars, judicial officers and all those who are associated with the study of law.

It is my privilege to present to you the eight volume of Delhi Journal of Contemporary Law. Wishing the readers an insightful, engaging and rewarding reading experience.

Happy reading!

Prof. (Dr.) Vageshwari Deswal
Editor
Professor, Law Centre-II,
Faculty of Law, University of Delhi

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DEFINING "TERRORISM" PROBLEMATIC INTERPRETATIONS OF "ACT OF TERRORISM" IN PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT OF SRI LANKA

P.A. Niroshan Pathberiya*

ABSTRACT

Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA), particularly following the Easter Attacks, has initiated much debate and discussion in Sri Lanka and the international sphere, in terms of its various controversial aspects. As a legislation set in the late 1970s and subjected to least judicial supervision, the PTA is often perceived as a "draconian law" that promotes political repression, resulting in grave violations of human rights and individual liberties. One of many such inadequacies in the PTA is the lack of a specific definition as to what acts or omissions constitute an "act of terrorism". Such a law with a critical legislative gap is a severe threat to the individual liberties and rights of the citizens. The recent past provides sufficient evidence of opposite political pressure, political otherness and discord being brought within the purview of "terrorism", posing a grave danger to rights and liberties as well as the confidence in the law. Hence, this paper examines the potential threat posed by the above discussed legislative gap to the rights and freedoms of the citizens. Further, in relation to international legislations, treaties and conventions, the paper presents the legal elements that should be considered in bringing an act within the scope of "terrorism". Consequently, the paper identifies the importance of a profound investigation of the *mens rea* – both initial and ultimate – for a broader understanding of the "intention" of the act, followed by an evaluation of the magnitude of its impact in terms of socio-economic, cultural and, political consequences, in bringing an act within the purview of act of terrorism. Concluding the discussion, the paper emphasizes the importance of establishing and finetuning the definition of "act of terrorism" in the interest of the state and the individual.

Keywords: Terrorism, PTA, Interpretation, Human Rights, Fundamental Rights

I. Introduction

As a country that survived several armed struggles, including the most recent experience of a violent civil war involving the Liberation Tigers of Tamil Eelam (LTTE), in Sri Lanka, "terrorism" is a term that terrifies the whole nation. During the period of the civil war, the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (hereinafter referred to as PTA) was primarily the most frequently utilised legislation against those who were involved in "terrorist" activities. However, the application of the provisions of the PTA almost 12 years

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since the end of the civil war, particularly in relation to some incidents that took place in the aftermath of the Easter Sunday Bombings on April 21, 2019, has been perceived by many human rights activists and organisations as an unjustifiable attempt to curtail human rights and personal liberties. One of the gravest allegations against the PTA has been the lack of a specific definition as to what constitutes an "act of terrorism", for it to be brought within the purview of the PTA. This grave legislative gap has the potential of being employed as a tool to suppress the voice and rise of the political, cultural and religious "others", by somehow bringing such strong oppositions – or "otherness" – under the purview of "terrorism". A legislation to prevent terrorism, with "act of terrorism" undefined, implicitly makes arbitrary arrests, torture and circumvention of due procedure by the officials possible, under the pretext of fighting terrorism. Hence, this paper intends to identify and examine the inconsistencies and gaps in the current interpretation of an "offence" or an "act of terrorism" under the PTA, in comparison with the international legal background on terrorism, in order to narrow such gaps and fine-tune the mainframe of the PTA, so that it best serves the intended purpose, while preserving the individual rights and liberties of the citizens of Sri Lanka.

II. What constitutes an "act of terrorism"?

Despite the intense impact terrorism has made internationally, no final definition of terrorism has been arrived at or agreed upon so far, mainly since the term itself is highly political, and the observer relative; a "freedom fighter" for an outsider may be a "terrorist" to the political leadership or the citizen who experienced the brutality of such violence. Nevertheless, followed by the globally condemned September 11, 2001 attacks, various international organisations and states have made several attempts to identify at least certain specific characteristics of an act that bring it under the spotlight of "terrorism".

Article 2(1)(b) of the United Nations International Convention for the Suppression of the Financing of Terrorism, defines terrorism as "any…act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to

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abstain from doing any act.”.[1] The United Nations Security Council Resolution 1566 of 2004 reiterated that terrorism involves “criminal acts, against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act,…[and they]…are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature”.[2]

The European Union has also made attempts to define “terrorism” to support the legal framework of preventing terrorist activities internationally and within the states of the Union. Article 1 of the Framework Decision 2002 on combating terrorism dictates that the “intentional acts…,which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation, are acts of terrorism”.[3] Similarly, the Council of Europe Convention on the Prevention of Terrorism (2005) defines acts of terrorism as “acts [that] have the purpose by their nature or context to seriously intimidate a population or unduly compel a government or an international organisation to perform or abstain from performing any act or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation”.[4]

The Arab Convention for the Suppression of Terrorism, adopted in 1998 by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice in Cairo, defines “any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them or placing their lives, liberty or security in danger, or seeking to cause

[1] International Convention for the Suppression of the Financing of Terrorism, 2178 UNTS 197, art. 2 (1)(b) (adopted Dec. 9, 1999, entered into force Apr. 10, 20027)

[2] UN Security Council, SC Res 1566, SCOR, UN Doc S/RES/1566 (Oct. 8, 2004)

[3] Council of the European Union, Council Framework Decision of 13 June 2002 on Combating Terrorism [2002] OJ L 164/3, art. 1.

[4] Council of Europe, Convention on the Prevention of Terrorism (opened for signature 16 May 2005, entered into force June 1, 2007) CETS No. 196.

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damage to the environment or public or private installations or property or occupying or seizing them, or seeking to jeopardise national resources"[5] as an act of terrorism.

Concerning the state-level jurisdictions, the United Kingdom and the United States, being among the countries with a reputation for their strict policies and solid legal framework on anti-terrorism, have laid down comprehensive definitions that distinguishes acts of terrorism from general offences. In the United Kingdom, according to Terrorism Act, 2000 – which is one of the many Acts to prevent national and international terrorism – an act of terrorism "involves serious violence against a person…property…health or safety of the public…or an electronic system, where the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious racial or ideological cause… and involves the use of firearms or explosives".[6] Similarly, in the United States, 18 U.S. Code § 2331 defines "international terrorism" as activities that include "violent acts, dangerous to human life…that appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion or affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily in or outside the territorial jurisdiction of the United States".[7] In Germany "acts of terrorism are "all acts by persons or groups of persons committed for political, religious, ethnic or ideological purposes suitable to create fear in the population and thus to influence a government or public body.".[8]

All the definitions mentioned above, regardless of being different from one another, lay down certain common characteristics that distinguish an act of terrorism from an offence in the general sense. In this endeavour, in addition to discussing offensive acts that can be linked with terrorism – such as killing, kidnapping or damaging property –, all these definitions focus mainly on the intended purpose or the ultimate purpose of the particular action for it to be defined as an act of terrorism; whether the impact of the wrongful action and/or its consequences are intended to last long after the completion of the wrongful act or whether the action and/or consequences make a significant impact on a population larger than the actual population of victims is specifically considered. The intentioned or the ultimate purpose of

[5] Arab Convention for the Suppression of Terrorism (adopted April 1998), art. 1(2).
[6] Terrorism Act 2000 (UK), s. 1.
[7] 18 USC § 2331, s. 1(A) & (B).
[8] Dirk Harbrücker, 'EXTREMUS – The German Solution for Act of Terrorism non-nuclear Risks Coverage', 5th International Conference on Nuclear Option in Countries with Small and Medium Electricity Grids (2022)

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these acts, as the definitions suggest, can be, but are not limited to, establishing, advancing, promoting, condemning a political, religious, racial, ethnic or ideological cause, intimidating a population or compelling a government or an international organisation to do or abstain from doing a particular act. Hence, in the case of an act of terrorism, two *mens rea* elements can be observed; *mens rea* to commit the immediate act – which can be bombing, shooting or kidnapping – and, importantly, the *mens rea* relating to the ultimate purpose/ intention of the act – or the ultimate *mens rea* – which can be to intimidate the government or establish a racial ideology. It is this ultimate *mens rea* that enables filtering general offences from an act of terrorism. In case of a general offence, the *mens rea* ends when the action is committed, and any ultimate purpose of such an act, if at least faintly exists, barely impacts the community at large; at least the doer does not intend to do so. For instance, if A kills B to rob his money, although the *mens rea* for killing is fulfilled, an ultimate *mens rea* that is as intense as in the case of an act of terrorism is not present. In contrast, if A kills B to initiate political instability, clearly, in addition to the *mens rea* for killing, the ultimate wrongful purpose – or an ultimate *mens rea* – to make an impact on a large community by creating political turmoil is evident, which brings the act under the definition of terrorism.

The definitions above discuss some of these ultimate wrongful intentions that need to be present – either expressly or inferred by evidence – in construing an action as an act of terrorism. Some of these wrongful intentions include, but are not limited to "intimidating a population;[9] affecting the conduct of a government; [10] sowing panic among people; [11] unduly compelling a government or an international organisation; seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation". [12] The intentions in the definitions have been linked with the *actus reus* or the wrongful acts, such as kidnapping persons, damaging government or private property, harming public health, and destroying electronic systems, in order to form both the required elements of an act of terrorism; *actus reus* and *mens rea*. Therefore, the presence of a comprehensive definition of an act of terrorism, as discussed above, enables isolating actual incidents and acts of terrorism, distinguishing them from general crimes or offences. As a

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[9] International Convention for the Suppression of the Financing of Terrorism, 1999, art. 2(1)(b).
[10] United States Code, § 2331, s. 1.
[11] Arab Convention for the Suppression of Terrorism, 1998, art. 1(2).
[12] Directive (EU) 2017/541 of the European Parliament and of the Council of March 15, 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, art. 3(2).

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result, with a specific definition, the law enforcement agencies can isolate incidents linked with terrorism, address and investigate such incidents separately and proceed within the relevant legal framework to prevent terrorism and punish the offenders without interfering with other citizens' rights and liberties.

III. Undefined "Terrorism" in PTA and its Consequences

Among the critical incongruities of the PTA, the absence of a specific and comprehensive definition of what constitutes "an act of terrorism" has drawn much public criticism and dismay. Provided that the very term "terrorism" should be used and dealt with extreme caution, deciding whether an act is an act of terrorism or merely an offence requires thorough consideration of facts and circumstances and comprehensive evidence. Scott L.J. in *Dumbell* v. *Roberts*[13], and Gratien J. in *Muttusamy* v. *Kannangara*[14] contended that when making an arrest on a "suspicion", the suspicion must be reasonable and justifiable. Hence, as Lord Porter stressed in *John Lewis & Co. Ltd* v. *Tims*,[15] officers bolstering up their evidence and assurance while detaining a man arrested is unacceptable; even in a matter of an act of terrorism, the standpoint does and should not differ.

In the case of a terrorist act, the *mens rea*, as discussed earlier, is twofold; the initial *mens rea*, i.e. the wrongful mind in relation to the immediate action – for instance, bombing or assassinating a person , and the ultimate *mens rea,* i.e., the wrongful mind in relation to the intended purpose or ultimate intention of the action – for instance compelling the government to perform an act. Hence, if A shoots and kills B, and only if there is evidence to support the fact that this assassination was with the intentions of intimidating or causing fear among the public, can it be construed as "an act of terrorism"; otherwise, it is simply murder.

In all international level definitions extracted from UN and EU treaties and state-level definitions from UK and US legislations, in addition to the *actus reus*, the ultimate *mens rea* of an act has been emphasised as a compulsory requirement to identify an act of terrorism. This is to say, the final question as to whether a particular offence is merely a criminal offence or an act of terrorism is to be decided considering both initial and ultimate *mens rea*, for an act of

[13] (1994) 1 All ER 326.
[14] (1952) 52 NLR 324.
[15] (1952) 52 CA 676,692.

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terrorism includes a statement intended to go beyond and last long after its physical actions. For instance, the claymore mine attacks launched by the LTTE, targeting unarmed civilians on a bus in Kebathigollewa, Sri Lanka, on June 15, 2006 was not merely an act of mass murder but also a "statement" of their intentions – which, at that point, was compelling the Sri Lankan government to permit the establishment of their separate Elam state in the northern and eastern parts of the country.

However, although the PTA is the main counter-terrorism legislation imposed "to make temporary provisions for the prevention of acts of terrorism in Sri Lanka",[16] the term "terrorism" does not appear in any of the provisions in the Act (including the interpretations section) other than in the long title, short title and preamble of the PTA. The lack of a comprehensive definition of "act of terrorism" makes the consideration of the fulfilment of certain elements of the act – such as the element of ultimate *mens rea* discussed above – optional and redundant in deciding whether a particular action is an act of terrorism. As a result, this gap "poses a real risk that the legislation could be used in circumstances very far removed from acts of real terrorism, or against minorities or human rights defenders in a discriminatory and sectarian manner."[17] The potential for PTA to be used against opposite socio-political opinions is ostensible when reading some of the sub-sections of section 2 (1) of the Act. For instance, sections referring to the offences under the Act, state that "any person who…by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups…shall be guilty of an offence under this Act". [18] Hence, under the mere whims or misunderstandings – or even premeditated intentions – of the officials who make the arrest, a particular expression can be construed as causing religious or communal disharmony, and the one who makes such expressions can be arrested without a warrant,[19] detained and charged under the provisions of the PTA. The absence of a definition for an act of terrorism in the PTA has made the requirement to evaluate whether the accused actually intended causing an act of terrorism redundant (unlike in the international scale definitions of "terrorism" discussed

[16] Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), Preamble.

[17] United Nations, "Human Rights and Counter-Terrorism: UN Special Rapporteur on The Promotion And Protection of Human Rights and Fundamental Freedoms While Countering Terrorism Concludes Visit to Sri Lanka" (2022), *available at*: https://www.ohchr.org/en/statements/2017/07/human-rights-and-counter-terrorism-un-special-rapporteur-promotion-and?LangID=E&NewsID=21883 (last visited on June 21, 2024).

[18] Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 2(1)(h).

[19] Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 6 (1).

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above). As a result, any person in power can abuse the provisions of the PTA for personal and/or political agendas and circumvent the due legal procedures of arrests and detention. This is entirely contrary to the guidelines of many international conventions and treaties[20] against arbitrary interference with personal liberties, as well as the position Sharvananda C.J. held in *Namasivayam* v. *Gunawardena*[21] that "the liberty of an individual is a matter of great constitutional importance. This liberty should not be interfered with, whatever the status of that individual be, arbitrarily or without legal justification".

The grave danger of this loophole in the PTA being exploited to suppress opposite political and religious views, support arbitrary arrests, unlawful detentions and numerous violations of many rights has been reported multiple times. Very often, following an actual act or incident of terrorism, multiple occurrences of the PTA being abused to infringe the freedom of religion, expression, assembly and movement are reported. In many cases, minorities, journalists and human rights activists become victims of these incidents. Amnesty International reports the detention of Ahnaf Jazeem, a Sri Lankan Muslim poet, for 19 months claiming his poems and teachings could instigate "communal disharmony", and the detention of Hejaaz Hizbullah under the accusation of aiding and abetting a terrorist linked with the Easter bombing for almost two years, as the most recent cases where PTA is exploited for suppressing minorities, treading away from its intended purpose, making it a "draconian law". [22]

In terms of detention, persons arrested under sub-section (1) of section 6 of the PTA may be kept in custody for a period not exceeding seventy-two hours without producing before a competent court. Similarly, under the PTA, the magistrate can, on an application made in writing on that behalf by a police officer not below the rank of Superintendent of Police, make an order that such person be remanded until the conclusion of the trial of such person.[23] A magistrate can release such a person from custody only with the consent of the Attorney

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[20] Universal Declaration of Human Rights (adopted Dec. 10, 1948 UNGA Res 217 A(III)) (UDHR), arts. 9, 12; International Covenant on Civil and Political Rights (adopted Dec. 16, 1966, entered into force March 23, 1976) 999 UNTS 171, 178 (ICCPR), arts. 9, 17; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art. 5; United Nations Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Annex (1985), U.N. Doc. E/CN.4/1985/4, art. 16, etc.

[21] (1989) 1 SriLR 401, 402.

[22] Amnesty International, "Sri Lanka: Authorities Must Review All 'Terrorism' Cases After Granting Bail To Hejaaz Hizbullah" (2022), *available at*: https://www.amnesty.org/en/latest/news/2022/02/sri-lanka-must-review-terrorism-cases-after-hejaaz-hizbullah-granted-bail/ (last visited on Apr. 26, 2024).

[23] Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 7 (1).

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General.[24] Under the PTA, the Court of Appeal may release a suspect on bail only in exceptional circumstances,[25] which was also emphasised in *Hejaaz Omer Hizbullah* v. *Attorney General*.[26] In addition, the social and psychological impact of an innocent person being accused of an act of terrorism, particularly in a country like Sri Lanka, in which the civilians have suffered the brutality and inhumanity of terrorism for almost four decades, is unthinkable. In addition to the physical burden of being deprived of fundamental rights such as movement, expression and religious and cultural freedom, and the freedom from cruel, inhuman and degrading treatment, a person, if falsely accused under the PTA, even if bail is granted, has to go through intense psychological and social suffering as well. As a result, the victim's education, professional life, family life, social life and future would be jeopardised. Moreover, family members, close relatives, and loved ones of such a victim have to survive through a similar psychological burden and pressure multiplied by social disgrace, humiliation, and disrepute. In addition, even though not victimised, with an unjust law in operation, no citizen will be confident to seek the protection of the law, marking the collapse of the concepts of the rule of law and equality before the law.

IV. A Workable Definition for "Act of Terrorism" – What Should be Considered

In the matter of setting a workable definition to identify an act of terrorism, the ultimate wrongful intention of the particular act, or the ultimate *mens rea* must be considered as a yardstick. The definitions should necessarily contain a broader, comprehensive and clear account of what wrongful purposes/intentions are construed as terrorism, with a special focus on the ultimate *mens rea*, enabling a clear demarcation between an act of terrorism and other criminal offences.

The purpose of the PTA being preventing and reprimanding a specific set of acts that fall within a specific category, i.e., "terrorism", one must consider the "intentions of terrorism" in a broader sense, with a special focus on matters specific to the country in defining terrorism. For instance, the separatist agenda of the LTTE to form an Elam state within Sri Lanka is clearly a

[24] *Ibid*.
[25] Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 19(b).
[26] (2022) CA PHC APN 10/22.

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matter Sri Lanka should pay special attention to. Such a motive is inconsistent with the Constitution, and therefore, if any campaign is launched or action is committed to support such an intention, it can very well be construed as an act of terrorism, as the ultimate *mens rea* is linked with an act that adversely affects the territorial, social, economic and cultural integrity of the entire state, not just of one or a small group of persons.

Moreover, the international standards and requirements laid down by the United Nations, European Union and treaties that Sri Lanka has signed with regard to prevention of terrorism must be adhered to and adopted in making amendments to the existing laws for preventing terrorism, including the PTA. The international standards laid down by the treaties and international organisations necessitate the protection of citizens' human rights and individual liberties in the journey of preventing terrorism. As a result, adopting such internationally recognised standards and rules into the Sri Lankan legal system and setting definitions for act of terrorism would become not only a vital safeguard against the rights of the citizens but also rekindle the confidence of the national and international communities in Sri Lanka's true intention to promote human rights and individual liberties in the journey to prevent terrorism.

The threat to fundamental rights and individual liberties of the citizens in Sri Lanka due to the absence of a comprehensive and clear definition for an "act of terrorism" is beyond question. A definition-less "act of terrorism" is not only fundamentally incompatible with modern standards and norms of human rights but also a tacit endorsement of violations of fundamental rights recognised by the Constitution of Sri Lanka.

V. Judicial Oversight and Procedural Safeguards: Reforms Without Substance

The Sri Lankan government's publication of revisions to the PTA on January 27, 2022, culminating in the enactment of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 12 of 2022 on March 2, 2022, presents a complex interplay of superficial progress and persistent structural deficiencies. While the Amendment Act introduced certain incremental improvements—particularly in judicial oversight and detainee rights—it left unaddressed the fundamental flaw that permits prolonged detention without trial. On the surface, the reduction of the maximum permissible detention period under section 9—

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from eighteen months to twelve months—represented a symbolic concession towards aligning with principles of due process. Nevertheless, even this curtailed term of incarceration without a fair hearing or meaningful judicial review constituted a serious breach of internationally recognized human rights standards. It perpetuated a regime wherein the executive branch wields disproportionate power to deprive individuals of liberty, absent effective safeguards.

The 2022 Amendment failed to address another foundational defect—the absence of a precise and narrowly tailored definition of "act of terrorism". This definitional vagueness enabled broad and discretionary enforcement, allowing the state to conflate dissent, civil disobedience, and minority activism with terrorism-related conduct. Within this structurally flawed framework, the introduction of judicial oversight mechanisms, encapsulated in sections 9A and 9B, signal a tentative step toward enhancing accountability. The imposition of mandatory monthly magistrate visits, the authority to order medical examinations, and the duty to report and investigate allegations of torture were welcome procedural protections. The statutory requirement to notify the Human Rights Commission of Sri Lanka (HRCSL) further introduced an external layer of scrutiny. Similarly, the provision in section 10A for detainees' access to legal counsel and communication with family addressed long-standing critiques of the PTA's incommunicado detentions. Equally notable was the mandate that a Judicial Medical Officer (JMO) must conduct a medical examination prior to the issuance of a detention order and submit findings to the Magistrate. This safeguard offered a preliminary check against physical abuse, enabling early intervention. The Magistrate's power to order medical treatment and transfer detainees upon confirmation of torture constituted a significant, if limited, protective measure providing immediate relief rather than retrospective remedies.

However, these procedural reforms did not remedy the overarching deficiency—the continued legality of detaining individuals for up to twelve months without presentation before a court for trial remained unconscionable. The requirement under section 15 for day-to-day trials ostensibly aimed to expedite the judicial process, yet the system remained structurally skewed to delay the accused's access to justice, reinforcing state dominance. Section 15B, allowing the Court of Appeal or High Court to grant bail if the trial did not commence within twelve months, offered only a partial safeguard. This measure depended on judicial discretion rather than a guaranteed right, allowing prolonged pre-trial detention to persist and undermining the foundational principle of the presumption of innocence. Moreover, the finality of detention orders—subject only to fundamental rights applications under Article 126 or writ petitions

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under articles 140 and 141—effectively insulated executive decisions from routine judicial scrutiny. This placed an undue burden on detainees, particularly those from marginalized or vulnerable communities, compelling them to engage in complex constitutional litigation merely to challenge the legality of their detention.

Despite these inadequacies, the government appeared intent on maintaining the PTA's legal infrastructure. Yet mounting pressure from domestic civil society and international stakeholders began to intensify. In April 2025, the Ministry of Justice appointed a Special Committee, chaired by President's Counsel Rienzie Arsekularatne, to prepare proposals for repealing the PTA and replacing it with a new counter-terrorism law that would purportedly conform to both constitutional guarantees and international legal standards.[27] By May, the government had conveyed to the EU–Sri Lanka Joint Commission that it would move toward full repeal, explicitly linking this commitment to the retention of GSP+ trade preferences—thus revealing the instrumental role of international economic leverage in catalysing human rights discourse.[28]

However, these state-led initiatives were met with deep skepticism by civil society actors. Over 240 organisations, comprising lawyers, activists, academics, trade unions, and former detainees, issued a unified demand for the immediate and unconditional repeal of the PTA, without replacement. These groups dismissed the newly initiated public consultations as rushed and superficial, arguing that Sri Lanka's existing criminal laws are more than adequate to address acts of terrorism within a rule-of-law framework.[29] The Jaffna Bar Association unequivocally rejected any proposed substitute legislation, characterising it as a veiled continuation of the state's apparatus for suppressing dissent and minority communities.[30] On

[27] "Committee Appointed to Repeal Prevention of Terrorism Act," *Newswire*, Apr. 13, 2025, https://www.newswire.lk/2025/04/13/committee-appointed-to-repeal-prevention-of-terrorism-act/ (last visited on July 10, 2025.

[28] "Sri Lanka Sets Timeline to Repeal and Replace PTA" *Colombo Gazette*, May 7, 2025, *available at*: https://colombogazette.com/2025/05/07/sri-lanka-sets-timeline-to-repeal-and-replace-pta/ (last visited on May 7, 2025); "Sri Lanka Claims Commitment to Repeal PTA in Talks with EU" *Tamil Guardian*, May 7, 2025, *available at*: https://www.tamilguardian.com/content/sri-lanka-claims-commitment-repeal-pta-talks-eu (last visited on July 10, 2025).

[29] "Over 240 Civil Society Groups Call for Immediate Repeal of Sri Lanka's PTA" *Tamil Guardian*, May 29, 2025, *available at*: https://www.tamilguardian.com/content/over-240-civil-society-groups-call-immediate-repeal-sri-lankas-pta (last visited on Aug. 3, 2025); "NPP Government Pressured by Civil Society to Scrap Terror Legislation" *Mawrata News*, May 31, 2025, *available at*: https://mawratanews.lk/news/npp-government-pressured-by-civil-society-to-scrap-terror-legislation/ (last visited on Aug. 10, 2025).

[30] "Jaffna Bar Association Calls for Unconditional Repeal of PTA with No Replacement" *Tamil Guardian*, June 12, 2025, *available at*: https://www.tamilguardian.com/content/jaffna-bar-association-calls-unconditional-repeal-pta-no-replacement (last visited on July 10, 2025)

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June 24, 2025, the Human Rights Commission of Sri Lanka (HRCSL) formally called for the PTA's repeal, citing routine violations of fundamental rights including arbitrary detention, custodial torture, and disproportionate executive discretion.[31]

International scrutiny likewise intensified. On June 23, 2025, the UN High Commissioner for Human Rights, Volker Türk, visited Colombo and urged the government to declare a moratorium on the enforcement of the PTA**,** initiate swift releases of detainees, and conduct inclusive and transparent law-making processes. He further called for the repeal of the Online Safety Act (OSA), framing both the PTA and OSA as emblematic of an entrenched pattern of state repression of civic space and dissent.[32] These interventions underscored the broader normative failure of Sri Lanka's counter-terrorism apparatus to conform with international legal standards and democratic legitimacy.

In summation, while the 2022 Amendment Act introduced procedural reforms that nominally curtailed the most egregious abuses permitted under the original PTA, it failed to rectify the core structural defect: the indefinite suspension of ordinary legal safeguards under the pretext of national security. The developments in 2025 mark an inflection point in the struggle to dismantle this regime. Yet the government's insistence on formulating replacement legislation, despite overwhelming domestic and international calls for outright repeal, suggests a continued attachment to a framework of counter-terrorism rooted in executive dominance and legal exceptionalism. Until this paradigm is dismantled and substituted with rights-compatible mechanisms grounded in due process, the PTA—whether in its current form or under a new name—will remain an instrument of profound legal compromise and systemic injustice.

VI. Conclusion

Among the many flaws within the PTA of Sri Lanka, the absence of a clear and comprehensive definition of an "act of terrorism" stands out as a fundamental defect that undermines both the

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[31] "Sri Lanka Human Rights Commission Calls for Urgent Repeal of PTA" *Tamil Guardian*, June 24, 2025, *available at*: https://www.tamilguardian.com/content/sri-lanka-human-rights-commission-calls-urgent-repeal-pta (last visited on Aug.3, 2025); "Sri Lanka: Government Must Repeal Prevention of Terrorism Act," *FORUM-ASIA*, June 24, 2025, *available at*: https://forum-asia.org/statement-sri-lanka-government-must-repeal-prevention-of-terrorism-act-cease-attempts-to-create-repressive-laws/ (last visited on July 9, 2025).

[32] EU SEE – Hivos, "UN High Commissioner for Human Rights Calls for the Repeal of the Online Safety Act and Moratorium on Enforcement of the Prevention of Terrorism Act in Sri Lanka" (June 25, 2025), *available at*: https://eusee.hivos.org/alert/un-high-commissioner-for-human-rights-call-for-the-repeal-of-the-online-safety-act-and-moratorium-on-enforcement-of-the-prevention-of-terrorism-act-in-sri-lanka/ (last visited on July 10, 2025).

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rule of law and the protection of individual rights and liberties. Without such a definition, the PTA enables the conflation of ordinary criminal offences with terrorism, removing the crucial element of ultimate *mens rea* that distinguishes acts motivated by political, ideological, or sectarian objectives from general crimes. This legislative gap not only facilitates arbitrary arrests, unlawful detentions, and violations of constitutional rights but also opens the door for discriminatory and politically motivated misuse of the law, disproportionately targeting minorities, dissenting voices, and human rights defenders. The social and psychological consequences for those falsely accused under the PTA are severe, extending far beyond the individual to families and communities, thus amplifying the urgent need for legal reform.

In light of international legal standards and Sri Lanka's unique socio-political context, it is imperative that the PTA be amended to include a precise and comprehensive definition of terrorism that incorporates both the actus reus and the ultimate *mens rea*, with particular attention to the wrongful intentions that threaten the nation's constitutional integrity and social cohesion. Such reform would not only align Sri Lanka's counter-terrorism framework with global norms but also restore public confidence in the legal system's commitment to uphold human rights. Without these critical amendments, the PTA risks remaining a draconian tool of repression rather than a legitimate instrument to prevent genuine acts of terrorism, ultimately weakening the very security and unity it seeks to protect.

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BRIDGING THE JUSTICE GAP: PARALEGALS AS CATALYSTS FOR EQUAL ACCESS TO JUSTICE IN INDIA

Bharti Yadav[*]

ABSTRACT

Access to Justice is an essential Constitutional and legal duty in India; still, it is largely inaccessible for many marginalized and disadvantaged groups due to constraints such as poverty, illiteracy, limited legal understanding, and systemic hurdles. Para-Legal Volunteers (PLVs) have surfaced as key facilitators, proficiently uniting the quest for justice with its providers. This paper discusses a detailed review of the responsibilities, training, and extent of paralegals in India, highlighting their development through legal provisions, court judgments, and proactive measures by institutions, like NALSA's Para-Legal Volunteers Scheme. It reviews judicial patterns that reinforce the value of paralegals in the domain of legal aid support, looks into their efforts in community involvement, legal knowledge dissemination, and conflict resolution, and points out their connection with vulnerable demographics. Furthermore, the paper integrates statistical data regarding legal awareness camps, beneficiaries, and the training and placement of paralegals from 2021 to 2025, providing a critical interpretation of the discrepancies between training and actual deployment. This insight reflects the insufficient involvement of trained paralegals, the opportunities that legal technology can present, and the immediate necessity for systematic education, just pay, and regulatory recognition to heighten their productivity. In summary, the paper provides valuable insights for strategic adjustments focused on improving the integration of paralegals within the justice delivery framework, thereby advancing the constitutional mandate to offer fair access to justice.

Keywords : Access to Justice, Paralegal, Community, Vulnerable, Discrepancy.

I. Introduction

Access to justice is a fundamental right enshrined in the Indian Constitution.[1] Access to justice is also a statutory right in India.[2] The Indian legal system is often complex and inaccessible, making it difficult for many people, especially those from marginalized and disadvantaged communities, who face barriers in accessing justice due to various reasons

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1 Article 39A of the Constitution of India mandates that the State must ensure that the legal system operates in a manner that promotes justice based on equal opportunity. It specifically directs the State to provide free legal aid through appropriate legislation, schemes, or other means to guarantee that no citizen is deprived of access to justice due to economic or other disabilities.

2 Section 12 of the Legal Services Authorities Act, 1987, establishes the entitlement of individuals to legal services under the Act.

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such as poverty, illiteracy, lack of legal awareness, and inadequate Legal Aid services.[3] Ignorance of the law is a major cause of perpetuation of injustice. Additionally, the poor and disadvantaged are largely excluded from the legal system as they have no means to secure the help of lawyers and access legal institutions.[4]

Paralegals can play a significant role in promoting access to justice by providing legal assistance to individuals who due to lack of legal aid and high costs associated with legal proceedings, fail to access justice.[5] In this way, paralegals help bridge this gap by providing affordable and accessible legal services to marginalized communities. They are important and cost-effective components of any justice system.[6] In India, Paralegals are called Para-Legal Volunteers (PLVs) and both the terms are interchangeably used in the paper.

Committee for Implementing Legal Aid Schemes (CILAS) suggested practical programmes for strengthening the legal aid movement in India. It includes training of Para-legal persons for creation of a cadre of barefoot lawyers who support the legal aid network and provide feedback to the respective State Legal Boards.[7] Justice P.N. Bhagwati, Chairman of CILAS, once stated, "Having regard to the socio-economic conditions prevailing in the country, a court-oriented or litigation-oriented programme is wholly inadequate.[8]

In 2009, the National Legal Services Authority (NALSA) brought out a scheme called the Para-Legal Volunteers Scheme which aimed at imparting legal training to volunteers selected from different walks of life.[9] The PLVs are expected to act as intermediaries bridging the gap between the common people and the Legal Services Institutions to remove impediments in access to justice. Ultimately, the process aims at Legal Services Institutions reaching out to

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3 Komal Audichya and Nikita Audichya, "Expanding Access to Justice to Reach the Poor and the Marginalized Communities" 5(2) *Bharati Law Review* 206 (2016).

4 Srikrishna Deva Rao, "Paralegal Education in India: Problems and Prospects" 1 *Journal of National Law University Delhi* 94 (2013).

5 Ainun Nafik, Helvin Crismayudhi and Aji Indra Laksana, "The Position of Paralegals in Providing Legal Assistance to the Defendant Is Guidance in the Trial Based on the Understanding of the Legal Aid Law No. 16 of 2011" 3(9) *Edunity Kajian Ilmu Sosial dan Pendidikan* 830 (2024), *available at:* https://doi.org/10.57096/edunity.v3i9.283 (last visited on December 14, 2024).

6 *Ibid.*

7 Baidyanath Choudhary, "Legal Aid Programme as an Instrument for Social Justice: An Inroad in Industrial Adjudication" 38 *JILI* 243 (1996).

8 Jagat Narain, "Notes and Comments: Legal Aid - Litigational or Educational: An Indian Experiment" 28 *JILI* 72 (1986).

9 National Legal Services Authority, *Scheme for Para-Legal Volunteers (Revised) & Module for the Orientation - Induction - Refresher Courses for PLV Training* (2024), *available at:* https://cdnbbsr.s3waas.gov.in/s3ec0109d37c08f7b129e9627738875753/uploads/2024/11/2024110278.pdf (last visited on March 3, 2024).

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the people at their doorsteps rather than people approaching such Legal Services Institutions.[10]

Equipped with a fundamental understanding of the law, welfare programmes, and legislation, PLVs offer assistance within their immediate communities, empowering individuals who may be unaware of their rights to access relevant programmes and legal remedies. PLVs are trained to provide informal advice and mediation for minor disputes, minimizing the need for affected parties to travel long distances for formal legal channels. When necessary, PLVs facilitate referrals to Alternative Dispute Resolution (ADR) centres, where they can assist in navigating Lok Adalat, Mediation Centres, or court adjudication, tailoring interventions to suit the specific nature of each issue.[11]

The status of paralegals in India is not well-defined, and there is no uniform regulatory framework governing their work. The lack of a clear legal recognition of paralegals can limit their effectiveness in providing legal services and promoting access to justice. Paralegals may face challenges in accessing resources and support, and they may not have a clear scope of work. This lack of recognition can also limit the opportunities for career growth and professional development for paralegals.[12]

Although the status of paralegals in India is not well-defined, and they often face challenges in performing their functions effectively, the Legal Services Authorities Act, 1987, recognizes the role of paralegals in providing Legal Aid services and empowers the Legal Services Authorities to promote and organise legal aid programmes with the assistance of paralegals. NALSA has also issued guidelines for the accreditation and regulation of paralegals in India. The guidelines prescribe the qualifications and training required for paralegals and provide for their remuneration and regulation.[13]

In the case of *Sheela Barse* v. *State of Maharashtra*,[14] the Supreme Court of India recognized the role of paralegals in providing Legal Aid services and directed the state governments to

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[10] District Courts of India, "Para-Legal Volunteers", *e-Courts Mission Mode Project*, *available at:* https://districts.ecourts.gov.in/para-legal-volunteers (last visited on May 25, 2023).

[11] *Supra* note 9.

[12] *Supra* note 5 at 832.

[13] Committee for Legal Aid to Poor, *Handbook for Paralegal Volunteers Training* (2014), *available at:* https://www.clapindia.org/pdf/Handbook%20for%20PLV%20Training.pdf (last visited on March 3, 2024).

[14] *Sheela Barse* v. *State of Maharashtra*, AIR 1983 SC 378.

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appoint paralegals to assist in the delivery of Legal Aid services. Similarly, in the case of *State of Madhya Pradesh* v. *Rakesh Kohli*,[15] the Supreme Court of India held that paralegals can assist in the delivery of Legal Aid services and can perform a variety of functions such as assisting in court proceedings, providing legal advice, and conducting legal awareness camps.

II. Eligibility and Selection of Para-Legal Volunteers

The selection from the received application is at the discretion of the selection committee but preference is given to applicants belonging to SC/ST, minorities, other backward classes and women. Any person who is literate can be a Para legal volunteer though a person with a matriculation degree is preferred. The selection committee looks for a person who wishes to serve the marginalised and weaker section of society with compassion and empathy. People with the motive of earning money only are discouraged from being selected as PLVs.[16]

Paralegals can be selected from the group of people consisting of Teachers (including retired teachers), retired government servants and senior citizens, *Anganwadi* Workers, doctors/physicians, law Students (till they enrol as lawyers), members of non-political service-oriented NGOs and Clubs, members of women neighbourhood groups, self-help groups including of marginalized/vulnerable groups, educated prisoners with good behaviour, serving long term sentences in prisons, any other person whom the district legal services authority or *Taluk* and legal services committee deems fit to be identified as PLVs. [17]

The selection process of PLVs at the district level shall be conducted by a Committee consisting of three members. The committee is chaired by the Chairman of the District Legal Services Authority (DLSA). The other two members consist of the Secretary and a third member, to be appointed at the discretion of the Chairman of the DLSA.[18]

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[15] *State of Madhya Pradesh* v. *Rakesh Kohli* (2012) 6 SCC 312.

[16] Mizoram State Legal Services Authority, *Scheme for Para-Legal Volunteers (Revised)* (2017), *available at:* https://mizoslsa.mizoram.gov.in/page/scheme-for-para-legal-volunteers-revised- (last visited on February 18, 2024).

[17] National Legal Services Authority, *Scheme for Para-Legal Volunteers* (2017), *available at:* https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/scheme-for-para-legal-volunteers (last visited on December 14, 2024).

[18] Jharkhand State Legal Services Authority, "Jharkhand State Legal Services Authority", *JHALSA*, *available at:* https://jhalsa.org (last visited on February 14, 2025).

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At the *Taluka* level, for the selection of PLVs, the selection committee is presided over by the Chairman of the DLSA. It consists of the Chairman of DLSA, the Member Secretary of DLSA, the Chairman of Taluka Legal Services Committee (TLSC) and a fourth person appointed at the discretion of the Chairman of DLSA. The place of interview for Taluk Level PLVs shall be at the discretion of the Chairman of DLSA. The Member Secretary of DLSA shall coordinate with the selection process.[19]

For the selection process, applications from interested persons are invited by the DLSA, TLSA or Sub Divisional Legal Services Committee through advertisement or notice calling for applications. For wider publicity, the advertisements or notices can be pasted on the notice board of court premises, legal services authority premises and district panchayat offices. It can also be shared with the offices of the Bar Association for spreading information about the call. In the application, interested people can select their area of work preference. The application for PLVs clearly states that selection to the post of PLV does not create any entitlement for salary, wages or remuneration but certainly, an honorarium fixed by DLSA is paid for the services rendered by PLV.[20]

III. Training of Paralegals

The PLVs have to be trained in the basics of different laws which would be applicable at the grassroots level with reference to their day-to-day life. The subtle nuances employed in the working of a judicial system and the functioning of various other stakeholders also forms part of the training. The training appraised paralegal about the working of Police, officials from Social Welfare Department, Woman and Child Welfare Department, other departments dealing with different beneficial schemes of Central and State Governments, protection officers involved with Domestic Violence and Juvenile Justice Acts.[21]

Initially, the training programme for PLVs was only for two to three days. Since the obligations of PLVs were vast in nature, it was felt, training needs to be for a longer

[19] *Ibid.*
[20] *Ibid.*
[21] District Courts of India, "Para-Legal Volunteers", *e-Courts Mission Mode Project*, *available at:* https://districts.ecourts.gov.in/para-legal-volunteers (last visited on May 25, 2023).

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duration.[22] At the same time, the training curriculum for PLVs adopted by NALSA cannot be to make them a full-fledged lawyer.[23] PLVs are not expected to conduct themselves as legal professionals.[24] The aim of the training should concentrate on basic human qualities like compassion, empathy and a genuine concern and willingness to extend voluntary service without expectation of monetary gain from it. Then the line separating PLVs from professional lawyers should be zealously guarded.[25]

Under the supervision of the Chairman of DLSA, PLVs undergoes a training programme, totally under the control of the Member Secretary. The training shall be held at a convenient place subject to the discretion of the Chairman of DLSA. The number of PLVs to be trained at any given point of time in a training programme shall not exceed 50. Wherever the State Judicial Academy has facilities for training, the same may be availed of. The expenses for the training shall be incurred by the Judicial Academy for providing such facility to be reimbursed by the State Government/DLSA concerned.[26]

In consultation with the State Legal Services Authority (SLSA), the Chairman of DLSA shall identify the trainers for training the PLVs and other resource persons. Suitable persons from the members of the Bar with training skills shall be included in the list of resource persons.[27] Others could include NGOs associated with the activities of the Legal Services Authority *i.e.,* persons, who are exposed to the nature of work of the Legal Services Authority, master trainers of mediation, law teachers from law colleges, post-graduate students of law, retired professors of law, retired judicial officers, revenue officers, officers from social welfare department, public prosecutors, police officers, psychiatrists/psychologists/mental health experts.[28]

Paralegals are an essential part of the legal system in India. They can play a significant role in promoting access to justice and providing affordable legal services. However, to perform their functions effectively, they require appropriate training. The training of paralegals in

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[22] *Supra* note 18.
[23] *Supra* note 9.
[24] *Supra* note 18.
[25] *Supra* note 17; *Supra* note 18.
[26] *Supra* note 9; *Supra* note 18.
[27] *Ibid.*
[28] *Ibid.*

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India varies depending on the organisation that provides the training.[29] In India, the training of paralegals is provided by various institutions, including legal aid organisations, law schools, and non-governmental organisations.[30]

The training of paralegals in India covers various aspects of the law, including legal procedures, basic legal principles, legal research, drafting of legal documents, communication skills, ethics and client representation.[31] With a basic knowledge of the laws and other available welfare measures and legislation, they would be able to assist their immediate neighbourhood.[32]

The training for paralegals consists of an orientation programme, basic training and a refresher course. Refresher courses are offered to update the knowledge of the paralegal. Periodical meetings are conducted to assess the learning of the paralegals, share their experiences and solve the concerns of the paralegals for the functions they perform.[33] DLSA and TLSA also provide mentors to trained PLVs to clarify their doubts about discharging their duties.[34]

In the case of *Budhadev Karmasker* v. *State of West Bengal*,[35] it was highlighted that State and District Legal Services Authorities have been working with sex workers and transgender persons for access to legal and social protection measures since 2011. Over the years, they have also trained sex workers as 'Para Legal Volunteers' so that they can support their peers and other vulnerable women in the community.[36]

The quality of legal education is bound to affect the quality of the judicial process and of the administration of justice and governance at all levels.[37] Legal education must aim to prepare legal professionals who will play decisive roles of leadership while maintaining the highest

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[29] V. K. Ahuja, "Impact of National Education Policy 2020 on Legal Education" 10 *RGNUL Law Review* 27 (2020).

[30] *Supra* note 9.

[31] Committee for Legal Aid to Poor, *Paralegal Training Manual for North East States* (2014), *available at:* https://www.clapindia.org/pdf/Paralegal%20Training%20Manual.pdf (last visited on April 12, 2024).

[32] *Supra* note 18.

[33] *Supra* note 33.

[34] *Supra* note 9.

[35] *Budhadev Karmasker* v. *State of West Bengal,* 2020 SCC OnLine SC 1382.

[36] *Ibid.*

[37] Iqbal Ali Khan, "Legal Education in India: An Overview" 22 *ALJ* 1 (2014-15).

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standards of professional ethics and spirit of public service.[38] The Bar Council of India (BCI) has the power to provide a "direct and institutional set up" which is required to deliver quality legal education.[39] In 1997, The BCI introduced four compulsory practical training courses at the B.A.LL.B. level, a course on "Public Interest Lawyering, Legal Aid and paralegal services" is one of them.[40]

Hon'ble Justice Shri Ranjan Gogoi also suggested that Communication and interaction with disadvantaged groups could be a wise starting point for young lawyers so that during their tenure at law school, students could undertake assignments as PLVs for the State/District Legal Services Authority.[41]

A person undertaking paralegal training receives the identity card of a paralegal subject to his qualifying test conducted after the programme. This identity card does not make Paralegal entitled to any benefit and can be used only for his identification as a paralegal. The ID card is valid for one year and can be renewed if a paralegal is found to be eligible by the Chairman, DLSA, for continuing as PLV.[42]

IV. Functions and Duties of Paralegals

One of the problems faced by legal services institutions is their inability to reach out to the common people. In this context, the NALSA has come up with the idea of PLVs to bridge the gap between the common person and legal services institutions.[43] Paralegals in India are not authorized to practice law independently, but they can perform several legal functions under the supervision of a lawyer.[44] In general, paralegals in India are involved in providing legal assistance, conducting legal research, drafting legal documents, providing information to clients and assisting lawyers in court proceedings.[45]

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[38] *Supra* note 8.

[39] The Preamble of the Bar Council of India Legal Education Rules, 2020, outlines the objectives and guiding principles for legal education in India.

[40] *Supra* note 39 at 5.

[41] Ranjan Gogoi, "Address of Hon'ble Justice Shri Ranjan Gogoi on the Occasion of Second Orientation Programme, HPNLU Shimla" 1 *Shimla Law Review* 1 (2018).

[42] *Supra* note 33.

[43] Anju Sinha, "Legal Aid: Rights of Accused" 1 *IJCLC* 135 at 141 (2013).

[44] Shubham Raj Singh, "Role of Paralegals in Indian Legal Aid System" (2022), *available at:* https://www.researchgate.net/publication/360504906_Role_of_Paralegals_in_Indian_Legal_aid_system (last visited on March 27, 2024).

[45] *Ibid.*

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Paralegals can play a crucial role in legal empowerment by conducting legal awareness campaigns and providing legal education to the communities. Legal awareness campaigns are an important function of paralegals in India. They can conduct legal awareness campaigns to educate the public about legal rights, duties, and obligations. This function is especially critical for marginalized and disadvantaged communities who may not have access to legal education.[46]

The engagement with PLVs enables the legal aid institutions to reach out to a larger population. It will work for the better accessibility of the justice system thereby increasing the reliability of legal aid institutions.[47] Paralegals can also provide legal services in remote areas where lawyers are not readily available. Additionally, they are often more accessible and can provide legal assistance to individuals who are unable to afford the services of a lawyer.[48]

Justice Patrudu, while working as a Member Secretary of Andhra Pradesh SLSA, propagated the legal aid movement and appointed para-legal volunteers in every village and made one village in each taluk a litigation-free village.[49] Paralegals can help reduce the burden on the already overburdened legal system by assisting lawyers in various legal tasks and making legal services more efficient and cost-effective. They can perform a range of legal tasks, such as drafting legal documents, conducting legal research, and assisting with court proceedings.[50]

Paralegals can provide affordable and accessible legal services to marginalized communities, who are often unable to access justice due to the high costs associated with legal proceedings. One of the primary advantages of utilising paralegals is their cost-effectiveness. Hiring a paralegal is significantly less expensive than hiring a lawyer.[51]

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[46] *Ibid.*
[47] Justice Adda, *Legal Aid in India: Between Practice and Promise for the Future* 32 (Eastern Book Company, Lucknow, 2023), *available at:* https://www.justiceadda.com/legalaidinindia (last visited on July 7, 2024).
[48] *Ibid.*
[49] M. E. N. Patrudu, "Legal Aid Movement and Litigation Free Villages" 2 *LW (JS)* 1 at 2 (2007).
[50] *Ibid.*
[51] *Ibid.*

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PLVs who have been authorized by the DLSA/TLSC visit jails, lock-ups, psychiatric hospitals, and children's homes/observation homes to ensure that inmates are getting the required legal services and inform the authorities if any inadequacy is noticed.[52] PLVs have also been mandated to report child rights violations to the nearest legal services authority and to the child welfare committee.[53] PLVs can assist the community by providing legal advice, and assistance and promoting community dispute resolution.[54] Paralegals act as a bridge between the legal system and the community and help in making the legal system more accessible and understandable to the people.[55]

PLVs are not only expected to impart awareness about laws and the legal system but also to counsel individuals on legal matters. They must be trained to amicably settle simple disputes between parties at the source itself, preventing unnecessary litigation which could save the trouble of the affected travelling all the way to the Legal Services Authority/ADR Centres.[56] If the dispute is of such a nature, which cannot be resolved at the source with the assistance of PLVs, they could bring such parties to the ADR Centres, where, with the assistance of the Secretary in charge either it could be referred to Lok Adalat or Mediation Centre or Legal assistance could be provided for adjudication in a court of law; depending upon the nature of problem. [57]

V. Judicial Trends

Indian courts have also emphasized through its various judicial pronouncements, the imperative role played by paralegals in promoting equal access to justice. The Hon’ble Supreme Court in the case of *Bachpan Bachao Andolan* v. *Union of India*[58] directed that the Para-legal volunteers who have been appointed by the Legal services authorities should be deputed in every police station to keep a watch over the manner in which the complaint regarding missing children and other offences against children are dealt with.[59]

[52] *Supra* note 17.
[53] *Ibid.*
[54] *Supra* note 4.
[55] *Ibid.*
[56] *Supra* note 17.
[57] *Supra* note 18.
[58] *Bachpan Bachao Andolan* v. *Union of India,* 2013 SCC Online SC 464.
[59] *Ibid.*

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In *Re Policy Strategy for Grant of Bail case*[60], the Apex Court directed that if after the grant of bail, an accused is not released within 7 days then it would be the duty of the superintendent of jail to inform the secretary DLSA who may depute Para legal volunteer to interact with the prisoner and provide assistance for availing the possible ways for release. The secretary DLSA can also direct Para Legal Volunteer to prepare a report on the socio-economic conditions of the inmate for requesting the relaxation of the condition of bail or surety from the court. [61]

In the case of *Shakeel Ahmed* v. *Union of India,*[62] the Court clarified that the Committee constituted to provide compensation can always take the help of the PLVs to reach the persons who have been deprived of compensation and to render assistance to them to comply with the formalities.[63]

In the case of *Environment and Consumer Protection* v. *Union of India,*[64] the Hon'ble Supreme Court constituted a special committee for social protection and the dignified existence of destitute widows in Vrindavan and the committee has given discretion to take assistance from PLVs of DLSA for collecting relevant information about them.

In the case of *Samarpan Varishtha Jan Parisar* v. *Rajendra Prasad Agarwal*,[65] the Supreme Court directed the Uttar Pradesh SLSA to depute a para-legal volunteer to visit the old age home at such intervals as possible and the Member Secretary of the DLSA to visit the old age home at least once a month initially to find out the difficulties being faced by the inmates and to take redressal steps, including legal aid if required by the inmates of the old age home.[66]

In *Voluntary Health Assn. of Punjab* v. *Union of India,*[67] the Apex Court gave direction to SLSAs of the States to emphasise a campaign for spreading awareness about the Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 while spreading legal aid and involve para-legal volunteers in it.[68]

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[60] *Re Policy Strategy for Grant of Bail case,* 2023 SCC OnLine SC 483.
[61] *Ibid.*
[62] *Shakeel Ahmed* v. *Union of India,* 2022 SCC OnLine SC 1519.
[63] *Ibid.*
[64] *Environment and Consumer Protection* v. *Union of India,* 2017 SCC Online SC 916.
[65] *Samarpan Varishtha Jan Parisar* v. *Rajendra Prasad Agarwal,* 2022 SCC OnLine SC 564.
[66] *Ibid.*
[67] *Voluntary Health Assn. of Punjab* v. *Union of India* (2016) 10 SCC 265.
[68] *Ibid.*

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VI. Scope for PLVs in Promoting Equal Access to Justice

To facilitate free and competent legal services to the persons entitled to free legal aid,[69] the Central Authority made National Legal Services Authority (Free and Competent Legal Services) Regulation, 2010. It provides that all legal services institutions shall have a front office to be manned by a Retainer Lawyer on a rotational basis and one or more para-legal volunteers available during office hours[70] to advise people entitled to free legal aid for free legal services.[71] Legal Aid Clinics further reinforce the commitment to free legal services with the assistance of para-legal volunteers by serving as the first point of contact for individuals seeking legal assistance.[72]

To enhance accessibility and streamline Legal Aid services, the government launched several initiatives, among which is the Tele-Law initiative in 2017. Through the use of video conferencing equipment at Common Service Centres (CSC), run by PLVs, the project would link attorneys and clients. It was believed that by utilising CSCs to mainstream Legal Aid services for the underprivileged at the panchayat levels, legal assistance would be able to reach people who were previously affected by lack of infrastructure and geographic difficulties.[73]

Services of PLVs are also utilised for assisting in Alternate Dispute Resolution Mechanism. Dispute resolution mechanisms like Lok Adalats play an essential role in ensuring timely justice. The Secretary of the DLSA and Chairman of the TLSC organising the Lok Adalats shall constitute a bench of the Lok Adalat which comprises a person engaged in paralegal activities of the area, preferably a woman.[74]

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[69] The Legal Services Authorities Act, 1987, s. 12.
[70] National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, reg. 3(6).
[71] *Ibid.*
[72] National Legal Services Authority (Legal Services Clinics) Regulations, 2011, reg. 2(c).
[73] Justice Adda, *Legal Aid in India: Between Practice and Promise for the Future* 9 (Eastern Book Company, Lucknow, 2023), *available at*: https://www.justiceadda.com/legalaidinindia (last visited on January 8, 2025).
[74] National Legal Services Authority (Lok Adalat) Regulations, 2009, reg. 6(b)-(c).

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PLVs also have a significant role to play for assisting various vulnerable groups in realising their rights and ensuring equal access to justice for them. Some of the prominent vulnerable groups getting assistance from PLVs for redressal of their legal rights are discussed below:

Child Rights

Recognizing the specific needs of juveniles, the Legal Aid services extend their reach to support children in conflict with the law. Every police station must prominently display a list of all designated Child Welfare Police Officers including PLVs.[75] The Legal Services Authority may provide a support person or PLV for pre-trial counselling and to accompany the child for recording of the statement who shall also familiarize the child with the Court and Court environment in advance. Where the child is found to have been disturbed by the experience of coming to the Court, orders for video-conferencing may be passed by the Court, on an application moved by the support person or PLV or by the Legal Services Authority, on behalf of the child.[76]

The Board may also deploy the services of the student legal services volunteers and non-governmental organisation volunteers in paralegal tasks such as contacting the parents of juveniles in conflict with the law and gathering relevant social and rehabilitative information about the juveniles.[77] For providing child-friendly legal services[78], legal services authorities undertake and organise training, orientation and sensitization programmes for PLVs for their skill enhancement and for creating a sense of responsibility amongst them.[7980]

SLSAs shall set up Legal Services Clinics at every Juvenile Justice Board and Child Welfare Committee in each district in the State. PLVs shall be deputed in such clinics.[81] PLVs may be asked to create an effective outreach campaign through the distribution of posters using child-appropriate messaging. DLSAs can take the services of PLVs deputed at each police station, in compliance with the direction in *Bachpan Bachao Andolan* v. *Union Of India*,[82] for

[75] *Id.,* reg. 8.
[76] *Id.,* reg. 54.
[77] The Juvenile Justice (Care and Protection of Children) Rules 2007, rule 14.
[78] *Supra* note 18.
[79] NALSA (Child-Friendly Legal Services to Children and Their Protection) Scheme, 2015, cl. 8.2.
[80] *Supra* note 18.
[81] *Supra* note 81 at cl. 10.3.
[82] *Supra* note 60.

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conducting initial interviews and investigations, to provide counselling and to work as a link between the children and his or her family.

Each SLSA shall take up necessary steps to solve the problem of Child Labour by working in villages with the help of PLVs to sensitize families about the long-term benefits of education and to make them aware that child labour is not acceptable.[83] Legal services authority also engages PLVS for greater social community engagement to prevent young girls from being coerced into early marriages.[84]

Tribal People, Senior Citizens, Victims of Acid Attack and Poverty Alleviation

Empowering and protecting vulnerable groups is one of the fundamental objectives of Legal Aid services, among these groups, tribal communities often face significant challenges in securing their legal rights. As per section 12 of the Legal Service Authorities Act, 1987 a member of the scheduled tribes is entitled to legal assistance. Each DLSA, should identify the areas of the districts where there are tribal populations and reach out to them through the PLVs.[85] In order to gain the trust of the tribal communities, to know the problems of each such community and also to communicate with them effectively during awareness programmes it is necessary that PLVs must be selected from amongst such tribal people.[86]

Panel lawyers should, with the help of PLVs, facilitate the tribal people in getting compensation for their acquired land and assist them with rehabilitation.[87] Legal Services Authority could play a vital role in providing medical help as well as benefits of medical schemes[88] with the assistance of PLVs for the tribal community.[89]

Similar outreach and awareness efforts are required for senior citizens and Acid Attack victims, who often face difficulties in accessing their legal rights and government welfare schemes. Legal Services Authorities working with the assistance of PLVs focuses on educating senior citizens and acid attack victims about their entitlements under various laws

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[83] *Supra* note 81 at cl. 10.6.
[84] *Supra* note 18.
[85] *NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015*, Part II(B)(1).
[86] *Id.,* Part II(B)(2).
[87] *Id.,* Part II(A)(7).
[88] *Ibid.*
[89] *Supra* note 18.

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and government programmes.[90] Trained PLVs are available in the Legal Services Clinics to assist the senior citizens and acid attack victims in making applications and carrying out other procedural requirements.[91] [92]

The Poverty Alleviation Schemes through PLVs and students in Legal Aid Clinics enhances awareness and build capacity for poverty alleviation.[93] It also provides to undertake and organise training and orientation programmes, for panel lawyers, PLVs, officers under Poverty Alleviation Schemes, and student volunteers in Legal Aid Clinics for their skill enhancement and for developing a sense of deeper engagement amongst them for implementing this Scheme.[94]

Person Suffering from Mental Health Issues, Unorganised Sector Workers and Drug Abuse

Efforts to combat human trafficking demand widespread community outreach, particularly in high-risk areas. DLSAs can spread awareness in the community through the panel lawyers and PLVs about the issues of trafficking particularly in vulnerable areas and among vulnerable groups. The DLSAs can accredit Para legal volunteers drawn from the community and train them as per the NALSA module. These PLVs can then act as the front-line workers of the Authority as far as the community is concerned. The effort must be to ensure "saturation coverage" by having representation from all the blocks of the district and ultimately the entire State.[95]

The need for specialized legal aid extends to individuals suffering from mental illness or disabilities with an objective to ensure that the mentally ill or mentally disabled are not stigmatized and they are dealt with as individuals who are to be helped to enforce all rights they are entitled to and as assured to them by law.[96] SLSAs/DLSAs set up Legal Services Clinics at psychiatric hospitals, homes and facilities to provide legal assistance wherever

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[90] *NALSA (Legal Services to Senior Citizens) Scheme, 2016*, cl. 6(5) and 6(3).
[91] *Supra* note 18;
[92] NALSA Scheme 2016, 6(3).
[93] *NALSA (Legal Services to the Victims of Poverty Alleviation Schemes) Scheme, 2015*, cl. 4.
[94] *Id.*, cl 7.
[95] *Supra* note 18.
[96] *Ibid.*

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required to the mentally ill /mentally disabled persons and their families to address legal issues concerning the mentally ill and mentally disabled persons.

Such a legal clinic should be manned by PLVs and Panel Lawyers who are sensitive to such issues and persons. It would be quite appropriate to train the doctors, nurses and other para-medical staff/administrative staff at the mental health facilities as PLVs so that the best legal services can be provided keeping in mind the welfare of the mentally ill/mentally disabled persons.[97]

Equally vulnerable are workers in the unorganised sector. To provide effective legal services to the workers of the unorganised sector, each SLSAs constitutes a special cell focusing exclusively on these services. The cell is manned by a one-panel lawyer specialising in Labour Laws, one counsellor/consultant having requisite qualification/experience in the relevant field, wherever feasible, a representative of an NGO doing demonstrably good work in the area and such number of PLVs as the SLSA may prescribe.[98]

Another area of concern is drug abuse prevention, where PLVs play a fundamental role. Following their training on several schemes, the PLVs visits different communities and educate the public about the dangers of narcotics and psychotropic substances.[99]

VII. Critical analysis of paralegal functioning

Paralegal plays an important role in spreading legal awareness as they work at the grass root level and can easily assess the needs at the community level. The critical analysis of statistical data of legal awareness camps, number of beneficiaries, number of paralegal trained and place can exhibit the level of utilisation of paralegal in spreading legal awareness and other legal aid services under various schemes discussed above. The data of the last four years from 2021 to 2025 has been critically analysed to get a clear picture of ground reality of paralegals promoting legal aid in India and potential way forward for better utilisation of paralegal for promoting equal access to justice.

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[97] *NALSA (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme, 2015*, Part II.
[98] *Supra* note 18.
[99] *NALSA (Legal Services to the Victims of Poverty Alleviation Schemes) Scheme, 2015*, cl. 17.

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Legal Awareness

Year	Awareness Camp	No. Of Participants	Average % Per Camp
2024-25	462988	37232850	80
2023-24	430306	44922092	104
2022-23	490055	67517665	138
2021-22	1134086	584126827	514

Source: NALSA statistical report on legal awareness camp Program[100]

The above stated table suggests that 2021-22 saw an extraordinarily high number of camps (1134086) and beneficiaries (584126827). Post this, there is a steep decline in both metrics. The reduction is almost 75 percent in camps and more than 90 percent in beneficiaries by 2024-25. It shows that 2021-22 was an exemplary year in terms of spreading legal awareness to large number of beneficiaries. The important factor to consider while analysing the data in the table is that the year 2021-22 was the year when country was struggling with pandemic and online mode for legal awareness was adopted. The output of legal awareness through online mode clearly suggests that use of technology has a huge potential for the mass legal awareness particularly by overcoming geographical barriers and user friendly content delivery. Legal aid mobile app can provide access to legal information on demand any time-any place, placing a continuous learning mechanism process into operation. Promotional SMS system can also be put into motion for notifying people about the upcoming legal awareness camps and the subject of the awareness.

Para-Legal Volunteers:

Year	Paralegal Trained	Paralegal Placed	Placement Percentage
2024-25	**50478**	**9848**	**19.5%**
2023-24	**53379**	**8438**	**15.8%**
2022-23	**56842**	**8129**	**14%**

[100] National Legal Services Authority, "Statistical Report on Legal Awareness Camp Program", *available at:* https://nalsa.gov.in/awareness-camps-programmes-report/ (last visited on May 20, 2026).

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2021-22	55258	14504	26%

Source: NALSA Statistical Report on Para Legal[101]

From 2021 to 2025 over 215957 paralegal volunteers have been trained but only 40,919 deployed. Less than 20 percent utilisation of paralegal raises a question on the adequacy of training imparted to paralegals. The scope of paralegals under different schemes and judicial pronouncements clearly highlights relevance of trained paralegals in bridging the gap between justice seekers and justice providers. Still if paralegals are not getting placed then it raises a doubt on the efficiency of paralegal for discharging the expected duty. The analysis of the placement percentage indicates that maximum no of paralegals were placed in the year 2021-22. Due to pandemic restrictions during this period, legal aid was provided through online mode with the help of technology assisted tools like mobile app for legal aid. This relevance of training paralegals for using technology and equipping them with the technology assisted tools like legal aid mobile apps can add to their efficiency and enhance their placements. So, in nutshell it can be said that use of technology can certainly contribute not only in increasing the frequency of legal awareness camps and legal aid beneficiaries but also improve the efficiency of paralegals in discharging their duties effectively.

Way Forward

The community should be enlightening at large about the benefits of using paralegal services. Marginalized communities should also be the target groups in this campaign. Advocacy campaigns, community workshops and information materials can target the duties and importance of the paralegals towards strengthening the system of the law to serve the poor, the weak, and the vulnerable and other underprivileged people in society.

The fuller utilisation of trained paralegals can be achieved not only by their placements but also by their retention in the assigned jobs for a longer duration. For retention of paralegals, remuneration is an important factor. Currently, the remuneration given to the paralegals is very nominal which makes the job of paralegal only a backup option till a better paying job is offered. So there is a need for revising the remuneration rate for ensuring retention of paralegals.

[101] National Legal Services Authority, "Statistical Report on Para Legals", *available at:* https://nalsa.gov.in/?s=Para+legal (last visited on May 20, 2026).

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Training of paralegal includes essential soft skills like communication, client interaction, ethical conduct, and time management then it can facilitate successful integration of paralegals into professional legal environments. Training of paralegals should not be a one-time affair but should be a continuous learning process through short-term internships or apprenticeships with legal organizations. This provides practical experience for para-legals and allows potential employers to assess their capabilities before formal placement. Mode of training can also be through online modules, webinars, and virtual workshops. This ensures that volunteers are always equipped with the latest legal knowledge and effective communication techniques, improving their overall effectiveness in conducting awareness activities.

To enhance the frequency of legal awareness camps, it is imperative to conduct a community needs assessment facilitated by paralegals for the purpose of developing customized legal awareness initiatives. Adopting this strategy will not merely expand the roster of legal aid recipients, but it will also enrich the total outcome of the legal awareness workshops. Finally, it's imperative to implement a feedback mechanism for participants, which would support the incorporation of recommendations aimed at refining the effectiveness of the legal awareness camps in responding to the requirements of those benefiting from legal aid.

VIII. Conclusion

There are significant advantages of taking assistance of PLVs for promoting equal access to justice but there are also some limitations too. One of the main limitations is that paralegals are not authorized to provide legal advice, represent clients in court, or perform other tasks that are exclusively reserved for lawyers. This limitation can restrict the services that paralegals can offer to clients. Their work is limited to assisting lawyers in providing legal services. Additionally, paralegals may lack the expertise and knowledge required to handle complex legal matters, and they may not be subject to the same ethical and professional standards as lawyers. It can affect the quality of legal services provided by paralegals. But despite the limitations of paralegal functioning, the relevance of the role played by paralegals in promoting equal access to justice can be underestimated. Paralegals play a vital role in promoting access to justice in India, especially for marginalized and disadvantaged

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communities. They assist in enhancing the reach and effectiveness of Legal Aid services and make the legal system more accessible and understandable to the people.

However, there is a need for a clear legal framework governing the role and functions of paralegals in India. This involves designing a learning system for paralegals that includes structured training, ensuring that they receive equal pay for corresponding services, and developing regulations governing paralegal standards of professionalism. Paralegal skill induction programmes can be initiated which are well structured depending on the requirement of paralegals, thus the quality and outcome of legal aid can be notably raised.

It can be yielded in a way that will ensure that the justice system is reachable by the poor and marginalized people. Thus, the wide strategy that combines continuous learning through periodical training, and awareness creation, technology integration is essential to develop the potential of paralegals to act as a bridge between justices seeks and justice providers.

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PRIVATE SCHOOL FEES REGULATION IN DELHI: A MUCH-NEEDED REFORM

*Abiha Zaidi**

ABSTRACT

Private schools in Delhi have long operated outside meaningful fee regulation, enabling arbitrary hikes and coercive collection practices that drew judicial intervention and widespread public protest. The Delhi School Education (Transparency in Fixation and Regulation of Fees) Act, 2025, enacted in August 2025 attempts to address this regulatory gap. Extending coverage to all private schools, aided and unaided, the Act establishes a three-tier regulatory mechanism comprising School Level Fee Regulating Committees, District Fee Appellate Committees, and a state-level Revision Committee. Fee fixation is required to follow evidence-based criteria, remain binding for three academic years, and be published for public access. The Act also prohibits coercive recovery practices and prescribes an escalating penalty regime, including the possibility of derecognition for persistent violations. This paper analyses the Act's key provisions, situates it within Delhi's prior regulatory framework under the Delhi School Education Act, 1973, and examines its reception among stakeholders including parents, school managements, and political actors. It further compares the Act with analogous legislation in Maharashtra and Rajasthan. While the Act marks a significant structural reform, its effectiveness will ultimately depend on institutional capacity, enforcement will, and the robustness of its implementation infrastructure.

Keywords: Right to Education, School Fees, Regulation, Delhi Schools

I. Introduction

"Education is the Most Powerful Weapon which you can use to Change the World"

- Nelson Mandela

Education is the most powerful tool that aids to self-development of an individual and acts as a catalyst to boost development of a nation. Nation building is achieved efficiently when the citizens of a country are well trained, possess various skills and keep on innovating with the advancement of the society. Citizens of any country will only be able to acquire such skills when its youth is trained with proper education. India is amongst the world's largest countries with a majority of the youth population therefore it's very crucial that the youth of our nation

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are trained with proper education[1]. The original text of the Constitution initially treated education as a goal for the State to strive towards. Under the Directive Principles of State Policy ("DPSP"), Article 41 and Article 45 directed State to make effective provision for right to education and to ensure free and compulsory education for all children between the age of six to fourteen years. With the enactment of Constitutional 86th Amendment Act of 2002, the directive under Article 45 was converted to a fundamental right through the insertion of Article 21A under Part III[2]. Hence, education for children between the age of six to fourteen years became a fundamental right. This constitutional shift transformed education from a non-enforceable directive into a guaranteed right, reflecting its central role in nation-building. To ensure that every child has an education right, government enacted the Right of Children to Free and Compulsory Education Act, 2009 ("RTE Act") with a similar objective[3].

Over the years, the Indian government has created a wide network of government schools across the country to fulfil the Constitutional and statutory mandates of providing educational rights. Along with the government efforts, private institutions have also contributed towards this collective goal. There are numerous private schools in various Indian States, and their number has grown exponentially over the last three decades[4]. These private schools have better infrastructure, well equipped labs, quality teaching and diverse extracurricular opportunities and therefore attract a large section of society, especially the aspirational middle class. The rapid growth of private schools, especially in urban areas like Delhi has shifted the core value of the education system from being purely welfare-oriented institutions to institutions focused on commercial interest. This commercial interest has been fuelled by parental aspirations for quality education, inadequacies in the government-school system, and increasing competitiveness in higher education and employment. On one hand, basic economics dictates that commercialisation leads to competitiveness and therefore better institutions; on the other hand in reality, the commercialisation in the education system has also raised to serious

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1 Ministry of External Affairs, 'One of The Youngest Populations in the World – India's Most Valuable Asset' (IndBiz Economic Diplomacy Division, 13 June 2021), *available at:* https://indbiz.gov.in/one-of-the-youngest-populations-in-the-world-indias-most-valuable-asset/ (last accessed 17 September 2025).

2 The Constitutional (Eighty-Sixth Amendment) Act, 2002 (India), *available at:* https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/2002_0.pdf (last accessed 12 September 2025).

3 The Right of Children to Free and Compulsory Education Act, 2009 (India), *available at:*https://www.indiacode.nic.in/bitstream/123456789/19014/1/the_right_of_children_to_free_and_compulsory_education_act_2009.pdf (last accessed 15 September 2025).

4 Observer Research Foundation, 'Learning Before Profits: Delhi's Push for School Fee Transparency' *ORF ExpertSpeak* (25 August 2025), *available at:* https://www.orfonline.org/expert-speak/learning-before-profits-delhi-s-push-for-school-fee-transparency (last accessed 19 September 2025).

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practical concerns. Sometimes, exploitative practices adopted by private school management, with the higher bargaining power against aspirational and desperate parents, creates a risk of shifting the focus away from its true objective i.e., holistic development of children and nation-building. Excessive fees, discriminatory admission practices, and prioritising revenue over accessibility can undermine the very spirit of Article 21A and the RTE Act.

It is an undeniable fact that private schools have improved the educational standards over the time, but they have also been surrounded with the continuous grievances of arbitrary fee hikes, lack of transparency in fee structures and exploitation of parents who are left with no alternative except agreeing to the arbitrary fee demand of such private schools. This market failure has therefore birthed the need for regulatory intervention aimed at solving the problem of accessibility without undermining the institutional independence.

Delhi is at the forefront of this tension being the hub of the elite and numerous elite private schools. In the past, there have been instances of steep annual fee hikes, imposition of development fees, and compulsory charges for facilities - sometimes not even availed by all students[5]. Such issues have sparked repeated protests from parents and civil society organisations. In most of such instances the management of these schools have justified fee hikes by citing infrastructure development, staff salaries, and inflation cost. The trust of parents has however eroded due to lack of transparency[6]. This created the demand for a statutory framework that could ensure transparency and fairness.

In this context we examine and analyse the key provisions of the Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025. The Education Bill was introduced by Ashish Sood, Education Minister GNCTD in the Delhi Vidhan Sabha on August 4, 2025 and was passed by a majority vote on August 8, 2025[7]. It received the Lieutenant-

5 Press Trust of India, 'No Annual And Development Fees Till Schools Reopen: Delhi High Court' *NDTV* (30 August 2020), *available at:* https://www.ndtv.com/education/annual-and-development-fees-cannot-be-charged-till-schools-reopen-delhi-high-court-2287642 (last accessed 11 September 2025).

6 Himanshi Dhawan & Hemali Chhapia, '"We're Not ATMs": Why Parents Are Fed up of Arbitrary School Fee Hikes' *Times of India* (31 May 2025), *available at:* https://timesofindia.indiatimes.com/toi-plus/education/were-not-atms-why-parents-are-fed-up-of-arbitrary-school-fee-hikes/articleshow/121535839.cms (last accessed 17 September 2025).

7 Express News Service, 'New Bill to be implemented this year, all private schools in Delhi will be covered under the law, says Minister' *Indian Express* (28 August 2025), *available at:* https://indianexpress.com/article/cities/delhi/new-bill-to-be-implemented-this-year-all-private-schools-in-delhi-will-be-covered-under-the-law-says-minister-10215278/ (last accessed 16 September 2025).

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Governor's assent on 13 August 2025 and got published in the Delhi Gazette on 14 August 2025. (Delhi Act No. 4 of 2025)[8].

Old Regulatory Framework Governing Education in Delhi

The Delhi School Education Act, 1973 (hereinafter referred as "the old Act") regulated the administration and fee structures of schools in Delhi for almost 53 years. However, the old Act primarily focused on government aided schools which received land allotments from Delhi Development Authority at concessional rates[9]. Section 17 of the old Act states that no aided school in Delhi can levy any fee or collect charge except those specified by the Director of Education. It further puts a mandatory requirement on the school to take prior approval from the prescribed authority before collecting any fee or charge which is not specified. The old Act mandates filing of full statement of the fees to be levied by the school before the commencement of each academic session and puts a bar on charging excess fee except with the prior approval from the Director of Education[10]. The provisions for fee regulation in the old Act did not mention unaided schools; only the word 'aided' has been used in such provisions. Hence, the scope of the old Act is limited. It merely covers approximately three-hundred private aided schools in Delhi and has left majority of the private unaided schools beyond its regulatory reach[11]. This gap in the regulatory mechanism and the ensuing consequences led to a cycle of litigation, protests by parents and various government orders. Due to these limitations, Delhi government enacted the Delhi School Education (Transparency in Fixation and Regulation of Fees) Act, 2025 as a major legislation to curb the arbitrary fee hikes by private schools. This Act expands the government's jurisdiction to all private unaided schools in Delhi. It aims to eliminate the prior loopholes and bring uniformity, transparency, and fairness to the process of fee fixation.

II. Recent Overhaul in School Fee Regulation in Delhi

[8] Delhi Legislative Assembly, *DLAS – Government Bills, available at:* https://delhiassembly.delhi.gov.in/dlas-govt-bills (last accessed 20 September 2025).

[9] PTI, 'Bill Regulating Fees in Private Schools to Bring Greater Transparency, Accountability: Delhi CM' *Indian Express* (11 August 2025) https://indianexpress.com/article/education/bill-regulating-fees-in-private-schools-to-bring-greater-transparency-accountability-delhi-cm-10180606/ (last accessed 22 September 2025).

[10] Delhi School Education Act 1973, s 17.

[11] NDTV Education, 'Delhi School Education Act 2025: What New Law Means For Parents, Schools' (18 August 2025) https://www.ndtv.com/education/delhi-school-education-act-2025-what-new-law-means-for-parents-schools-9108702 (last accessed 23 September 2025).

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The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025 ("the Act") is a significant move by the government to regulate private schools in the National Capital Territory. This Act has not been enacted in vacuum. It is in fact a result of policy discussions, judicial interventions, and continuous social pressures that highlighted the urgent need for reforms. Recent incidents in Delhi showcased dramatic episodes which brought the arbitrary fee hike crisis to public attention[12]. There have been instances where students were reportedly barred from entering the school campus by bouncers[13], expelled, confined to school buses, or forced to sit in the library[14]. All of this because the parents of those students did not pay the fee or challenged the arbitrary fee hikes.

Parents criticized such measures by school and called them as inhumane and coercive. More than hundreds of parents have approached the Hon'ble Delhi High Court with petitions against schools, accusing that the schools had removed name of their child from schools' roll or used physical measures to prevent them from attending classes[15].

An inspection report submitted before the Hon'ble Delhi High Court by an eight-member committee led by a District Magistrate (South-West) flagged the coercive and discriminatory practices by the private schools against students[16]. The report highlighted that students who did not pay the fee were barred from attending classes, confined to the libraries, not allowed to use the school canteen, isolated from peers, and were monitored by school security guards whenever they used restrooms[17]. Based on this report, Hon'ble Delhi High Court condemned

[12] *BBC, 'Delhi: Rising School Fees Push Indian Families to the Brink' (27 June 2025) https://www.bbc.com/news/articles/c2le1l0pv95o* (last accessed 13 September 2025*).*

[13] 'Bouncers at School Gate: Parents Accuse DPS Dwarka of Inhumane Practices over Fee Hike' *Times of India* (16 May 2025) https://timesofindia.indiatimes.com/city/delhi/inhumane-methods-parents-allege-dps-dwarka-used-bouncers-to-manage-children-amid-fee-hike-row/articleshow/121204132.cms (last accessed 21 September 2025).

[14] 'DPS Dwarka Fee Hike Row: Here's What Panel Formed to Look into "Harassment" of Students Found' *Indian Express* (14 April 2025) https://indianexpress.com/article/cities/delhi/no-regular-classes-restroom-visits-monitored-panel-flags-discrimination-against-students-at-dps-dwarka-amid-fee-hike-row-9942626/ (last accessed 13 September 2025).

[15] SNS, 'Parents Move HC against Expulsion of 32 Private School Students over Fee' *The Statesman* (15 May 2025) https://www.thestatesman.com/cities/parents-move-hc-against-expulsion-of-32-private-school-students-over-fee-1503433127.html (last accessed 13 September 2025).

[16] Sanjana Dadmi, '"Very Disturbing State Of Affairs": Delhi HC Raps DPS Dwarka For Discriminating Against Students Over Alleged Non-Payment of Fees' *LiveLaw* (17 April 2025) https://www.livelaw.in/high-court/delhi-high-court/delhi-public-school-inspection-discrimiantory-treatment-to-its-studetns-over-alleged-non-payment-of-fees-289611 (last accessed 13 September 2025).

[17] 'DPS Dwarka Fee Hike Row: Here's What Panel Formed to Look into "Harassment" of Students Found' *Indian Express* (14 April 2025) https://indianexpress.com/article/cities/delhi/no-regular-classes-restroom-visits-monitored-panel-flags-discrimination-against-students-at-dps-dwarka-amid-fee-hike-row-9942626/ (last accessed 13 September 2025).

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the conduct of schools and called such practices as "shabby and inhuman"[18]. The Court ordered that no child should suffer because of fee disputes[19]. The Directorate of Education ("DoE") was directed by the Hon'ble Court to ensure that all the affected students are reinstated, and no discriminatory treatments shall be repeated. Following the Court's order, DoE directed immediate reinstatement of 32 students who were expelled over the fee dispute[20]. In one instance the National Commission for Protection of Child Rights ("NCPCR") issued notice to DPS Vasant Kunj. It was reported that the students were forced to stay in the school's library whole day and were denied attending their classes due to unpaid fees. Similar complaints were also reported from DPS Rohini and several other schools[21].

These incidents reflect the systemic failure and absence of a robust and transparent fee regulation mechanism. The developments emphasised the need for a comprehensive legislation. The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025 thus emerges not just as policy reform, but as a necessary corrective measure aimed at ending arbitrary fee practices, enforcing accountability, and safeguarding children's right to education without fear or discrimination.

III. The Ordinance: A Precursor to the Act

Amidst the protest by parents against the arbitrary fee hikes by private schools, the Delhi Government used the executive route to bring immediate reforms. In June 2025, Delhi government promulgated the Delhi School Education (Transparency in Fixation and Regulation of Fees) Ordinance, 2025 to regulate arbitrary fee fixation and bring greater transparency[22]. This Ordinance was enacted with retrospective effect from April 1, 2025 which reflects the urgency of this issue.

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[18] 'Deserves to Shut down: Court Slams DPS Dwarka for Confining Students over Fees' *India Today* (17 April 2025) https://www.indiatoday.in/india/law-news/story/delhi-high-court-slams-dps-dwarka-for-confining-students-over-fees-deserves-to-shut-down-2710444-2025-04-17 (last accessed 13 September 2025).

[19] The Hindu Bureau, 'Delhi High Court Slams DPS Dwarka for "Inhuman" Treatment of Students' *The Hindu* (16 April 2025) https://www.thehindu.com/news/cities/Delhi/delhi-high-court-slams-dps-dwarka-for-inhuman-treatment-of-students/article69457915.ece (last accessed 13 September 2025).

[20] 'DPS Dwarka Ordered To Reinstate 32 Students Removed Over Fee Dispute' *NDTV* (16 May 2025) https://www.ndtv.com/india-news/dps-dwarka-ordered-to-reinstate-32-students-removed-over-fee-dispute-8429498 (last accessed 13 September 2025).

[21] 'NCPCR Notice to Education Official over "Arbitrary" Fee Hike by School' *Times of India* (20 March 2025) https://timesofindia.indiatimes.com/city/delhi/ncpcr-notice-to-education-official-over-arbitrary-fee-hike-by-school/articleshow/119267316.cms (last accessed 13 September 2025).

[22] 'Delhi Govt Approves Ordinance to Curb Arbitrary Fee Hikes in Private Schools' *News on AIR* (10 June 2025) https://www.newsonair.gov.in/delhi-govt-approves-ordinance-to-curb-arbitrary-fee-hikes-in-private-schools/ (last accessed 17 September 2025).

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The Ordinance sought to bridge immediate gaps in the regulatory regime of fee regulation in private schools across NCT Delhi. Its key features included:

i. Prohibition on arbitrary fee hikes without prior approval from a government-appointed committee.

ii. Creation of a grievance redressal mechanism for parents, including the establishment of district-level committees empowered to entertain complaints.

iii. Penalties for non-compliance, including fines and withdrawal of recognition in cases of repeated violations.

While the Ordinance was welcomed by many parent associations and schools, it was also subject to significant criticism. Private School were aggrieved by executive interference in fee fixation thereby in their opinion eroding autonomy and financial viability, particularly for institutions that did not receive government aid[23]. However, despite the Ordinance the issue of establishing long-term accountability still remained.

Nonetheless, the Ordinance laid the groundwork for the 2025 Act, functioning both as a trial mechanism and as a political signalling tool. It highlighted the state's willingness to intervene decisively in school fee regulation and tested stakeholder responses before the introduction of a permanent statutory framework.

IV. The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025 – An Overview

The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025 is one of the most ambitious educational reforms in recent years in NCT Delhi. This Act has been enacted to bring transparency in the matters of fee fixation, collection and regulation of fees in schools across Delhi and any other matters related to the said objective. The Act is to be read as a supplement to the Delhi School Education Act, 1973. It attempts to create a comprehensive

[23] 'Private Schools Say Rule Changes Meant to Crush Autonomy' *Indian Express* (24 June 2015) https://indianexpress.com/article/cities/delhi/private-schools-say-rule-changes-meant-to-crush-autonomy/ (last accessed 17 September 2025).

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legal regime that balances financial autonomy of schools with the rights of parents and students to affordable and equitable education[24].

The New Education Policy of 2020 advocates for curbing Commercialization of Education. It mentions that erstwhile regimes have not been able to curb such commercialization and exploitation of parents by private schools which are solely focused on profit generation[25]. Considering this aim of the New Education Policy, the Delhi Government decided to take necessary steps to prevent commercialisation of education through profiteering by the private schools[26]. Hence, keeping in consideration the public interest, the Delhi government has enacted this Act for regulation of fee charged by private schools.

This Act applies to all the schools across the NCT Delhi, be it private aided school or private unaided school. This broadened coverage of school is a significant leap from the 1973 Act as the old Act only applies to private aided schools[27]. The 2025 Act covered these gaps by ensuring that no private schools can remain outside the purview of fee regulation regime. At its core the Act consists of three interlined objectives, which are ensuring transparency, protecting the rights of parents and students, and balancing the autonomy of schools. To ensure transparency, the act mandates regular disclosure of accounts and provide justifications for any proposed fee increase[28]. This is intended to prevent profiteering and hidden charges by the school management, which have been common complaints from parents. To protect the rights of parents and students and for balancing the financial autonomy of schools the Act provides for proper representation of parents and school management in the committees mentioned in the Act.

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[24] The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025 https://delhiassembly.delhi.gov.in/sites/default/files/dlas/govt-bills/bill03.pdf (last accessed 17 September 2025).

[25] Ministry of Education, *National Education Policy 2020* https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf accessed 15 September 2025.

[26] Express News Service, '"New Fee Law Will Boost Trust between Parents & Schools", Says Delhi CM Rekha Gupta' *The New Indian Express* (19 August 2025) https://www.newindianexpress.com/cities/delhi/2025/Aug/19/new-fee-law-will-boost-trust-between-parents-schools-says-delhi-cm-rekha-gupta (last accessed 17 September 2025).

[27] 'New Bill to Be Implemented This Year, All Private Schools in Delhi Will Be Covered under the Law, Says Minister' *The Indian Express* (28 August 2025) https://indianexpress.com/article/cities/delhi/new-bill-to-be-implemented-this-year-all-private-schools-in-delhi-will-be-covered-under-the-law-says-minister-10215278/ (last accessed 17 September 2025).

[28] Malhotra NV Abhishek, 'Strengthening Oversight through Legislation: Delhi's School Fee Reforms' *Bar and Bench* (20 August 2025) https://www.barandbench.com/view-point/strengthening-oversight-through-legislation-delhis-school-fee-reforms (last accessed 17 September 2025).

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Regulatory Mechanism under the Act

One of the most significant moves of this Act is its effort to impose a clear statutory bar upon arbitrary fee hikes by private schools in Delhi. Section 3 of the Act unequivocally prohibits charging any fee above the amount determined under the Act. This is important under the current educational system where indiscriminate fee structures usually weigh down parents, generating public frustration and frequent litigations. In taking fee fixation within a legal framework, the Act aims to find a balance between schools' financial autonomy and safeguarding parents from exploitative practices.

The key feature of this Act is setting up of three-tier mechanism for school fee regulation. The Act has provision regarding formation of a three-level committee at school, district and state level[29]. This three-tier mechanism is necessary since there are numerous private schools in Delhi. By operating at school, district and state level, the Act ensures proper checks and balances at multiple stages.

The School Level Fee Regulating Committee (Section 4–5)

Section 4 of the Act mandates every school in the NCT Delhi to set up a School Level Fee Regulating Committee for each academic year. This committee is structured in a way that all representation of all the stakeholders shall take place. This committee consist of five categories of members which are the Chairperson, Secretary, Group of Members from Schools' side, Group of Members from Parents side and Observer. Such representation at the grassroot level reflects inclusivity and participatory governance. Folling is the composition structure of school level committee:

i. The Chairperson shall be a representative of school management and shall be nominated by the management of school.
ii. The Secretary is the principal of the school.
iii. Three teachers from the school are included as members, the selection of these teachers will be through draw of lots.

[29] 'Fee Regulations to Cover All Private Delhi Schools: Minister Ashish Sood' *The Economic Times* (27 August 2025) https://economictimes.indiatimes.com/news/india/fee-regulations-to-cover-all-private-delhi-schools-minister-ashish-sood/articleshow/123547330.cms?from=mdr&utm (last accessed 17 September 2025).

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iv. Five parents from the Parent-Teacher Association are also selected through draw of lots for being the member of committee.

v. An Observer nominated by the Director of Education to ensures governmental oversight[30].

The Act also provides representation from marginalised sections in the committee. It mandates that the school level committee shall include at least one member from Scheduled Castes, Schedules Tribe or Socially and Educationally Backward Class. Further, the Act provides for representation of women in the committee. It mentions that there shall be at least two women members in the school level committee[31]. These requirements in the school level committee not only make the committee representative but also makes it inclusive and gender neutral.

Section 5 of the Act provides for mechanism for deciding the fee for school. As per the section, the management of the school shall propose the school fee for three academic years to the School Level Committee for its approval[32]. The School Level Committee can either accept the said proposal submitted by the management or can decide the fee amount afresh while giving the approval. Such fresh decision by the School Level Committee cannot be more than the fee proposed by the school management[33]. This provision prevents arbitrary fee increases while giving the school level committee meaningful discretion. The Act also stresses transparency by mandating schools to publish the fee decided by the School Level Committee on website of school and on the notice board of school in Hindi and English[34]. The fee decided by the School Level Fee Regulation Committee shall be binding on the school for three academic years[35], ensuring clarity for three academic years.

Further, the Act puts a deadline of 15th September on the School Level Committee to fix the fee. This ensures administrative efficiency and predictability. In case the School Level Committee fails to do so, the school management can approach the District Fee Appellate Committee[36]. Similarly, if the School Level Committee has fixed the fee, then any aggrieved

[30] The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025, s 4(1)(b).
[31] *Id.*, s 4(3).
[32] *Id.*, s 5(2).
[33] *Id.*, s 5(3).
[34] *Id.*, s 5(4).
[35] *Id.*, s 5(5).
[36] *Id.*, s 5(7).

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parent can challenge such decision before the District Fee Appellate Committee within thirty days[37].

District Fee Appellate Committee (Section 6)

i. The second level of the three-tier mechanism is District Fee Appellate Committee. Section 6 of the Act provides for constitution of district level committee. This committee shall be constituted by the Director of Education and shall comprises of six categories of members. The structural composition of the district level committee is as under:
ii. The Deputy Director of Education of the connected District shall be the Chairperson.
iii. The Deputy Director of Education (Zone) shall be the Member Secretary.
iv. A Chartered Accountant shall be member of the committee.
v. The Account functionary of the Region/ District shall be a member.
vi. Two representatives of school, and
vii. Two representatives of parents shall be the members of the committee[38].

The District Committee is vested with the power to adjudicate disputes between aggrieved parents' group or the management or the Parents Teachers Association regarding fee to be charged by the school management[39]. The Act confers the District Committee with powers equivalent to the civil courts under Code of Civil Procedures, 1908 for the purpose of making any inquiry under the Act[40]. The quasi-judicial powers of the district level committee make it an essential disputes resolution body in the three-tiered structure. It's a strong step since it reduces the burden on courts while providing specialised forum to address school fee related grievances. Further, the district committee shall communicate its decision within thirty days from the date of receipt of an appeal, failing which the matter shall be referred to the Revision Committee[41]. In case any parent or management or Parents' Teachers Association has any grievance with respect to the decision of the District Committee, they can prefer an appeal to Revision Committee[42]. This ensures that the issue does not remain unresolved. Also. the strict timelines play a crucial role in education related disputes where the delay in decision of any

[37] *Id.*, s 5(8).
[38] *Id.*, s 6.
[39] *Id.*, s 7(1).
[40] *Id.*, s 7(4).
[41] *Id.*, s 7(7).
[42] *Id.*, s 7(9).

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committee directly affect the financial planning of families and continuity of academics of students.

Revision Committee (Section 9)

The third and final level of three-tier structure is the Revision Committee, which shall be constituted by the government under section 9, through a notification[43]. Section 9 of the Act lays down the structure and constitution of Revision Committee. This committee shall act as the highest appellate forum under the three-tier structure, it shall be comprised of six categories of the members[44]. The structural composition of the Revision Committee shall be as under:

i. An eminent person having made valuable contribution in the field of education shall act as the Chairperson,
ii. Additional Director of Education shall act as Ex-officio Member-Secretary,
iii. A Chartered Accountant,
iv. Controller of Accounts/ Deputy Controller of Accounts,
v. Representative of schools, and
vi. Representative of parents.

The presence of an eminent person from the education sector ensures that deliberations are not purely administrative or financial but also sensitive to the pedagogical needs of schools and students. This tier provides the final opportunity for redressal within the regulatory framework before parties resort to constitutional remedies.

Critical Oversight

The three-tier structure of Delhi School Education (Transparency in Fixation and Regulations of Fees) Act reflects a progressive regulatory framework by the Delhi government. This mechanism decentralises the decision-making through an active involvement of parents and school management directly at the grass root level with appellate oversight within the hands of District Level Appellate Committee and Revision Committee. While bringing together transparency, social representation, and quasi-judicial authority, the Act attempts to strike a balance of stakeholders' interests in a sector as sensitive as education.

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[43] *Id.*, s 9(1).
[44] *Ibid*

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However, a possible limitation is the real functioning of these committees. For instance, the dominance of school management in the School Level Committee might dilute the role of parents, even with procedural protections such as draw of lots. Likewise, marginalised group representation, might be subjected to tokenism unless supported with true empowerment. Another issue is whether District Committees will be sufficiently resourced and autonomous to be effective, considering they will be dependent upon officers already carrying a heavy load of administrative tasks.

Nevertheless, if put into effect both in letter and spirit, the Act has the potential of introducing much-needed transparency and accountability in the regulation of fees in private schools, a subject matter which has been contentious in Delhi for decades.

Factors for Determination of Fee

The Act sets clear parameters for determination of school fees. Section 8 the Act lists down various factors that shall be considered while deciding fee levied by a school[45]. This provision ensures a rational and transparent way for fee fixation by preventing arbitrary or one-sided fee hikes. These factors are listed below:

i. Location of the school,
ii. Infrastructure and quality of education,
iii. Facilities promised in the prospectus or website of the school,
iv. Education standards maintained by school,
v. Expenditure on administration and maintenance of school,
vi. Excess funds generated as part of charity,
vii. Contribution by the government under any schemes,
viii. Qualified teaching and non-teaching staff as per their salary components,
ix. Salary increments,
x. Expenditure incurred over students over the total income of the school,
xi. Reasonable revenue surplus and
xii. Any other factor which may be prescribed.

[45] The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025, s 8.

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By listing down the aforementioned factors the Act has emphasised on evidence-based fee regulation. School fee will be increased upon consideration of both costs and fairness, therefore striking a balance between financial viability of schools and affordability for parents.

Penal Provisions

The Act has introduced strong deterrent measure against non-compliance of the provisions, making compliance mandatory rather than optional. Section 12 of the Act deals with penal provision, it states that violation of any provision of the Act or any rule made under the Act shall attract penalties[46]. There are different penalties for repeated violation under this section. These penalties are as follows:

First Violation

If a school levies fee which is not determined under this Act, the Director of Education can direct the school to roll back such fee or refund the excess fee to the student within twenty working days. In addition, such instance shall be treated as first violation by the school and a penalty of not less than one lakh rupees and extendable up to five lakh rupees shall be levied on the school[47].

Second Violation

For a subsequent violation, the school shall be charged with a penalty amounting to not less than two lakh rupees and extendable up to ten lakh rupees[48].

Non-Compliance with the Orders

In instances where the school do not comply with the directions of Director of Education to roll back or refund excess fees, the school shall be charged with double the amount imposed earlier. Such amount of fine shall be tripled if the non-compliance extends to forty days, quadruple if it extends to sixty days and so on[49].

Repeated Violations

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[46] *Id.*, s 12.
[47] The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025, s 12(2)(a).
[48] *Id.*, s 12(2)(b).
[49] *Id.*, s 12(2).

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In case of repeated violations of the provisions under the Act by the school management, the Director of Education in addition to the penalties can order for:

i. Suspension or withdrawal of recognition of such school,
ii. Taking over of the management of such school, and
iii. Can restrict the right of such management of school to propose fee increase for subsequent years[50].

It's crucial to note that the Act also provides right of fair hearing to the school management by providing reasonable opportunity of being heard[51]. The Director of Education can only impose penalty or pass any order as mentioned herein after giving notice to the management of school for a reasonable opportunity of being heard.

The penal framework of the Act is strict and through, it not only ensures that parents receive refunds but also increases the penalty for repeated non-compliance. The potential for suspension or takeover of management demonstrates the government's commitment to prevent exploitation. Additionally, the guarantee of a fair hearing protects schools from unfair administrative actions. The true challenge, however, will be in enforcement of these penal provisions, it remains to be seen if the Directorate of Education has enough resources and political determination to enforce these penalties effectively.

Prohibition on Coercive Recovery of Fees

Section 13 of the Act is one of the crucial provisions in favour of students' welfare. This section prohibits fee recovery through coercive means. It states that no school shall harass any student by using coercive practices such as striking down the name of student from the rolls for non-payment of fees, withholding results of examination, denying access to education, classes or activities, public humiliation or psychological harassment[52]. In case any school is found using such practice then the Director of Education can impose a penalty of fifty thousand rupees per violation against every student. Such penalty can only be imposed after giving reasonable opportunity to the school for of being heard[53].

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[50] *Id.*, s 12(3).
[51] *Id.*, s 12(4).
[52] *Id.*, s 13(1).
[53] *Id.*, s 13(2).

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This provision was much need as it places the right of child to get education and their dignity above financial disputes. By putting a bar on the coercive practices, the Act protects students from becoming collateral damage in disputes between parents and schools. However, effectiveness of this provision will again depend on strict monitoring, as such practices often occur informally and are harder to prove.

Mode of Recovery of Penalties

To ensure that the penalties do not remain just on paper, the Act has categorically provided provision for mode of recovery of penalties. Section 14 of the Act provide powers of civil court to the Director of Education for enforcing penalties under the Act. The penalties under the Act shall be treated as if they were decree for payment of money passed by a civil court which shall include attachment and sale of movable or immovable property of the School Management, taking possession of the property over which security interest is created or any other property of the school management and appointing receiver for such property and to sell the same, appointing a receiver for the management of the movable or immovable properties of the School Management; any other mode of recovery as may be prescribed by the government[54].

Granting civil court powers to the Director of Education is a practical step, it ensures that fines can actually be collected. This prevents the lengthy court proceedings and adds to the deterrent effect of the Act. But there should be some restrictions on misuse of these powers since attachment of property or takeover of management can have serious implications.

Stakeholder Perspectives

The enactment of Delhi School Education (Transparency in Fixation and Regulations of Fees) Act has generated wide range of perspectives from stakeholders. It had received varied responses from parents and schools even at the stage when the bill was introduced in the legislative assembly of Delhi. The Times of India reported that the bill sparked a wave of reaction across the capital city and has been welcomed largely by parents and school principals[55]. It's unsurprising that the bill received such wide spectrum response from stakeholders, since regulation of fee directly impacts the financial structure of schools,

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[54] *Id.*, s 14.

[55] 'Delhi School Fee Regulation Bill 2025 Draws Praise from Parents, Criticism from Opposition' *Times of India* (30 April 2025) https://timesofindia.indiatimes.com/education/news/delhi-school-fee-regulation-bill-2025-draws-praise-from-parents-criticism-from-opposition/articleshow/120768045.cms accessed 18 September 2025.

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affordability of education for parents and forms a larger political discourse around governance. Understanding these perspectives is essential to assess the law's effectiveness and potential challenges in implementation.

Parents and Parents Association

Parents, especially the middle-class families that dominate Delhi's education landscape has widely welcomed the Act. Different episodes of 2024 and early 2025 where students were stopped by bouncers, expelled, confined to libraries or denied entry in classrooms over fee disputes has stemmed the public opinion and strengthened the demand for systemic reform. According to PTI News Update, the president of Delhi Parents' Association called the bill as a long-awaited development[56]. Similarly, parent groups like the United Parents' Voice (UPV) and other locals have praised the Act for placing legal limits on profiteering and establishing forums where grievances can be heard.

Most of the parents opined that transparency provisions such as mandatory disclosures, publication of fee structures on schools' website, and disclosure of financial statements are a form of empowerment[57]. Earlier fee demands had often arrived as unilateral circulars and there was very little scope for questioning. The Act requires compulsory disclosures and prior approval from the school level committee for fee hikes. These reforms have shifted the balance of power in the direction of a more dialogic relationship between the parents and the schools.

Despite the enactment of the Act and its stringent provisions, parents are still cautious. Since, experiences under the old Act of 1973 and earlier orders by Director of Education demonstrate that schools have consistently managed to evade regulations, by simply bringing in fresh categories of charges or exploiting loopholes in legislation. Parent groups thus assert that the test of the 2025 Act lies in implementation capacity and political will. There is also a fear amongst parents regarding frequent litigation and bureaucratic processes that could cause delays, compelling parents to keep paying disputed amounts in the meantime.

Schools and Management Bodies

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[56] *Ibid.*

[57] 'Explained: Delhi School Education Bill, Key Provisions, Three-Tier Watchdog, and Whether It Really Reins in Profiteering' *Times of India* (5 August 2025) https://timesofindia.indiatimes.com/education/news/explained-delhi-school-education-bill-key-provisions-three-tier-watchdog-and-whether-it-really-reins-in-profiteering/articleshow/123113667.cms?utm accessed 11 September 2025.

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The new Act has also been welcomed by most of the schools in Delhi. As reported by PTI News Update, principal of ITL Internation School in Dwarka stated that the Act would bring transparency between parents and schools and will resolve the longstanding concerns regarding unexplained fee hikes. Likewise, chairperson of Sovereign school in Rohini supported the inclusion of five parents in the fee regulation committee and called it a unique approach allowing parents to directly share their perspective of fee related matters[58]. However, some schools have also shown concerns and disagreement against the implementation of the Act. The president of Action Committee Unaided Private Recognised Schools (an organisation representing over four-hundred schools in Delhi) opined that while private schools play crucial role in nation-building, it is equally important that the autonomy of these institutions is respected and preserved[59]. Hence, there are mixed reactions amongst the schools across Delhi.

Historically, private school especially the unaided schools across NCT Delhi had operated with significant financial autonomy. The main contention of all such schools lies in the perception of interference of State in financial decision-making. To justify the fee hikes, it has been argued by management of schools that fee structures are closely related to the quality benchmarks such as salaries of teachers, infrastructure, extracurricular facilities, and international collaborations. Further, regulatory approval requirements for even slight fee hikes may lead to bureaucratic delays that might undermine the swiftness of institutions in coping up with the inflationary pressures.

Many schools claimed that provisions of the new Act, specifically with respect to surplus generation, risks their financial sustainability. Unlike government schools, private schools depend exclusively on fees for operational expenditure. Without a reasonable surplus, schools may be unable to invest in modern facilities, digital infrastructure, or competitive teacher salaries. The cap on ancillary charges is therefore viewed as problematic, since transport, development, and activity-related fees constitute an important portion of operational budgets for schools.

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[58] 'Delhi School Fee Regulation Bill 2025 Draws Praise from Parents, Criticism from Opposition' *Times of India* (30 April 2025) https://timesofindia.indiatimes.com/education/news/delhi-school-fee-regulation-bill-2025-draws-praise-from-parents-criticism-from-opposition/articleshow/120768045.cms accessed 17 September 2025.

[59] 'How Delhi's New Draft Bill Seeks to Regulate Private School Fees & Why Schools Are Apprehensive' *ThePrint* (1 May 2025) https://theprint.in/india/education/how-delhis-new-draft-bill-seeks-to-regulate-private-school-fees-why-schools-are-apprehensive/2611226/ (last accessed 18 September 2025).

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School associations has also pointed out the historical inconsistency of government regulation in Delhi. They highlight that the Directorate of Education (DoE) has often been unable to implement orders effectively, leading to an unpredictable climate. From schools' perspective, the Act risks becoming another "command-and-control" instrument without addressing ground realities such as delayed reimbursements, litigation backlogs, and lack of capacity in Fee Regulation Committees.

Political Opposition

The Opposition Aam Aadmi Party (**"AAP"**) had criticised the Act since its introduction as an Ordinance. It was contended by the Opposition that the government by introducing the Act as an Ordinance attempted to bypass the legislative process and public consultation. The Leader of Opposition (**"LoP"**) in Delhi, alleged that the BJP led Delhi government in Delhi lacks transparency and the Act instead of regulating fee hike, intends to enable fee hikes[60]. Opposition termed the Act as an eyewash[61], the LoP argued that provisions of the Act only come into force from the academic year of 2026-27, hence it does not offer any immediate relief to the parents who are currently facing the increased school fees.

The Opposition critiqued the Act and questioned the timings of introduction of the Ordinance, calling it electorally motivated. In a letter to Delhi CM, LoP Atishi stated that the draft bill was necessitated due to sudden spurt in the unregulated and arbitrary fee hike by many private schools immediately after the formation of BJP government in Delhi[62]. The Opposition argued that although the fee regulation sounds attractive, but it does little to address the deeper structural problems of education in Delhi, such as inadequate capacity in government schools, rising costs of teacher training, and urban disparities in educational access. By focusing excessively on private schools, the government is attempting to score political mileage rather than building long-term educational infrastructure.

Some opposition leaders have also suggested that stringent fee caps on private schools may inadvertently drive down the quality of education. They claim that institutions competing with

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[60] 'Education Bill Favours Private Schools over Parents, Omits Audit, Bars Civil Cases: Atishi' *Times of India* (9 August 2025) https://timesofindia.indiatimes.com/city/delhi/education-bill-favours-private-schools-over-parents-omits-audit-bars-civil-cases-atishi/articleshow/123194279.cms accessed 12 September 2025.

[61] How Delhi's Move to Rein in School Fee Hikes Looks out for Middle Class That Propelled BJP to Power' *Indian Express* (1 May 2025) https://indianexpress.com/article/cities/delhi/delhi-govt-school-fee-hike-bill-middle-class-bjp-capital-9975417/ accessed 17 September 2025.

[62] *Ibid*

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global standards, through advanced curriculum, international exchanges and modern facilities require significant funding. Further it is claimed that overregulating might discourage innovation and investment in the education sector, eventually leading to lowering down the education standards. Another major criticism by the Opposition is lack of extensive consultation prior to the Act's passage. It was argued that parents, schools, and educational experts were not adequately engaged in the drafting process, not any copy of the policy was put in public domain to seek public opinion.

The Government

The BJP led Delhi government calls the Act as a step towards transparency and affordability, Delhi Chief Minister Ms. Rekha Gupta hailed the bill as victory for parents[63]. For the government, the Act is both a policy promise and a political necessity. Education has been one of the key electoral issues in the capital city over the years, with governments attempting to showcase that they are public centric in their reforms. The 2025 Act enables the government to present itself as a protector of middle-class families and also give a warning to private institutions that profit maximisation at the expense of students would not be accepted.

Administratively, the government has some major challenges to contend with. Functional efficiency of Fee Regulation Committees is subject to timely appointments, adequate staffing, and financial expertise. There is also the issue of monitoring numerous schools spread over various districts with different fee structures. The government much act wisely, if it too strictly implements the Act then it risks offending school managements and, in the process, possibly lowering the quality of education. if it implements it too lightly then it will lose trust of parents.

The Act also carries political connotations. In advocating fee regulation, the government is appealing to the urban middle class which has already been vocal in its demands for affordability in education. At the same time, the government positions itself against elite institutions accused of profiteering by enacting an Act as a social justice measure. Critiques, argue that the timing of the Act, implies that it is as much of a political tool as it is a policy measure.

[63] 'Delhi Chief Minister Meets Parents, Assures Transparency in Private School Fee Rules' *India Today* (4 May 2025) https://www.indiatoday.in/education-today/news/story/delhi-cm-meets-parents-assures-transparency-in-private-school-fee-rules-2719449-2025-05-04 (last accessed 11 September 2025).

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V. Regulation of School Fees in Other Indian States

In recent decades there has been numerous instances of arbitrary fee hikes across the nation. The Delhi School Education (Transparency in Fixation and Regulations of Fees) Act, 2025 is not an isolated example. State such as Maharashtra, Rajasthan, Punjab, Haryana and Uttar Pradesh[64] have already put in place detailed mechanisms that attempt to strike a balance between the autonomy of private schools and the protection of parents' interests[65]. A closer look at some of these statutes provides important insights into how Delhi's reforms align with and diverge from, the national trend.

Maharashtra

The State of Maharashtra was amongst the first states to legislate comprehensive fee regulation through the Maharashtra Educational Institutions (Regulation of Fee) Act, 2011. The said Act was enacted to regulate collection of fees by educational institutions in Maharashtra[66]. It puts a bar on the schools to collect fee in excess as to the fee fixed under the Act. It also provides for constitution of Parent-Teachers Association and executive committee. The Executive Committee shall comprise of chairperson, vice-chairperson, secretary, two joint secretaries, one parent and one teacher member from every standard.

The Act also provides for representation of at least one member from Scheduled Caste, Scheduled Tribes or Backward Class in the Executive Committee. Private unaided schools must submit the proposed fee before the Executive Committee. If the proposed fee is approved by the Executive Committee, then it shall be binding for two consecutive academic years. In case of any dispute or disagreement against the decision of the Executive Committee, either the management of school or parents may approach the Divisional Fee Regulatory Committee ("DFRC")[67].

The DFRC is headed by a retired District Judge and includes a chartered accountant, education officer, and a representative of parents. The DFRC functions like a quasi-judicial body, empowered to approve, modify, or reject fee proposals based on prescribed criteria. The Act

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[64] 'Delhi Wants to Stop Massive Fee Hike in Schools. Here Is How Other States Do It' *Indian Express* (1 May 2025) https://indianexpress.com/article/cities/delhi/delhi-school-fee-norms-cpi-based-adjustment-9976170/ (last accessed 16 September 2025).

[65] 'Regulating School Fee' *The Tribune* (1 May 2025) https://www.tribuneindia.com/news/editorials/regulating-school-fee/ (last accessed 17 September 2025).

[66] The Maharashtra Educational Institutions (Regulation of Fee) Act, 2011 https://prsindia.org/files/bills_acts/acts_states/maharashtra/2014/2014MH7.pdf accessed 23 September 2025.

[67] The Maharashtra Educational Institutions (Regulation of Fee) Act, 2011, s 7.

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also lays down various factors based on which the fee of school shall be determined. Some of these factors are location of the school, infrastructure, salaries of teaching and non-teaching staff, administrative expenses, and a reasonable surplus for future development. The Act imposes penal provisions ranging from one to ten lakhs for violation of any provision of the Act.

Rajasthan

Under the Rajasthan Schools (Regulation of Fee) Act, 2016, each private school is required to constitute a School-Level Fee Committees ("SLFC") consisting of the principal, management representatives, teachers, and five elected parents from the Parent-Teacher Association. This structure ensures that parental voices are directly incorporated into the fee-setting process. Schools must propose their fee structure to the SLFC at least six months before the commencement of the academic year[68]. Once the proposed fees have been approved by the SLFC, it remains binding for three academic years. The term of three years ensures predictability and stability for parents[69].

If consensus is not achieved or there is any dispute against the decision of SLFC, the disputes are referred to the Divisional Fee Regulatory Committee ("DFRC") which is chaired by the Divisional Commissioner and includes representatives of parents and schools.[70] An appeal from DFRC orders lie before a state-level Revision Committee[71], ensuring multi-level dispute adjudication. To decide the school fee the Act specifies certain factors which has to be considered by the SLFC, DFRC or Revision Committee. These factors include location of the school, infrastructure and facilities, teacher and staff salaries, expenditure on administration and maintenance, surplus generated for reinvestment in educational development. And contributions received under government schemes[72]. To ensure strict compliance, the Act lays down penal provisions. In case any schools are found guilty of collecting fees in violation of approved structures then such school must refund the excess amounts with interest. Frequent violations or noncompliance of the provisions of the Act can lead to disqualification of members of the school management, suspension, or even withdrawal of recognition[73].

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[68] Rajasthan Schools (Regulation of Fee) Act, 2016 https://www.indiacode.nic.in/bitstream/123456789/18865/1/14_of_2016.pdf accessed 27 September 2025.

[69] Rajasthan Schools (Regulation of Fee) Act, 2016, s 4(2)(c).

[70] *Id.*, s 7.

[71] *Id.*, s 10.

[72] *Id.*, s 8.

[73] *Id.*, s 15.

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The Delhi's 2025 Act to regulate school fees has many similarities with the Rajasthan and Maharashtra's Act. Both statutes aim to curb profiteering by mandating audited accounts, disclosure of expenditures, and oversight by external regulatory bodies. Delhi's Fee Regulation Committees mirror Maharashtra's DFRCs in structure and function, both chaired by experts with the power to adjudicate disputes and enforce compliance. Like Maharashtra and Rajasthan, the Delhi Act requires regulators to consider staff salaries, infrastructure, administrative costs, and a reasonable surplus. In both frameworks, profiteering and commercialisation are expressly prohibited. Both Acts impose significant fines and allow for derecognition of schools in cases of persistent violation. Therefore, the Delhi School Education Act 2025 is not an isolated case rather it is inspired by various similar pre-existing statutes in different Indian states.

VI. Way Forward

The Delhi School Education Act 2025 stands as a pioneering framework that establishes unprecedented transparency in educational governance. This forward-looking analysis identifies opportunities to enhance its already robust structure and maximize its transformative impact.

The Act's three-tier committee structure demonstrates sophisticated governance design. This multi-layered approach ensures thorough review and balanced decision-making. The collaborative model brings diverse perspectives together, creating opportunities for consensus-building and mutual understanding between schools and parents.

The 15% threshold for collective grievances protects schools from frivolous complaints while ensuring genuine concerns receive attention. This mechanism can be enhanced by creating digital platforms for parent coordination, making collective action more accessible when needed.

Reinforcing Constitutional Strength

The Act's specialized tribunal system streamlines dispute resolution, keeping educational matters within expert forums. This focused approach ensures decisions are made by those who understand educational dynamics. The penalty structure demonstrates serious commitment to compliance, encouraging schools to maintain transparency proactively.

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The framework respects institutional autonomy while establishing clear boundaries. Schools retain flexibility in operations while parents gain meaningful oversight. This balance can be strengthened through clear guidelines that help both parties understand their roles and responsibilities.

Supporting Economic Sustainability

The three-year fee fixation cycle provides stability for family budgeting and school planning. This predictability benefits everyone in the educational ecosystem. To enhance this further, the framework could incorporate inflation-indexed adjustments and emergency provision clauses for unforeseen circumstances.

Schools can leverage this stability to focus on long-term educational improvements rather than annual fee negotiations. The system encourages institutions to plan strategically and communicate their vision effectively to parent committees.

Maximizing Implementation Success

Delhi's commitment to overseeing 1,700 schools demonstrates ambitious governance goals. The existing audit infrastructure provides a foundation that can be scaled through technology and partnerships. Digital tools, automated compliance tracking, and standardized reporting templates can multiply administrative capacity.

The Director of Education's expanded role creates centralized expertise in fee regulation. Supporting this office with specialized teams, including financial analysts and education experts, will enhance decision quality. Training programs for committee members will ensure informed, constructive participation.

Creating Clear Pathways Forward

The Act's provision for current fee structures as baselines creates a clean slate for future transparency. Schools can use this opportunity to justify their fee structures comprehensively, building trust with parents from day one.

Enhancing Operational Excellence

To strengthen the framework, consider these enhancements:

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Transparent Criteria Development

Establish clear benchmarks linking fee increases to measurable factors like inflation rates, teacher qualification improvements, and infrastructure investments. This clarity benefits both schools and parents.

Financial Transparency Tools

Introduce standardized financial reporting templates and optional third-party audits. Schools choosing voluntary audits could receive expedited committee approvals, incentivizing transparency.

Capacity Building Programs

Launch comprehensive training for committee members, covering financial literacy, educational planning, and collaborative decision-making. Well-informed committees make better decisions faster.

Digital Integration

Develop online platforms for document submission, committee meetings, and parent feedback. Technology can streamline processes and increase participation.

Flexible Framework Options

Create specialized tracks for different school types while maintaining core transparency principles. This allows institutional diversity while ensuring accountability.

Delhi can adopt best practices from other states while maintaining its innovative approach. Tamil Nadu's expertise-based model offers insights for training programs. Karnataka's digital initiatives provide templates for technology integration. Each successful element strengthens Delhi's comprehensive framework.

The Act's success trajectory can be accelerated through targeted improvements:

i. Graduated Thresholds**:** Implement sliding scales for grievance thresholds based on school size, ensuring accessibility across all institutions.

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ii. Excellence Incentives: Reward transparent schools with streamlined approval processes and public recognition, creating positive competition.
iii. Support Systems: Establish help desks and guidance centers to assist schools and parents in navigating the new framework effectively.
iv. Phased Implementation: Roll out enhanced features gradually, allowing the system to mature and stakeholders to adapt smoothly.
v. Continuous Improvement: Build feedback mechanisms that allow the framework to evolve based on real-world experiences.

Vision for Educational Excellence

Delhi's Act positions the capital as a national leader in educational governance. This framework creates an environment where schools thrive through transparency, parents engage constructively, and students benefit from stable, quality education.

The Act's true strength lies in its potential for continuous improvement. Each enhancement makes the system more robust, efficient, and effective. Delhi is building not just a regulatory framework but a collaborative ecosystem where education flourishes.

This progressive legislation sets the stage for a new era in educational governance—one where transparency drives excellence, collaboration replaces confrontation, and every stakeholder contributes to creating world-class education for Delhi's children.

VII. Conclusion

The Delhi School Education (Transparency in Fixation and Regulation of Fees) Act, 2025 marks a transformative milestone in educational governance. The Act empowers parents through direct participation in fee decisions while ensuring schools maintain complete transparency in their financial operations.

This groundbreaking legislation creates a balanced framework where educational institutions can sustainably operate while protecting families from arbitrary fee increases. The mandatory fee committees bring diverse stakeholders together, fostering collaboration between schools and parents. Schools now have clear guidelines for fee structuring, eliminating uncertainty and enabling better long-term planning.

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The Act's transparency requirements build trust between institutions and families. Parents gain insight into how their fees are utilized, while schools can justify necessary expenses with documented evidence. This mutual understanding strengthens the educational ecosystem.

By establishing standardized processes across Delhi's schools, the Act ensures equitable access to quality education. Families can make informed choices, schools can focus on educational excellence rather than fee disputes, and students benefit from a more stable learning environment.

The legislation sets a progressive precedent for educational reform nationwide. It demonstrates that regulatory frameworks can protect consumer interests while supporting institutional growth. The Act positions Delhi as a leader in educational governance, creating a model that other states can adopt and adapt.

This forward-thinking approach promises a future where education remains accessible, institutions remain viable, and the focus returns to what matters most - delivering quality education to every child.

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OVERTIME WORK CULTURE: A VIOLATION OF HUMAN RIGHTS IN MODERN EMPLOYMENT PRACTICES

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ABSTRACT

As the Indian economy rapidly moves upwards, various co-founders advise against overtime work in odd hours. Sometimes overtime work is necessary, but expecting more and normalising it raises concerns in any organisation or industry. The question remains after so many backlashes from the youth on social media and months of trending; the overtime culture shows no decline. The objective is to stand tall to preserve the individual's healthy social life, enabling them to maintain a work-life balance. We must analyse the current legal structure to understand how the rights of working individuals can be protected and what favourable conditions are provided by law. This problem requires a solution that addresses the dilemma faced by both organisations and working individuals. The study has demonstrated a correlation between overtime working hours and various health problems, including stress, burnout, and sleep deprivation. For instance, research indicates that working overtime schedules are associated with a 61% higher injury hazard rate compared to jobs without overtime (National Library of Medicine). Additionally, a prospective cohort study found that engaging in excessive overtime work was linked with a higher risk of long-term sickness absence due to mental health problems[1]. The study shows a correlation between overtime working hours and various health problems like stress, burnout, sleep deprivation, and work-life imbalance. Continuing to use of Outdated technology, poor infrastructure and programs directly affect health due to overuse of the body. The highlights of long-term overtime work affect the productivity of working individuals and strain social relationships. The mental and physical stress is unbearable in the long run .This research examines the pervasive overtime culture in modern employment practices. Furthermore, this paper concludes by addressing the issues of overtime in working culture and empowering the working individual to know their rights and encouraging a cultural shift that promotes free time and rest as essential parts of human life. It also argues the involvement of legislative action to strengthen the labor laws and enforcement of the law, employers' responsibility to provide a healthy working environment and societal changes to adapt to cultural shifts, which ensure the protection of human rights norms in current modern employment practices.

Keywords: Overtime working, Human rights, Organisation, Society

I. Introduction

Overtime work has become an entrenched part of modern work culture. Extra hours are often expected to be put in by employees to meet deadlines, manage workload, or demonstrate

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[1] Yosuke Inoue, Shuichiro Yamamoto, *et.al.*, "Overtime Work and the Incidence of Long-term Sickness Absence Due to Mental Disorders: A Prospective Cohort Study" 32 *Journal of Epidemiology* 283–289 (2022), *available at*: https://pubmed.ncbi.nlm.nih.gov/33518590/ (last visited on Sept. 02, 2025).

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commitment. But what are the human costs of this expectation? How are workers' physical and mental health, relationships, and overall well-being affected?

The culture of overtime work is a pervasive problem that has affected workers across industries and countries. According to the International Labour Organisation (ILO), long hours are being worked by millions of workers worldwide, often without adequate compensation or protection. In many countries, more than 12 hours a day, 6 days a week, are expected to be worked by workers, without adequate rest or breaks.[2]

The impact of human rights on overtime work is seen as multifaceted. Firstly, the right to rest and leisure, as enshrined in the Universal Declaration of Human Rights, is violated.[3] The right to a reasonable work-life balance is held by workers, which is deemed essential for their physical and mental health. This balance is disrupted by overtime work, leading to fatigue, stress, and burnout.

Secondly, the right to fair compensation and safe working conditions is violated by overtime work. Adequate payment for their work is often not received by workers who work long hours, and hazardous working conditions may be encountered by. This is particularly true for workers in low-wage industries, such as manufacturing, construction, and agriculture.

Thirdly, the right to family life and relationships is violated by overtime work. Limited time for their families and loved ones is often experienced by workers who work long hours, leading to strained relationships and social isolation. Long-term consequences for workers' mental health and well-being can be caused by this[4].

Finally, the right to equality and non-discrimination is violated by overtime work. Long hours may disproportionately affect workers, particularly women, migrant workers, and workers with disabilities, who are expected to work. Existing inequalities and discrimination in the workplace can be perpetuated by this.

Constitutional limitations with regard to excess overtime must also be considered. While India's Constitution does not specifically guarantee a "right to disconnect" or limits on the number of working hours per week, recent interpretations of Article 21 of the Indian

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[2] International Labour Organization, Working Time and Work-Life Balance around the World, *available at*: https://www.ilo.org/publications/working-time-and-work-life-balance-around-world (last visited on Sept. 01, 2025).

[3] The Universal Declaration of Human Rights, 1948, art. 24, *available at*: https://www.un.org/en/about-us/universal-declaration-of-human-rights (last visited on Aug. 02, 2025).

[4] Jiaoyang Yu & Stavroula Leka, "The Effect of Worktime Control on Overtime Employees' Mental Health and Work-Family Conflict: The Mediating Role of Voluntary Overtime" 19 *International Journal of Environmental Research and Public Health* 3767 (2022), *available at*: https://pmc.ncbi.nlm.nih.gov/articles/PMC8997466/ (last visited on Sept. 01, 2025)

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Constitution (i.e., the Right to Life) by the Supreme Court have consistently emphasized that the right to life includes protection for the dignity, health and quality of life of all people[5].

Thus, employers' reliance on overtime which is either mandatory, or otherwise financially coercive to their employees could result in a constitutionally protected violation of employees' rights when they are required to give up their physical and mental well-being in order to protect their jobs. Additionally, under the Directive Principles of State Policy (Article 39), it is constitutionally mandated that States provide humane working conditions; adequate living standards (Article 41); and protection from exploitation (Article 42). With the rise of the digital age and employee availability via email, message apps and other forms of virtual communication outside regular working hours, the separation between individuals private lives and their employment has been significantly diminished[6]. As such, the always-on nature of today's workplace has changed what was once seen as an occasional necessity in terms of working overtime into a permanent expectation, leading to increased levels of emotional fatigue, psychological distress and social isolation in many employees.

The causes of overtime work are complex and multifaceted. One major factor is the culture of presenteeism, which emphasises the importance of being present at work, regardless of the hours worked. This culture is perpetuated by productivity and efficiency being prioritised over workers' well-being by managers and employers.

The phenomenon of overtime work culture has been observed to be a pervasive issue in modern employment practices in India. It has been noted that the relentless pursuit of productivity and profit has led to an expectation that employees will work beyond their regular hours to meet the demands of their jobs. However, it has been recognised that this culture of overtime work has severe consequences for the physical and mental health of employees, ultimately violating their human rights. The impact of overtime work culture on employees' health and well-being cannot be overstated. Research has shown that working long hours can lead to a range of health

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[5] Sunaina, "Labour and Service Law in 2025: Landmark Reforms and Defining Judgments" SCC Times, 2026, *available at*: https://www.scconline.com/blog/post/2026/01/07/labour-and-service-law-developments-2025-india/ (last visited May 4, 2026).

[6] Archit Musale, "Right To Disconnect: Reclaiming Boundaries In Digital Age," 2025, *available at*: https://www.livelaw.in/lawschool/articles/employees-mental-health-and-right-to-disconnect-in-india-513926 (last visited May 14, 2026).

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problems, including cardiovascular disease, diabetes, and depression.[7] Furthermore, the pressure to work overtime can lead to stress, anxiety, and burnout, ultimately affecting employees' overall quality of life.

In addition to the health consequences, the overtime work culture also has significant social and economic implications. For example, employees who work long hours may have limited time for family and social activities, leading to social isolation and decreased community engagement. Furthermore, the economic costs of an overtime work culture can be significant, with estimates suggesting that the annual cost of overtime work in India is more than ₹50,000 crores.[8]

In light of these findings, policymakers, employers, and employees must work together to address the issue of overtime work culture in India. This can involve implementing policies and practices that promote work-life balance, providing employees with adequate compensation and benefits for overtime work, and raising awareness about the risks and consequences of overtime work culture.

II. New Codes and Overtime Policy in India

In recent years, India has implemented significant changes in its labor laws by introducing new labor codes.[9] The Government of India has streamlined numerous older regulations into a few comprehensive codes that aim to simplify compliance while enhancing worker protection. Two of the most important of these reforms are the Code on Wages and the Occupational Safety, Health and Working Conditions Code. These new codes clarify wage calculations, standardise working hours, and ensure that overtime work is fairly compensated.

Under the new labor codes, the following provisions specifically address overtime work:

i. Standard Working Hours: Most employees are now expected to work no more than nine hours per day or 48 hours per week. Any work performed beyond these limits is officially classified as overtime.

ii. Overtime Compensation: Employees who work extra hours must receive overtime pay at a rate of at least twice the normal hourly wage. This measure is designed to ensure

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7 Marianna Virtanen & Mika Kivimäki, "Long Working Hours and Risk of Cardiovascular Disease" 20 *Current Cardiology Reports* 123 (2018). DOI: 10.1007/s11886-018-1049-9.

8 Government of India, "Economic Survey 2024-25" (Ministry of Finance, Department of Economic Affairs, January 2025), available at: https://www.indiabudget.gov.in/budget2024-25/economicsurvey/doc/echapter.pdf (last visited on Aug. 22, 2025).

9 Government of India, Ministry of Labour and Employment, "New Labour Code for New India" (Ministry of Information and Broadcasting, 2020), available at: https://labour.gov.in/sites/default/files/labour_code_eng.pdf (last visited on Aug. 11, 2025).

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that workers receive proper remuneration for additional work and to discourage employers from overburdening their staff.

iii. Simplification of Regulations: By consolidating numerous outdated laws into unified codes, the government has reduced the confusion associated with conflicting rules. Both employers and workers now have a clearer understanding of their rights and obligations under a consistent regulatory framework.

Comparing Overtime Policies: Before vs. After the New Codes

The table:1 below summarises the key differences between the previous overtime policy framework and the current provisions under the new labor codes.

Aspect	**Before (Pre-New Code)**	**After (New Code)**	**Source**
Standard Work Hours	9 hours/day or 48 hours/week	9 hours/day or 48 hours/week	Government of India, 2020–2021
Overtime Rate	Generally, at least 2 times the ordinary rate	Mandated at least 2 times the ordinary rate	Ministry of Labour, 2020
Regulatory Complexity	Multiple laws with varying definitions	Unified labor codes for clarity and enforcement	Official Gazette, 2020–2021
Employer Compliance	Varied by region and interpretation	Uniform standards across the country	Official Gazette, 2020–2021

Table:1

This comparison clearly shows that the new codes have not only standardised the overtime pay rate but have also simplified the overall regulatory framework.

The recent progress of the New Labour Codes appears progressive on paper; however, there are still a number of issues with the implementation of these new labour codes as well as the potential effectiveness of these labour codes. Some critics argue that although the combination of all labour laws into one code makes it easier for employers to comply, this is likely to lead to some provisions which protect employees being diluted through the use of executive discretion, and/or inadequate enforcement mechanisms[10]. Employees in industries that are characterized by non-formalized labour arrangements, contract labor, or gig based labor do not have the bargaining position to negotiate for overtime pay as mandated by law. Additionally,

[10] "Government Makes the Four Labour Codes effective to Simplify and Streamline Labour Laws," available at: https://www.pib.gov.in/www.pib.gov.in/Pressreleaseshare.aspx?PRID=2192463 (last visited May 3, 2026).

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even though the State has the legal authority to conduct labour inspections and monitor employer compliance, the consistency of such activities varies from state to state. Therefore, the extent to which employees can take advantage of protections afforded by these labour codes will be dependent on institutional accountability, and consistent and adequate enforcement at the local (ground) level[11].

Implications for Workers and Employers

The new overtime policy carries important implications for both workers and employers:

i. For Workers: Clear definitions of working hours and guaranteed overtime rates offer better protection against exploitation. With legally mandated compensation for extra hours, employees can be assured that their additional work is valued appropriately. Furthermore, defined limits on work hours are expected to foster a healthier work-life balance, reducing the risk of burnout and stress-related illnesses.

ii. For Employers: The streamlined regulatory framework provides businesses with consistent rules across all states. This uniformity makes it easier to manage work schedules and payroll, reducing administrative complexities. However, employers must now be more diligent with record-keeping and compliance, as the new rules are strictly enforced.

Overall Impact: The new codes are designed to balance economic growth with worker welfare. By ensuring fair overtime compensation and limiting excessive work hours, these reforms aim to improve job satisfaction and productivity while contributing to a healthier, more sustainable workforce.

Challenges and Future Outlook

While the new labor codes offer clear benefits, there are challenges ahead. Enforcement of the new regulations may vary across different regions and sectors. Industries with a large informal workforce might find it difficult to adhere to the standardised norms immediately. Sectors such as manufacturing and construction, where overtime has traditionally been high, may need time to adjust their operational practices and payroll systems[12]. Nevertheless, with proper enforcement and continuous monitoring by state authorities, the long-term benefits of these

[11] Dr. Priyanka Chhibber , Dr. Preet Kanwal , and Dr. Shivani Dhand, Perspectives on Industrial Relations, Labour Laws, and Workforce Transformation in India and Beyond: Towards the Achievement of the SDGs (LPU Publication House , Punjab, 2026).

[12] Naman Jain, "Impact of the New Labour Codes on Employers and Employees: What You Need to Know" Corridalegal, 2025available at: https://corridalegal.com/impact-of-the-new-labour-codes-on-employers-and-employees-what-you-need-to-know/ (last visited Sept.31, 2025).

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reforms are expected to outweigh the initial challenges. The new policies have the potential to create a more equitable work environment that not only improves worker well-being but also enhances overall productivity and economic stability.

III. Data and Statistical Analysis

Prevalence of Overtime Work in India

India ranks among the countries with the highest rates of overtime work, with millions of workers exceeding the standard 48-hour workweek. The Table:2 below shows the distribution of weekly work hours across different segments of the workforce.

Weekly Work Hours	Percentage of Workforce	Estimated Number of Workers (in millions)	Source
35–40 hours	22%	55	International Labour Organisation (ILO), 2023
41–48 hours	32%	80	National Sample Survey Office (NSSO), 2023
49–55 hours	25%	62.5	Periodic Labour Force Survey (PLFS), 2023
56–60 hours	13%	32.5	Economic Survey of India, 2023
61+ hours	8%	20	Indian Council of Medical Research (ICMR), 2023

Table:2

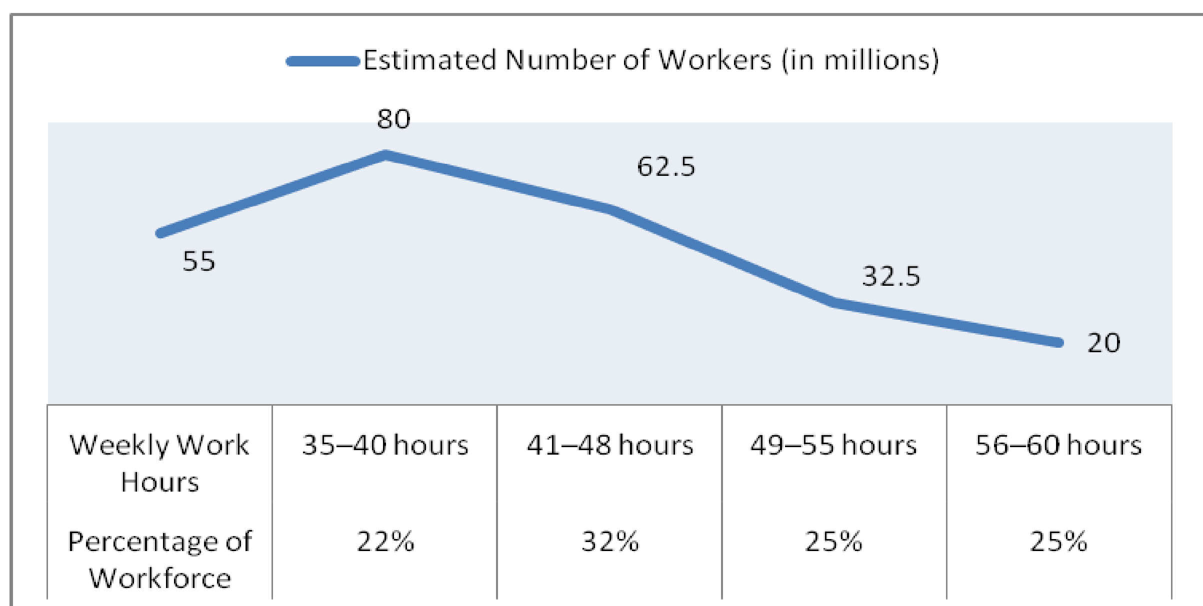

Figure:1

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i. As per Figure:1, More than 57% of Indian workers exceed the international standard of 40 hours per week, with about 21% working over 55 hours weekly—raising serious concerns about work-life balance and health risks.
ii. Overtime is most common in unorganised sectors, especially in manufacturing, construction, and services.
iii. India's overtime prevalence is significantly higher than the global average (the ILO estimates that only 18% of the global workforce works 55 or more hours per week).

Overtime in the workplace in India is becoming less about a labor requirement from time to time and much more about standard procedure for the majority of workers. This trend represents the larger structural changes taking place under neo liberalism, which values production, efficiency, competition, etc., above worker welfare. In addition to these structural issues related to the exploitation of labor by capital there exists significant inequalities in employer/employee power dynamics. For example, in low-wage, high-labour-intensity industries (e.g., manufacturing), economic instability can lead many workers to endure poor wages and long hours rather than risk losing their jobs. Therefore, overtime practices need to be viewed not just as a company policy issue, but as a system-wide labour regulatory issue with serious implications for human rights.

Impact of Overtime Work on Worker Well-being

As per Table:3, Numerous studies confirm a strong link between long work hours and declining worker well-being, including both physical and mental health risks. The table below illustrates how overtime hours affect overall well-being.

Table:3

Overtime Work Hours	Worker Well-being Index (out of 100)	% Change from Baseline (40-hour workweek)	Source
0–5 hours	82	—	WHO & ILO Joint Report on Work Stress, 2023
6–10 hours	74	-9.8%	Indian Council of Medical Research (ICMR), 2023
11–15 hours	65	-20.7%	National Institute of Occupational Health (NIOH), 2023
16+ hours	52	-36.6%	Economic Times Workplace Stress Study, 2023

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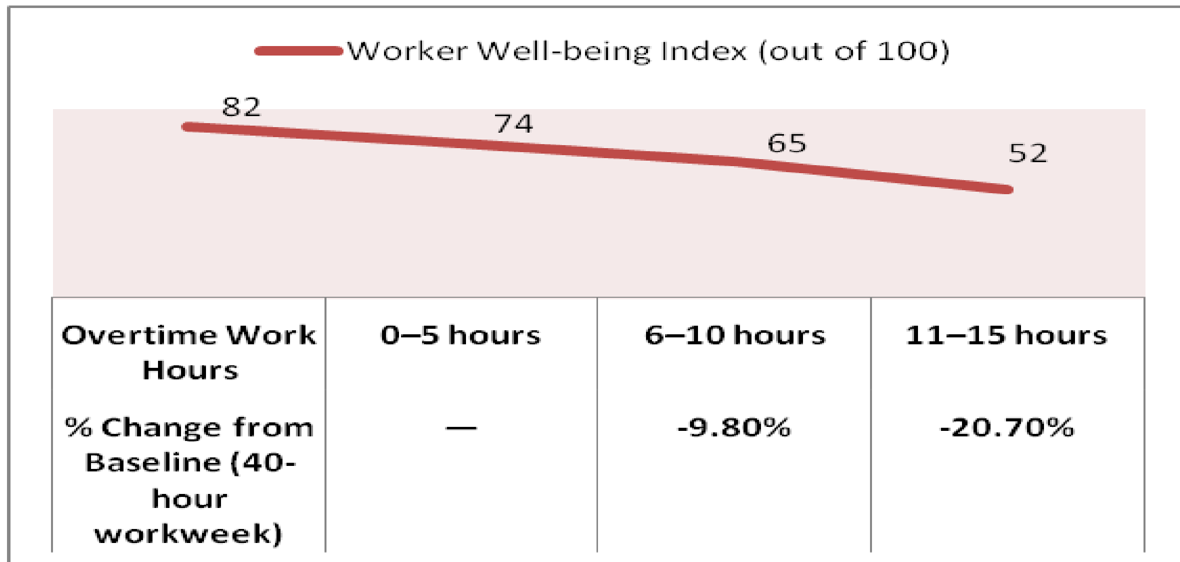

Figure:2

i. Workers putting in more than 15 hours of overtime per week experience a 36.6% decline in their well-being, facing higher risks of hypertension, cardiovascular problems, sleep deprivation, and depression.

ii. Mental health issues such as anxiety and burnout increase significantly as overtime hours rise.

iii. The World Health Organisation (WHO) estimates that overwork contributes to 745,000 deaths each year worldwide due to stroke and heart disease.

Industry-wise Overtime Work Analysis

Different industries in India show varying levels of overtime work due to factors like labor demand, economic pressure, and employer expectations. The following table:4 summaries these differences:

Industry	% of Workers Doing Overtime	Average Weekly Overtime Hours	Worker Well-being Index (out of 100)	Source
Manufacturing	42%	11	64	Confederation of Indian Industry (CII), 2023
Construction	38%	13	58	Labour Bureau, Govt. of India, 2023
Services	31%	9	70	National Sample Survey (NSS), 2023

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IT & Finance	29%	16	54	NASSCOM Workplace Report, 2023
Retail	22%	7	75	Retail Association of India (RAI), 2023

Table:4

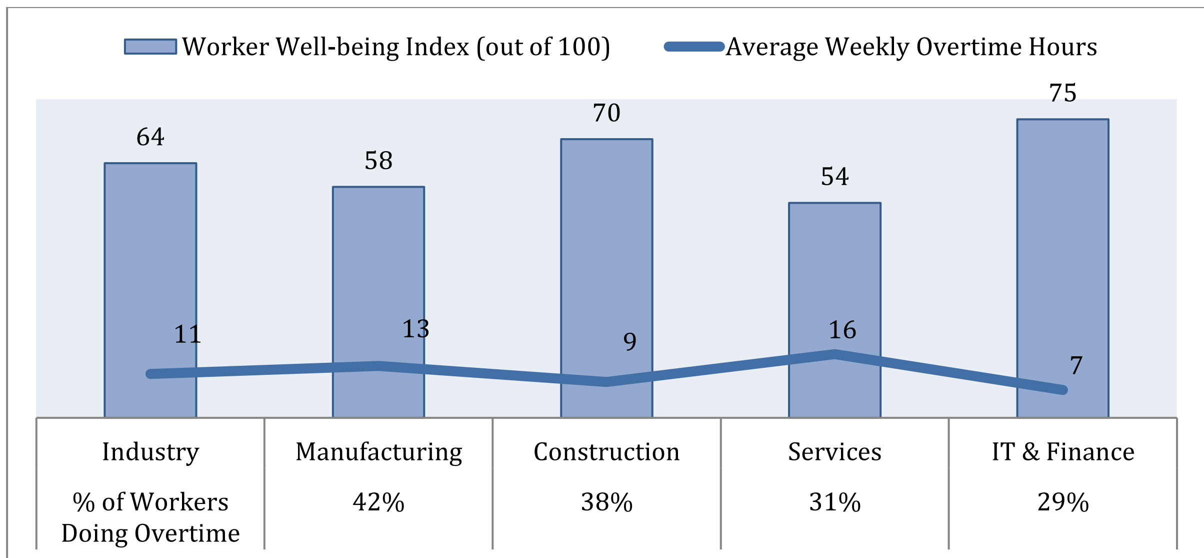

Figure:3

i. The manufacturing and construction sectors exhibit the highest overtime rates, with workers averaging an extra 10–13 hours per week.

ii. IT & Finance professionals face the longest average overtime (16 hours per week), often driven by corporate culture and performance-based incentives.

iii. In contrast, retail workers generally work the least overtime, resulting in the highest well-being scores among the groups analysed.

Overtime Work and Health Risks

As mentioned in Table:5, Extended work hours are closely linked to an increase in both physical and mental health issues. The table below highlights some of the key health risks associated with overtime work:

Health Condition	**% Increase Among Overtime Workers**	**Source**
Hypertension	32%	Indian Medical Association (IMA), 2023
Cardiovascular Disease	27%	WHO & ILO Joint Report, 2023

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Depression & Anxiety	45%	National Institute of Mental Health (NIMH), 2023
Sleep Disorders	40%	Indian Council of Medical Research (ICMR), 2023

Table:5

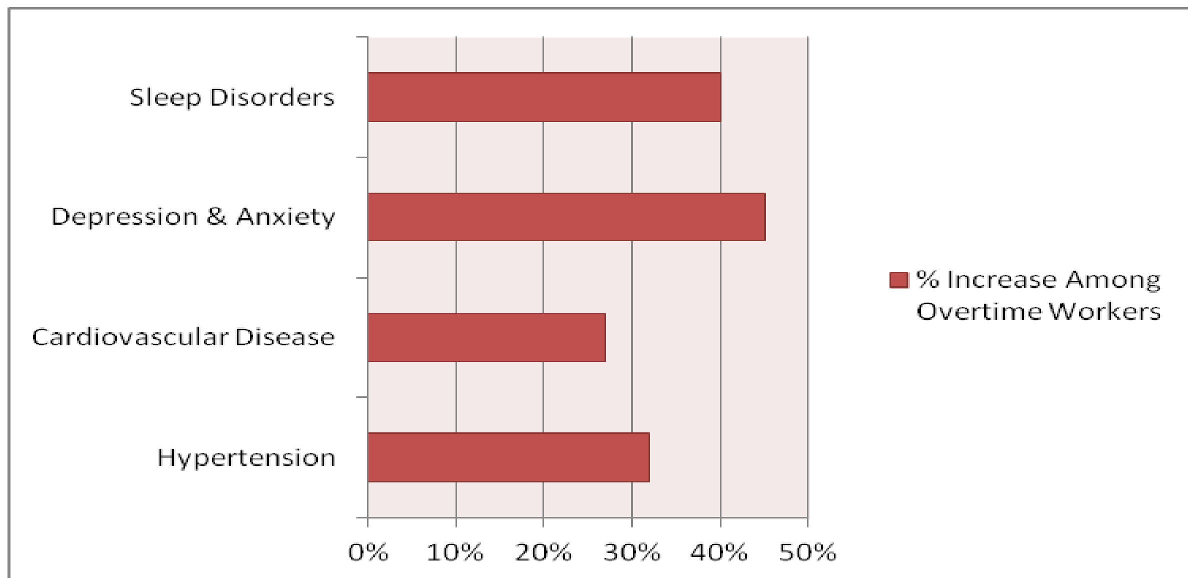

Figure:4

i. Workers doing more than 10 hours of overtime each week face a 32% higher risk of developing hypertension, which can have serious long-term health consequences.
ii. Overtime is associated with a 45% increase in mental health issues, such as depression and anxiety, leading to burnout and lower productivity.
iii. The economic impact of poor worker well-being due to excessive overtime is estimated at $12 billion per year in lost productivity and increased healthcare costs[13].

IV. Law relating to Overtime in India

The Indian government has enacted several laws and regulations to regulate overtime work and protect workers' rights. The emergence of the gig economy and platform-based work arrangements has added an additional layer of complexity to overtime regulations in India. Many workers associated with various digital platforms (e.g., Zomato and Swiggy), ride-sharing companies, and app-based service providers do not fall under traditional employer-employee models; this limits the application of general labour rights to these workers. Many gig employers use performance ratings, which are rankings from algorithmically driven

[13] World Health Organization, Guidelines on Mental Health at Work (Geneva, 2022), *available at*: https:// www.who.int/publications/i/item/9789240053052 (last visited on Sept. 01, 2025).

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systems, to encourage their workers to be on call longer than would otherwise be required[14]. Surge pricing and incentives create conditions where overtime is also more likely to occur. As a result, while there is growing concern about overtime abuse in the gig economy due to its substantial negative impacts on the health (both physical and mental), financial security, and social security of workers involved, regulatory frameworks addressing these issues are inadequate. Therefore, as a direct result of the rapidly expanding use of platform-based labour, current labour legislation will need to be reassessed so that technological advancements cannot erode the core rights of all workers.

Factories Act, 1948[15]

The Factories Act, of 1948, is a comprehensive legislation that regulates the working conditions of workers in factories. The Act defines a factory as any premises where 10 or more workers are employed with the aid of power or 20 or more workers are employed without the aid of power.The Factories Act, of 1948, regulates overtime work in factories by providing that no worker shall be required or allowed to work in a factory for more than 48 hours in any week. The Act also provides that workers who work overtime shall be paid at a rate of twice the ordinary rate of wages.

Shops and Establishment Act, 1953[16]

The Shops and Establishment Act, of 1953, is a state-level legislation that regulates the working conditions of workers in shops and commercial establishments. The Act provides that no worker shall be required or allowed to work in a shop or commercial establishment for more than 9 hours in any day. The Shops and Establishment Act, of 1953, also regulates overtime work in shops and commercial establishments by providing that workers who work overtime shall be paid at a rate twice the ordinary rate of wages.

Minimum Wages Act, 1948[17]

The Minimum Wages Act, of 1948, is legislation that regulates the minimum wages payable to workers in various industries. The Act provides that every employer shall pay to every worker employed by him wages at a rate not less than the minimum rate of wages fixed by the government. The Minimum Wages Act, of 1948, also provides that workers who work overtime shall be paid at a rate twice the ordinary rate of wages.

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[14] Pooja Kumari, "The Gig Economy's Legal Grey Area: Re-Interpreting 'Workman' And'Employee' For Platform-Basedlabour In India," 10, *International Journal of Scientific Development and Research* 662–71 (2025)

[15] The Factories Act, 1948, No. 63, Acts of Parliament, 1948 (India)

[16] The Delhi Shops and Establishments Act, 1954, No. 7 of 1954, Acts of Delhi Legislature, 1954 (India)

[17] The Minimum Wages Act, 1948, No. 11, Acts of Parliament, 1948 (India)

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Payment of Wages Act, 1936[18]

The Payment of Wages Act, of 1936, is legislation that regulates the payment of wages to workers. The Act provides that every employer shall pay to every worker employed by him wages on a working day and before the expiry of the seventh day from the date of payment. The Payment of Wages Act, of 1936, also provides that workers who work overtime shall be paid at a rate of twice the ordinary rate of wages.

Code on Wages, 2019[19]

The Code on Wages, 2019, is legislation that consolidates and simplifies the existing laws relating to wages, including the Minimum Wages Act, of 1948, the Payment of Wages Act, of 1936, and the Equal Remuneration Act, of 1976. The Code on Wages, 2019, provides that every employer shall pay every worker employed by him wages at a rate not less than the minimum rate of wages fixed by the government. The Code also provides that workers who work overtime shall be paid at twice the ordinary rate of wages.

Occupational Safety, Health and Working Conditions Code, 2020[20]

The Occupational Safety, Health and Working Conditions Code, 2020, is a legislation that regulates the occupational safety, health, and working conditions of workers. The Code provides that every employer shall ensure that every worker employed by him is provided with a safe and healthy working environment. The Occupational Safety, Health and Working Conditions Code, 2020, also provides that workers who work overtime shall be paid at a rate twice the ordinary rate of wages.

State-level Legislations

In addition to the central legislation, several state governments in India have enacted their own laws and regulations to regulate overtime work. For example, the Maharashtra government has enacted the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017, which regulates the working conditions of workers in shops and commercial establishments in the state[21]. Similarly, the Karnataka government has enacted the Karnataka Shops and Commercial Establishments Act, 1961, which regulates the working conditions of workers in shops and commercial establishments in the state.

[18] The Payment of Wages Act, 1936, No. 4 of 1936, Acts of Parliament, 1936 (India)

[19] The Code on Wages, 2019, No. 29 of 2019, Acts of Parliament, 2019 (India)

[20] The Occupational Safety, Health and Working Conditions Code, 2020, No. 37 of 2020, Acts of Parliament, 2020 (India)

[21] Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017," (2017).

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The Indian government has enacted several laws and regulations to regulate overtime work and protect the rights of workers. These laws aim to prevent the exploitation of workers, promote fair labour practices, and ensure that workers receive fair compensation for their work. However, the implementation of these laws remains a challenge, and there is a need for greater awareness and enforcement of these laws to protect the rights of workers.

In this regard, the laws on overtime in India are designed to reflect an approach to achieve two opposing objectives: namely; increased industrial output and the protection of worker dignity and well-being. While there exist formal protections for workers through legislation, the reality is that these provisions have little or no impact due to lack of enforcement, especially amongst those who are employed in non-formal, non-regulated sections of the economy[22]. Furthermore, the continued prevalence of unpaid overtime, long working hours and pressures placed upon employees by their employers in terms of what they expect from them at the workplace raise serious questions as to whether labor regulations are capable of effectively regulating current forms of employment. In relation to human rights issues surrounding overtime, the regulation of overtime cannot be solely focused on ensuring that workers receive appropriate remuneration (i.e., adequate pay) for their work, it must also ensure that workers' physical, mental and social well-being is protected. Ultimately, a long-hours culture undermines the overarching constitutional ideals contained in India's labor law of providing humane and fair workplaces.

V. Overtime work culture India vs Australia comparative analysis

Over time culture significantly vary across countries because of the differences in labour laws, economic conditions, workplace norms, and societal expectations. Both India and Australia represent two distinct work culture- one with a high regularity of extended working hours and another with a strong emphasis on the work-life balance[23]. Overtime work culture varies significantly across countries due to differences in labor laws, workplace norms, and socio-economic factors. India and Australia represent two distinct models in terms of labor regulation, employee rights, and work-life balance. This paper examines the overtime work

[22] "Overtime Policy in India: A Legal Guide for 2026,"available at: https://www.mewurk.com/blog/ understanding -overtime-policy-in-india-a-quick-guide (last visited May 14, 2026).

[23] Jenni Ervasti, Jaana Pentti, *et.al.*, "Long Working Hours and Risk of 50 Health Conditions and Mortality Outcomes: A Multicohort Study in Four European Countries" 11 Lancet Regional Health – Europe 100212 (2021), available at: https://pubmed.ncbi.nlm.nih.gov/34917998/ (last visited on Sept. 02, 2025).

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culture in both countries, analyzing legal provisions, employer expectations, employee perspectives, and the impact on productivity and well-being.

Overtime regulations:

Factors	India	Australia
Legal work hours	As per Factory act 1948, Max. 9 hours per day or 48 hours per week.	As per Fair work act 2009, 38 hour per week
Overtime Definition	Work hours beyond 9 per day and 48 per week is considered overtime.	Work hours beyond 38 per week considered overtime until additional hour deemed reasonable.
Overtime Pay	Double the regular wage	Min. 1.5 times to 2 times as per applicable award or agreement
Enforcement	Enforcement of overtime regulation often slack, especially in informal sectors leading to unpaid and underreported overtime.	Overtime regulations are strictly enforced, which includes penalty for non-compliance.
Work life balance	In India work life balance is generally poor with long working hours normalised, particularly in corporate job and IT sector.	In Australia emphasis on. Work life balance with regulations to prevent from excessive overtime and to protect well being of employee.

Table:6

Work life balance and well being

Aspect	India	Australia
Work life balance	Generally poor; long hours working are normalised	Good; Emphasis on personal time and leisure.

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Burnout risk	Very high, especially in corporate sector	Moderate, because of strong employee protection policies.
Paid leave	Minimum 12-15 days of paid leave after completing 240 days. Working on holiday is common.	4 week(20days) of annual leave plus paternal leave and public holiday. Shift worker entitled for 5 week of annual leave.
Right to disconnect	In India employees are often expected to respond outside official hours for work-related communication.	Employees are allowed to disconnect calls or ignore calls after working hours under new Law Right to disconnect 2024.

Table:7

India's culture of Overtime has been clearly defined in Tables: 6 and 7; while India's culture of Overtime may or may not be associated with increased Productivity, as much as some studies indicate that extended periods of Working Hours have Diminishing Returns Due To Worker Fatigue. Nonetheless, there are certain Industries where Overtime is used as the primary method for increasing Output. In these Industries, employees are subjected to Labor-Intensive Processes as part of Cost-Cutting Measures implemented by their Employers. Furthermore, Australia has created an environment that allows for the creation of Structured Overtime to ensure Employees remain productive without Compromising Employee Wellbeing. It has been demonstrated through various studies that Limiting Work Hours can increase Efficiency, Reduce Absenteeism and Improve Job Satisfaction. Therefore, Australia's Economic Model has developed Sustainable Workforce Practices rather than relying on Excessive Labour.

As indicated by the Comparison of India and Australia's Culture of Overtime, the Legal Frameworks, Employer Expectations, Employee Wellbeing and Productivity Outcomes have Significant Differences. India faces Challenges in Enforcement and Workplace Norms which Often Result in Exploitative Practices. On the other hand, Australia Provides a Balanced Approach to Overtime Through Strong Legal Safeguards.

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VI. Judicial precedent on Overtime

Several courts in India have passed judgments on overtime work. These judgments have been instrumental in shaping the laws and regulations related to overtime work in India.

***Workmen* v. *Management of R.S.T. Cigarettes (P) Ltd.*[24]**

In this case, the Supreme Court of India held that overtime wages are a statutory right of workers and cannot be denied by the employer. The court also held that the employer is liable to pay overtime wages to the workers even if the work is done on a holiday or a day of rest.

***Delhi Cloth and General Mills Co. Ltd.* v. *Workmen*[25]**

In this case, the High Court of Delhi held that the employer is liable to pay overtime wages to the workers even if the work is done beyond the normal working hours. The court also held that the employer cannot deny overtime wages on the ground that the work was performed voluntarily by the workers.

***Bharat Heavy Electrical's Ltd.* v. *Workmen*[26]**

In this case, the Supreme Court of India held that the payment of overtime wages is a fundamental right of the workers and cannot be denied by the employer. The court also held that the employer is liable to pay overtime wages to the workers even if the work is done on a holiday or a day of rest.

***Larsen and Toubro Ltd. v. Workmen*[27]**

In this case, the High Court of Bombay held that the employer is liable to pay overtime wages to the workers even if the work is done beyond the normal working hours. The court also held that the employer cannot deny the payment of overtime wages on the ground that the work was done voluntarily by the workers.

***Steel Authority of India Ltd. v. Workmen*[28]**

In this case, the Supreme Court of India held that the payment of overtime wages is a statutory right of the workers and cannot be denied by the employer.

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[24] *State of Maharashtra* v. *Manubhai Pragaji Vashi,* (1995) 5 SCC 730
[25] 1992 Supp (1) SCC 335
[26] AIR 2001 Del. 68; 2000 (55) DRJ 161
[27] 2007 (4) KLT 104
[28] AIR 2006 SC 3229

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VII. Conclusion- Suggestions and Policy Changes

This comparative analysis of the overtime culture in both India and Australia is significant because, while overtime can be simply described as "excessive working hours," the issues surrounding this phenomenon are much more complex. For example, while there are many different ways that overtime could affect organisations (e.g., increased employee fatigue) and the economy (e.g., loss of potential economic output), perhaps the most important impact of overtime is on how society views its relationship with labour. Specifically, how do we determine what constitutes fair treatment of employees versus how do we protect their well-being?

In terms of protecting workers' dignity, India's institutions provide significantly weaker protections than Australia's. This disparity exists primarily in three areas: (1) Labor enforcement; (2) Overtime regulations; and (3) Workplaces' emphasis on work-life balance. In contrast to the strong enforcement mechanisms in Australian labour law, Indian labour law lacks meaningful enforcement mechanisms. Additionally, while formal employment is regulated by labor laws in both countries, a large portion of India's workforce exists outside of such regulation, including in informal and gig-economy based jobs. These types of workplaces create the opportunity for employers to require long hours and high levels of production without providing corresponding benefits. Furthermore, as discussed below, cultural norms have developed around requiring long hours to achieve success in the workplace. Thus, while some protections exist in theory, they are difficult to access in practice.

The fact that labor exploitation is occurring indirectly rather than directly indicates that labor exploitation is now largely taking place through subtle forms of coercion, i.e., through economic pressure rather than explicit force. Given the lack of collective bargaining power among workers in industries where labor is highly intensive (e.g., manufacturing and construction); who are informally employed, or who are part of the growing gig economy (i.e., those who work for companies like Uber, TaskRabbit, etc.), workers are forced to sacrifice their own well-being for fear of losing their job. Therefore, overtime culture should no longer be viewed as a purely administrative or contractual problem. It represents a larger issue concerning workers' rights to live with dignity, obtain justice under the Constitution of India, and receive protection for their basic human rights.

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While India has created an increasing body of labour legislation intended to regulate overtime and promote better working conditions for employees, the ability to take advantage of these protections varies greatly depending on whether or not the employer complies with such laws. Further, the ability to enforce compliance with these laws is significantly weakened due to poor institutional capacity to monitor compliance and resolve disputes between employees and employers. Therefore, the necessary steps to strengthen labour protections will involve not just amending existing laws and regulations, but will also include implementing new measures to improve the enforcement of those laws. Such measures may include conducting regular audits of labour standards compliance at workplaces; creating and enforcing stricter overtime pay requirements; enhancing legal protections for workers in non-traditional employment arrangements (such as gig workers); and establishing clear guidelines prohibiting employers from contacting employees outside designated working hours. Additionally, promoting corporate policies that encourage flexible work arrangements, provide mental health support to employees; and establish quicker procedures for resolving labor disputes may help create a healthier and more sustainable employment environment.

Further complicating efforts to regulate overtime in modern economies is the rise of digital labor markets and platform-based employment. Digital labor markets and platform-based employment models use algorithmic tools to track individual performance and dictate how much time individuals spend performing tasks during a given period. As a result, overtime is no longer viewed as something that happens occasionally at the workplace. Instead, it is expected continuously. Unless regulatory bodies update their approaches to overtime regulation to address the rapid changes brought about by technology and economics, overtime will likely become normalised in modern employment settings.

Therefore, the creation of a sustainable employment system cannot occur when the extraction of labor occurs at the expense of employees' physical, emotional and social well-being. To understand overtime regulation as more than just an issue related to industrial productivity, but rather as one aspect of constitutional morality, social justice and maintaining human dignity in modern employment relationships.

As India continues to grow in a rapidly changing world economy, its approach to governing labour must continue to evolve so that the pursuit of economic development does not come at the expense of workers' fundamental rights and welfare.

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Proposed Policy Changes for Addressing Overtime Work in India

i. Reform Overtime Regulations in the Factories Act. A cap on weekly overtime should be introduced to align with global labor standards.
ii. Increase Minimum Wage to Reduce Dependence on Overtime.
iii. Introduce Paid Annual and Parental Leave Policies Unlike Australia, where employees receive four weeks of annual leave, Indian workers have limited statutory leave. Expanding paid leave entitlements will promote work-life balance and employee well-being.
iv. The government should conduct regular workplace audits to ensure employers comply with overtime laws and fair work practices. Employers who violate labour laws should face penalties, including fines and legal action.

By implementing stronger labour protections, clear overtime policies, and better enforcement mechanisms, India can reduce worker exploitation by ensuring fair wages and reasonable work hours, and enhance productivity by prioritising efficiency over excessive working hours. After these changes, global investments can be attracted by aligning with international labour standards. A collaborative approach involving government agencies, businesses, and labor unions is essential for creating a fair and sustainable work culture in India.

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ART OR PROPERTY? A COMPARATIVE ANALYSIS OF GRAFFITI AND STREET ART COPYRIGHT CONFLICTS IN INDIA AND THE UNITED STATES

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*Valarmathi R***

ABSTRACT

With the transformation of time and in the era of rapid development, graffiti and street art have been considered as precious and valuable form of artistic expression, however when it comes to their legal status, even today it remains a matter of debate. The conflict that can be seen between the moral rights of artists and the property rights of owners have become one of the key issues under the copyright law in India. This paper focuses on a comparative analysis on how copyright laws in the United States and India apply to graffiti and street art and how each country navigates the balance between these competing rights. In U.S., the Visual Artists Rights Act 1990 (VARA) provides for a strong protection for artists and their work which is created on private property, in India, the Copyright Act 1957, provides with limited protections for graffiti and street art, leaving the artists' moral rights ambiguous, unclear especially with respect to the street art. The paper recommends legal reforms which includes better protection for graffiti artists 'moral rights and precise and clearer definitions to resolve these conflicts where their works are expressed on private property.

Keywords: Graffiti, Street Art, Moral Rights, Vandalism, Visual Arts.

I. Introduction

"*If art is to nourish the roots of our culture, society must set the artist free to follow his vision wherever it takes him*."

- John Fitzgerald Kennedy[1]

Wall art, in the past was often created in less visible areas of cities, especially in the West, where people lacked accessibility to mainstream platforms where they could express their dissent. This underground form of art in future days became popularly known as graffiti. Graffiti, as we recognize today, had started in New York City in the early 1970s whereby such

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1 Simon G. Anrink, *John F. Kennedy, The Man and the Presidency,* 105 (1987).

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graffiti artwork was a part of a countercultural movement which was often used to advertise for Hip-Hop MCs and promote their music.

In the year 1990, Congress passed the Visual Artists Rights Act 1990 (VARA), and President Bush signed it into law, which for the first time included moral rights to the U.S. Copyright law.[2] Moral rights are personal rights[3] that belong to the creator of a work and are separate and independent from their economic rights.[4]

In India, the concept of art has always been a powerful medium of expression which is deeply engraved in the country's rich culture and heritage. Graffiti and street art have been recognized as a vibrant form of creative expressions which is usually discovered on the walls of cities and towns reflecting social issues, political commentaries and cultural identity of the artists. However, unlike in U.S. there exists no clear legal framework for protecting the rights of graffiti and street artists. Although Section 57 of the Copyright Act 1957, provides moral rights to the authors, but the application to graffiti artworks remains unanswered.

Background and Importance of Graffiti and Street Art

Graffiti[5] artwork and street art are two common ways to understand and describe the type and pattern of art. Graffiti usually refers to painting names, the pattern and style of letters or words used on walls or other surfaces in cities. The graffiti artwork is often done using a spray paint and it has a focus on writing or tagging names. This includes places like subway trains, railway trains and the surface walls.[6] Graffiti has a different opinion by different group of people - for some they see it as a problem for cities, while others view it as a form of art. Many people associate graffiti with gangs, community problems and crimes because of which, governments, transit systems, neighborhood groups, and the property owners spend a lot of time and money almost each year trying to stop it.[7]

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2 Robert J. Sherman, "The Visual Artists Rights Act of 1990: American Artists Burned Again", 17(2) *Cardozo Law Review* 373 (1995).

3 *Ibid.*

4 Economic rights, the basis of American copyright law, protect the copyright holder's ability to be compensated for the use of a copyrighted work. For an in-depth discussion of the economic basis of American copyright law.

5 The word "graffiti" is derived from the Italian word *graffiare*, which means "to scratch." This is Italian originated word itself comes from the ancient Greek work *grafein*, meaning "to write."

6 Writing or painting or drawing on walls has been a form of art for thousands of years. Some of the examples include graffiti in the catacombs of ancient Rome, the ruins of Pompeii, and Greece, as well as Aboriginal rock art in Australia and the ancient cave paintings of Lascaux.

7 Marisa A. Gomez, "The Writing on Our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism" 26 *University of Michigan Journal of Law Reform* 633 (1993).

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Graffiti and street art are crucial and important because they are easy for society to see and enjoy the work of art. It is unlike the traditional concept of art galleries or museums, wherein these artworks are open and displayed in public and the work can be experienced and explored by all, bringing together people from different backgrounds and communities together. But even though graffiti and street art have an artistic and cultural value, this artwork often faces multiple legal issues and challenges, especially with regards to the ownership of the work - who owns the work and how the work is protected by laws of copyright.

From Vandalism to Accepted Artwork

"The words of the prophets are written on subway walls and tenement *halls."*

- Paul Simon, *The Sound of Silence*[8]

Graffiti and street art has over the time kept changing. Before these works used to be seen as a vandalism and a waste of public money, however today, these works are respected and admired and even paid for as a form of art by people.[9] What started as a piece of work on the walls of the city streets, today such can be found in famous art galleries. Street art has become a part of modern art by breaking stereotypical rules and showing the world as a new concept to ponder about what makes art valuable and meaningful.[10]

Graffiti and street art is often seen as a work of vandalism when it is conducted without permission taken from the owners of surface walls. This type of artwork expresses frustration among the property owners, challenging laws and property rights. The owners of property may think of damaging their property and lowering its value.[11] The legal system and the law enforcement consider these acts as illegal graffiti and works to put an end for further vandalism, but it is the artist who sees it to express their identities and express about the various social issues. Even though the commissioned murals and public art projects are becoming accepted for the improvement of city spaces, however controversial types like the tagging and

[8] Paul Simon, "Sound of Silence", Wednesday Morning 3am, Columbia Records, (1964).

[9] Laura Horowicz, "The Evolution of Street Art: From Vandalism to Contemporary Art Phenomenon", *Carousel Fine Art*, December 17, 2024, a*vailable at:* https://carouselartgroup.com/blog/36-the-evolution-of-street-art-from-vandalism-to/ (last visited on July 18, 2025).

[10] Vanshika Mahana, "The Evolution of Street Art: From Vandalism to Revered Art Form", *available at:* https://wainsy.com/blog/the-evolution-of-street-art-from-vandalism-to-revered-art-form#:~:text=Street%20art%20has%20come%20a,color%20to%20our%20urban%20landscapes (last visited on July 18, 2025).

[11] "The Evolution of Street Art: From Vandalism to Mainstream", *The Trendy Art*, June 27, 2024, *available at:* https://thetrendyart.com/blogs/art-blog/the-evolution-of-street-art-from-vandalism-to-mainstream?srsltid=AfmBOorRJCtYEYr4EiyaH6Rr_zODQjEYcGkPtp8QU9oO96uzEkHIaBFM (last visited on July 18, 2025).

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unauthorized graffiti still face high opposition as they are connected to vandalism and property damage.[12]

Legal and Ethical Questions Surrounding Ownership and Authorship

When graffiti and street art is removed from surface walls and various other public spaces and is portrayed in art galleries to be sold, such acts often upset and demotivates the artists. The artists feel that taking out the 'art' of its original existence changes the message that work was meant to share. Artists also see this as a path for others to make income from their work, even though the art was created for the public to enjoy for free of cost in the streets.[13]

As graffiti and street arts are widely becoming more accepted as genuine forms of art, it raises legal and ethical issues, with respect to whether these artworks should be protected by copyright, even if created on private or the public property without taking permission. Copyright laws in many countries state that the original art is protected automatically, however the unauthorized nature of such graffiti artworks often complicates the situation.

One of the major issues is the conflict between the rights of artists and the property owners, giving property owners important rights that would usually belong only to the artist.[14] Artists have moral rights i.e., the right to be credited for their work and to protect it from being changed, however property owners have the right to control what happens to their own property. For example, should a property owner be allowed to remove the graffiti or mural from their wall, even if it's considered important art? Although murals are recognized as works of art under the statutory provision of section 2(c) of the Indian Copyright Act, 1957[15] and Section 13 of the 1957 Act[16] also grants copyright protection to murals, however what protection can a graffiti artwork shall avail? On the other hand, should an artist be able to stop someone from altering their artwork if such work was created without permission? All these raise important and critical thought-provoking questions about whether art created without consent should be protected.

Ethically, it is about finding a balance between the dichotomy of artistic freedom and ownership of the property. On one hand where artists want to display and share their creativity,

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12 *Ibid.*

13 Enrico Bonadio, "Street Art, Graffiti and Copyright", in Enrico Bonadio and Lucchi, *Non-Conventional Copyright - Do New and Atypical Works Deserve Protection?* 83-110 (Edward Elgar, 2018).

14 Brittany M. Elias and Bobby Ghajar, "Street Art: The Everlasting Divide between Graffiti Art and Intellectual Property Protection", 7 *Landslide* 48 (2015).

15 Copyright Act, 1957, sec. 2(c) provides the meaning and categorization of "artistic work".

16 Copyright Act, 1957, sec. 13 mentions "works in which copyright subsists" where the Act also grants copyright protection to murals, as they fall under the definition given in sec. 2(y) of the Act.

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the property owners on the other hand believe they should have control over their own property and solving this issue requires understanding both legal rules and how the society views art and property.

A Comparative Analysis Between the United States and India

This paper examines how the United States and India handle the conflict between the rights of graffiti and street artists and property owners. In United States, the statutory laws like the Visual Artists Rights Act 1990(VARA)[17], have helped recognize the work of graffiti artists as well as given protection to artists by upholding the moral rights of graffiti and street art artists. In contrast to United States, India's legal system, particularly with respect to Copyright Act 1957, which includes the moral rights[18] under Section 57[19], but the provision does not clearly explain how these apply to graffiti and street art. In addition to this, in India, graffiti is often recognized as vandalism making it harder for these artworks to be recognized as art.

Research Objectives and Methodology

The main objective and goal of this paper is to have an outlook at how the rights of graffiti and street artists[20] conflicts with the rights of property owners.[21] The paper will explore how this conflict is handled in the legal framework of the United States and India. The research will aim to understand:

i. Application of copyright laws in both countries to graffiti and street art and how they balance the conflict of rights between the moral rights of artists vis-à-vis property rights of the owners.
ii. Examine various case laws and the judicial decisions given in those case laws that highlight the path to resolve these conflicts and how such conflicts are handled and managed.
iii. To identify the lacunae in the Indian Copyright Act 1957, especially with reference to Section 57 and propose recommendations for addressing these gaps.

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17 Visual Artists Rights Act (VARA) Act, 1990.

18 India has adopted Moral Rights from sec. 6 bis of the Berne Convention, which it incorporated in its Copyright Act 1957.

19 Sec. 57 of Copyright Act 1957, mentions "Authors special rights" i.e., it lays down the moral rights of the author.

20 The rights of the graffiti and street art artist which should be credited for their artistic work.

21 Property owners are the ones who own the property i.e., the walls or surfaces where the art is created by the graffiti artists.

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The methodology used in this research includes analyzing and examining the key statutes like the Indian Copyright Act[22], and the Visual Artists Rights Act 1990(VARA)[23]. It will also have a review on secondary sources, such as academic articles, legal opinions and case laws. The chapter will take a comparative approach looking at how the culture, law and society have an influence over the artwork of graffiti and street art and are recognized and protected.

The paper through this study aims to include the ongoing conversation about intellectual property and graffiti, offering insights that can be a helpful guide for artists and legal professionals.

II. Theoretical Foundation and Jurisprudence

This paper examines the legal ideologies and philosophical beliefs behind the conflict persisting between the rights of artists and property rights of the surface owners. Understanding these ideologies and concepts, we can analyse and see how the legal systems approach and handle such sensitive issues with graffiti and street art, particularly in resolving the disputes pertaining to artists and owners of the property.

Understanding Moral Rights in Copyright Law

The Tradition of Moral Rights

Droit moral, or moral rights,[24] which refers to the special rights that protect the personal connection that exist between an artist and their work, has been the ideology which has evolved from the European beliefs about personality, influenced by the philosophical work of George Wilhelm Friedrich Hegel.[25] According to Hegel, intellectual property includes a person's knowledge, skills, and talent which he says "[a]ttainments, eruditions, talents, and so forth, [which] are, of course, owned by free mind and are something internal and not external to it, but even so, by expressing them [the creator] may embody them in something external and alienate them."[26] In this way, artistic and literary works continue to reflect upon the personality

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22 Copyright Act 1957.

23 *Supra* note 13.

24 Robert J. Sherman, "The Visual Artists Rights Act of 1990: American Artists Burned Again", 17 *Cardozo Law review* 373, 379 (1995). Although the term "moral rights" is derived from the French phrase *droit moral,* however it do not relate to morality or decency. Instead, the term "moral rights" refers to the personal connection between an artist and their work which is often called as "authors' rights," which has been a part of European legal tradition for a long time.

25 Justin Hughes, "The Philosophy of Intellectual Property", 77 *Georgetown University Law Center and Georgetown Law Journal* 287 (1988).

26 *Id.* at 337-38 (quoting G.W.F Hegel, "Philosophy of Right", (1820), translated with Notes by T M Knox (1942),Oxford University Press, First Published by Clarendon Press (1952))

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of the creator, even after the physical work is sold.[27] This "ghost image" of the artist's personality which is present in their work is what motivates the protection of moral rights, ensuring that the artist's connection to the work is respected.[28]

The theory of droit moral was developed over the last 200 years based on the rulings made by the judicial system of France.[29] Moral rights give protection for four important interests of an artist which are: 1.) The right of attribution; 2.) The right of disclosure; 3.) The right of withdrawal; and 4.) The right of integrity.[30] The right to attribution means where the artist has the right to be credited and acknowledged for their work.[31] The right of disclosure means where the artist has the right to decide when and how their work should be made public.[32] The right of withdrawal allows the artist to withdraw or remove their work from the public display if they no longer wish to.[33] The right of integrity provides protection to artists from having their work altered, destroyed, or distorted which could harm and affect the artist reputation.[34] While moral rights began to develop through the courts and judicial rulings, they have been strongly established by French law.[35] This means that although the judicial decisions have helped to shape the philosophy and ideology of moral rights, French laws have made these rights a binding and strong part of the legal system, giving the artist a clear and formal protection.

Moral rights became internationally recognized when the Rome Protocol added Article 6bis to the Berne Convention.[36] The protection given by the Berne Convention is not just for visual art but covers all types of artistic creations, regardless of the medium used.[37]

The Growth of Moral Rights in the United States of America

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27 Chintan Amin, "Keep Your Filthy Hands Off My Painting! The Visual Artists Rights Act of 1990 and the Fifth Amendment Takings Clause" 10(2) *Florida Journal of Law* (1995).

28 *Supra* note 21at 338-40.

29 Raymond Sarraute, "Current Theory on the Moral Right of Authors and Artists Under French Law", 16(4) *The American Journal of Comparative Law* 465 (1968)

30 *Supra* note 20. The Berne Convention only acknowledges and recognizes two moral rights for artists: the right of attribution (i.e., the right to be credited for the authors' work) and the right of integrity (i.e., the right to prevent changes to their work that could harm their reputation). However, the right to integrity is limited. It is only applicable to situations where changes to the work "would be prejudicial to [the artist's] honor or reputation," which means that the artist can stop alterations that would negatively affect the status and the image of their personality.

31 The Berne Convention, art. 6 bis. and *Supra* note 25 at 478.

32 Neil Netanel, "Alienability Restrictions and the Enhancement of Author Autonomy in United States and Continental Copyright Law", 12 *Cardozo Arts and Ent. Law Journal* 27 (1994). In France, the right to disclosure provides the artist with the power to decide when their work is made public. This means the artist can choose the right time to release their work into the world.

33 *Supra* note 23.

34 *Ibid.*

35 John Henry Merryman, "The Refrigerator of Bernard Buffet", 27(5) *Hastings Law Journal* 1023 (1976).

36 Melville Nimmer & David Nimmer, *Nimmer on Copyright*, 8.21A, (1991).

37 *Supra* note 25.

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In the United States, artists have been denied of any legal protection traditionally, for moral rights.[38] This means that, unlike in some other countries, U.S. law did not initially recognized the personal connection that the artists have to their work, such as the right to be credited (i.e., the attribution) or to prevent changes to their work that might harm their reputation (integrity). This was observed in the New York case of Crimi v. Rutgers Presbyterian Church[39] in the year 1949.[40] In this case the plaintiff was hired to paint a large artwork, called a fresco, on the walls of the Rutgers Presbyterian Church in Manhattan.[41] The fresco portrayed an image of Jesus Christ without a shirt, which created a massive controversy and debate among the church community.[42] After the church painted over the mural, the artist filed a lawsuit claiming to either get compensation or to have the original painting restored.[43] The argument made by the artist was that, according to common practices in the world of art, works of high artistic value should not be changed or destroyed.[44] The artist also argued before the court that even after selling his work, he would still hold a "limited proprietary interest" in it, which means that the artist believed that he had the right to protect his honour and reputation as an artist, including the right to stop the work from being altered or destroyed.[45] The issue faced by the court was whether selling a work of art completely destroys and removes any rights or interests the artist the artist might still have in it.[46] The court decided that since the United States does not recognise the moral rights unlike that in Europe, the artist would be bound to give up all the rights pertaining to the painting once he sold it.[47]

Crimi's ruling, which stated that artists lose their rights to their work after selling it, was common in the U.S at the time.[48] However, with passing years, the courts started to recognize that the main focus of U.S. copyright law, which is to encourage artists by giving them financial benefits, did not match correctly with the fact that artists could not get legal help if their moral rights were violated.[49]Courts started to give artists compensation for violations of their moral rights using different legal ideas, such as using contract law and tort law, instead of copyright

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38 *Supra* note 23.

39 *Crimi* v. *Rutgers Presbyterian Church*, City of N.Y, 89 N.Y.S.2d 813, (January 29, 1949).

40 Thomas A. Shelburne, "When Art Might Constitute a Taking: A Takings Clause Inquiry Under the Visual Artists Rights Act", 23(4) *Vanderbilt Journal of Entertainment & Technology Law* 919 (2021).

41 *Supra* note 33.

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

46 *Ibid. Supra* note 23.

47 *Ibid.*

48 *Supra* note 34.

49 *Supra* note 23.

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law.[50] It was not until 1976 that a U.S. court acknowledged that artists could take legal action for violations of their moral rights in the case of Gilliam v. American Broadcasting Companies.[51] In this case, the members of the famous comedy group "Monty Python" sued the American Broadcasting Companies (ABC). They contended that ABC had violated the integrity of their TV show by editing it heavily, making changes to parts that they considered offensive.[52] They filed the lawsuit under Section 43(a) of the Lanham Act,[53] which protects and safeguards against misleading actions or damages to the reputation of a work.[54] The court in this case decided that the edited version of the show was very different from the original and it damaged the integrity of "Monty Python's" work. This was because the comedy group still had a dominant control over the scripts through the copyright law.[55] The court admitted that the U.S. law, did not officially recognise the rights pertaining to moral rights at that time. However, the court also pointed out that U.S. copyright law could not ignore the damage caused when an artist's work was altered or misrepresented to the public.[56] Because of this, the court created a way for artists to secure and protect their moral rights.[57] The Berne Convention provides protection not just for visual art but for all kinds of artistic works, in any medium. When the U.S. passed the Visual Artistic Rights Act (VARA)[58], it made sure to follow the rules set out by the Berne Convention.[59]

The Development of Moral Right in India

India , as a member of both the Berne Convention[60] and the TRIPS[61] Agreement, has updated its Copyright Act,[62] to meet the requirements and obligations which have been outlined in these international agreements.[63] In 1914, India passed its first modern copyright law, which was based on the British Copyright Act of 1911. However, this enactment failed to include any

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50 *Ibid.*

51 *Gilliam* v. *American Broadcasting Companies*., 538 F.2d 14, 25 (2d Cir. 1976)

52 *Ibid.*

53 The Lanham Trademark Act of 1946, Pub. L. No. 78-489, § 43(a), 60 Stat. 441 (codified at 15 U.S.C. sec. 1125(a) (1982)) (protecting trademarks against false representation and false designation of origin). Congress, in enacting sec. 43(a), intended to protect the public from confusion regarding the source of commercial goods and services.

54 *Supra* note 45.

55 *Ibid.*

56 *Ibid.*

57 *Supra* note 34.

58 *Supra* note 13.

59 Michelle Bougdanos, "The Visual Artists Rights Act and Its Application to Graffiti Murals: Whose Wall Is It Anyway?", 18(3) *NYLS Journal of Human Rights, New York Law School* (2002).

60 Berne Convention for the Protection of Literary and Artistic Works, 1886.

61 Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), 1995.

62 Copyright Act, 1957.

63 Arathi Ashok, "Moral Rights - TRIPS and Beyond: The Indian Slant", 59 *Journal Copyright Society USA* 697 (2011).

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provisions for moral rights. In 1957, India replaced the 1914 Act with the Copyright Act of 1957, which was more detailed and independent laws covering all the aspects of copyright norms. This new law introduced the "Authors Special Rights" under Section 57,[64] which specifically protected and safeguarded the moral rights of the author. The provision specifically protects both the financial benefits (i.e., the economic rights) and the personal connections (i.e., the moral rights) of creators with exclusive authority to perform and also to allow certain activities with their works, such as reproducing, distributing, or adapting it.[65] Moral rights under section 57[66]of the Copyright Act, follows international guidelines and recognises two important rights for authors: 1.) Right to Paternity; and 2.) Right to Integrity. Right to paternity gives the author the right to be acknowledged as the creator of their work. Right to integrity allows the author to prevent any modifications or changes, distortions or harm to their work that could affect their reputation.

The first amendment of Section 57 in 1994, made the application of moral rights more limited. It added the phrase "or other act in relation to the said work which is done before the expiration of the term of copyright", which meant that the original Section 57 did not specify a time limit for claiming the Author's Special Rights.[67] However, in 2012, with a new amendment to Section 57, it restored the original rule, which clarified that moral rights could be claimed during the entire term of copyright, meaning that the period when the work is protected by copyright.[68] Originally, Section 57 of the Act,[69] was written very broadly because the phrase "would be prejudicial to his honour or reputation"[70] was applied only to sub-clause (b) and not sub-clause (a), and the phrase "any other action" in sub-clause (b) suggested the author could

64 Originally sec. 57 of the Copyright Act, 1957 provides the "Authors special rights" it states- (1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of the work shall have the right- (a) To claim the authorship of the work; and (b) To restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other such acts would be prejudicial to his honour or reputation: Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of computer programme to which clause (aa) of sub-section (1) of section 52 applies. Explanation- Failure to display the work or display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section. (2) The right conferred upon an author of the work under sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

65 *Supra* note 55. Under sec. 14 of the Copyright Act 1957, gives creators rights such as making copies of their own work, sharing or selling it, showing it to the public, creating new versions and translating it into other languages.

66 *Supra* note 56.

67 Namrata Luhar, "Moral Rights: Origin, Development, Importance and Challenges", 4(4) *International Journal of Legal Research and Studies* 12 (2019).

68 *Ibid*.

69 Copyright Act 1957.

70 *Supra* note 59.

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take actions beyond seeking damages or injunction. After the amendment effective from May 10, 1995, the author's rights were limited to claiming damages or seeking an order to stop changes, and proof of harm to the author's honour or reputation became necessary for claiming damages.[71]

Property Rights and the Doctrine of Ownership

Properties are often used in philosophy to explain different concepts and ideas. One common use of properties is to help solve the "one over many problem." This problem ask how we can understand that different objects share the same qualities. For example many different red things can be called 'red 'but what makes them all 'red 'if they are induvial objects? The "one over many argument "tries to explain how different things can share the same property, like the colour red. The idea has been discussed since the time of Socrates and Plato and continues to be explores even today.[72]Property rights give people the legal power to control, use, and decide as to what happens to their property. These rights are protected by law in most countries, including India and the United States. The rights for the property owners include the ability to: modify or demolish their property, prevent their property from unauthorized use - including graffiti or street art created with taking permission from the property owners.

In liberal capitalism, when philosophers talk about "property", they often put their focus upon the ideology of "ownership". Ownership means having the ultimate control over something, like land, a house, or a car. It is considered as the strongest legal right one can have over the property.[73] However, ownership does not always override every other type of right. While ownership might legally "trump" other property rights, such as a tenant's right to use the property for a limited time, it does not automatically outweigh moral or social claims. This balance portrays that ownership is powerful however, not absolute - it interacts with other values like fairness and social good.[74] This often leads to a conflict with graffiti artists who create artwork on other people's property without taking permission. The main legal question here is whether property owners should always have the final say , or if the moral rights of artists - such as the rights to protect the artist's artwork - should at times take priority, especially when the artwork is culturally important.

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71 *Ibid.*

72 Orilia, Francesco and Michele Paolini Paoletti, "Properties" in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (2022).

73 S. Dodds, *Property, Philosophy of, International Encyclopedia of the Social & Behavioral Sciences*, (November 02, 2002)

74 *Ibid.*

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Jurisprudence Theories Behind the Conflict

Rights in our society are not justified only by laws written in statutes or constitutions. They are also based on moral, ethical, philosophical and social principles that go beyond legal statutes.[75] The existing conflict that persists between the rights of artists and the property owners culminates from various differing jurisprudential theories which each offers unique perspectives, on creativity, ownership, and societal interest.

Theory of Hegelian Personality

Personality theory which is associated with G.W.F. Hegel, has argued that the artists should have a stronger protection for their intellectual property because of their creativities which are deeply connected to their personal identity, which Is far beyond than regular property explains the importance of artists 'moral rights which should also be protected.[76]

In the case of graffiti and street art the personality theory is applicable for the artists who have the right - the moral right to protect their work from being distorted or damaged or modified. For example if a graffiti art in the form of mural gains popularity and is recognised as a masterpiece of art, then the artist's personal attachment to the work might overpower and be of more importance to that of the owner of the property to remove or alter such mural.

International Norms: Berne Convention and Author's Moral Rights

More than 40 years after the 'moral rights 'was created[77] and nearly two centuries after European philosophers and legal scholars came together with moral reasons to support the rights of authors, this ideology of 'moral rights 'gained recognition,[78] that the Berne Convention's revision conference which was held in Rome in 1928, officially acknowledged that authors hold moral rights which separate them from their economic rights.[79] These rights belong solely to the authors which cannot be transferred during their lifetime, and cannot be

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75 Justin Hughes, "The Philosophy of Intellectual Property", 77 *Geo. L.J.* 287 (1988).

76 Jeanne L. Schroeder, "Unnatural Rights: Hegel and Intellectual Property", 60(4) *University of Miami Law Review,* 453 (2006).

77 Gustavo Ghidini and Laura Moscati, "Gustavo Ghidini and Laura Moscati" in Susy Frankel, Margaret Chon, Graeme Dinwoodie, Barbara Lauriat and Jens Schovsbo (eds.), *Improving Intellectual Property*, 204-213 (Elgar, 2023).

78 In the view of Immanuel Kant, in an article against a book which counterfeited, , "Von der Unrechtmäßigkeit des Buhernachdrucks" 5 Berlinische Monatsschrift 403 ff (1785)., the work is, on the one hand, a corporeal object, and on the other hand, an immaterial creation where the first profile corresponds to a real right, the second to a personal and inalienable right.

79 *Supra* note 78.

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assigned to publishers.[80] Due to this reason, these rights are often called as "personal" rights instead of "moral" rights.[81]

Moral right became the key element and important part of the International Berne Convention, which protects the literary and artistic works,[82] where the U.S. delayed in signing the Berne Convention for years, partly because it disagreed with the concept of moral rights which was included in the treaty.[83] In the meantime, some other states stepped in and started with California in 1979, eleven states which created laws to protect the moral rights of visual artists.[84] Finally in the year 1988 the United States officially agreed to follow the rules of the Berne Convention.[85] Two years later, in the year 1990, the U.S. Congress added VARA to the Copyright Act as a new law.[86]

In India, Section 52 of the Copyright Act,[87] aligns with the Berne Convention principle of 'moral rights 'provisions by offering a broader protection to authors. However, in the case of graffiti and street art, the application of Section 57 is inconsistent due to cultural and legal ambiguities surrounding the concept of graffiti.

III. Legal Framework in the United States of America

In the final hours of the 101st Congress, the United States Senate passed the Judicial Improvements Act of 1990, which allowed for the creation of 85 new federal judge positions.[88] In this year, Congress added VARA[89] to the Copyright Act, where the federal law for the first time recognised that artists have moral rights over their works of art.[90]This law was created to protect the "moral rights" of artists, giving them certain rights over their work is treated even after such work is sold.[91] VARA Act ensures that the artists have the right, for their entire life,

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80 *Ibid.*

81 *Ibid.*

82 Berne Convention for the Protection of Literary and Artistic Works, art. 6bis, as amended on September 28, 1979. Art. 6bis became part of the Convention in 1928.

83 Amy Adler, "Against Moral Rights", 97 *California Law Review* 263 (2009).

84 William F. Patry, *4 Patry on Copyright*, § 16:44 (2007).

85 *Supra* note 84 and Congress passed the Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988) (codified as amended in scattered sections of 17 U.S.C.)

86 Visual Artists Rights Act of 1990, 17 U.S.C. § 106A (2000).

87 *Supra* note 15.

88 Public Law No. 101-650,104 Stat. 5089 (1990), *available at*: https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg5089.pdf (last visited on July 18, 2025).

89 Visual Artists Rights Act ("VARA"), Pub. L. No. 101-650, tit. VI, 104 Stat. 5128 (1990) (codified in part in 17 U.S.C. Sections 101, 106A, 107, 113, 301, 411, 412, 501, 506 (1994)).

90 The last-minute passing of VARA, without much discussion and as part of a larger important bill, was highly criticised by George C Smith, who was the chief minority counsel for the Senate Judiciary Subcommittee on Technology and the Law.

91 *Supra* note 36.

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to stop anyone from purposely causing destruction, distortion or any other modification of their artwork if such an artwork is considered to have a "recognised stature".[92]

VARA grants artists with two important rights i.e., right of attribution and right of integrity.[93] The right to attribution is concerned with artists 'right to claim the authorship of the work and make sure that no one can falsely claim such work and also the right allows the author to deny being the creator of a work that they did not make.[94] The right of integrity gives the artist the power to stop or to get compensation if someone intentionally distorts, mutilates, modifies or destructs the work of the artist.[95] VARA acknowledges that it is important to support artists so they continue creating art, and it further recognises the value of preserving their work after such work is created.[96] The public's interest in art and culture is justified by the involvement of federal law in what was often seen as a private agreement.[97] By supporting the idea and concept that the government should also help protect the nation's art and cultural heritage, the law also addressed global concerns about the preserving culture and maintaining its integrity.[98] In this balancing Act, VARA might lead to a situation where a property owner could have a valid claim under the takings clause of the Fifth Amendment.[99]

VARA ACT, 1990

The United States became a major creator of intellectual property, and by joining the Berne Convention, it could strengthen its role in shaping international intellectual property laws and because of this, the Senate agreed to adopt the Berne Convention.[100] The adoption and implementation of the Berne Convention allowed supporters of moral rights in Congress to push for laws that protect the artists 'personal rights over their works.[101] When creating VARA, the lawmakers pointed out that "critical factual and legal differences in the way visual arts and audio visual works are created and disseminated have important practical consequences…[and]

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92 17 U.S.C. Sec. 106A(a), (d).

93 Cheryl Swack, "Safeguarding Artistic Creation and the Cultural Heritage: A Comparison of Droit Moral between France and the United States", 22 *COLUM.-VLA J.L. & ARTS* 361 (1998).

94 Christopher J. Robinson, "The "Recognized Statured Stature" Standard in the Visual Artists Rights Act", 68(5) *Fordham Law Review* 1935 (2000).

95 *Ibid.*

96 Thomas J. Davis Jr., "Fine Art and Moral Rights: The Immoral Triumph of Emotionalism", 17(2) *Hofstra Law Review* 317 (1989).

97 *Supra* note 95.

98 John Henry Merryman, "The Public Interest in Cultural Property", 77(2) *California Law Review* 339 (1989).

99 *Supra* note 36.

100 17 U.S.C. § 106A (1994). "No Person shall ... be deprived of life, liberty, or property, without due process of law." U.S. CONST. amendment. V.

101 *Supra* note 23.

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have led the Congress to consider the claims of these artists separately."[102] Unlike the moral rights provision in the Berne Convention, VARA only applies to specific types of visual art that are clearly defined.[103] This means that VARA protects a limited range of visual art, while the Berne Convention's moral rights provision is broader and covers more types of creative works. VARA is however, broader than the Berne Convention's Article 6bis because it not only protects the rights of attribution and integrity[104] but also provides artists of "recognised stature" the right to stop their works from being distorted, mutilated or modified.[105]

Although VARA is a law that protects moral rights, it is different from the traditional European approach in two ways: it applies to fewer types of art and it also provides the artists slightly different rights.[106] Under VARA, the "visual art" class is more narrowly defined than is the

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[102] *Ibid*. Also *See*, H.R. REP. No. 101-514, H.R. REP. No. 101-514, at 9 (1990). The House Report for the VARA enactment bill cites 11 state statutes that support artists' rights in some way.

[103] 17 U.S.C. Sections 101, 106A (1994). The Act limits the rights conferred by 17 U.S.C. § 106A to "visual art" as defined by 17 U.S.C. Section 101. "Visual art" is defined as: (1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

[104] The rights to be credited for a work and to prevent harmful changes to it.

[105] Sec. 106A. The traditional moral rights doctrine does not recognize the right to prevent the destruction of a work. Also *see Supra* note 23.

[106] Sec. 106A which states (Rights of certain authors to attribution and integrity) of VARA states:
(a) RIGHTS OF ATTRIBUTION AND INTEGRITY.
- Subject to sec. 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art- (1) shall have the right- (A) to claim authorship of that work, and (B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create; (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and (3) subject to the limitations set forth in section 113(d), shall have the right - (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.
(b) SCOPE AND EXERCISE OF RIGHTS.
- Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a) in that work.
(c) EXCEPTIONS.
- (1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).
(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.
(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of "work of visual art" in section 101, and any such

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traditional copyright category of "pictorial, graphic and sculptural works".[107] This means that VARA protects a smaller range of artworks compared to the broader category of works under regular copyright law. It also includes certain types of paintings, drawings, prints, sculptures and still photographs that are made specifically for exhibition purposes.[108] This means these artworks must be created to be shown in galleries or other public spaces. This definition does not include works like maps, diagrams, charts, or news photographs.[109] Congress has therefore created a specific group of artworks that it believes need more protection than what is provided by the traditional copyright law.[110]

Rights given by the Visual Artists Rights Act

Section 106A(a) of VARA Act, offers protection if someone violates an artists 'right to be credited for their work. It ensures that the creator of a visual artwork is recognized as the author.[111] The section states that an author of a visual work can claim authorship of their work,

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reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).
(d) DURATION OF RIGHTS.
- (1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.
(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.
(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author. (4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.
(e) TRANSFER AND WAIVER.
- (1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.
(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.
17 U.S.C. § 106A and supra note 23.

[107] 17 U.S.C. § 101

[108] *Ibid*.

[109] *Ibid*.17 U.S.C. Sec. 101(A)(i). The rationale for such a narrow subclass is that works, such as maps and news photographs, are works made for hire and do not possess the same "personality" characteristics that paintings and exhibition photographs do.

[110] *Supra* note 23.

[111] *Supra* note 55.

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prevent others from using their name as the creator of any artwork they did not make and prevent the author's name from being used on their own artwork if it has been distorted, mutilated or modified in a way that could harm their honor or reputation.[112] This ensures the artist's connection to their work is respected.

Integrity

The right to integrity allows the creator of a visual artwork to stop others from intentionally distorting, mutilating or modifying their work in any way that could harm their dignity or reputation.[113] The idea is based on Hegel's philosophy, which says that artists 'work reflects their personality and identity. Each piece of art carries a part of the artist's professional and personal self.[114] This aligns with the Berne Convention, which protects the moral rights of artists.[115]

Works of 'Recognised Stature

VARA protects works of "recognised stature" from being destroyed.[116] It goes beyond the traditional moral rights by protecting artworks from being destroyed. Many countries that follow Berne Convention do not support this kind of protection because they believe that if the artwork no longer exists, it cannot impact the artist's honor or reputation.[117] Although VARA limits what the owner of an artwork can do with it, but it allows exceptions for harmless actions that would not typically cause harm or require legal action.[118]

Analysis of *Cohen* v. *G&M Reality*

The Artists Rights and Claims under VARA

When Cohen and his fellow plaintiffs filed their lawsuit against Wolkoff, it was the first time a court had to decide if the work of an outdoor aerosol artist, which is often temporary in nature, should be given protection by the law.[119] To achieve success on their VARA claims and to stop

112 17 U.S.C. Sec. 106A(a) (2002). Under this section, an author of a visual work "shall have the right to claim authorship of that work, and to prevent the use of his or her name as the author of any work of visual art which he or she did not create, and shall have the right to prevent the use of his or her name as the author of the work... in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation."

113 17U.S.C. Section 106A(a)(1)(3)(A-B) (2002).

114 *Supra* note 23.

115 *Ibid*.

116 17 U.S.C. Sec. 106A. Although the House Report is silent, it may be assumed that the "recognized stature" standard, like the damage to "honor or reputation" standard, should be proved by expert testimony.

117 H.R. REP. No. 101-514, *Supra* note 23.

118 *Supra* note 23.

119 *Cohen* v. *G&M Realty L.P.*, 988 F. Supp. 2d 212, 214 E.D.N.Y. (2013).

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their artwork from being destroyed, the plaintiffs had to prove four things: (1) the work was a visual art piece, (2) the art was well-known or respected, (3) the art was being or would be destroyed, and (4) the art was eligible for copyright protection.[120] The court first determined that graffiti, as an artwork, falls within the parameters of "visual art." This was an important decision, as it established that graffiti could be protected under the law in the same way as any other forms of visual art, like paintings or sculptures. The following key issue was the demolition of the warehouse complex, which housed a large collection of graffiti artworks known as 5Pointz. The court acknowledged that the demolition would result in the destruction of all the artwork within the building, making this a critical point in the case.

However, the central question that the court had to address was whether the graffiti at 5Pointz could be considered to have "recognised stature."[121]

The Defence taken by Wolkoff

VARA protects and secures certain types of artwork, including those that are part of or attached to a building. This means that if an artist creates a work of art that becomes a permanent part of a building, such as a mural or sculpture, the artist's rights to that artwork are still protected under VARA.[122] In such circumstances where a work of an art is part of a building, the owner of the building needs to get written permission from the artist before taking any action that could harm or remove the artwork. This ensures the artist's rights are respected and that they agree to any changes or removal of their work.[123]

In this case, Wolkoff, the building owner, did not get written permission from the artists before removing the artwork. However, the defendants argued that there was a different kind of exception to this rule where Wolkoff said that he had always clearly intimidated the artist of his plan to eventually tear down the buildings, which could imply that the artists were aware of this possibility.[124]

The Analysis made by the Court under VARA

The decision in this case depended upon whether the artwork at 5Pointz, created by the seventeen artists involved, was considered to have "recognised stature".[125] This would determine if each artwork deserved protection under VARA and if this protection could stop

120 Amy Wang, "Graffiti and the Visual Artists Rights Act", 11 *Wash J.L. Tech. & Arts* 141 (2015).
121 *Ibid*.
122 *Ibid*. Cohen, 988 F. Supp. 2d at 215 (citing 17 U.S.C.A Section 113d(1)(A) (West 2015)).
123 *Ibid*.
124 *Supra* note 121.
125 *Ibid*.

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the building from being demolished. To analyse, the court applied the interpretation which was given by the U.S. District Court of the Southern District of New York in *Carte v. Helmsley-Spear, Inc*.[126]

In the *Carter* case, the court held that the sculpture in the lobby of a commercial building was considered to be a work of "recognised stature" because the court was convinced by the expert testimony that highlighted the sculpture's strong reputation. Experts described it as "an incredible phenomenon," praised its imaginative qualities, and mentioned that an art society which wanted to conduct a tour of the artwork.[127]

The court used the similar approach given to the *Carter* case in this case to determine if the work of *Cohen* at 5Pointz were "recognised stature." This meant that the court looked at whether the graffiti artworks were considered important and well-known, just like the work in *Carter*. Daniel Simmons Jr., who was an expert witness for the plaintiffs, agreed with the other expert Mastrion, and discussed the high quality of the artwork of 5Pointz, mentioning things like design, colour, shape, form, symmetry and innovation. Simmons believed that losing 5Pointz would cause harm to New York City, as the artwork had become a significant part of the city's landscape and should be preserved if possible.[128]

From the defendant's point of view, while the artwork at the 5Pointz was "beautiful," they contended that it did not have "recognised stature". They brought in Erin Thompson who was an art history professor, to testify with a more limited view of "recognition" and "stature." Thompson agreed that aerosol art could gain the recognition of recognised stature, citing the famous artist Banksy, whose works are well-known globally. However, Thompson argued that just because people visited 5Pointz to see the artwork did not mean it fulfilled the requirements for VARA recognition.[129]

The district court in this case ultimately agreed with Thompson and explained that it did not have the authority to preserve 5Pointz as a tourist attraction, as the power to do so belonged to the City. While the court acknowledged the "breadth and visual impact" of 5Pointz and wished it could preserve the artwork, the court decided not to grant VARA protection to the works at 5Pointz.[130] The court further added that the plaintiffs had created their own difficulties by

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126 861 F. Supp. 303 S.D.N.Y. (1994). The court of appeals did not address what constitutes a work of "recognized stature" but found that the artwork was indeed of recognized stature because it was not precluded as a work made for hire exception.

127 *Supra* note 121.

128 *Ibid*.

129 *Ibid*.

130 *Ibid*.

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continuing to paint even after the City Planning Commission approved the demolition. The court further explained that the plaintiff's artwork could live on in the other forms, which would still be protected under the traditional copyright law. These works could be marketed to the public, even to people who had never visited 5Pointz. By refusing to grant VARA protection to the 5Pointz artists, the court confirmed in this case that graffiti artists can still avail access to copyright protections.[131]

IV. Legal Framework in India

This section of the paper explains how Indian law protects graffiti and street art under the provisions of Copyright Act 1957 with relevant case laws and examines the existing legal challenges and lacunae of balancing artists 'rights with the property rights of owners of the surface or building.

Legal Analysis of Copyright Act, 1957

In India, copyright applies to all original literary and artistic works.[132] The Indian Copyright Act of 1957 defines "literary work" in Section 2(o), however the definition is vague. It mentions examples like computer programs, tables and databases. Section 2(c) provides a complete list of "artistic works," which includes paintings, sculptures, drawings (like diagrams, maps, charts, or plans), engravings, photographs, architectural works and various other forms of artistic craftsmanship.[133]Graffiti and street art often include both pictures and non-stylised text along with artistically designed text.[134] However, the Act does not explicitly mention public artforms like graffiti or street art which creates an ambiguity about whether graffiti qualifies as an "artistic work," especially if such an art work is created without the consent of the property owner.

Section 57: Moral Rights of Artists

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131 *Ibid*.

132 This is by virtue of Section 13(1)(a) of the 1957 Copyright Act, which is subject to the other provisions of both the Section as a whole and the rest of the statute. The other clause in Section 13 relevant to street art and graffiti reads: '13(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 [which deal with international copyright] apply, unless, – (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India; (ii) in the case of an unpublished work other than a work of architecture the author is at the date of the making of the work a citizen of India or domiciled in India; and (iii) in the case of work of architecture the work is located in India. Explanation. In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.'

133 Nandita Saikia, "Street Art, Graffiti, and Indian Copyright Law" in E. Bonadio (ed.), *The Cambridge Handbook of Copyright in Street Art and Graffiti*, 272 (Cambridge: Cambridge University Press, 2019).

134 *Ibid*.

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The Copyright Act of 1957 provides artists with two 'special rights 'or moral rights: the right of paternity and the right to integrity.[135] Before 1994, the Copyright Act had given a lifelong protection to the right of integrity which is similar to the perpetual protection currently as the right of attribution. Also, the right of integrity was not connected to whether the author's reputation was affected.[136] Section 57 originally, did not require any changes to a work to harm the author's reputation for the author to take action. This made Section 57 provide stronger protection than the Berne Convention.[137] For example, Indian law could protect artwork from being completely destroyed, which the Berne Convention's moral rights rules usually do not cover.[138] The right of integrity mentioned under Section 57(1)(b)[139] of the Act, protects an artist's work from being distorted, mutilated and modified in any way that harms the artist's honor or reputation. The right is separate from, and not affected by, how long the copyright on the work lasts.[140]To violate the integrity right, two things must happen: first, the work must be treated in a way that harms it - which is called as the "derogatory treatment", and second, it must harm the artist's honor or reputation.[141] The Delhi High Court in *Raj Rewal v. Union of India*,[142] has made a distinction between "reputation"[143] and "honor".[144]

In the case of *Amarnath Sehgal*,[145] Delhi High Court suggested that an Indian court might be open to recognise the rights that are not explicitly mentioned in the law, going beyond what the statutes prescribe.[146] The court referred to India's international law and stated that Section 57 of the Copyright Act 1957, should be broadly interpreted. The court said that destroying a work of an art is the most severe form of 'mutilation 'because it reduces the artist's creative body of work and harms their reputation, which can be legally challenged under this section. However, this interpretation has had little practical impact outside academic discussion and

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135 Sec. 57 of the Copyright Act 1957 which is based on art. 6(bis) of the Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971).

136 Mrinalini Kochupillai, "Moral Rights Under Copyright Laws: A Peep into Policy - 3", *Spicy IP*, January 13, 2008, *available at:* https://spicyip.com/2008/01/moral-rights-under-copyright-laws-peep.html (last visited on July 18, 2025).

137 *Ibid*.

138 *Ibid*.

139 *Supra* note 60. Sec. 57 states 'Authors Special Rights'.

140 Karishma Karthik, "Why Moral Rights are Dead Serious: Preserving the Posthumous Moral Right of Integrity - Part I", *Spicy IP*, May 3, 2023, *available at:* https://spicyip.com/2023/05/why-moral-rights-are-dead-serious-preserving-the-posthumous-moral-right-of-integrity-part-i.html (last visited on July 18, 2025).

141 *Ibid*. The uses the terms "honor" and "reputation" separately, meaning they are meant to be seen as two different concepts that both need protection.

142 *Raj Rewal* v. *Union of India & Ors.* AIR 2019 Del 911.

143 Reputation refers to how others view the artist based on their professional work.

144 Honor relates to the artist's personal integrity as a person.

145 *Amarnath Sehgal* v. *Union of India*, Delhi High Court, India, 2005 (3) PTC 253 (Del).

146 *Supra* note 129.

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traditional art, like street art and graffiti, which has not been benefited from it.[147] The court said that when it comes to protecting an artist's work, if the work is considered an important part of the nation's cultural heritage, the artist's work could include actions to protect the works integrity, especially if it is seen as a modern national treasure.[148]

In *Raj Rewal s*[149] the Delhi High Court found that even if a work is created legally, there may still be no moral right to stop it from being destroyed as right to property is a fundamental right in the Constitution, and it cannot be taken away by using copyright law. Copyright law does not allow property owners to lose their property, even if moral rights are claimed against demolishing a building. If an artwork is placed on a property without the owner's permission, the owner has no copyright over that artwork. The copyright of the artwork and the property owner's rights over the physical surface can exist separately without affecting each other.[150]

When graffiti or street art is destroyed without care, there are no clear legal tools to stop such actions, especially if the works were created illegally or by unknown or lesser-known artists. The only transparent way to challenge such destruction is if the art was created legally under a contract that could specifically prohibit its destruction. In such cases, the artist could sue for breach of contract or ask for specific legal protection. However, even if the art was created legally, it can still be difficult to use moral rights to prohibit its destruction because for a moral right claim to success, the artist must prove that destroying the work harms their honor or reputation.

V. Conclusion and Suggestions

Graffiti and street art in India face multiple challenges due to a lack of legal recognition and protections under the legal statutes. The Indian Copyright Act 1957, does not explicitly include graffiti or street art as "artistic works," leaving their copyright status ambiguous, especially when they are created without prior permission from the property owners.

Most graffiti work is considered vandalism under the property laws, as it is often created without taking prior consent from the property owners, which makes it difficult for artists to claim legal protection for their work. Even though Section 57 of the Act grants 'special rights' or moral rights to authors, it is difficult for graffiti artists to access and apply these rights to

147 *Supra* note 129.
148 *Supra* note 145.
149 *Supra* note 138.
150 *Supra* note 129.

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protect their work because courts tend to prioritize property owners 'rights over the rights of artists.

In India, cultural perception often view graffiti artwork as an act of defacement rather than as a legitimate and legal form of artistic expression which creates a negative impact upon the recognition of graffiti artists and protection of 'graffiti 'as an art. The ephemeral nature of graffiti and street art is also an issue where their artwork is often removed easily, making it very difficult for the artists to ascertain their rights. The lack of legal mechanisms to solve the disputes between property owners and artists further adds to the problem.

India can take inspiration from the VARA Act 1990 to better implement graffiti and street art. By amending the Copyright Act 1957, to provide recognition to graffiti and street art as valid artistic works eligible for copyright protection, clarifying how the application of moral which is prescribed under Section 57 of the Act. Campaigns based on public education could transform the perception of society with respect to graffiti from vandalism to art, while creating separate street art zones could encourage and motivate artists to create artistic work in a legal and collaborative work.

Overall, the lacunae in India's legal framework, combined with weak enforcement of the existing moral rights and limited cultural recognition, make it difficult for graffiti and street artists to protect their work or gain proper recognition for their creativity.

The pragmatic study has examined how copyright laws in the United States and India provides protection to graffiti and street art where the Visual Artistic Rights Act (VARA) 1990, in United States offers a transparent protection for artists 'even if their work is displayed on private property. However, in India, there are no specific laws for graffiti or street art, which creates a legal vacuum and lacunae for the artists.

To balance artistic freedom and property rights, India must recognise graffiti and street art as a legitimate form of creative expression and create laws that encourage cooperation between artists and property owners. These laws should not only protect the rights and interest of the artists but also property or surface owners interest by providing clear legal guidelines for graffiti and street art which will help to preserve creative art, prevent damage to such art and create a more inclusive cultural environment. Recognising the value of graffiti and street art will in further help ensure artists 'creative work is protected and its contributions are also valued in the society, promoting a fair balance between the freedom of the artists and property rights in India.

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AN ANALYSIS OF JUDICIAL PERSPECTIVE OF NGT ON SUSTAINABLE DEVELOPMENT

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ABSTRACT

In order to resolve the conflicts between environment and development many legal efforts have been taken at international and national level since 1972 to till date for achieving the sustainable development goal. The principles of Stockholm Conference and Rio Declaration and other International Instruments provide the protection and improvement of human environment as well as access to judicial remedy and effective adjudication of environmental disputes by the national court. There is no doubt that Indian judiciary particularly Supreme Court and High Courts played an important role in developing the environmental jurisprudence. Further, the complex nature of environmental disputes which Insole scientific and other sues the Supreme Court expressed his desire in number of cases for the need of a specialized court Related to environmental matters Apart from that the Law Commission of India in its 186th Report 2003, also proposed to constitute environment courts for achieving the objectives of Articles 21, 47 ,48 A, 51 A (g) of the Constitution of India, 1950 by means of fast, fair and satisfactory judicial process. Keeping in view the abuse developments the Parliament has passed a comprehensive legislation named as the National Green Tribunal Act, 2010 the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources for realizing goals of sustainable development. In this paper, the researcher attempted to analysis the jurisprudence of NGT on sustainable development measures with the effective implementations.

Key Words: Environmental Protection, Sustainable Development, Judgements, Forest.

I. Introduction

The link between environmental degradation and economic development has become a matter of great concerns over national and international level over past four decades. It is therefore futile to resolve the clash towards environmental protection and economic growth that paved the imbalance on sustainable development. This term sustainable development used by the World Commission on Environment and Development Report(Brundtland Report) as in the name of Our Common future in the year of 1987. But the links between environmental protection and development issues are already articulated from Stockholm Conference on 1972. Thereafter, the Rio Declaration in 1992, Johannesburg Summit in 2002 and Rio 20 submit in 2012 continuously renew global commitment to sustainable development. Further,

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the United Nations Conference on Sustainable Development is popularly known as Rio 20 again connotes the challenges over environment and economic crises that have to compile the agendas of sustainable development goals in post-2015 development agenda known as Sustainable Development Goals 2030 in the coming years. One of the most important facets of environmental justice.

The above conferences which enlist the principles towards the environment protection, assured intergenerational equity compiled with the judicial remedy and effective adjudication of environmental disputes by the national courts by its legislation regarding liability over the polluters and the justice for the victims with the effective environmental sustainability to resolve all their environmental disputes by appropriate means. Indian government has passed various socio-economic and environmental legislations and policies towards the implementations the three pillars of sustainable development in post Rio period.[1] Verdicts of Supreme Court and High Courts proceeds with the environmental jurisprudence since 1980. It is incomplete to without mentioning Environmentalist M. C. Metha in this study of environmental jurisprudence. Further, the complex nature of environmental disputes which involves scientific and other issues the Supreme Court pressed its desire in serious number of cases for the need of a specialized court related to environmental matters. Apart from that, Indian Law Commission recommends to constitute environment courts by its 186th Report in 2003[2] towards the objectives of Articles 21, 47, 48 A, 51 A (g) by means of fast, fair and satisfactory judicial process, but this execution taken out by National Green Tribunal Act, 2010 have enacted for environmental protection and conservation of forests and other natural resources for effective and expeditious disposal of environmental matters. The present article wishes to examine the role and contribution of National Green Tribunal as the green institution in the faces to environmental justice and goals of sustainable development.

II. Sustainable Development: International and National Perspective

In the international context, sustainable development law considers to be a corpus of international environmental principles and conventions, the areas of intersection between the three pillars of sustainable development as international economic law, international

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1 The three pillars - Society, Environment and Economy, in associated with the international forum and other Environmental organisations. Purvis, B., Mao, Y. and Robinson, D., "Three pillars of sustainability: in search of conceptual origins", 14 *Sustainability Science* 681 (2019).

2 186th Law Commission Report, 2003, p. 8-9.

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environmental law (interracial environmental law)[3] and international social law as to be referred as three pillars. The journey begins with the Stockholm Conference in 1972. This principle gained an international importance in 1987 by Words Commission on Environment and Development the Our Common Future a fundamental document that gave a new concept for the strategic framework for sustainable development across nations. That defines sustainable development in term of "development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

With the adoption of these instruments, sustainable development becomes a leading concept of international environmental policy and after thirty years of Brundtland Report, we have to analyse our position with the huge population in the international consensus regarding sustainable development. These aforesaid international documents dealt about the access to environmental justice, assured right to health to everyone and social justice ensuring equality and to develop a national dispute resolution procedure to deal with the settlement and exploitation of nature. In the recent past, in 2015 the global community adopted future agenda popularly known as sustainable development goals by 2030. It prescribes international level, every developed, developing and transition nation has committed to ensure access to justice for all by an effective means of accountably inclusive institutions in its efficient levels comprehensive in every nation to promote the rule of law at the national and international levels. As far as the national perspective is concerned that the Indian ‘Law Commission of India, ‘186th Report on Proposal to Constitute Environment Courts, September 2003. This effective measure is amongst the few in the world that contains specific provisions related to environmental protection and improvement’.

The principle of sustainable development was used to require executive and administrative authorities to give due regard to existing policies in their decision-making processes.[4] The principle of sustainable development has embedded in the fundamental rights under Part III of the Constitution and the judicial remedies for the enforcement of fundamental might to wholesomeness of the environment have been very much expanded and liberally construed to sustain the claim of the competing stakeholders of such rights in number of cases as part of Article 21 in a number of judicial pronouncements by the Supreme Court and High Courts.

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3 The international environmental law segregates the protection of environment, but it specifically implanted white space area. The implementations not be measured other than, the place of whites. – Nadia B Ahmed and Melissa Bryan, “Environmental law as Segregation” 64(3) *Howard Law Journal* 439 (2021).

4 In *Vellore Citizens’ Welfare Forum* v. *Union of India and Ors*, (1996) 5 SCC 647.

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Apart from this, for the concerns of environmental protection, legislations enacted for the protection of land, water, air and sustainable environment over by rules and policies related to the improvement for implementing the three pillars of sustainable development.

III. National Green Tribunal: Institutional Structure

The National Green Tribunal (NGT) was set up on 18th October 2010 under the NGT Act, 2010, for the purpose of effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural recourses including enforcement of any legal right relating to environment and giving relief relating to environment and giving relief compensation for damages to persons and property and for matters connected therewith or incidental thereto NGT has five places of sitting, i.e. the principal Bench in Delhi and zonal benches in Pune, Kolkata, Bhopal, and Chennai. Apart from this, the tribunal holds three circuit benches at Shimla, Shillong, and Jodhpur.

IV. Powers and Functions of National Green Tribunal

The Tribunal can resolve disputes pertaining to the environment both initially and on appeal. All civil matters involving a significant environmental challenge arising from enactments listed in Schedule-I of the NGT Act fall under the original jurisdiction. The time limitation for adjudication of application is within a period of six months from the date on which the cause of action in such a dispute first arose; it may be extended for 60 days where there is sufficient clause Tribunal has its own procedure and have the same power as are vested in a civil court under Civil Procedure Code 1908, but neither it is bound by the procedure of Civil Procedure Code 1908 nor the rule of evidence. The fundamental tenets of Indian environmental jurisprudence namely, the principles of precaution, sustainable development, and the polluter pay principle must be applied by the Tribunal. Any aggrieved party may appeal the Tribunal's decision or award to the Supreme Court of India under the terms of the Act. It may be based on any of the grounds specified in Civil Procedure Code, 1908, Section 100. The tribunal has a power to impose the penalty on individuals and companies for noncompliance of tribunal's orders i.e individual is subject to a three-year prison sentence or fine of Rs. 10 crores, or both, while corporate entities subject to a fine of Rs. 25 crores, with relevant company officials potentially facing personal culpability. This Compensation is inadequate while harming the environment is irreparable damage to the ecology.

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The National Green Tribunal (NGT) has emerged in recent years as a significant environmental regulatory authority that may give harsh directives on matters pertaining to waste management, pollution and deforestation, etc. Among the National Green Tribunal's principal authorities are the following:

i. NGT facilitates the advancement of environmental law by creating a substitute conflict settlement process.

ii. It contributes to lessening the load of environmental litigation in higher courts.

iii. NGT offers a less formal, less expensive, and quicker resolution to a range of environmental problems.

iv. It stops actions that harm the environment. The Environment Impact Assessment procedure is strictly adhered to by NGT.

v. NGT offers indemnification and redress for any harm done to people or property.

V. NGT's Contribution in Environmental Justice and Sustainable Development

The role of courts is emphasized environmental protection by judicial decisions viewed as potential means. An analysis of the NGT's role for the past decade screened as a progressive means of its approach towards environmental protection in sustainable development concerns. NGTs first contribution Forest Clearance given for generating hydroelectricity power Environment Clearance for Thermal Power Project in Nagpur, sometimes crack had occurred in the tunnel based hydro power projects. The ecology may suffer irrevocable and irreparable harm if the dam's construction is approved. The concepts of polluter pay, precautionary principle, and sustainable development shall be applied by the Tribunal enforcing any order, decision or award. It is to be declared an important tool ensuring optimal use of natural resources and confirms by sustainable development is Environmental impact assessment EIA.

In *Adivasi Majdoor Kisan Ekta Sangthan Vs. Ministry of Environment and Forests*[5],

When delivering its ruling, the NGT noted that there had not been a few minor procedural errors made at the public hearing. Thus determines the crucial step to approve an environmental

[5] *Adivasi Majdoor Kisan Ekta Sangthan* v. *Ministry of Environment and Forests NGT New Delhi,* M.A No: 36 of 2011, (Arising out of Appeal No. 3 of 2011).

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permit. In actuality, it was a quintessential illustration of how the laws and ideals of natural justice were broken. Held that, it is proper to declare that the case's public hearing was invalid. The theory of sustainable development has gained acceptance as a solution to balance, on the one hand, the several developmental initiatives meant to guarantee a higher standard of life and enhance the social and economic circumstances of people. However, making sure that the effects of growth are consistent with the need to preserve and enhance the environment rather than surpassing it carrying capacity need to protect and improve the environment with the same interest. With the change of time, Sustainable Development was dealt by NGT which seems that after this year every authority or institutions were focused on sustainable development.

In *Kehar Singh Vs. The State of Haryana Through the Secretary*,[6] the application has been filed that dealt with the legal absence of any requirement for environmental approval in order to build a sewage treatment plant. By comparing the project's negative consequences to the benchmarks of sustainable development, human welfare, and the environment, they may conduct a comparative analysis. Inherently, sewage is a highly dangerous contaminant. It can lead to severe health risks and harm the environment, including unbearable odours. It contains nutrients that might cause receiving water bodies to become eutrophic, pathogenic organisms that can spread disease to people and animals, and ecotoxicity. Here, the NGT has focused on protection of human health, which is also part of sustainable development, and again a consideration of Ratlam Municipal case[7] as well said by the Supreme Court.

Goa Foundation and Peaceful Society Vs Union of India and Others[8] Applicant relied on an apex court ruling to argue that the Tribunal should not propose the anthropocentric sustainable development. The request was made for the protection of the environment in the Western Ghats and for relief that Respondents be directed not to issue any consent, environmental clearance, or permission under different laws within Western Ghat areas. Nonhumans are only valuable to humans as tools, according to anthropocentrism, which is constantly grounded on human interests. Ecocentrism holds that nonhuman animals have inherent value and that humans are a part of nature. Human interests do not always come first, and people have duties to nonhuman entities that are separate from their own. Therefore, ecocentrism is life-centered and nature-centered, with people and non-humans both being a part of nature. The Public Trust Doctrine mandates that the government protect and preserve the natural balance of the environment.

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6 *Kehar Singh* v. *The State of Haryana Through the Secretary NGT New Delhi,* A No:124/2013.
7 *Municipal Council, Ratlam* v. *Shri Vardhichand & Others*, 1980 AIR 1622, 1981 SCR (1) 97.
8 NGT New Delhi 2013,M.A No: 49/2013, Appl. No: 26/2012.

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In M/s. Sterlite Industries (India) Ltd. Vs. Tamil Nadu Pollution Control Board and Others[9] The appellant company installed and operates a copper smelter plant in south Tamil Nadu. The National Environmental Engineering Research Institute's (NEERI) report in 2005 prescribed its certain emissions from the company haven't meet the regulations, overall emission levels not stipulate within the standard prescribed range. The most basic quality of air been poor quality but this regard meant to bound the right to life under Article 21 should ensure the quality life.

The scale of human health and environment's impact should be previewed in the curvature of public interest, fixed in 'reasonable person' test. Priorities include life, public health, and environment over joblessness and economic loss. It is frequently asserted that environmental preservation and development are complementary aspects of one another rather than rivals.

If using the concept of sustainable development makes it feasible to continue with developmental activities without endangering the environment or by minimizing its negative impacts via 'the implementation of strong hurdles, development must continue in that case since it is essential to the growth of industry, irrigation resources, power projects, etc., as well as the enhancement of employment possibilities and income production'.

Tribunals must strike a balance between the need for environmental preservation and development. Therefore, the term 'sustainable development' should refer the level of development is possible and that is supported by the environment and nature, whether or not mitigation is required. The public interest must now be considered when determining the risk of harm to the environment to habitat, as per the reasonable person's test.

In Wilfred J. Vs. Ministry of Environment & Forests[10] Present application filed against Vizhinjam Port Project on the ground that said project affects not only ecology and environment of that area would be affected but there would also be the adverse impact on their livelihood Whether NGT had jurisdiction to entertain said application - Held the NGT Act's structure explicitly grants the Tribunal total autonomy to carry out its judicial duties, tenure security, favorable employment conditions, and all the capabilities of a court. The NGT's presiding members served as judges and justice administrators in their official capacities; they

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9 AIR 2019 SC 1074.

10 *Wilfred J.* Vs. *Ministry of Environment & Forests* (2014) NGT (Principal Bench) Apl No. 74/2014.

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were not administrative officers. Subject to the rules of applicable Acts, the Tribunal would have to review any environmental concern that fell under Scheduled.

The Court held that intergenerational equity has been incorporated into international law and is a crucial component of environmentally sustainable development. According to the theory, it is the responsibility of all those who care about the present to make sure that the next generation is not subjected to excessive suffering or environmental or ecological damage.

In Rohit Choudhury v. Union of India & ors,[11](Kaziranga National Park case) The United Nations Educational, Scientific, and Cultural Organization (UNESCO) has designated Kaziranga National Park in Assam as a World Heritage Site. The Kaziranga National Park is home to several rhinoceroses, including one horned rhino, elephants, and a diverse range of plant and animal species. In this instance, the applicant sought the NGT, claiming a gross breach of the MoEF circular, which declared a 15-kilometer radius surrounding the Numaligarh Refinery and Kaziranga National Park to be a "No Development Zone" (NDZ). Though, applicant had filed multiple objections and approached the State and Central Authorities in a request that they take action to stop infringement and violation of law, the applicant contended that mushrooming stone quarries were installed indiscriminately within the NDZ in flagrant violation of the aforementioned notification, severely harming the ecology, wildlife, and environment.

Kalpavriksha Vs Union of India[12]- Petition challenging Notification issued prescribing eligibility criteria for chairperson and members of Committee of National committee on Environmental planning. The authority to take any action the Central Government saw fit to prevent, control, and mitigate pollution as well as to safeguard and enhance the quality of the environment was granted to it. The individuals nominated ought to possess extensive administrative expertise in the relevant development sector, be experienced ecologists or environmentalists, or both. It was no longer necessary for a technical professional or someone with managerial experience in the relevant development area to have any connection to environmental development or conservation.

The Forward Foundation, Charitable Trust and Others Vs State of Karnataka and Others[13]. National Green Tribunal has condemned Mantri Tech Zone Pvt Ltd. and Core Mind Software

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11 *Rohit Choudhury* v. *Union of India & ors*, (2012) NGT App No. 38/2011.

12 *Kalpavriksha* v. *Union of India*, NGT (New Delhi), (2014) A.No: 116/2013.

13 *The Forward Foundation, Charitable Trust and Others* v. *State of Karnataka and Others,* NGT (New Delhi) (2015) 19.

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and Services Ltd., imposed with penalties of Rs 117.35 crores and Rs 22.5 crores respectively, for starting construction on two projects on the Bangalore catchment area in Agara lake and in Bellandur lakes before receiving environmental clearance, the application filed for seeking restoration of ecologically sensitive land on ground projects were implemented without following environmental norms.

Held - The applicant could not have accessed any remedy prior to the dates the Act came into force and the Tribunal was constituted. As a result, the statute of limitations would begin to run at best from these dates. Consequently, the application for purposes of Section 15 of the Act had been filed within the specified years therefrom and was within time. Respondent had received environmental clearance on a specified date, and all events had occurred thereafter until the institution of the petition. The Center for Ecological Sciences, Bangalore, handled the application for The Environmental Information System (ENVIS), conducted research and produced a report on the necessity of Bellandur Wetlands Conservation and Decision Makers' Obligation to Ensure Intergenerational Equity. It focused addressed the Karnataka Industrial Area Development Board's SEZ proposals in six zones. The opinion expressed was that this practice goes against sustainable development since it affects wetlands, lakes, and natural resources. Eliminating rajakaluve[14], or storm water drains, and progressively encroaching onto them is equivalent to removing lake connection, which intensifies flood occurrences and related calamities. To regain the advantages of wetland ecosystems, sustainable development management measures must be put into place due to the increased loss of ecosystem products and services and the deterioration of water quality.

SP. Muthuraman Vs Union of India and Others,[15] In this case, NGT observed that,

When projects are finished and even permanent harm to the environment and ecosystem is done, the Precautionary Principle may no longer be relevant. But in partially finished projects, the circumstances could be different; in such situations, prompt corrective action would be required to safeguard the environment. It could be feasible to take action at this point, but waiting much longer would make it completely unfeasible. Using the precautionary principle is a proactive approach to mitigating the likelihood of environmental harm. The goal should always be to stop the principal environmental issue before its most detrimental impacts and secondary effects become apparent. An aid for improving judgments about the environment

14 A water resource or flow of water into the lake, pond or canal or any accumulated ground water.

15 *SP. Muthuraman* v. *Union of India and Others* NGT, Southern Zone Chennai, 2020.

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and human health is the precautionary principle. Instead, then managing it after the fact, its goal is to avoid it from the beginning. This rule may need to be implemented more strictly in specific circumstances, especially if the project sponsor is responsible for any errors or commissions of commissions. Under Environment (Protection) Act of 1986, the authorities empowered to the cease any operation of projects that volatile the environment. Due observance of the precautionary principle and the theory of balance is implied by the necessity of the sustainable development concept.

VI. Challenges and Concerns before NGT

Although the National Green Tribunal has served as a 'effective deterrent' against environmental norm violations, there is cause for worry given the recent high court appeals to the tribunal's rulings. The fact that recently NGT's decisions contested before High Courts under the Constitutional power of Article 226 also raised concerns. Some High Courts, such as the Bombay High Court, have begun to hear appeals against the NGT orders and have argued that they are superior to the NGT because 'High Courts are constitutional bodies, and the NGT is statutory bodies'.[16]

The NGT Act allows for challenges to rulings before the Supreme Court; nevertheless, petitioners have been challenging decisions before the High Courts by citing Article 226 (the authority of High Courts to issue certain writs). The Supreme Court has not yet determined which NGT rulings, and on what grounds, may be appealed to the High Courts. The report also expresses worry about the fact that the NGT's rulings were described as "not feasible to implement within a given timeframe in situations where they were disregarded. The largest obstacle that individuals encounter is getting justice. In Jharkhand's Chaibasa district, the Bindrai Institute for Research Study and Action (BIRSA), along with the Occupation Health and Safety Centre (OHSC), had approached NGT over abandoned asbestos mines at Roro in the same district. BIRSA pointed out that their role was to make people aware of the harmful effects of asbestos, but only activists in metro cities could approach NGT over the issue[17]:

According to the BIRSA Convenor, 'We don't know a lot about NGT' It is quite difficult for a tribal activist who is stationed in a rural area to get to Kolkata and find lodging there. Dayamani Barla, a tribal leader who has spearheaded efforts against mining and relocation, offers perhaps

16 Geetoanjoy Sahu, "Impact of the National Green Tribunal on Environmental Governance in India: An Analysis of Methods and Perspectives", 3 *Journal of Environmental law Policy and Development* (2016).

17 Dutta M, Sreedhar R, Basu A. "The blighted hills of Roro, Jharkhand, India: a tale of corporate greed and abandonment", 9(3) *International Journal on Occupational Environment Health* 254 (2003).

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the clearest and most concise criticism of NGT's inaccessibility. She expressed regret, saying, ‘I am not aware of NGT’ She queries the rationale of someone making the lengthy trip to Kolkata to pursue legal action. ‘A green tribunal should have been based in a place that has the largest mineral deposit or the highest forest cover,’ she continued[18]. That is where the dispute is and that is where the extremely poor live.

Specifically Southern zone of NGT at Chennai registered in oil spill case at Ennore port in 2017. The status report filed before it clearly affidavits its distribution of compensation about Rs. 141 Crore and the Government of TN grants about 203 Crore[19], but the restoration takes as long and the spill also continues. The sadden is that the oil spill and leakage still be rattled, Chamgpang district in Nagaland, still oil leakage issue doesn’t ended. Thus it be better to increase the Benches to respective states. This preview have to include two new UTs Ladakh and Jammu & Kashmir as of now mining license have granted.

VII. Conclusion and Suggestions

Environmental preservation and development are not antagonistic. The synonyms of development should be in sustainable in nature, without harming the environment or minimizing its negative effects by enforcing strict safeguards. This is because it is essential to develop industries, irrigation resources, power projects, and other projects, as well as to increase employment opportunities and revenue generation. Since its founding, the National Green Tribunal (NGT) has unquestionably been India's most dependable and forward-thinking environmental body. It had reinterpreted the function of environmental specialists and the standards used in choosing them. When it comes to carrying out its orders which often have to do with maintaining environmental clearances it has generally been effective. Every person has a responsibility to safeguard and enhance the natural environment in addition to the laws, policies, organizations, and agencies already in place. To start, we must prioritize the duty-based approach in addition to the right-based approach. With the attention, all governmental branches must urgently assist in ensuring that laws and policies are effectively enforced by the means to balance the development coexist with sustainability.[20]

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[18] Anumeha Yadav, on The Hindu, dated Nov 6th, 2012.(Ranchi)

[19] *Meenava Thanthai K R Selvaraj* v. *The Chairman*, National coastal zone NGT Chennai, (2020) Original App. No. 14/2017.

[20] Tandon, Usha, “Assessing India’s Green Tribunal for Conservation of Biodiversity” in *Biodiversity: Law, Policy and Governance*, 200 (Routledge, Taylor and Francis Group, London, New York, 2018).

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Technical specialists in engineering and other technological fields, as well as scientists in the physical and biological sciences, make up the NGT's expert membership. It's interesting that no exception is made for social scientists, environmental activists, or other concerned individuals who have the necessary training or experience with hazardous jobs or the environment. It is important to emphasize that the scope of the NGT's authority is restricted to the acts specified in the schedule. Thus, in addition to their primary functions as a venue for environmental public interest litigations, the HC and SC continue to play a significant and concurrent role in this regard. For example, there may be no clear connection between this and statutory infractions and environmental health issues.[21]

The NGT is not empowered to dealt about certain legislations that deal with the concerns of environment such as the Wildlife (Protection) Act 1972, the Indian Forest Act 1927, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006[22]

Reverting to our ancient dharma of environmental conservation is the most crucial action that can be recommended to improve the quality of life on Earth. To do this, we must first and foremost change the way we think about the environment, which can only be done by living a more natural lifestyle. The natural way of living basically entails a balanced perspective on life, where materiality and spirituality are viewed as equally significant for the overall sustainable development of society and humans in particular, and as such, coexist in harmony. Discretion and reason are developed by spirituality, allowing a man to discern right from wrong and act appropriately. Environmental problems, have to dealt as a duty over the humanity all over the globe.

A strong recommendation through this article is that the clear principle policy decision have to determine that the environmental sustainability should prevail over the investment arena. The NGT judiciary functionary should not entertained without the departmental experts. The fine or compensation collected should be diverted to a separate publicly accountable department should ensure the environmental sustainability and other recreational activities in the concerns of environmental protection sense.

21 Gill, Gitanjali, "A Green Tribunal for India", 22(3) *Journal of Environmental Law* 461 (2010).

22 Neetu Singh, "NGT: a Beacon for Sustainable Development", 11 *International Journal of Scientific & Innovative Research Studies* 13 (2023).

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Every state should establish an environment court in order to produce more productive results. Furthermore, before much water goes down, it is the constitutional responsibility of all those who concerned towards the sustainable environment, with most conscious legislators and "We the people of India" to ensure that the Parliament makes the necessary changes to address the shortcomings mentioned above with serious responsibilities. In conclusion, it is anticipated that NGT would satisfy the long standing demand for an alternate court that can provide victims of environmental damage with appropriate justice in the sense of environmental sustainability.

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THE EVOLVING LANDSCAPE OF THE CRIMINAL JUSTICE SYSTEM: TOWARDS OFFENDER REHABILITATION AND REINTEGRATION IN INDIA

Dr. Madhuri D. Kharat[*]

ABSTRACT

This article is a critical analysis of the history and the present status of offender rehabilitation and reintegration in the criminal justice system in India. Historically, the system was based on retributiveness and punishment which has been reified by the Indian Penal Code of 1860 and the Prison Act of 1894, the legacy of the British colonial period. With the advent of human rights movements worldwide, philosophy has gradually shifted towards a more reformative approach, reflected in significant post-independence legislative developments such as the Probation of Offenders Act, 1958, and the Juvenile Justice Act, 2015. More recently, the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) of 2023 have brought progressive ideas such as community service and time-bound release for undertrials.

Despite these legislative developments, serious systemic, societal, and administrative challenges remain. Prisons are chronically overcrowded, massively understaffed and desperately underfunded with respect to rehabilitation programs, with only 0.6% of the overall prison budget going towards the provision of educational and vocational training. Many ex-offenders believe societal barriers, such as widespread stigma and discrimination, make it difficult for them to find employment and housing. Additionally, there is a systemic underuse of non-custodial sentences and a serious lack of reliable data on reoffending, which limits evidence-based policy. The paper concludes that a truly rehabilitative system is multifaceted, including strengthening the legal framework, improving prison infrastructure, and making a conscious effort to build greater societal acceptance of former offenders to break the cycle of recidivism and build a more just and productive society.

Keywords - Rehabilitation, Reintegration, Prison, Reforms, Society.

I. Introduction: Shifting Paradigms in Indian Criminal Justice

The crafting of India's criminal justice organisation is an account of shifting philosophies, from a

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rigid, crime-focused to a more sophisticated, offender-centered framework. Historically, the paradigm of choice has been based on retribution and deterrence. In ancient legal texts, the emphasis was on punishment as a measure of social control, with the understanding that criminals must not re-offend. Punishments tended to be harsh, and ranged from fines and corporal punishment to capital punishment (long-term imprisonment as a main penalty was frequently absent). The pre-modern *danda*, or punishment, was considered divine in that it was an instrument of order and societal protection. While some ancient edicts such as that of Ashoka and Kautilya displayed traces of mercy and release of prisoners on special occasions, these were the exceptions to the general punitive orientation. The modern Indian prison was established during the British colonial rule, which clearly emphasised retribution and deterrence over rehabilitation. The Indian Penal Code (IPC) of 1860 and the Prison Act of 1894 created a system of strict imprisonment and hard labor with the punishment for each case depending on the gravity of the offense and its effect on public peace. This system was not very concerned with the offender's background or ability to change. Colonial jails were often "houses of industries," with an overarching focus on profit from punitive labor, rather than true reform. While economic considerations tended to undermine early reformist efforts, as in the persistence of such practices as oil-pressing which is known to be harmful to prisoners' health because it was profitable, the new post-independence era ushered in a new chapter, inspired by international human rights movements and new constitutional commitment to justice, equality and human dignity. This article does a critical inspection of historical movement, the existing laws and policies, existing problems, and attempts to develop detailed solutions to promote offender rehabilitation and reintegration in India.

From Retribution to Reformation: A Historical Overview

One of the main points of retribution and deterrence was provided by the older structure of punishment in India as known in the ancient legal texts and the colonial law provisions. In Indian Penal Code (IPC) of 1860, retributive concept of punishment was envisaged where the offender suffered through a process that was relative to the harm caused to a person or to property. The pre-modern penology also took a similar stand in terms of causing penalty as a penalty leading to ruling people and defending the society, the wise people considered it a blessing to penalty. It was a crime-centered model which tended to sentence depending on the seriousness of the breach, the severity of the crime and its overall impact on the community peace with minimal attention to the

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history and probable change of the offender.[1] The modern Indian prison system was pioneered by the British colonial rule, which had both explicit intentions to use the prison to seek retribution, as well as deterrence, usually at the cost of rehabilitation. It is such historical superiority of the retributive justice that resulted in the punishment-oriented tradition in which the key illegal objective was to ensure that the offender pays a debt owed to the law broken.[2]

Although firmly rooted in this punitive basis, the reformative ideals started to emerge rather slowly and, in the majority of cases, controversially. Such an understanding of rehabilitation as one of the purposes of punishment emerged as a reason for punishment.[3] The legal system of the original colonial version was constructed with control and vengeance. During the post-independence period, inspired by international human rights movements and the changing philosophy of penology, India began to consider reformative ideals in theoretical discourse.[4]

The Imperative of Rehabilitation and Reintegration

On the basis of humanitarian considerations, the need to rehabilitate and reintegrate offenders into the community is inherently born idea not only out of simple pragmatism in terms of comprehensive avenues of ensuring safety of the community but more so the ability to reduce the rates of recidivism and the need to ensure greater justice and productive society.[5] The overall interest of the modern community is to contribute in rehabilitation of the offender as a way of social defense.

Ancient and Medieval Roots: Retributive Justice and Early Forms of Confinement

In ancient and medieval India, the main purpose of the discipline was to ensure that those who had committed a crime would not commit another. Early Indian jurisprudence was heavily influenced by the Vedas and the Dharmasutras and thus dominated by retributive and deterrence-based principles. Punishment or *danda*, was considered as a weapon of the king to subdue the criminal

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1 A. S. Anand, "The Evolving Landscape of Criminal Justice: A Retrospective," *Indian Journal of Legal Studies*, 2024, vol. 15, no. 2, pp. 45-60.

2 *Committee on Jail Reforms*, 1983 (Mulla Committee), Ministry of Home Affairs, Government of India, 1983.

3 D. R. Gautam, *Penology and Victimology*, Central Law Publications, 2022, pp. 112-115.

4 P. S. S. S. N. V. Naidu, "Colonial Penology and Its Legacy in India," *Journal of Historical Penology*, 2020, vol. 8, no. 1, pp. 22-38.

5 T. S. K. Aiyar, "Recidivism and Social Reintegration: The Modern Penological Approach," *Indian Law Review*, 2021, vol. 45, no. 3, pp. 189-205.

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and establish peaceful order in society.[6] *Manu* of ancient times believed that keeping the people in order, saves people, guards people when they do not respect the law and order, so wise have thought of 'penalty' as a source of fairness.[7]

The punishments imposed in these times were diverse and most of the time brutal, like imposing fines, corporal punishment, which entailed lashing and flogging, and even capital punishment. Imprisonment, however, was not widely used as a means of punishment, especially in a long-term setting. The trial detention was the main use of prisons, as people suspected of wrongdoing could be temporarily imprisoned, but they could not be kept there, as there was little, yet considerable, increment in the use of reformatory actions. These are mentioned in history, e.g., the moral edicts of Ashoka and the counsel of Kautilya, regarding the granting of general liberty to prisoners. The earlier examples showed that *Kautilya* recommended releasing inmates, especially between the old and the poor, on special occasions such as the king's birthday or full moon days. These humankind measures, though occasional, reveal some ancient premonition of mercy and reintegration.[8]

Colonial Legacy: Punitive Imprisonment and Early Reform Efforts

The contemporary Indian prison system is the direct legacy of British colonialism. The philosophy and structure of the first prisons were based on the British system and changing European penal philosophy.

The Indian Penal Code 1860 and British Influence

The British colonial regime enacted a mechanism that was mainly focusing on some harsh forms of punishment, and strict incarcerations. IPC of 1860 and Prison Act of 1894 also contributed to development of this punitive ground and it established principles of harsh imprisonment and hard labor as principal components of punishment. The IPC largely relied on the severity and seriousness of a crime and its overall impact on the tranquility of the people in as far as sentencing policy was concerned. Things like the necessity of the application of the criminal justice compulsion and the punishment in proportionality with the nature and extent of the threat to the

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6 K. L. Sharma, "Dharma and Danda: The Retributive Roots of Ancient Indian Law," in R. M. N. Varma (ed.), *Readings in Ancient Indian Jurisprudence*, Universal Law Publishing, 2018, pp. 78-90.

7 *The Laws of Manu*, Chapter 8, Verse 308.

8 *Arthashastra of Kautilya*, Book 4, Chapter 3.

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fundamental freedoms were taken into account. This was the policy that focused on punishment rather than correction and paid less attention to social and psychological background of the crime. Instead, attention was paid to an offense itself, but not to the background of the individual criminal and his/her chances to be rehabilitated.[9]

Early Prison Committees and the Rise of Reformative Thought

Although the punitive system was basically present, periodic committees were appointed by the British colonial government to explore penal policies and practices. This was followed by the formation of commissions in the year 1838, 1864, 1877 and 1919. First, they recommended things of practical use like the dimensions of a facility, conditions of prisons and management of a prison. But a greater philosophical change came with the report of the 1919 committee and this was the earliest direct suggestion ever in Indian history to the effect that rehabilitation is to be the express aim of prison management.[10] This committee emphasised the need of a reformative approach to the convicts and criticised the use of physical punishment in prisons wherein the prisoners should be put to good use and also rehabilitation programs should emphasise on recreation after release. The years that moved to the independence of India i.e. 1937 to 1947 also witnessed a focused approach towards the expansion of the new penal policies. It was also partially explained by the circumstances that a significant number of leaders of that period had a first-hand experience of life in prisons, as they were incarcerated due to their protests against the foreign colonialist rule. This heightened the publicity, which led to the progressive changes in the law as well as the constitution of prison reform committees in different provinces.

The Prison Labour vs. Rehabilitation - Economic Imperative

Colonial jails in India were usually projected as houses of industries rather than rehabilitation. More emphasis was put on how to make huge profits through different applications of punitive labour and harsh means to punish.11 It was all hypocritical to espouse how to reform them, but not put it to practice completely within the jails. Economic purport was also one of the reasons that led to the transition of corporal and the capital punishment to the incarceration in an endeavor to

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9 *Report of the All India Jail Committee, 1919*, Government of India, 1920.

10 V. K. Singh, *A History of Indian Prison System: From Colonial Era to Modern Times*, LexisNexis, 2015, pp. 55-60.

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"socialise production and make a docile and disciplined labor force". The colonial jails especially those of the 19th century ran on a profit basis. This economic necessity too frequently wiped out any possible rehabilitative work. In the example given, oil-pressing which was a profitable industry kept running in Indian jails even though it was suggested that it should be abolished because it adversely affected the health and mind of the prisoners. This brings out a gap existing consistently between reform discourse and economic exploitation in the colonial punishment establishment.[11]

II. Post-Independence Period: Requirement of the Constitution and First Reforms

India had gained independence and was looking forward to a process of penal reform informed by the new Constitution that articulated justice, equality and human dignity. This paved the way to a more human oriented perspective to prisons and the movement to incorporate the ideas of rehabilitation in the correctional system.[12]

One of the landmark events of such a reform movement was the constituting of the All India Committee on Jail Reforms (1980-83) popularly referred to as the Mulla Committee.[13] This is so often considered as a turning point in the history of prison reforms in India because the committee published a detailed report covering 658 recommendations.[14] Some of the recommendations made by the committee included the need to have a national policy on prison and the emphasis on the prison being reformative in nature where the main task should be to make it a center of correctional treatment that can bring some positive changes in a person.

However revelatory the constitutional direction in these recommendations and the mandatory shift to more humane directions, the actual execution of such reforms has been tendentious, evinced by an apparent absence of political will to effect therefore dramatic changes. This implies that the extreme transactions of punitive and economical imperative of the colonialist period remain substantially influential today and are finding difficulties in plasticity those recommended ideals

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[11] S. D. Pradhan, "Reforming the Punitive System: A Look at British-Era Committees," *The Hindu*, November 15, 2023.

[12] D. M. Verma, *Prison Labour in Colonial India: An Economic Analysis*, Routledge, 2017, pp. 101-105.

[13] *Report of the All India Committee on Jail Reforms*, 1983 (Mulla Committee), Ministry of Home Affairs, Government of India.

[14] *Report of the Jail Reforms Committee, 1983* (Mulla Committee), Ministry of Home Affairs, Government of India, 1983, p. 150.

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of change.[15] The theoretical move in the legal framework might have taken place and even the operational culture, infrastructure and even the current perception held by society are still heavily imprinted with profit-based, control-focused past causing a long, hard road on the way to the change of a truly rehabilitative system.[16]

It is possible to comprehend the development of penal philosophy in India with the help of separate periods. The Ancient and Medieval period had a retributive and deterrent philosophy witnessed by the actions of the state of Danda (restraint), fines, corporal punishment, capital punishment with the main remedies of imprisonment being a pre-trial detention only and having minimum cases of general amnesty. The Colonial period had the predominant element of the British model of the retributive and deterrent philosophy with major focus of having severe punishment measures, rigorous imprisonment and hard labor as enshrined in the Indian Penal Code 1860 and Prison Act In this period prisoner sentencing was crime focused and prisons operated as a profit based house of industries, even though early suggestions of changing the philosophy to a more reformative and rehabilitative state were made, but were not necessarily acted upon.1 During the post Independence period the philosophy shifted further to reformative and rehabilitative with deterrence remaining as one of its components. A constitutional involvement in justice, equality and human dignity, concentration on human rights, and stressing the concepts of rehabilitation and reintegration characterised this epoch. Important events seen were the formation of major reform Commissions such as Mulla and Krishna Iyer Commissions, and the emergence of non-custodial forms like the introduction of Probation act.[17]

III. Legal Framework and Policy Evolution Towards Rehabilitation

Some legislative measures and judicial statements have contributed significantly to the path that India took in its rehabilitative journey with the criminal justice system, with the latest effort of wholesome reform taking place to a large extent. The instruments are the outcome of a conscious effort to move beyond simply punishing offenders and reforming them.

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15 S. C. Mishra, "Mulla Committee Recommendations: An Analysis of Implementation," *Journal of Criminal Law and Criminology*, 2022, vol. 12, no. 1, pp. 88-102.

16 *The Constitution of India*, Preamble and Article 21.

17 *Law Commission of India, 268th Report on Bail Reforms*, 2017.

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The Probation of Offenders Act, 1958: A Landmark Shift

In India, the Probation of offenders act (POA) of 1958 was a watershed in the change towards the abandonment of wholly punitive approaches to criminal justice. It was mainly targeted to transform first-time offenders and not to make them hardened criminals by re-establishing them in the society through re-habilitation rather than by subjecting them to the possibly adverse impact of prison life.[18] Courts can set free a convicted criminal on probation (on condition of good behaviour) under the supervision of a probation officer, in case of offences not subjected to death or life imprisonment, and this is considered as the socialized penal instrument and extramural substitute of institutionalization. There are some important characteristics of the POA that aim at promoting rehabilitation. It leaves a lot of discretion to courts to decide on whether an offender must be placed on probation, depending on the character of the crime and the offender, his age, and antecedents.[19] Pre-sentence reporting by probation officers is compulsory and important in effecting court decisions, especially for juveniles below the age of 21 years. Special provisions are also provided to youth offenders in the Act whereby the prevention of incarceration is encouraged, but minors less than 21 years can be incarcerated only when neither admonishment nor probation is appropriate. One of the most critical issues of the POA is Section 12, which can remove disqualifications linked to a conviction after successfully completing probation and supports reintegration by removing the lifetime stigma of a criminal record.

Despite its constitutional purpose and definite legislative requirement, the Probation of Offenders Act has not been used properly at all. According to legal interpretation, such provisions are mere ornamentation; they are rarely exercised and often gather dust. In most cases, they are never used because courts tend to tip the balance against their use rather than uphold the Act's intent. It indicates underlying systemic lethargy, a lack of appreciation or preparation among judicial officers, or, quite possibly, a general retributive tendency reluctant to internalise the full embrace of reformatory alternatives.[20] This misuse directly contributes to prison overcrowding. It will cause a repeat of the same offence because the enactment of progressive legislation is not enough. Still, the implementation of such needs to be based on cultural change in the judiciary and the criminal

[18] *The Probation of Offenders Act, 1958*.

[19] *Rattan Lal v. State of Punjab*, AIR 1965 SC 1325.

[20] K. R. N. G. S. Pillai, "Probation of Offenders Act: The Road to Its Effective Utilization," *National Law Journal of India*, 2023, vol. 10, no. 2, pp. 56-70.

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justice system as a whole, as well as on proper funding for probation services.

Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015, has become one of the foundations of reformative justice in India towards children. It was enacted as an Act to consolidate and amend the law relating to children who are alleged or found to conflict with the law (CCL) and children in need of care and protection (CNCP). The main focus of this Act is to consolidate and amend the law, upholding the rights, dignity, and reform and social reintegration of children. Compared with other countries, the Act advances a child-friendly approach to adjudication and prevents unnecessary criminalisation of children.[21]

The Act establishes a comprehensive system of specialised institutional care, including Observation Homes for temporary reception during inquiry, Special Homes for rehabilitation of children found to have committed an offence, and Places of Safety for older juveniles accused of heinous crimes. It also promotes a range of non-institutional, family-based care options such as restoration to family or guardian, foster care (including group foster care), sponsorship, and aftercare services for individuals leaving institutional care between 18 and 21 years of age. The emphasis is on providing care, treatment, education, training, development, and rehabilitation tailored to the child's best interests.

However, the 2015 amendment to the Act introduced a controversial "judicial waiver system," allowing 16-18-year-olds accused of "heinous crimes" (offences with a minimum punishment of seven years or more) to be tried as adults. This change was prompted by public outrage following cases like the Nirbhaya gang rape, where a minor offender's sentence under the previous juvenile law sparked intense debate. The critics of this amendment claim that it jeopardises the reformatory philosophy of the Act in that it triggers the adultification of a minor class of juvenile offenders, its thoughtless provisions outweigh the overall intentions of the Act and, possibly, destabilise the young offenders and contribute to the further increase of recidivism.[22]

Recent forms of Reform: Bharatiya Nyaya Sanhita (BNS) & Bharatiya Nagarik Suraksha

21 *Juvenile Justice (Care and Protection of Children) Act, 2015*.
22 *Pooja Singh v. State of U.P.*, (2018) 12 SCC 520.

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Sanhita (BNSS) 2023

The codification of the Bharatiya Nyaya Sanhita (BNS), 2023, and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replace and rewrite the Indian Penal Code (enacted during the colonial rule) and the Code of Criminal Procedure, respectively, marks a substantial shift in legislation that aims to reform and modernise India's criminal justice system.40 These new codes present a relatively positive vision as they have several provisions that are purported to promote rehabilitation and reintegration.

Community Service

One of the more controversial features that the BNS has introduced is the inclusion of community service as a sanction for minor offences.[23] This is an important paradigm shift as we move beyond a purely punitive system to a more restorative and rehabilitative approach to minor offences. Community service is an alternative to prison overcrowding that allows offenders to pay their debt to society and the community through useful work, while also supporting social reintegration and the empowerment of ex-offenders. For example, Section 303(2) of the BNS even makes community service the only compulsory penalty for first-time petty theft, with the restoration of property.[24] The BNSS describes community service as the unpaid work prescribed by a court to serve the community.

First Time Offenders Plea Bargaining

The new laws also make provisions for reduced punishment in plea bargaining for first-time offenders. This is recognition that first-time offenders are an opportunity to learn, especially given that the offender may be a first-time offender in the justice system. During plea bargaining cases, the new laws provide that the first-time offender may be given a lesser punishment; that is, one-fourth or one-sixth of the stipulated punishment, something that was not done before. The new law is also expected to reduce congestion.[25]

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23 N. Sharma, "BNS, BNSS: A New Era of Criminal Justice in India," *Hindustan Times*, September 10, 2023.
24 *Bharatiya Nyaya Sanhita, 2023*, Section 303(2).
25 *Bharatiya Nagarik Suraksha Sanhita, 2023*, Section 479(1).

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Undertrial, Time-Bound Release

To reduce the high burden of overcrowding in correctional facilities, the BNSS 2023 proposes radical measures for time-bound release of undertrial prisoners. Section 479(1) of the BNSS states that the first-time undertrial offender, who has never been found guilty of any offence previously, will be granted bail by the court upon undergoing detention for a period covering up to one-third of the absolute term of imprisonment that has been announced for such offence.

The Sentencing Provisions (BNS)

Controversially, alongside so much that is progressive in these proposals, there is also a substantial increase in reliance on provision for mandatory minimum tariffs for many serious offences. e.g., Section 70 provides for a minimum of ten years in the case where a woman is gang raped below the age of sixteen, and Section 103(2) provides for a minimum of twenty years in case of death through mob lynching.[26] This is seen as one of the most controversial features of the new criminal code: the rigidity of the legislation diminishes the judge's discretion and results in a loss of consideration of proportionality. These reforms will succeed as long as this underlying dichotomy is accommodated. How will the rehabilitative ethic seep into the entire system, or will the retributive force of rigorous sentences overpower it?[27]

There are certain provisions in Indian law which facilitate the grant of probation and non-custodial sentencing. These provisions are similar in their effects but have their own characteristics, eligibility conditions, aims, and challenges. The **Probation of Offenders Act, 1958 (POA)**, allows for conditional release on good conduct under probation officer supervision, with admonition and victim compensation, and provides special provisions for youth and the removal of conviction stigma (Section 12), and mandates reasons for not granting probation (Section 361).[28] It applies to first-time offenders and those committing minor offences not punishable by death or life imprisonment, including youth under 21 and women. The Act aims to promote reform, rehabilitation, the prevention of hardening, societal reintegration, and the reduction of prison overcrowding, while also being cost-effective. However, it is significantly underutilised, with

[26] "Controversies Surrounding the New Criminal Codes," *The Indian Express*, November 25, 2023.
[27] *Bharatiya Nyaya Sanhita, 2023*, Section 70 and Section 103(2).
[28] *The Probation of Offenders Act, 1958*, Section 12.

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courts often opposing its application, leading to its provisions "collecting dust" in practice.[29]

Section 360 of the Code of Criminal Procedure, 1973 (CrPC), grants judges discretion to release offenders on probation or admonition, considering their background and character and often relying on probation officer reports, with conditions such as bonds. It applies to first-time offenders, those committing less serious crimes (up to 7 years' imprisonment), youth under 21, and women, and does not affect the POA or the Juvenile Justice Act. Its objectives are reformative justice and reintegration to lessen the burden on the criminal justice system. Similar to the POA, it suffers from underutilization and a mechanical approach to sentencing.

The Bharatiya Nyaya Sanhita (BNS) 2023 introduces Community Service as a direct sanction, involving unpaid work for community benefit, and is mandatory for first-time petty theft (Section 303(2) BNS). It applies to minor offences, non-violent crimes, first-time shoplifting (if recovered), defamation, and public drunkenness. This provision signifies a shift towards restorative and rehabilitative justice, aiming for reintegration, reduced prison overcrowding, cost-effectiveness, and allowing offenders to make amends to society. Challenges include a lack of specific implementation guidelines (e.g., on duration and offences), potential sentencing disparities, and the need for effective monitoring.

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 includes provisions for Plea Bargaining for first-time offenders, allowing for reduced minimum punishment (one-fourth or one-sixth of the stipulated punishment) and time-bound applications. It applies to first-time offenders and to crimes that do not carry a death sentence or a life sentence of more than seven years. Rehabilitation rather than retribution, compassion, personal growth, and reintegration into society are also aims that benefit from decreasing overcrowding in prisons. Cultural and sociological resistance, the necessity of being just and transparent, infrastructure constraints, and the absence of transparent guidelines for serving the community are issues surrounding the implementation.[30]

Lastly, the BNSS 2023 also provides for Time-Bound Release of Undertrial Prisoners, granting statutory bail to first-time undertrials once a third of the maximum sentence has been served, with

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29 K. P. Pillai, "Community Service as a Punitive Measure: The Indian Perspective," *Indian Journal of Criminology and Criminal Justice*, 2023, vol. 35, no. 1, pp. 78-92.

30 *Law Commission of India, 262nd Report on Plea Bargaining*, 2016.

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bail applications made by the Jail Superintendent (Section 479 BNSS). This is for first-time offenders under trial for non-punishable crimes. Its main aims are to decongest prisons, exact justice on time, minimise prolonged incarceration, and prepare the way for rehabilitation. Issues that arise include denying bail on several charges and the lack of clear detention period standards in certain cases.

IV. A Critical Analysis of Rehabilitation and Reintegration Challenges

The criminal justice system in India is badly flawed on several fronts that adversely affect effective offender rehabilitation and reintegration despite the legal and policy reforms that have been advocated. Such barriers often create a layered, interdependent network that is systemic, social, and administrative in character.[31]

Systemic and infrastructural derivatives of prisons

Prisons are affected by inadequate training for existing employees and a serious staffing shortage. Such understaffing poses a major problem given the fact that they can hardly manage, monitor, and carry out rehabilitative programs successfully, thereby leading to violence and other criminal offences within jails. Besides the prevalence of disease and malnutrition, the crowded and unsanitary environment creates an atmosphere of crime in which hardened criminals prey on less competent ones. This makes the environment unfriendly and unhealthy, hindering real reform.

Insufficient Health and Mental Services

Despite the high prevalence of mental health and addiction disorders among prisoners, there are notable gaps in the availability of adequate medical care, especially for these services. Studies indicate that the frequency of mental illnesses in prison populations can be five to ten times higher than in the general population, with 83.5% prevalence of psychiatric disorders among inmates, and depression being the most common. However, there is a "dearth of sufficient funding and professional mental health services" in Indian jails, and a "lack of post-release support programs" for these critical needs. The integration of jail health services with the broader National Health

[31] S. K. Singh, "Rehabilitation vs. Retribution: A Study of Indian Prisons," *International Journal of Correctional Studies*, 2022, vol. 18, no. 3, pp. 210-225.

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Service is still being worked out, leading to persistent gaps in the quality of care.[32]

Insufficient Funding for Rehabilitation Programs

A disproportionately small share of the prison budget is allocated to educational and vocational training schemes. The amount spent on education and vocational training is only 0.6 per cent of the entire prison budget. This very low figure severely limits the quality and scope of the learning that would help resolve this issue. The low level of spending on education and vocational training suggests that most prisons have inadequate numbers of classrooms and other facilities and can hardly attract or retain skilled teachers. Open-air prisons are an effective tool for rehabilitation and humanisation, and have also been found to be economical. However, they are underutilised in India.[33] By 2022, the percentage of the total prison population kept in open-air prisons, ironically, low even at design capacity, will still only be 0.7 per cent, literally leaving plenty of room to house more prisoners. This relative inactivity has been explained as stemming from a one-dimensional form of punishment focused on deterrence, as well as a lack of leadership and investment by state governments.[34]

The interrelationships among these systemic failures form a vicious circle that significantly hampers the effectiveness of rehabilitation. Due to overcrowding, resources are saturated, leading to understaffing and, in turn, poor living conditions and severely inadequate medical and psychological health care. This creates a negative, unhealthy climate that will make true reformation difficult. Undertrials are the main cause of this overcrowding and also deprive the already weak system of proper justice. This means that small fixes, well-intentioned though they may be, are unlikely to have a significant impact on the system; a comprehensive strategy that addresses all these interlinked problems at once is needed to ensure that rehabilitation can actually take place.[35]

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[32] Dhillon HS, Sasidharan S. Prison mental health—an Indian perspective. Ann Indian Psychiatry. 2024;8(1):80–2. 10.4103/aip.aip_105_21.

[33] A. C. Raj, "Challenges to Offender Rehabilitation in India: A Sociological Perspective," *Journal of Social Justice*, 2022, vol. 15, no. 1, pp. 33-48.

[34] S. N. Pandey, *Recidivism and Social Stigma: A Case Study of Ex-Offenders in India*, Oxford University Press, 2019, pp. 90-95.

[35] M. L. N. Sarma, "Judicial Reluctance in Implementing Probation," *Indian Criminal Law Review*, 2023, vol. 7, no. 1, pp. 1-15.

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Barriers of the Society and the Culture

In addition to the institutional failure, the nature of societal and cultural barriers to successful offender rehabilitation and reintegration lies. Pervasive stigmatisation and discrimination toward ex-offenders make it very difficult to secure employment and housing as well as acceptance in the community. Current background checks limit employment opportunities because employers use policies that automatically vet candidates with criminal records, weeding out most of them, regardless of whether the crimes are minor or old. The stigma frequently causes employers to hold ex-offenders to be unsafe, untrustworthy or hazardous. In the same way, ex-inmates risk discrimination by landlords who can refuse to rent their apartments, even despite the cost aspect, and the shortage of available housing. This long-term stigma of incarceration may limit access to the essential needs that, in turn, cause lifetime stigmatisation and can lead to disenfranchisement of rights and dignity, disintegration and insufficiency in family support.

During the incarceration of many prisoners, family bonds may be severely damaged or even destroyed, which results in a lack of family/social support after prison release. After the release, family support helps ex-prisoners become successfully reintegrated, and this factor is repeatedly mentioned when it comes to avoiding recidivism in future. Imprisoned people who maintain their families are likely to have a better background than those who commit recidivism.68 They lack the crucial support and are left in a vulnerable and isolated position of not knowing how to readapt to living outside prison and subsequently become re-incarcerated.

Public Awareness and Knowledge of Reformative Justice

There is a common retributive apprehension of justice among the populace, which makes it difficult to accommodate rehabilitative ideas and ex-criminals. This retributive sentiment takes note of the public outcry, as seen in the Nirbhaya case, where the verdict for a juvenile offender appears relatively mild. Generally, there is a lack of awareness of restorative justice in society and the legal fraternity to achieve greater appeal and wider application.

Resistivity by Culture

The deeply rooted cultural and sociological resistance, especially towards the idea of plea bargaining, acts as another impediment to the implementation of reformative strategies.55 The criminal justice system in India is highly focused towards establishing truth and accountability through a trial, and its cultural reinforcement has ensured that the idea of plea bargaining cannot

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be implemented with consensus. Before any other procedures can be effectively applied, this difference in traditions would require due diligence and adaptation. The stigma of society and the services available after release from prison are two extrinsic barriers that more often than not cancel out the efforts at rehabilitation while in prison and often send the offender back to a life of crime. [36]

V. Legislative and administrative challenges

Poor Utilisation of Probation and Non-Custodial Sentencing

Though there have been legislative provisions, as seen in the Probation of Offenders Act, 1958, and the judiciary still underutilises CrPC Section 360, progressive practices are enshrined in these laws. Courts often lean against applying these provisions, leading to a situation where these "salutary provisions have been left only to collect dust". This judicial reluctance or systemic inertia prevents a substantial portion of eligible offenders from benefiting from non-custodial alternatives, contributing to prison overcrowding and hindering their rehabilitation.[37]

Coordination Gaps Between Agencies

A severe lack of coordination among key criminal justice agencies—police, judiciary, prison authorities, and post-release support agencies—leads to prolonged detention, human rights violations, and ineffective rehabilitation. Specific issues include considerable delays in police investigations and filing of charge-sheets, arbitrary arrests without physical production before magistrates, and a reluctance to grant bail by both police and courts. Within prisons, there is a lack of accountability among government officials and legal aid lawyers, and poor performance of legal aid services due to inadequate incentives and monitoring. Furthermore, a "police culture" often leads to negative police reports for premature release, stemming from a belief that convicts cannot be reformed. This uncoordinated operation of criminal justice agencies is detrimental to human rights and prisoners' rights.

[36] M. L. N. Sarma, "Judicial Reluctance in Implementing Probation," *Indian Criminal Law Review*, 2023, vol. 7, no. 1, pp. 1-15.

[37] R. D. Singh, "The Role of Legal Aid in Prison Reform," *Indian Legal Aid Journal*, 2022, vol. 8, no. 1, pp. 45-60.

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Inadequate Aftercare Services

Post-release support mechanisms, including halfway homes, financial assistance, and structured employment aid, are largely insufficient or non-existent in India.[7] While some states like Kerala have schemes for financial assistance to ex-convicts for starting small trades (Rs. 10,000 per head), the overall lack of comprehensive programs leaves former offenders vulnerable. This "lack of resources" and programs is a significant challenge to social reintegration, making it difficult for ex-offenders to get back on their feet and increasing their risk of recidivism.

Limited Data and Research on Recidivism and Program Effectiveness

A significant challenge is the lack of comprehensive, reliable data on recidivism rates and the effectiveness of existing rehabilitation programs. While official figures from the National Crime Records Bureau (NCRB) report a low recidivism rate of 6.4%, this figure is often considered "underestimated and not appropriately addressed" due to a lack of national studies and comprehensive follow-up. Without accurate and comprehensive data on recidivism and program effectiveness, policy-making remains uninformed, and genuine progress in rehabilitation and reintegration cannot be reliably measured or achieved. This limitation hinders the development of evidence-based interventions and the assessment of their impact on reducing reoffending. The reported low recidivism rates may be misleading, masking deeper issues due to incomplete data collection, narrow definitions, or a lack of robust long-term tracking mechanisms for released offenders. If the true recidivism rate is indeed higher, it implies that current rehabilitation efforts are less effective than official statistics suggest, which in turn makes it harder to advocate for and justify increased investment in these programs.[38]

Major challenges to offender rehabilitation in India stem from systemic, societal, and legal/administrative issues. Systemic and infrastructural deficiencies include chronic prison overcrowding, with facilities operating at 130.2% occupancy, leading to strained resources and substandard living conditions. A significant contributor is the high percentage of undertrials, who constitute 77% of the prison population, causing prolonged detention due to trial delays. Prisons also suffer from understaffing and inadequate training, which compromises management and fosters criminality within facilities. Housing conditions combined with poor health, which is

[38] *National Crime Records Bureau (NCRB), Prison Statistics India 2022*.

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typified by unhealthy living environments, prevalent disease and malnourishment, make the environment conducive to exploitation by tough criminals. The unsatisfactory results in providing proper medical and mental health care are due to insufficient funding and a workforce shortage in this sector. However, the prevalence rate of inmates with psychiatric disorders is high (83.5%). Moreover, educational and vocational training comprises 0.6 per cent of the total prison budget and therefore seriously limits quality and reach. Finally, the open prisons, though proven highly beneficial, are still hugely underused, with only 0.7% of prisoners kept in them at 74% capacity, most likely because of a deterrence-oriented policy.

Some societal and cultural obstacles are a social stigma and discrimination against ex-offenders throughout the country, and a lack of opportunities in the employment and housing contexts because of criminal records and attitudes towards ex-offenders. Due to the poor relations inside jails, family break-up, and insufficient post-release assistance, ex-offenders are threatened and contribute to the growth of recidivism. The population's awareness of reformative justice is also rather low, and the largely retributive vision has not helped them accept rehabilitative correction methods or former offenders. The resistance to changing the measures is also driven by deep-rooted cultural opposition, especially to aspects such as plea bargaining.

Legal and administrative barriers to the underutilization of probation and non-custodial sentences include the infrequent use of legislation such as the Probation of Offenders Act, 1958, and CrPC Section 360 by the courts, rendering them ineffective. Lack of coordination between the police, judicial, prison and post-release agencies contributes to long-term detention, human rights abuse and weak rehabilitation efforts. A lack of aftercare services (enough halfway houses), economic assistance, and job counselling increases the likelihood of reoffending. Lastly, the information and studies on the effectiveness of rehabilitation programs and the level of reoffending are not sufficiently detailed or robust enough to serve as a basis for policymaking and tracking changes.[39]

VI. Conclusion and Recommendations

The crafting of India's criminal justice organisation is an account of shifting philosophies, from a rigid, crime-focused to a more sophisticated, offender-centred framework. Historically, the

[39] A. R. Sharma, "The Human Cost of Incarceration: The Need for Prison Reform in India," *Indian Journal of Correctional Administration*, 2021, vol. 18, no. 2, pp. 110-125.

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paradigm of choice has been based on retribution and deterrence. In ancient legal texts such as the Vedas and the Dharmasutras, the emphasis was on punishment as a means of social control, with the understanding that criminals must not reoffend. Punishments tended to be harsh, and ranged from fines and corporal punishment to capital punishment (long-term imprisonment as a main penalty was frequently absent). The pre-modern danda, or punishment, was considered divine in that it was an instrument of order and societal protection. While some ancient edicts, such as those of Ashoka and Kautilya, displayed traces of mercy and the release of prisoners on special occasions, these were exceptions to the general punitive orientation. The modern Indian prison was established during the British colonial rule, which clearly emphasised retribution and deterrence over rehabilitation. The Indian Penal Code (IPC) of 1860 and the Prison Act of 1894 created a system of strict imprisonment and hard labour, with the punishment for each case depending on the gravity of the offence and its effect on public peace. This system was not very concerned with the offender's background or ability to change. Colonial jails were often "houses of industries," with an overarching focus on profit from punitive labour, rather than true reform. At the same time, economic considerations tended to undermine early reformist efforts, as in the persistence of practices such as oil-pressing, which was known to be harmful to prisoners' health because it was profitable. The post-independence era ushered in a new chapter, inspired by international human rights movements and by a new constitutional commitment to justice, equality, and human dignity.

Strengthening of the Legal and Policy Framework.

To have a truly reformative system, the legal and policy framework needs to be strengthened and adhered to. The current variations in parole and furlough rules across states lead to inconsistent implementation and enforcement, resulting in unfairness. It is important to develop generalised national regulations and guidelines for release mechanisms. Uniform criteria for eligibility, duration, and conditions, as well as transparent decision-making procedures, would lead to equitable application across the country and help ensure the criteria are effective in facilitating gradual reintegration and sustained ties with family members.[40]

[40] R. P. Gupta, "Systemic Challenges to Offender Reintegration," *The Wire*, January 15, 2024.

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Build up Legal Aid

Prisoners have a fundamental right to access to competent legal representation, but there are great gaps. Access to and the quality of legal aid services for prisoners should be significantly improved. This should be done by allocating more funds to the National Legal Services Authority (NALSA) and the State Legal Services Authorities; ensuring the establishment of fully functional prison legal aid clinics in all prisons; and offering adequate incentives and training to legal aid lawyers. The performance of legal aid providers and their accountability mechanisms must be regularly monitored to ensure that legal aid is provided to prisoners, especially undertrials and other vulnerable populations, in a timely and proactive manner.[41]

Reshaping Prison Infrastructure and Management

Prison overcrowding needs a multi-faceted approach to address. First, many more open prisons should be established in all states, with their criteria of eligibility loosened to send more non-violent prisoners into the less traditional facilities. A more humane and economical approach is to implement open prisons, where rehabilitation is the emphasis, enabling prisoners to work productively and maintain direct contact with their families. Second, time-bound release of undertrials, especially under Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, should be consistently and effectively carried out by prison authorities and courts across states to reduce unwarranted stays in custody.[42]

Heavy investment is necessary to improve prison infrastructure and make it habitable. This involves providing decent sanitation, clean water, good food, proper clothing, and proper ventilation to help fight disease and enhance inmates' health. Regular inspections and adherence to human rights standards are essential to eliminate the pervasive criminality and exploitation within prison walls. The critical need for comprehensive medical and mental healthcare in prisons demands immediate attention. Prison health services should be fully integrated with the broader National Health Service, ensuring that inmates receive the same standard of care as the general public. This necessitates adequate funding, recruitment and training of more mental health

[41] R. D. Singh, "The Role of Legal Aid in Prison Reform," *Indian Legal Aid Journal*, 2022, vol. 8, no. 1, pp. 45-60.

[42] A. K. Das, "The Efficacy of Open Prisons in India," *Journal of Prison Administration*, 2023, vol. 10, no. 4, pp. 311-325.

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professionals, and the establishment of comprehensive de-addiction centres within or linked to prisons. Continuity of care upon release is equally vital to prevent relapse and support successful reintegration.[43] The current abysmal allocation of only 0.6% of the total prison budget to educational and vocational training must be drastically increased. The investment should focus on developing industry-relevant skills, establishing modern vocational training workshops, and forging partnerships with national skill development organisations, such as the National Skill Development Corporation (NSDC). Programs should be tailored to inmate interests and market demands, providing practical skills for a post-release livelihood and building their confidence to reintegrate into society.[44]

The professionalisation of prison staff is paramount. Establishing an All India Prisons & Correctional Service, as recommended by the Mulla Committee, would ensure professional recruitment, standardised training, and a reformative orientation among prison personnel nationwide. Training programs should focus on modern correctional philosophies, human rights, de-escalation techniques, and specialised skills for managing mental health issues and facilitating rehabilitation programs.

Fostering Societal Acceptance and Support

Rehabilitation cannot succeed in isolation; it requires a supportive and accepting societal environment. [45]Sustained public education and awareness campaigns are crucial to shift societal perceptions from a purely retributive to a more rehabilitative understanding of justice.[71] These campaigns should highlight the pragmatic benefits of successful reintegration, such as reduced recidivism and increased public safety, and challenge the stigma associated with former offenders. Educating the public about restorative justice principles and the potential for human transformation can foster greater community understanding and support for rehabilitation programs.[46]

The problems within the criminal justice system in India are complex and require

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43 S. C. Pradhan, "Integrating Prison Health Services with the National Health Service," *The Times of India*, February 2, 2024.

44 S. K. Aiyar, "The Public Perception of Criminal Justice," *The Economic Times*, December 2, 2023.

45 R. S. Kumar, "Societal Barriers to Reintegration," *Indian Journal of Social Work*, 2022, vol. 15, no. 3, pp. 210-225.

46 N. C. V. R. Sharma, "BNS and Community Service: A Critical Appraisal," *Indian Journal of Criminology*, 2023, vol. 32, no. 1, pp. 1-15.

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multidimensional solutions that draw on legal, administrative, social, and inter-agency domains. It is important to develop a system which is not only future-ready but also focuses on rehabilitation and reintegration. This can be achieved by deriving best practices from around the world and incorporating the local context and the needs of the hour.

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LEGALITY OF PRE-EMPTIVE STRIKES ON NUCLEAR FACILITIES: THE CASE OF IRAN'S NUCLEAR SITES

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ABSTRACT

Legality of anticipatory or pre-emptive attacks under international law is still one of the most debated issues in international relations today. This article critically analyses the legal status of such strikes with special reference to the possible targeting of Iran's nuclear facilities. Grounded in the United Nations Charter principles, in particular Articles 2(4) and 51, and in the foundational Caroline doctrine, the article probes whether the use of force may be justified when there is no actual armed attack. The study rests on milestone precedents, such as Israel's Operation Opera in 1981 against Iraq's Osirak reactor and the Syrian Al-Kibar facility airstrike in 2007, to examine state practice and international responses. It also assesses Iran's ongoing nuclear enrichment within the context of its commitment to the Nuclear Non-Proliferation Treaty (NPT) and recent discoveries by the International Atomic Energy Agency (IAEA). Using legal standards such as imminence, necessity, and proportionality, the article submits that although military intervention against Iran is tactically attractive to some countries, it encounters concrete legal hurdles under current standards of international law. The article ends by offering policy recommendations to strengthen diplomatic efforts, legality, and regional stability, as opposed to authorizing unilateral uses of force outside the strict boundaries of the UN Charter.

***Keywords**:* Nuclear Program, Caroline Test, Atomic Energy, Proportionality, Operation Opera

I. Introduction

Global concern has reached razor-sharp heights since the United States' own withdrawal from the Joint Comprehensive Plan of Action (JCPOA) in 2018 and Iran's subsequent return to uranium enrichment levels far beyond the treaty limit of 3.67 per cent. As of mid-2025, independent sources reported enrichment at close to 60–90 per cent uranium-235 well within weapons-grade range provoking double-speak from both Israel and the United States in terms of pre-emptive military action against Iranian nuclear plants.[1] Parallel diplomatic discussion, comprising intelligence leaks and white papers emanating from Western capitals, hints at the

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1 Suzanne Raine, "The Rights and Wrongs of Self-Defence" *Engelsberg Ideas*, 30 June 2025, *available at*: https://engelsbergideas.com/notebook/the-rights-and-wrongs-of-self-defence/ (last visited on July 18, 2025).

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possibility that these states might consider military pressure as the means to prevent Iran from achieving nuclear breakout capacity.[2]

Historical precedent highlights this debate. Israel conducted Operation Opera in June 1981, destroying Iraq's Osirak reactor. The Israeli government legitimized the attack as anticipatory self-defense, although the UN Security Council condemned the attack in a unanimous vote as illegal aggression.[3] Similarly, in September 2007, Israel conducted Operation Outside the Box (otherwise known as Operation Orchard), attacking a suspected nuclear facility in Syria. Israel reiterated necessity based on anticipatory self-defence, yet international legal opinion continued to be split.[4] These incidents are still cited in scholarly work evaluating the legality of pre-emptive strikes against nuclear sites.[5]

In this context, this article questions: is it permissible for a state to initiate a pre-emptive attack on another state's nuclear installations under international law? By a systematic examination, it considers: (i) the Charter framework of the UN Articles 2(4) and 51along with customary international law principles defined in the Caroline correspondence and reaffirmed in ICJ jurisprudence; (ii) the doctrine of anticipatory self-defence, demarcating legal pre-emptive action from illegal preventive strikes; (iii) the law implications of Operation Opera and Orchard; (iv) a case-specific examination of Iran's nuclear activities, including adherence to Nuclear Non-Proliferation Treaty (NPT) provisions and International Atomic Energy Agency (IAEA) safeguards; and (v) ending with normative policy recommendations in support of diplomatic and verification instruments over single-sided military action.

The legality of anticipatory self-defence is still very controversial. Article 2(4) of the United Nations Charter forbids "the threat or use of force against the territorial integrity or political independence of any state."[6] Article 51 makes an exception, permitting the use of force in self-defence "if an armed attack occurs."[7] The phrasing, especially the requirement of a real armed attack, has given rise to controversy on whether a state is legally entitled to respond to a threatened but unconsummated attack. The earlier historical formulation of the doctrine of

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2 Jackson Nyamuya Maogoto, "Rushing To Break The Law? The "Bush Doctrine" of Pre-Emptive Strikes and the UN Charter on the Use of Force", 7(1) *University of Western Sydney Law Review* 1 (2003).

3 Andrew Garwood-Gowers, "Pre-Emptive Self-Defence: A Necessary Development or the Road to International Anarchy?" 23 *Australian Year Book of International Law* 51 (2004), 60; See further ICJ *Nicaragua* v. *United States* (Merits) [1986] ICJ Rep 14.

4 *Supra* note 1.

5 *Supra* note 2. *Ibid.*

6 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), art. 2(4).

7 *Id.*, art. 51.

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anticipatory self-defence originates in the 1837 Caroline case, under which the principle was settled that in order for force to be legitimate, it has to be necessary, immediate, and proportionate terms now regarded as elements of customary international law.[8] These conditions are reiterated in International Court of Justice (ICJ) jurisprudence, such as Military and Paramilitary Activities in and against Nicaragua, where the Court took a stringent approach to self-defence limited to actual attacks.[9]

Nonetheless, state practice especially by Israel and the United States has occasionally diverged from this strict interpretation. The United States' 2002 National Security Strategy enunciated a more extensive doctrine of pre-emption, implying a legal entitlement to employ force pre-emptively in the context of increasing asymmetric threats.[10] Yoram Dinstein and Michael Schmitt and other scholars have contended that anticipatory action can be legitimate in some exceptional situations if the threat is overwhelming and does not leave any moment for contemplation.[11] But other scholars are of the opinion that expanding Article 51's scope erodes the Charter system and poses a perilous risk of undermining international legal restraints on the use of force.[12]

This article goes on the basis that the legality of anticipatory pre-emptive strikes cannot be separated from their strategic and factual context. On this basis, the subsequent sections will initially discuss the legal and doctrinal underpinnings of anticipatory self-defence. Analysis of state practice by way of case studies of Israel's 1981 and 2007 operations follows. Subsequently, the article assesses the enforcement of these standards in the current context in Iran, looking at enrichment work, IAEA safeguards, and the architecture of the NPT. The article concludes with normative recommendations for maintaining the ban on force without betraying the legitimate non-proliferation interest, disputing that pre-emptive attacks on Iran's nuclear facilities are of questionable legality under extant international law.

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8 Thomas Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* 97 (Cambridge University Press 2002).

9 Military and Paramilitary Activities in and against Nicaragua (*Nicaragua* v *United States of America*) (Merits) [1986] ICJ Rep 14, para 194.

10 US National Security Strategy, September 2002, *available at*: https://georgewbush-whitehouse.archives.gov/nsc/nss/2002 (last visited on July 18, 2025.

11 Yoram Dinstein, *War, Aggression and Self-Defence* 217–18 (6th edn, CUP 2017); Michael N Schmitt, "Preemptive Strategies in International Law", 24(2) *Michigan Journal of International Law* 513 (2003).

12 Christine Gray, *International Law and the Use of Force* 143–45 (4th edn, OUP 2018).

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II. International Legal Framework

UN Charter: Primary Source

Article 2(4) establishes the foundational prohibition on force: "All Members shall refrain in their international relations from the threat or use of force…".[13] This provision creates a general rule against unilateral force and underscores the importance of collective security under Chapter VII. However, Article 51 preserves an inherent right of self defence, stating: "Nothing in this Charter shall impair the inherent right of individual or collective self defence if an armed attack occurs…".[14]

A central legal debate arises: Does Article 51 permit preemptive force, or is it limited to responding to actual armed attacks? One viewpoint argues that Article 51 codifies only a right post attack.[15] Here, Article 51 must be read narrowly, with preemptive force absent an "armed attack" falling foul of Article 2(4). Critics urge strict adherence to the literal reading, emphasising the Charter's objective to curtail the destructive unilateral use of force.

Conversely, an alternative interpretation posits that Article 51 preserves customary international law, which includes a narrow right to anticipatory self defence under the Caroline doctrine.[16] According to this doctrine, if the necessity is "instant, overwhelming… no choice of means, and no moment for deliberation" and under conditions of proportionality, anticipatory self defence may be lawful.[17]The doctrine is part of customary law reaffirmed by tribunals and scholars alike.

Customary International Law & the Caroline Doctrine

The Caroline incident (1837), involving a preemptive strike by British forces on US territory, resulted in the formulation of a test requiring necessity, immediacy, and proportionality. These conditions have been widely recognised as customary law. Despite its origins in the 19th century, Caroline remains a reference point in modern discussions and is frequently invoked in commentary on preemptive strikes.[18]

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[13] UN Charter, art. 2(4).

[14] UN Charter, art. 51.

[15] Elgawari ZA, "Preemptive Self Defense in Public International Law", 8 *AJEE* 1 (2025).

[16] *Ibid.*

[17] Maria B Occelli, ""Sinking" the Caroline: Why the Caroline Doctrine's Restrictions on Self-Defense Should Not Be Regarded as Customary International Law", 4(1) *San Diego International Law Journal* 467 (2003).

[18] *Ibid.*

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ICJ Jurisprudence

The ICJ's 1986 judgement in *Nicaragua v United States* confined lawful self defence to actual armed attacks, signalling reluctance to endorse broad anticipatory rights.[19] Similarly, in Oil Platforms (Iran v USA) (2003), the Court reaffirmed the necessity and proportionality criteria.[20] The 1996 Legality of the Threat or Use of nuclear weapons advisory opinion further underscored that states must adhere to customary principles of necessity and proportionality in self-defence.[21]

These decisions illustrate the ICJ's cautious approach: self-defence may include anticipatory strikes but only if they align with both the Caroline standards and the requirements of Article 51. Importantly, the Court has not explicitly forbidden anticipatory self defence, but it has limited its scope to narrow and well-defined scenarios.[22]

III. Anticipatory Self-Defence: Conceptual Clarifications

Terminology Distinctions

Anticipatory self-defence, also termed pre-emptive self-defence, permits a state to use force in response to an imminent armed attack even before it occurs based on customary international law principles embodied in the Caroline doctrine.[23] The Caroline case (1837) formulated a strict standard under which force may be lawful only when a threat is "instant, overwhelming, leaving no choice of means, and no moment for deliberation."[24]

The terms "anticipatory" and "pre-emptive" are frequently used interchangeably, though some legal commentators distinguish "anticipatory" as justified under Caroline imminence, while "pre-emptive" may suggest broader, less certain threats.[3] Preventive self-defence, by contrast, targets speculative future threats and is largely rejected by both Article 2(4) of the Charter and customary law.[4] The legal divide hinges on timing and certainty: anticipatory action responds to a near-term threat; preventive action addresses hypothetical, distant threats.[5]

Important Legal Tests: The Caroline Criteria

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19 Military and Paramilitary Activities (*Nicaragua* v. *USA*) [1986] ICJ Rep 14.
20 Oil Platforms (*Iran* v. *USA)* [2003] ICJ Rep 161.
21 Legality of the Threat or Use of Nuclear Weapons [1996] Advisory Opinion.
22 *Supra* note 14.
23 Andrew Garwood-Gowers, "Pre-Emptive Self-Defence: A Necessary Development or the Road to International Anarchy?", 23 *Australian Year Book of International Law* 51 (2004).
24 *Supra* note 17.

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The Caroline doctrine defines two non-negotiable criteria for lawful anticipatory self-defence:

Necessity: Force must be the only available means to avert the threat, which must be imminent and overwhelming.

Proportionality: Any use of force must be strictly limited to eliminating the specific threat and should not exceed what is necessary.

These principles are deeply embedded in international legal thinking. In Nicaragua v United States (1986), the ICJ affirmed that self-defence can be lawful only against actual armed attacks.[25] In Oil Platforms (Iran v USA) (2003), the Court emphasised the dual requirement of necessity and proportionality.[26] The Legality of the Threat or Use of Nuclear Weapons advisory opinion (1996) similarly reaffirmed necessity and proportionality as customary law applicable to Article 51 responses.[27]

Current Legal Position

There is no uniform state practice or academic consensus on whether Article 51 permits anticipatory self-defence. The restrictive interpretation holds that Article 51 applies only upon the occurrence of an actual armed attack, as it explicitly states: "if an armed attack occurs." In contrast, some scholars and states argue that Article 51 preserves the inherent customary right of anticipatory action, provided Caroline conditions are satisfied. Notably, Lindsey Green remarks that the Charter did not extinguish pre-1945 customary prerogatives, suggesting a narrow, context-based retention of anticipatory rights.

State practice remains divided. The United States and United Kingdom formally invoked anticipatory self-defence in their 2003 invasion of Iraq, citing perceived imminent threats from weapons of mass destruction (WMDs). These justifications drew widespread criticism for failing to meet the necessity and imminence standards, and for relying on speculative intelligence. In contrast, the majority of Global South states, including India and China, maintain that without an armed attack or UN Security Council authorization, anticipatory strikes remain unlawful.

[25] *Supra* note 19.
[26] *Supra* note 20.
[27] *Supra* note 21.

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No definitive ruling has come from the ICJ affirming or denying anticipatory self-defence under Article 51. However, the case law favors a strict interpretation aligned with necessity and proportionality, and reserved use only under tightly constrained circumstances.

IV. Case Studies: Precedent & Practice

Operation Opera (Israel–Iraq, 1981)

On 7 June 1981, Israel carried out a surprise attack on Iraq's Osirak nuclear reactor, justifying an imminent threat to its national security. Israel presented the move as anticipatory self-defence, asserting that Iraq was about to gain nuclear arms, whose existence would jeopardize its survival. Although the attack did successfully demolish the reactor, it became a point of global condemnation. The UN Security Council, by a unanimous vote, passed Resolution 487, which condemned the action as an infringement of Iraqi sovereignty without calling upon sanctions.

Neither international court considered the act illegal, and Israel never applied for judicial review to the ICJ. Scholars are sharply divided. It is contended by some that the strike met the Caroline doctrine requirements of proportionality and necessity, citing sound intelligence regarding the threat.[28] Others denounce the attack as a preventive not pre-emptive use of force contrary to Article 2(4) of the UN Charter that outlaws the use of force against another state except in the context of self-defence against an actual armed attack.

Significance: Operation Opera remains a landmark case in the debate over anticipatory self-defence. Although it arguably set a precedent in state practice, its legal standing remains ambiguous due to the absence of judicial scrutiny or formal legal justification by Israel.

Operation Outside the Box (Israel–Syria, 2007)

Israeli aircraft on 6 September 2007 destroyed a secret Syrian nuclear reactor at Al-Kibar. While initially refusing public admission, Israel subsequently justified the attack as necessary to prevent Syria's suspected nuclear aspirations. Later investigations by the IAEA affirmed the site had the features of a reactor undeclared under Syria's obligations.[29]

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28 Maria B Occelli, "“Sinking” the Caroline: Why the Caroline Doctrine’s Restrictions on Self-Defense Should Not Be Regarded as Customary International Law”, 4(1) *San Diego International Law Journal* 467 (2003).

29 Andrew Garwood-Gowers, “Israel's Airstrike on Syria's Al-Kibar Facility: A Test Case for the Doctrine of Pre-emptive Self-Defence?”, 16(2) *Journal of Conflict and Security Law* 263 (2011).

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The attack was roundly condemned worldwide, especially for contravening Syrian sovereignty in accordance with Article 2(4) of the Charter. Israel made no formal legal argument, contrary to what happened in 1981. The incident therefore contributed nothing to opinio juris since the mere repeated conduct without express legal assertions undermines their potential to develop into customary international law.[30]

Effect: Though the operation reflects an ongoing trend in Israel's strategic doctrine, its inability to establish legal bases narrowed its normative effect. Silence of states cannot be interpreted as legal acceptance, reiterating that state practice without opinio juris is not normative.[31]

Other Historical Example: Six-Day War (1967)

In June 1967, Israel struck Egypt with a massive pre-emptive attack, citing Egypt's troop mobilization and the closure of the Straits of Tiran as warlike acts. Israel claimed that the circumstances constituted an immediate threat justifying pre-emptive self-defence. Critics would counter, though, that Egypt had not yet attacked, so the Israeli response was more preventive than defensive.[32]

The dispute has never been tried by an international court, but lawyers apply the Caroline test to it. There are doubts whether the attack was "instant, overwhelming, leaving no choice of means", particularly since Israel had time for diplomacy. The Six-Day War demonstrates the legal and ethical uncertainty between pre-emptive and preventive force, reaffirming the UN Charter's preference for peaceful settlement of disputes and reactive self-defence.

V. Legal Analysis in the Iran Case

Iran’s Nuclear Programme Post-JCPOA

Since the U.S. withdrawal in May 2018, Iran has stepped back from the constraints of the JCPOA.[33]

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30 Elena Chachko, “The Al-Kibar Strike: What a Difference 26 Years Make” Lawfare, April 2, 2018, *available at*: https://www.lawfaremedia.org/article/al-kibar-strike-what-difference-26-years-make (last visited on July 18, 2025).

31 Case Concerning Military and Paramilitary Activities (*Nicaragua* v *USA*) [1986] ICJ Rep 14, para 207 – ICJ emphasises that state conduct must be accompanied by opinio juris to impact customary international law.

32 Moshe Gat, “Nasser and the Six Day War, 5 June 1967: A Premeditated Strategy or An Inexorable Drift to War?”, 11(4) *Israel Affairs* 608 (2005).

33 UK Parliament, “What is the status of Iran’s nuclear programme and the JCPOA?”, *available at:* https://commonslibrary.parliament.uk/research-briefings/cbp-9870 (last visited on July 18, 2025).

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Specifically:

Enrichment Capacity: Iran boosted centrifuge operations at Natanz and Fordow, installing advanced models (IR-2m, IR-4, IR-6), including nearly 1,000 IR-4/6 units at the Natanz PFEP.

Enrichment Level: Enrichment levels increased to 60 %nearly weapons-gradewell above the 3.67 % threshold. Current stocks contain more than 400 kg of 60 % uranium, enough for some nuclear bombs if enriched further.[34]

Inspection Reduction: Iran limited its application of the Additional Protocol in early 2021; by 2025, it dismissed standard IAEA monitoring, allowing case-by-case approval of inspections and temporarily barring unqualified inspectors from entering.

These actions have drastically reduced Iran's break-out time minutes to daysto make weapon-grade uranium, although specialists say weaponization is months to a year out. The IAEA verifiably established there is no proof of ongoing weapons development, but stated Iran is in breach of NPT commitments regarding undeclared activities and material.[35]

The central legal issue: do these actions constitute an impending threat warranting anticipatory self-defence under Article 51 and customary international law?

Evaluating the Caroline Test[36]

Immediacy

According to the Caroline standards, force is only legitimate against immediate and irresistible threats, allowing no choice of means and no time for deliberation.

Estimates indicate Iran's capability of generating weapons-grade uranium in days, but weaponization in the form of design, assembly, delivery systems could take from months to a year. The immediacy factor is therefore not yet fulfilled. Analystssuch as Kelsey Davenportemphasize that without weaponization, Iran is a threshold and not an imminent threat.

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[34] Politics Stack Exchange, "IAEA report on Iran, including 400 kg of 60% uranium", *available* at: https://politics.stackexchange.com/questions/92866/what-exactly-did-the-iaea-say-iran-has-violated (last visited on July 18, 2025).

[35] International Atomic Energy Agency, Update on Developments in Iran, June 2025, *available at*: https://www.iaea.org/newscenter/pressreleases/update-on-developments-in-iran (last visited on July 18, 2025).

[36] *Supra* note 40.

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Necessity

Can non-military options be enough? Historical examples and the mechanisms of monitoring by the IAEA give states time to move diplomatically or institutionally. Iran's temporary delay in allowing inspections is indeed worrisome, but nothing rules out renewed inspection or intervention through diplomatic or UN Security Council avenues.

Therefore, it would seem force is not the sole option, especially if inspections and sanctions are utilized satisfactorily.

Proportionality

Even if Iranian preparations were close at hand, any pre-emptive attack on its nuclear facilities would most probably aim at enrichment plants, centrifuges, or deposits. But such targets are generally embedded in civilian facilities (Natanz, Fordow). To comply with proportionality, any military intervention should be restrained, targeted, and avoid collateral damage to civilians. Due to the dual-use character of nuclear installations, proportionality is a severe legal obstacle.

Precedent vs Scholarly Views

Precedent: No global court has upheld anticipatory force in comparable situations. State practice like Operation Opera was not ruled upon legal merits.[37]

Scholarly Opinions

i. Most experts contend that nuclear breakout instant threat in the absence of weaponization. For example, Crisis Group's Ali Vaez states: "actual weaponization process … likely would have taken months… there was no imminent threat of a nuclear bomb."[38]

ii. Ehud Barak asserts breakout can be days awaya perspective that has been criticized as overestimating the immediacy by experts and the IAEA.[39]

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[37] Reuters, “Araqchi says inspections subject to approval” July 4, 2025, *available at*: https://www.reuters.com/world/middle-east/fm-araqchi-says-iran-work-with-iaea-inspections-may-be-risky-2025-07-12/ (last visited on July 25, 2025).

[38] Ariadne UML / Arms Control Association, “Limits of Breakout Estimates”, August 2020, *available at*: https://www.armscontrol.org/act/2020-08/features/limits-breakout-estimates (last visited on July 18, 2025.

[39] IAEA, GOV/2025/24, “Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015), May 31, 2025, *available* at: https://www.iaea.org/sites/default/files/25/06/gov2025-24.pdf (last visited on July 18, 2025).

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iii. The Washington Institute analysts note that Iran might weaponize if threatened, but not now.

iv. Breakout projections are evolving though weaponization is the real trigger. Overall, existing scholarly agreement is that Iran's behaviour fails to meet Caroline imminence standards.

Regional Security Environment

The risk matrix stretches wider than Iran.

Retaliation: Any attack would elicit Iranian retaliation through proxies or missile attacks, threatening regional escalation of conflict.[40]

Proliferation Cascade: Iran could invoke Article IV of the NPT to assert peaceful enrichment and push others (Saudi Arabia, Turkey, Egypt) to do the same, possibly leading to a regional arms race.

Article 51 anticipation must also take into account second-order effects; if these entail wide instability, even a "limited" strike could breach proportionality, sabotaging legal justification.

V. Iran's View & NPT Commitments

Civilian vs Military Use according to the NPT

Iran's role in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) system has always revolved around the rights provided under Article IV, which recognizes the "inalienable right" of all members to develop, research, produce, and use nuclear energy for peaceful purposes. Iran has taken recourse to this provision all along to justify its activities related to uranium enrichment, claiming that it is working on nuclear technology for energy, medical, and scientific purposes.[41]

Article IV is nonetheless subject to the satisfaction of Articles I and II, which ban nuclear arms development or acquisition.[42]The question of law, thus, is whether Iran's enrichment program,

[40] Arms Control Association, "Limits of Breakout Estimates" August 2020 *available at*: https://www.armscontrol.org/act/2020-08/features/limits-breakout-estimates (last visited on July 18, 2025).

[41] Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161 (NPT), art. IV.

[42] Islamic Republic of Iran, Letter to IAEA Director General on Peaceful Use of Nuclear Energy, INFCIRC/839 (2014) *available at*: https://www.iaea.org/sites/default/files/publications/documents/infcircs/2012/infcirc839.pdf (last visited on July 18, 2025).

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which has now surpassed the limits initially set under the JCPOA (Joint Comprehensive Plan of Action), can be considered peaceful in nature.[43]

The International Atomic Energy Agency (IAEA), NPT's verification agency, has complained of a lack of transparency by Iran. Since 2021, Iran has restricted access to several facilities and cameras by the IAEA.[44] While Iran continues to allow some safeguards under its Comprehensive Safeguards Agreement (CSA), it suspended implementing the Additional Protocol, which gave wider inspection rights.[45] While there is no conclusive evidence Iran is using enriched uranium for weapons purposes, the IAEA has reported grave concerns about the presence of unexplained nuclear material and activities at undeclared locations.[46]

Notwithstanding all these issues, Iran insists that it is still within its rights under the NPT and that any departure was due to the U.S. unilateral withdrawal from the JCPOA in 2018.[47] Iran claims that European powers also failed to live up to their obligations under the agreement, with Iran having no option but to scale down its compliance accordingly.

Iran's Legal Position on Use of Force and Self-Defence

In the eyes of Iran's law, a unilateral military attack on its nuclear installations will be an act of aggression under Article 2(4) of the UN Charter, as it prohibits the "threat or use of force against the territorial integrity or political independence of any state."[48] Iran contends that its nuclear installations are under the supervision of the IAEA and, therefore, do not represent an immediate threat to international peace. Thus, any strike would be unlawful except as authorized by the UN Security Council under Chapter VII or otherwise unmistakably justified under Article 51 (self-defence after an armed attack).

In addition, Iran makes its inherent right to self-defence, stating that it would be legally justified in responding to any illegal aggression. This could take the form of asymmetric countermeasures such as retaliatory strikes within the region, economic sanctions, or alignment with regional players such as Syria or Iraq.[49] In diplomatic circles, Iran has also presented such

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43 NPT (n 1) arts. I and II.

44 Joint Comprehensive Plan of Action (Vienna, 14 July 2015), Preamble and General Provisions, *available at*: https://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf (last visited on July 18, 2025).

45 IAEA, GOV/2023/24, "Verification and Monitoring in the Islamic Republic of Iran in Light of UN Security Council Resolution 2231 (2015), June 2023, *available at*: https://www.iaea.org/sites/default/files/documents/gov2023-24.pdf (last visited on July 18, 2025).

46 IAEA, Iran's Suspension of the Additional Protocol, GOV/INF/2021/10.

47 IAEA, NPT Safeguards Agreement with Iran, GOV/2023/46 (2023).

48 Islamic Republic of Iran, Statement to the UN General Assembly (September 2022).

49 UN Charter, art. 2(4).

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an attack as a violation of international law, which could destabilise the whole Gulf region and undermine the integrity of the NPT system.[50]

So, Iran positions its actions as being in accordance with, and any outside military action as illegitimate, not justified under international law. This is a viewpoint shared by a good number of Global South nations, which also consider civilian nuclear progress as a matter of sovereignty and oppose anticipatory attacks pre-emptively based on hypothetical threats.

VII. Policy Implications, Recommendations and Conclusion

Policy Implications & Recommendations

Strengthen IAEA Verification and Transparency

Resuming and reinforcing robust monitoring mechanisms is crucial. Iran's 2025 law mandates that IAEA inspections must now pass the Supreme National Security Council, per Foreign Minister Araqchi, reflecting decreased transparency and undermining verification efforts.[51] A policy priority should be restoring unrestricted IAEA access, including full Additional Protocol implementation, to ensure real-time surveillance of enrichment facilities (e.g. Natanz, Fordow). Additionally, remote monitoring systems and environmental sampling must be reactivated under the JCPOA framework. Historical analysis underscores that transparency reduces misperception of nuclear ambitions.[52]

Re-engage Through a JCPOA-II with Sunset Clauses

Diplomatic re-engagement must aim at a JCPOA-II featuring stricter ceilings on centrifuge numbers and enrichment levels, backed by clear sunset clauses aligned with breakout risk projections. The new agreement should retain progress made in arms control and allow snap-back provisions to trigger sanctions swiftly if Iran resumes suspicious activity. Regional partnersparticularly the US, EU, China, and Russiashould offer credible, legally binding economic and nuclear cooperation benefits to incentivize compliance.[53]

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[50] Permanent Mission of Iran to the UN, Legal Framework of Iran's Right to Self-Defence, UN Doc A/76/349 (2021).

[51] Reuters, "Iran Says Will Work with IAEA but Inspections May Be Risky", 4 July 2025, *available at*: https://www.reuters.com/world/middle-east/fm-araqchi-says-iran-work-with-iaea-inspections-may-be-risky-2025-07-12/ (last visited on July 18, 2025).

[52] Kelsey Davenport, "Breakout Estimates and the Politics of Nuclear Ambiguity", Arms Control Association, 2024, *available at*: https://www.armscontrol.org (last visited on July 18, 2025).

[53] Seyed Hossein Mousavian, "The Rise and Fall of the JCPOA", *Journal of Indo-Pacific Affairs* 32 (2023).

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Develop Regional Security Frameworks and Nuclear-Weapon-Free Zones

A regional architecture is essential for durable non-proliferation. Drawing lessons from UNIDIR's proposals for a Middle East WMDFZ, stakeholder states should initiate confidence-building, merging nuclear safeguards with security guarantees.[54] This could include phased sequencing: Iran suspends enrichment; in turn, regional adversaries commit to non-proliferation, promoting mutual transparency. Such frameworks help decouple nuclear issues from broader geopolitical disputes and lessen the perceived need for unilateral strikes.

Legal Messaging for States Considering Pre-emptive Strikes

To avert misuse of pre-emption, states claiming anticipatory self-defence must meticulously document compliance with the Caroline criteria: verifying imminence, exhaustively analyzing alternative peaceful means (necessity), and ensuring any force is limited and proportional.[55] Transparent legal memosshared confidentially with the IAEA or UN Security Councilcan provide retrospective justification and scrutiny. Absence of such documentation severely weakens legality under jus ad bellum.

Coordinate Legal Action via UN Bodies

Although Article 51 allows self-defence, lawfulness and legitimacy are best achieved through:

UN Security Council resolutions recognizing imminent threatmirroring R1696 (2006)or IAEA Board endorsement of non-compliance, creating a formal path for collective enforcement rather than unilateral responses.[56]

This preserves the rules-based order and avoids precedent fragmentation.

Conclusion

This analysis confirms that pre-emptive strikes against Iran's nuclear infrastructure are severely constrained under current international law. While Iran's capacity nearing weapons-grade

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54 United Nations Institute for Disarmament Research (UNIDIR), "Lessons from the JCPOA for WMDFZ in the Middle East", May 2023 *available at*: https://unidir.org/files/2021-06/UNIDIR - Lessons from the JCPOA for the ME WMDFZ essay series.pdf (last visited on July 18, 2025).

55 Daniel Webster, Letter on the Caroline Affair (1837), reproduced in BFSP vol 29, 1137.

56 UN Security Council Resolution 1696 (31 July 2006) UN Doc S/RES/1696, *available at:* https://main.un.org/securitycouncil/en/s/res/1696-(2006) (last visited on July 18, 2025).

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levels heightens security concerns, without clear weaponization or overt hostilities, such strikes fail to satisfy the Caroline test's threshold of "instant, overwhelming" threats.[57]

Recommendation Summary

i. Reinstate IAEA oversight, including Additional Protocol mechanisms, to restore verification confidence.

ii. Pursue a renewed agreement (JCPOA-II) with enforceable and transparent deadlines to curb enrichment.

iii. Introduce regional security frameworks or WMDFZ proposals to reduce motivations for unilateral preventive measures.

iv. Install procedural safeguards: states must document imminence, necessity, proportionality when claiming anticipatory self-defence and ideally align such actions with UN mechanisms.

Absent such steps, state resort to force remains legally precarious and politically destabilizing risks include Iran's retaliation through proxies, missile strikes, or even accelerated proliferation by other regional actors.

Ultimately, reinforcing non-proliferation norms and embedding Iranian nuclear activities within verified peaceful use regimes advances strategic stability more sustainably than normalizing pre-emptive operations. It is only through coordinated legal and diplomatic engagement not unilateral military action that the international community can uphold the NPT regime, the UN Charter, and regional peace.

[57] Brian Finucane, "The Caroline Test Revisited: Imminence in International Law", 17(1) *San Diego Journal of International Law* 89 (2015).

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INCLUSION WITHOUT NORMS: EIGHTH SCHEDULE'S PROCEDURAL VACUUM WITH SPECIAL REFERENCE TO THE MIZO LANGUAGE PROPOSAL

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ABSTRACT

The Eighth Schedule of the Constitution of India lists the official languages recognised for specific constitutional purposes. While its scope has expanded from 14 to 22 languages since 1950, no constitutional or statutory criteria govern the inclusion of further languages. Drawing on information obtained under the Right to Information Act, 2005, this note examines the absence of objective norms, the political and procedural implications of this vacuum, and the status of the Mizo language proposal. The findings reveal that despite decades of committee work, the Pahwa Committee (1996) and the Sitakant Mohapatra Committee (2003), the Union Government has been unable to finalise measurable standards for inclusion. As a result, 38 language proposals remain in indefinite limbo, perpetuating unequal treatment among linguistic communities. The absence of clear criteria violates the principles of equality and non-arbitrariness enshrined in Article 14 of the Constitution. Without a rational framework, inclusion decisions risk being guided by political expediency rather than constitutional morality, frustrating the expectations of marginalized linguistic groups. This note argues that the procedural indeterminacy surrounding the Eighth Schedule erodes constitutional trust and undermines India's pluralist commitments. By situating the Mizo language proposal within this broader policy vacuum, this note highlights the need for a statutory framework that institutionalises fairness, transparency, and predictability in language recognition. Establishing objective criteria such as demographic presence, cultural significance, and administrative viability would curb political discretion and reinforce constitutional morality. In doing so, India can meaningfully advance its federal and multicultural ethos, ensuring that linguistic recognition becomes a right grounded in justice and equality rather than a privilege granted at the state's discretion for all linguistic communities.

***Keywords**:* Eighth Schedule, Linguistic rights, Article 14, Language inclusion policy, Mizo language proposal, Constitutional equality

I. Introduction

The Eighth Schedule of the Constitution was conceived as a dynamic list reflecting India's linguistic diversity. Article 344(1) and Article 351 of the Constitution indirectly relate to its purpose, while no provision explicitly lays down how languages may be added. The initial 14

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languages have[1] grown through successive constitutional amendments, to 22[2]. Each addition has been a political and legislative act rather than a rule-bound administrative process. [3]This position is reinforced by judicial precedent.

The Mizo language, spoken predominantly in Mizoram and by diaspora communities across Northeast India and beyond, holds official status in the state and is central to the community's literary, cultural, and educational identity. Notably, Mizoram has become the first fully literate state in India, achieving a literacy rate of 98.2% as per the Periodic Labour Force Survey (PLFS) 2023–2024. This milestone was officially declared on May 20, 2025, under the Understanding Lifelong Learning for All in Society (ULLAS) initiative, which is part of the New India Literacy Programme.[4] Despite this, its claim for inclusion in the Eighth Schedule has been pending for more than a decade. [5]

The absence of transparent inclusion criteria has long been criticised by scholars, state governments, and cultural organisations.[6] This note is based on responses received from the Ministry of Home Affairs (MHA) under the Right to Information Act, 2005, and presents documentary evidence of this procedural vacuum, with a particular focus on the Mizo language's unfulfilled demand for inclusion.

In May 2025, the author filed a Right to Information (RTI) application to ascertain the status of the Mizo proposal and the criteria guiding Eighth Schedule additions. The Ministry of Home Affairs (MHA), in its reply dated 16 June 2025, confirmed the absence of any prescribed norms, disclosed a backlog of thirty-eight pending proposals, and withheld two committee reports under Section 8(1)(a) of the RTI Act.

This note is an empirical legal commentary, distinct in its reliance on primary RTI data rather than secondary summaries. It argues that the RTI reply exposes a structural vacuum: the inclusion process lacks binding criteria, operates in an ad-hoc fashion, and has remained

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1 Constitution of India, 1950, Eighth Schedule

2 Constitution of India, 1950, Eighth Schedule, as amended up to 2003 (22 languages)

3 Ministry of Home Affairs, *RTI Application regarding inclusion of Mizo language in the Eighth Schedule*, Reg. No. MHOME/R/T/25/01591 (23 May 2025) (on file with author).

4 Department of Information & Public Relations, Government of Mizoram, "Chief Minister Declares Mizoram the First Fully Literate State in India," published on [insert publication date], *available at*:https://dipr.mizoram.gov.in/post/chief-minister-declares-mizoram-the-first-fully-literate-state-in-india (last accessed on December 31, 2025)

5 Ibid.

6 Indian Express, *The Eighth Schedule of the Indian Constitution: How Language Inclusion Creates Exclusion*, 2025; The Print, "*No Timeframe for Considering Demands for Inclusion of Languages in 8th Schedule: Govt*, 2019"; Deccan Herald, *Conscious of Sentiments for Inclusion of Tulu Language into 8th Schedule*, 2024.

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stagnant for decades. This raises serious constitutional questions about India's institutional commitment to its proclaimed linguistic diversity.

II. Legislative and Constitutional framework

Article 344

Article 344 of the Indian Constitution lays the foundation for India's official language policy by mandating the appointment of a Commission after fifteen years from the commencement of the Constitution. [7]This Commission, along with a Committee of Parliament, was tasked with recommending the progressive use of Hindi for the Union's official purposes and the gradual restriction of English. The provision was conceived as a transitional mechanism, reflecting the Constituent Assembly's intent to strike a delicate balance between promoting Hindi and accommodating the continued necessity of English.[8]

The Commission was expected to devise measures to facilitate the wider use of Hindi in administration, legislation, and the judiciary, while simultaneously ensuring that linguistic minorities were not disadvantaged. [9]However, in practice, recommendations under Article 344 have faced political contestation, regional resistance, and repeated extensions of English as an associate official language. [10]Thus, the aspirational goal of a smooth transition has been tempered by the sociolinguistic reality of India's diversity.

Importantly, Article 344 provides the first link between official language policy and constitutional safeguards for linguistic plurality. Though the provision envisages Hindi's eventual predominance, it also acknowledges the need for inclusivity and gradualism. [11]The lack of a clear procedural mechanism for inclusion of languages within the Eighth Schedule. [12]However, it creates a structural vacuum. For languages like Mizo recognized at the state level but excluded from the Eighth Schedule this vacuum means that their role in shaping national linguistic policy remains peripheral, despite Article 344's vision of balanced accommodation.

Article 351

[7] M.P. Jain, *Indian Constitutional Law*, 8th edn., LexisNexis, Gurugram, 2021, p. 823
[8] D.D. Basu, *Introduction to the Constitution of India*, 25th edn., LexisNexis, Gurgaon, 2021, p. 409-410
[9] Ibid., p. 409
[10] Government of India, *The Official Languages Act, 1963*, Act No. 19 of 1963.
[11] D.D. Basu, *Introduction to the Constitution of India*, 25th edn., LexisNexis, Gurgaon, 2021, p. 408-410
[12] Basu, supra note 5, p. 414-415

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Article 351 serves as the guiding directive for the Union to promote the spread and development of Hindi as the unifying link language of India. It mandates that Hindi evolve into a language capable of expressing the nation's composite culture. What distinguishes Article 351 from a mere promotion of Hindi is its explicit instruction: Hindi must enrich itself by drawing upon the vocabulary, style, and expressions of the languages listed in the Eighth Schedule. [13]This provision reflects a constitutional commitment to both integration and linguistic inclusivity.

The constitutional design was therefore twofold: while Hindi was to be promoted as a national link language, this promotion could not come at the expense of India's linguistic diversity. Instead, Scheduled languages were envisaged as reservoirs of cultural wealth that would feed into the growth of Hindi. However, the provision also reveals a structural weakness: only languages included in the Eighth Schedule are positioned to influence the national language policy. Languages like Rajasthani, Tulu, Mizo, etc., despite being vibrant and widely spoken are excluded from this constitutional arrangement.

This creates a paradox of "inclusion without norms." While Article 351 imagines enrichment through Scheduled languages, it provides no procedure for adding new languages to the Schedule.[14] Consequently, the Eighth Schedule's expansion has occurred only through sporadic political decisions rather than transparent constitutional norms. The exclusion of Mizo exemplifies this procedural vacuum: despite cultural vitality and constitutional protection under Article 371G, its inability to enrich Hindi under Article 351 underscores the limitations of India's current language framework.

Absence of Codified Criteria

All languages added to the Eighth Schedule have been included through constitutional amendments under Article 368. The first was Sindhi in 1967[15], and the latest were Bodo, Dogri, Maithili, and Santhali in 2003[16]. Each addition needed political discussion, Cabinet approval, and a special majority in Parliament. Since there is no separate law for including languages, any new language must go through the full amendment process.[17]

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13 Constitution of India, 1950, Art. 351, as amended up to 2025, Government of India, Ministry of Law and Justice, New Delhi.

14 Ibid.

15 Added by the Constitution (Twenty-first Amendment) Act 1967, S. 2.

16 Added by the Constitution (Ninety-second Amendment) Act 2003.

17 Constitution of India, 1950, art. 368; Constitution (Twenty-first Amendment) Act, 1967; Constitution (Seventy-first Amendment) Act, 1992; Constitution (Ninety-second Amendment) Act, 2003.

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Crucially, there exists no statutory enactment, constitutional mandate, or subordinate legislative instrument prescribing measurable, binding, or transparent criteria for inclusion in the Eighth Schedule. The Ministry of Home Affairs, in its 16 June 2025 RTI reply, expressly acknowledged this absence. This legal vacuum has allowed the process to function in an ad-hoc manner, dependent on political will and contingent considerations, without the predictability or accountability expected in constitutional governance.

III Committee Attempts at Codification

While the constitutional text provides no framework for the inclusion of new languages into the Eighth Schedule, successive Union Governments have periodically attempted to codify objective criteria. These attempts, however, have remained inconclusive, leaving the process dependent on political negotiation rather than transparent evaluation. [18]

Pahwa Committee (1996)

The Government of India constituted the Pahwa Committee in 1996 with the mandate of evolving objective criteria for the inclusion of additional languages in the Eighth Schedule. The initiative emerged in response to an increasing number of representations from State Governments, community organisations, and Members of Parliament. Despite extensive consultations, the Committee could not finalise a universally acceptable framework. The primary point of contention lay in defining and distinguishing between “languages” and “dialects,” a question complicated by India’s layered linguistic identities, script variations, and regional politics.[19]

Sitakant Mohapatra Committee (2003)

In 2003, the Sitakant Mohapatra Committee was set up with a similar mandate: to develop measurable norms that could guide Parliament in deciding whether a language merited inclusion. The Committee’s terms of reference specifically included the task of distinguishing dialects from languages and assessing the sociolinguistic vitality of candidates. While the Committee is understood to have prepared a set of recommendations, these remain undisclosed to the public. The Ministry of Home Affairs (MHA) has withheld the reports under Section 8(1)(a) of the Right to Information Act, 2005, citing concerns over public order and harmony

[18] Ministry of Home Affairs, *RTI Application regarding inclusion of Mizo language in the Eighth Schedule*, Reg. No. MHOME/R/T/25/01591 (23 May 2025) (on file with author).

[19] Ibid.

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on the ground that premature disclosure could provoke unrest among communities whose demands were rejected.[20]

RTI Disclosure (2025)

An RTI application filed on 23 May 2025 sought information on the status of inclusion criteria and the position of the Mizo language in the pending list. In its reply dated 16 June 2025, the MHA stated unequivocally that "attempts… to evolve such fixed criteria have remained inconclusive due to divergent opinions of various stakeholders." [21]The reply further confirmed that no committee or expert group is currently considering new inclusions.

Consequences of Procedural Stasis

To date, the Union Government has confirmed that the Pahwa Committee (1996), tasked with formulating criteria for language inclusion in the Eighth Schedule, did not produce an actionable framework nor a publicly accessible report. The failure to codify criteria has produced a long-standing procedural vacuum. In practice, each inclusion depends upon political will, coalition dynamics, and shifting parliamentary priorities. While the Government has made multiple "attempts at codification," each effort has stalled before producing a binding standard. As a result, the Eighth Schedule remains static, and claims such as that of the Mizo language continue to be subject to indefinite administrative delay.

IV RTI Evidence of the Procedural Vacuum

The absence of codified inclusion criteria for the Eighth Schedule is not merely an academic inference; it is an officially acknowledged fact. An RTI application (Reg. No. MHOME/R/T/25/01591) filed on 23 May 2025 sought specific information from the Ministry of Home Affairs (MHA) regarding the current status of the Mizo language's inclusion proposal, any existing norms governing such inclusion, and the availability of past committee reports.[22] Judicial pronouncements reinforce this procedural vacuum. In *Kanhaiya Lal Sethia v. Union of India* (1997), the Supreme Court categorically held that inclusion of Rajasthani was "a policy matter for the Government," declining to issue directions[23]. More recently, in *Ripudaman Singh v. Union of India* (2023), a Public Interest Litigation seeking inclusion of Rajasthani was

[20] Ibid.
[21] Ibid.
[22] MHA, RTI Application on Mizo Language (n1)
[23] *Kanhaiya Lal Sethia v. Union of India*, (1997) 6 SCC 573.

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dismissed on similar grounds, [24]with the Court reiterating that recognition of languages falls exclusively within the legislature's domain under Article 368. These disclosures and rulings demonstrate that the process is driven entirely by political discretion and constitutional amendment, lacking transparent, rule-bound criteria.

No Prescribed Norms

The MHA's reply, dated 16 June 2025, categorically stated: "At present, there are no prescribed norms for inclusion of more languages in the Eighth Schedule, including Mizo." This is a publicly documented admission based on primary evidence that the Union operates without a binding framework in deciding linguistic inclusion. The statement aligns with earlier indications from committee histories but carries greater probative value because it is an official, on-record response to a citizen query.

Pending Proposals

The reply annexed a list of 38 languages whose inclusion proposals remain pending. These include widely spoken regional tongues such as Bhojpuri, Tulu, and Garhwali, as well as smaller linguistic communities like Mizo, Khasi, etc. The breadth of the list underscores the scale of the administrative backlog and the absence of a systematic process for addressing competing claims.

Past Submissions from Mizoram

The RTI response confirms that the Government of Mizoram formally submitted a proposal for Mizo's inclusion in 2013, followed by a 2021 letter from the Governor of Mizoram reiterating the demand. Despite these high-level representations from constitutionally recognised State authorities, no substantive action has been taken, illustrating how political endorsements alone cannot break the procedural impasse. This institutional inaction resonates with findings from recent open-ended survey responses among the Mizo diaspora, in which participants highlighted a deep sense of political marginalisation, noting that Mizoram is represented by only one seat each in the Lok Sabha and the Rajya Sabha.[25]The perceived lack of political leverage underscores how smaller states and linguistic minorities struggle to advance

24 *Ripudaman Singh v. Union of India*, W.P. (C) No. 387/2023 (India)

25 Author's field research, Questionnaire Responses of Mizo diaspora in Delhi regarding inclusion of the Mizo language in the Eighth Schedule (April–May 2025) (data on file with author).

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languagerecognition agendas in a system dominated by numerical strength, thereby further entrenching the procedural vacuum surrounding the Eighth Schedule.

Non-Disclosure of Committee Reports

Perhaps most tellingly, the MHA refused to disclose the reports of the Pahwa Committee (1996) and the Sitakant Mohapatra Committee (2003), citing Section 8(1)(a) of the RTI Act, 2005. The stated reason for avoiding "uproar… detrimental to peace, public order, and harmony" suggests that the Government anticipates community-level unrest if certain languages are perceived to have been prioritised or rejected. This reinforces the politically sensitive nature of Eighth Schedule expansion and the reluctance to institutionalise transparent evaluation norms.

Structural Absence of Norms

Taken together, these RTI disclosures move the debate beyond mere bureaucratic delay. They reveal a structural vacuum in the constitutional architecture where the absence of criteria is not accidental, but embedded in a decades-long stalemate, leaving linguistic recognition at the mercy of political expediency rather than principled decision-making.

V. Implications of the Procedural Vacuum

The RTI disclosures examined above reveal not only the absence of procedural norms for inclusion in the Eighth Schedule but also a series of systemic consequences that undermine constitutional commitments to linguistic diversity. Four interlinked implications merit closer scrutiny.

Backlog of Claims

The official list of 38 pending language proposals reflects an expanding queue without a defined mechanism for disposal. Each year, additional demands are made by State governments, Members of Parliament, and community organisations, yet no chronological or priority-based framework exists to ensure timely consideration.[26] This cumulative backlog transforms what should be a process of structured constitutional recognition into a protracted, indeterminate wait, effectively freezing linguistic aspirations for decades.

Risk of Politicisation

[26] Ministry of Home Affairs, *RTI Application regarding inclusion of Mizo language in the Eighth Schedule*, Reg. No. MHOME/R/T/25/01591 (23 May 2025) (on file with author).

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In the absence of codified criteria, the inclusion process becomes vulnerable to political negotiation and electoral calculus. Languages with stronger political lobbies or greater representation in Parliament may receive attention, while others, despite cultural or demographic merit, remain ignored. Such ad-hocism risks distorting the Eighth Schedule's constitutional role from a recognition of linguistic diversity into a transactional instrument of coalition politics and a violation of Article 14.

Violation of Article 14: Equality and Non-Arbitrariness

The absence of codified criteria or procedure for the inclusion of languages in the Eighth Schedule raises serious constitutional concerns under Article 14, which guarantees equality before the law and equal protection of the laws. While Article 14 does not prohibit reasonable classification, the Supreme Court has consistently held that classifications must be based on intelligible differentia and have a rational nexus with the objective sought to be achieved. In *E.P. Royappa v. State of Tamil Nadu* (1974), the Court famously declared that "arbitrariness is antithetical to equality," establishing that equality is not merely formal but substantive. [27]This view was reinforced in *Maneka Gandhi v. Union of India* (1978), [28]which expanded Article 14 to encompass fairness, reasonableness, and non-arbitrariness as cornerstones of governance.

Applied to the Eighth Schedule, this jurisprudence reveals a structural gap: while the Constitution envisions recognition of languages as an instrument of cultural and linguistic justice, the absence of codified standards has allowed arbitrary decision-making. The Union Government holds exclusive discretion to initiate constitutional amendments for inclusion, yet there is no statutory or policy framework to guide such decisions. This opacity has produced inconsistent outcomes, where some languages with comparable or even smaller speaker populations have been recognized, while others with strong literary traditions and sustained political representation remain excluded.

This lack of transparency and predictability undermines constitutional trust and creates a perception of unequal treatment among linguistic communities, contrary to the spirit of Article 14. Codifying objective and consultative procedures would not only align with constitutional principles of fairness and equality but would also strengthen India's pluralist vision, ensuring that recognition of linguistic diversity is based on justice rather than political expediency.

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[27] *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

[28] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

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Transparency Deficit

As part of an attempt to obtain information regarding the inclusion of languages in the Eighth Schedule, the following RTI query was submitted to the Ministry of Home Affairs (MHA):

"For each language added to the 8th Schedule after the original 14, please provide: A copy of the official proposal or recommendation submitted for Copies of internal file notings, cabinet notes, or relevant communications regarding the inclusion. Details of any expert committees or linguistic surveys involved in evaluating the proposals. Criteria or benchmarks used by the Government or committees while approving the inclusion. Any relevant Parliamentary standing Committee reports or recommendations that supported the inclusion."

The RTI response revealed the extent of this opacity. A recent reply from the MHA stated:

"Inclusion of languages in the 8th Schedule to the Constitution is a very sensitive matter. There are hundreds of languages and dialects in India and there have been persistent demands for the inclusion of these languages/dialects. Due to the sensitive nature of the matter, a decision regarding the acceptance or otherwise of the Sitakant Mohapatra Committee Report and the Pahwa Committee Report could not be taken so far. As such, these reports and related documents cannot be made public until a decision on their acceptance is made, as disclosure may spark public uproar against the Committee's recommendations, which may be detrimental to peace, public order, and harmony. Thus, the requisite information cannot be disclosed at this stage as it attracts the provisions of Section 8(1)(a) of the RTI Act, 2005."[29]

The MHA's refusal to disclose the Pahwa and Sitakant Mohapatra Committee reports, citing Section 8(1)(a) of the RTI Act, deepens the transparency deficit. Communities are left in the dark about why some languages may be favoured over others, or what technical and sociolinguistic parameters have been considered in the past. This justification is highly questionable and appears to be a clear attempt to avoid accountability for decades of inaction. The MHA's claim that disclosing the reports could "create uproar in society" weaponizes an exemption designed for matters of national security. It overlooks the crucial "public interest override" provision in Section 8(2) of the RTI Act, which mandates disclosure even if an exemption applies if the public interest outweighs the potential harm. The public's interest in transparency and fairness regarding language recognition for 38 pending proposals far

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29 Ministry of Home Affairs, *RTI Application regarding inclusion of Mizo language in the Eighth Schedule*, Reg. No. MHOME/R/T/25/01592 (23 May 2025) (on file with author).

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outweighs the government's speculative fear of unrest. This non-disclosure reinforces the politically sensitive nature of Eighth Schedule expansion and the state's reluctance to institutionalize transparent evaluation norms. The secrecy fosters suspicion among linguistic groups, increasing the risk of inter-community tension and undermining trust in the Union's language policy.

Judicial Review Limitations

The Supreme Court and High Courts have historically regarded inclusion in the Eighth Schedule as a matter of legislative policy, falling within Parliament's exclusive amending power under Article 368. In the absence of explicit constitutional or statutory criteria, judicial review is unlikely to compel inclusion, limit delays, or enforce transparency. This doctrinal restraint leaves affected communities with limited legal remedies, reinforcing the dominance of political and administrative discretion.

Collectively, these implications suggest that the procedural vacuum is not a neutral omission but an enabling condition for a politically managed, non-transparent system. Without reform, the Eighth Schedule risks losing its legitimacy as a constitutional instrument for the protection and promotion of India's linguistic heritage.

VI Conclusion and Recommendations

The RTI disclosures unequivocally reveal that the process for inclusion of languages in the Eighth Schedule operates without any legally binding criteria or prescribed policy framework. This procedural vacuum severely undermines the principles of equality and non-arbitrariness enshrined in Article 14 of the Constitution, as similarly situated linguistic communities face unequal treatment due to the absence of objective parameters.

To address these systemic gaps, the Union Government should take immediate steps, including:

i. Public Disclosure of Committee Reports: Release the withheld reports of the Pahwa Committee (1996) and Sitakant Mohapatra Committee (2003) to enable informed public discourse and build trust among linguistic communities.

ii. Establishment of Statutory Criteria: Formulate clear, measurable, and objective criteria for inclusion, incorporating demographic strength, cultural heritage, linguistic distinctiveness, and sociolinguistic vitality.

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iii. Periodic Review Mechanism: Implement a transparent and regularized process to review pending proposals, ensuring that claims do not languish indefinitely.

iv. Parliamentary Oversight Grounded in Objectivity: While parliamentary approval remains constitutionally indispensable, inclusion decisions should be based on rigorous evaluation rather than ad-hoc political negotiations.

The situation of several languages, including the Mizo language, pending inclusion despite formal proposals and constitutional recognition at the State level, starkly illustrates the consequences of this procedural inertia. Without substantive reforms, demands for linguistic recognition risk being consigned to perpetual limbo, frustrating constitutional promises, violating the mandate of Article 14, and eroding India's commitment to its pluralistic ethos.

As Mahatma Gandhi aptly said, *"Our ability to reach unity in diversity will be the beauty and the test of our civilization."* [30]Ensuring transparency, objective criteria, and timely inclusion of languages in the Eighth Schedule is not merely a procedural necessity; it is a reaffirmation of India's commitment to its pluralistic and democratic ethos.

[30] Mahatma Gandhi, *Young India*, 1925.

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ROLE OF DUBBING ARTISTS WITH REGARD TO THE ROYALS WEB SERIES BY NETFLIX

*Vikas**

ABSTRACT

The current paper examines the technological advancements that could potentially eliminate the role of dubbing or voice-over artists in the film industry, whether in Bollywood or Hollywood. Apart from it, another big issue that arises is the question of copyright over the voices generated by AI or other such applications and software. This paper extensively studies the gaps and explores the existing legal provisions in our system and whether amendments are needed to address these concerns.

Keywords: Copyright, Dubbing and Voice over Artists, Artificial Intelligence, legal reforms, film industry

I. Introduction

We are living in the 21st century, a time marked by unprecedented technological advancement.[1] Irrespective of our age group, we are a generation that has witnessed rapid developments in science, innovation, and technology. Simply by existing on this planet, in whatever part of the globe we may reside, we are all touched by this wave of progress.[2] From Earth to sky, from day to night, from the natural world to human-made creations everything around us has evolved drastically.[3]

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1 Steven Johnson., "AI is mastering language. Should we trust what it says?" *The New York Times Magazine*, Apr.15, 2022.

2 Technology governance in the 21st century, 2020, *available at:* https://www.weforum.org (last visited on May 1, 2026). (The 21st century has been marked by exponential growth in science, technology, and innovation, transforming how people live, work, and communicate. Technological breakthroughs—from artificial intelligence and biotechnology to digital communication and space exploration—have become integral to modern life. This era, often referred to as the Fourth Industrial Revolution, is characterized by the fusion of physical, digital, and biological systems. Regardless of geographical location or demographic group, individuals across the globe are affected by these advancements, whether through access to smartphones, healthcare innovations, digital education platforms, or globalized economic systems. These changes underscore a shared human experience shaped by interconnected technological progress).

3 Mika Westerlund, "The Emergence of Deepfake Technology: A Review" 9(11) *Technology Innovation Management Review* 40-53 (2019).

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In addition to these tangible advancements, we also see the emergence of numerous intangible innovations. One such vital domain is intellectual property (IP). Among the eight recognized categories of intellectual property rights, copyright holds a significant place in our daily lives.[4] Whether we realize it or not, we constantly interact with copyright-protected content through videos, films, serials, web series, and episodes that we consume for entertainment. All these creative works are subject to copyright protection. Moreover, they come with various related rights that extend to other contributors involved in the production process.[5]

When a film or web series is created, it involves the collective effort of thousands of individuals each contributing their time, talent, and hard work to bring the story to life on screen.[6] However, as viewers, we seldom consider the human stories behind the curtains. This paper aims to deeply explore the contributions of one such group of unsung heroes: dubbing artists and voice-over artists.[7]

In the current scenario, when a movie is filmed, it is typically shot in a single language. For instance, Bollywood movies are predominantly produced in Hindi. However, given the global fan-base of Hindi cinema, it becomes necessary to release these films in multiple languages to cater to international audiences.[8] Actors performing in these films are not necessarily fluent in all the languages in which the film is intended to be released. Consequently, these movies are dubbed into different languages with efforts made to

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[4] World Intellectual Property Organization, *What is Intellectual Property?*, *available at:* https://www.wipo.int/about-ip/en/ (last visited on May 1, 2026). (Intellectual Property (IP) refers to creations of the mind, including inventions, literary and artistic works, designs, symbols, names, and images used in commerce. The World Intellectual Property Organization (WIPO) recognizes eight core categories: patents, trademarks, industrial designs, geographical indications, copyright, trade secrets, layout designs of integrated circuits, and plant variety protection. Among these, copyright plays a vital role in everyday life by safeguarding creative expressions such as books, music, films, software, and online content. It ensures that creators have the exclusive right to use, reproduce, distribute, and monetize their original works for a certain period, thereby incentivizing innovation and cultural production in the digital age.)

[5] Harini Suresh and John Guttag, "A Framework for Understanding the Unintended Consequences of Machine Learning" 64(11) *Communications of the ACM* 62-71 (2021).

[6] World Economic Forum, *The Fourth Industrial Revolution – At a Glance*, 2016, *available at:* https://www.youtube.com/watch?v=Ko2esJeGsrI. (The world is currently experiencing rapid technological changes that impact people across all age groups and regions. This global shift is often described as the Fourth Industrial Revolution, where innovations in fields like artificial intelligence, robotics, and biotechnology are reshaping daily life).

[7] D. Gervais, "AI and Authorship: Does the Law Need a Rewrite?" 59(2) *Houston Law Review* 203-235 (2022).

[8] M.D. Dubber, F. Pasquale, *et.al., The Oxford Handbook of Ethics of AI* (Oxford University Press, 2020).

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match the original actors' voices, pace, and emotional expression as closely as possible. This is where the need for skilled dubbing artists arises.[9]

Additionally, there are many instances where certain dialogues or scenes cannot be performed by the actors themselves for various reasons. In such cases, voice-over artists step in, lending their voices to the characters. The voices behind the faces we see on screen are not always those of the original actors but rather the carefully crafted performances of these talented artists.[10]

Dubbing and voice-over artists enjoy a range of rights under copyright law, particularly in countries that are signatories to the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994).[11] In addition to the primary right of copyright, these artists are entitled to related rights, including personality rights, moral rights, and even the right to receive royalties for their work even in situations where they are hired under a "work-for-hire" arrangement.[12]

While this traditional model of dubbing has long been studied and documented in academic literature, we now face a disruptive new reality. Recent advancements in AI-driven voice generation technologies have introduced the possibility of dubbing films without the need for human dubbing or voice-over artists.[13] This may appear beneficial to producers in terms of cost efficiency and production speed, but it raises significant challenges both for the future of these artists and from a legal perspective.[14]

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9 Ramon Lobato, *Netflix Nations: The Geography of Digital Distribution* (NYU Press, 2019).

10 Voice-over and dubbing artists often play a critical but underrecognized role in audiovisual productions. They may be required in cases where the original actor is unavailable, has a speech limitation, or where the dialogue needs to be re-recorded for clarity, localization, or censorship purposes. This process—known as Automated Dialogue Replacement (ADR)—is common in both domestic cinema and international dubbing industries. Voice artists are not merely replicating lines but interpreting tone, emotion, and intent to match or enhance the original performance. In multilingual content or OTT adaptations, such as those seen on Netflix, these voice artists essentially become the 'new voice' of the character for an entire linguistic audience, yet often go uncredited. Their contribution is vital to preserving narrative immersion across cultural and linguistic boundaries.

11 *Agreement on Trade-Related Aspects of Intellectual Property Rights*, World Trade Organization, *available at*: https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm (last visited on May 1, 2026).

12 J.T. Caldwell, *Production Culture: Industrial Reflexivity and Critical Practice in Film and Television* (Duke University Press, 2020).

13 Luciano Floridi, *The Ethics of Artificial Intelligence: Principles, Challenges, and Opportunities* (Springer, 2023).

14 Jane C. Ginsburg, "People Not Machines: Authorship and AI" *Columbia Public Law Research Paper* No. 14-687 (2020).

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The critical question is this: if AI tools can create a voice that mimics an actor or a dubbing artist without their involvement or consent, who owns the copyright to that voice? Moreover, can such AI-generated voices be used freely, or does this practice infringe upon the rights of the original artists? These unresolved questions demand urgent attention from legal scholars and policymakers alike.[15]

To illustrate the urgency of this issue, I refer to a personal experience that inspired this paper. Last week, while watching Netflix, I came across a new web series titled The Royals, which was released on May 9, 2025. I generally watch Bollywood series in Hindi, but upon starting this series, I noticed it was entirely in English. What caught my attention even more was that the actors were speaking eloquent and coherent English, yet their voices sounded exactly the same as in Hindi.[16]

II. Background and Context

Many researchers have written numerous papers on the issue of monetary compensation for dubbing artists, particularly focusing on the question of royalties that these artists should rightfully receive following the commercial success of a film. Unfortunately, despite the substantial revenues generated by such films, dubbing artists often do not receive adequate compensation or any share of the profits.[17] However, a more recent and pressing issue that of voice dubbing being performed without any human

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[15] *Supra* note 7. (The rise of AI-generated voices has sparked complex debates around authorship, consent, and intellectual property. When an artificial voice closely replicates that of a real actor or dubbing artist without their involvement, it challenges traditional notions of copyright and moral rights. Legal scholars argue that while the AI-generated output may not qualify as an "original work" under current copyright law, it may still infringe upon the performer's right of publicity, voice identity, or personality rights. These legal gray areas are being actively examined by international IP bodies and scholars as AI continues to evolve.).

[16] Andrew McStay, *Emotional AI: The Rise of Empathic Media* (Polity Press, 2021). (The increasing use of AI voice replication in OTT platforms has led to concerns about transparency, attribution, and performer consent. When AI is used to mimic familiar voices across languages, audiences may be unaware of whether the performance is human or synthetic, raising ethical and legal challenges.).

[17] Dubbing artists are typically hired on a one-time contractual basis and are not entitled to residuals or royalties, even when the films or series they contribute to earn significant revenue. Their work is often excluded from collective bargaining agreements and lacks recognition in national copyright frameworks, leading to widespread undercompensation and invisibility in credit listings. This issue has been widely reported across industries, including Bollywood and international streaming platforms.

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involvement through AI tools has received comparatively little attention from scholars.[18]

The background of this study is not rooted in ancient legal discourse, as this is a contemporary issue emerging alongside advancements in technology.[19] While many modern tools are designed to aid creative professionals, there are instances where these innovations create challenges rather than convenience. This is one such case, where AI-generated voice dubbing threatens the professional and legal standing of human dubbing artists.[20]

It is important to note that even before the introduction of the TRIPS[21] Agreement in 1994, India already had copyright laws in place that governed various aspects of intellectual property. In fact, on a global scale, several international treaties such as the Paris Convention[22], the Berne Convention[23], and others have long established the framework for the smooth regulation of copyright protection worldwide.[24]

However, the current issue surrounding AI-generated voices is a novel challenge that these earlier agreements could not have anticipated. When these international conventions were drafted, the extent of future technological advancements, particularly those involving artificial intelligence and machine-generated content, was beyond the foresight of lawmakers. As a result, there is now a significant legal and regulatory gap that must be addressed to ensure the rights of creative professionals are adequately protected in this evolving digital landscape.[25]

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18 The growing use of AI-based voice synthesis tools in film and streaming content has introduced significant challenges for the dubbing industry, particularly in relation to consent, creative authorship, and performer rights. While AI dubbing offers efficiency and cost-saving benefits, scholarly research on its legal and ethical implications remains limited. This gap highlights the need for more focused academic inquiry into how AI affects labor rights, copyright frameworks, and the future role of human dubbing artists in global media production.

19 K.S. Sundar, "Invisible Voices: Legal Voids in India's Dubbing Industry" 7(1) *Indian Journal of Media Law* 41-56 (2021).

20 *Supra* note 7.

21 *Supra* note 11.

22 The Paris Convention for the Protection of Industrial Property, 1883, *available at:* https://www.wipo.int/treaties/en/ip/paris/ (last visited on May 2, 2026).

23 The Berne Convention for the Protection of Literary and Artistic Works, 1886, *available at:* https://www.wipo.int/treaties/en/ip/berne/ (last visited on May 1, 2026).

24 *Supra* note 19.

25 *Ibid.*

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III. Different Contextual Review of Literature

The dubbing industry, especially in the context of OTT platforms like Netflix, has witnessed a significant rise in demand, yet the recognition and legal protection for dubbing artists remain limited.[26] Despite their crucial role in localizing international content for regional audiences, dubbing artists often face economic marginalization, lack of credit, and minimal contractual safeguards.[27] The profession remains informally structured, with no standardized remuneration, royalty rights, or moral rights over voice performances creating an imbalance between the booming digital content industry and the neglected human voices behind it.[28]

One notable study highlights the "bewildering predicament" of voice actors, revealing how their identity, labor, and artistic contribution are systematically erased in favor of celebrity branding or platform promotion.[29] Dubbing artists are frequently replaced or excluded from promotions, even after contributing significantly to character development and viewer engagement.[30] This becomes especially relevant in series like The Royals, where the Indian dubbing voice dramatically shapes character perception for non-English-speaking audiences. However, without industry acknowledgment, these artists remain invisible despite being integral to the content's regional success.[31]

IV. Originality Criteria

For anything to be protected under the copyright laws the first and foremost criteria is originality. A work must be independently created and not copied from another source. If the creation of the author is not original than it would not be able to get the copyright protection under copyright law

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[26] *Supra* note 9.
[27] *Supra* note 19.
[28] Frederic Chaume, *Audiovisual Translation: Dubbing* (Routledge, 2012).
[29] R.C. Thomas, "The Bewildering Predicament of Voice Actors in the Age of AI" 12(2) *Journal of Media Law and Policy* 67-79 (2023).
[30] Whitman-Linsen, *Through the Dubbing Glass: The Synchronization of Foreign Films into English* (Greenwood Press, 1992).
[31] N. Kapoor, "Voice Matters: Audience Reception to Dubbed Content on OTT Platforms" 6(2) *New Media & Society India* 59-73 (2022).

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Modicum of creativity - It is commonly used phrase under copyright laws which says that any work done for the purpose of attaining copyright protection it have a touch of originality or uniqueness without these both essentials elements it is not copyright-able.[32][33]

Independent Creation[34] **-** the work should be done by the author's own mind and with his own intellect rather than being directly copy of someone's else.[35] If the author put his own art and creativity than the law protect it, he/she must independently own it.[36]

Minimal Creativity - it is not required to be exceptional innovative, if the work have nominal or some level of originality or individual expression than it would be protected under copyright law.[37]

Novelty and Uniqueness - In copyright law, originality does not demand that a work be wholly novel or revolutionary; rather, it requires that the author's expression of the work be the result of their own independent effort, even if the underlying ideas are not original.[38]

Focus on expression, not the idea - Copyright protection hinges on the author's individual effort in expressing a work, not on the newness of the ideas involved. A work may qualify as original even if it is built upon pre-existing concepts, so long as the author's expression is independently created.[39]

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[32] *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U.S. 340 (1991). (The U.S. Supreme Court laid down that a work must possess a "modicum of creativity" to be eligible for copyright protection. This principle is widely accepted in other jurisdictions as well, including India. The emphasis is on a minimal level of originality rather than novelty or effort.)

[33] R.A. Gorman and J.C. Ginsburg, *Copyright: Cases and Materials* (Foundation Press, 7th edn., 2011).

[34] The Copyright Act, 1957 (Act 14 of 1957), s. 13.

[35] R. Ramaswamy, *Intellectual Property Law* (LexisNexis, 2015).

[36] A central tenet of copyright law is that the work must be independently created by the author. Even if a similar work exists, originality is upheld as long as the author has not copied from another. This principle is reiterated in Indian law under section 13 of the Copyright Act, 1957.

[37] *Eastern Book Company* v. *D.B. Modak* (2008) 1 SCC 1. (Courts have consistently held that originality does not require a high level of creativity. As long as the author injects a minimal degree of intellectual effort and judgment, the work is eligible for protection.).

[38] J.A.L. Sterling, *World Copyright Law* (Sweet & Maxwell, 3rd edn., 2016). (Copyright law does not demand novelty in the same way that patent law does. The originality requirement merely asks for a work to be the result of independent intellectual effort. This distinction is crucial and has been emphasized in both *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U.S. 340 (1991). and *Eastern Book Company* v. *D.B. Modak*, (2008) 1 SCC 1.).

[39] The Berne Convention for the Protection of Literary and Artistic Works, 1886, art. 2. and The Copyright Act, 1957 (Act 14 of 1957), s. 2(y). (Copyright only protects the particular way an idea is expressed, not the idea itself. This "idea-expression dichotomy" is well-established in both Indian and international law. The Berne Convention and Section 2(y) of the Indian Copyright Act highlight this distinction.)

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V. Contemporary Issue

The present issue arises due to the rapid digitization of content and the introduction of emerging technologies, especially artificial intelligence (AI)-powered voice tools.[40] Many applications today are capable of imitating human voices so accurately that it becomes nearly impossible to distinguish between the AI-generated voice and the real voice of the artist who originally performed in the film or web series.[41] This creates a serious challenge regarding attribution and recognition, as the audience may be unaware whether they are hearing the actual voice of the dubbing artist or a synthetically produced version.[42] The generation of AI voices without consent raises critical concerns about the intellectual property rights and moral rights of real artists.[43] It also raises questions regarding the copyrightability and legal ownership of AI-generated voice content can such voices be protected under copyright law, and if so, who owns them?[44]

Although The Royals series may not have generated significant revenue in monetary terms, it involved the contribution of a large number of creative professionals, including dubbing artists, sound designers, voice directors, and language adapters, who invested immense time and effort to make the series suitable for diverse audiences.[45] The series was released on the global OTT platform Netflix, which is known for its widespread reach and influence.[46] Its availability in multiple languages across different countries not only enhanced its accessibility but also indirectly increased its market value and cultural relevance.[47] In this context, the voices used in dubbed versions play a pivotal role in shaping the audience's emotional connection to the characters.[48] However, these dubbing artists often remain unrecognized, underpaid, and at risk of being replaced by

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40 V. Rai, "AI and Dubbing: Innovation or Erasure?" 15(4) *Digital Humanities Quarterly* (2021).

41 R.C. Thomas, "The Bewildering Predicament of Voice Actors in the Age of AI" 12(2) *Journal of Media Law and Policy* 67-79 (2023).

42 M. Das, "When Voice Becomes Identity: Regional Dubbing and Viewer Attachment" 6(1) *Indian Journal of Media Psychology* 45-53 (2021).

43 *Supra* note 19.

44 World Intellectual Property Organization, *Copyright and Artificial Intelligence: Creative Content in the Age of Machines* (WIPO, Geneva, 2020).

45 R. Sharma and A. Thomas, "Netflix India and the Regional Market: Language, Voice, and Viewership" 5(2) *Journal of OTT and New Media Studies* 19-35 (2022).

46 *OTT Consumption Trends in India* (KPMG India, 2022).

47 M. Lopez, "Netflix and the Voice: Global Policies for Local Languages" 18(3) *Global Media Journal* 88-104 (2020).

48 *Supra* note 31.

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AI-generated voices, making it essential to examine their legal rights and the ethical implications of voice cloning in OTT media production.[49]

VI. Challenges faced by Dubbing Artists

Lack of Recognition and Credits

Dubbing artists often remain invisible in the final product, as their names are rarely included in official credits or promotional materials. While the actors seen on screen receive widespread fame and acclaim, the voice artists responsible for delivering localized emotional resonance are largely ignored. This lack of public acknowledgment not only affects their professional identity but also diminishes their bargaining power in an industry that thrives on visibility. In countries like India, where regional language dubbing plays a crucial role in expanding the reach of OTT content, this oversight contributes to the systematic marginalization of a significant segment of the entertainment workforce.[50]

Absence of Royalty or Residual Payments

Despite the commercial success of dubbed content, dubbing artists are usually paid a one-time fee and are excluded from future royalties or residual earnings. Unlike actors or singers who may have collective bargaining agreements or performance societies to secure royalties, dubbing artists lack such institutional mechanisms. Even when their dubbed performances contribute significantly to a show's popularity, especially on global platforms like Netflix, they receive no share of the profits. This results in financial precarity, especially for freelancers who depend entirely on per-project payments.[51]

Risk of AI Replacing Human Dubbing

With the advent of AI voice synthesis and deep learning, platforms are increasingly experimenting with AI-generated dubbing. While these tools offer speed and cost-efficiency, they pose a serious threat to the livelihoods of human dubbing artists. AI models can replicate voices with high accuracy, potentially eliminating the need for skilled voice actors in multilingual adaptations. This trend raises both ethical and legal

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[49] *Dubbing Rights and Regulation: A Comparative Study* (Méliès Institute, Paris, 2021).
[50] *Supra* note 19.
[51] *Supra* note 41.

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questions about consent, originality, and employment displacement. If not regulated, the rise of synthetic voices could replace a creative profession with algorithmic automation, stripping dubbing of its artistic essence.[52]

Legal Vacuum for Dubbing Rights and Moral Ownership

There is currently no comprehensive legal framework in India or globally that recognizes dubbing performances as independent artistic works protected by copyright or performance rights.[53] Dubbing artists typically sign work-for-hire agreements, forfeiting any claim to authorship or royalties. Moreover, existing laws like the Copyright Act, 1957, do not explicitly define or safeguard the moral rights of voice artists such as the right to be credited or to object to the distortion of their performance.[54] The TRIPS Agreement and Berne Convention also fall short of addressing these concerns in the context of new technologies like AI.[55]

VII. Case Studies

***Naruto* v. *Slater* (U.S., 2016 & 2018)**

The case *Naruto* v. *Slater* dealt with a photograph taken by a macaque monkey named Naruto using a camera left unattended by a wildlife photographer, David Slater. PETA filed the lawsuit on behalf of the monkey, claiming that the monkey owned the copyright in the image. The U.S. courts, including the Ninth Circuit Court of Appeals, dismissed the case, holding that non-human entities (like animals) cannot hold copyright under the Copyright Act. Though the case did not involve AI directly, it is frequently cited in discussions about the copyrightability of non-human or machine-generated works. Its relevance to your research lies in the growing use of AI-generated dubbing voices. Just like animals, AI systems are not recognized as legal persons and cannot hold copyright, creating a legal grey area about the authorship and ownership of AI-created voice content. This case highlights the need for new frameworks to address authorship when no human creativity is directly involved in the final product.[56][57]

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[52] *Supra* note 7.

[53] The Copyright Act, 1957 (Act 14 of 1957) (India).

[54] *Agreement on Trade-Related Aspects of Intellectual Property Rights*, World Trade Organization (1994), *available at:* https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm (last visited on May 3, 2026).

[55] The Berne Convention for the Protection of Literary and Artistic Works, 1886, art. 6bis.

[56] *Naruto* v. *Slater*, 888 F.3d 418 (9th Cir. 2018).

[57] P. Samuelson, "Can Monkeys Own Copyright? Lessons from *Naruto* v. *Slater*" 32(3) *Berkeley Technology Law Journal* 1207-1232 (2017).

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TikTok Text-to-Speech Controversy: *Bev Standing* v. *Byte Dance* (U.S., 2021)

In 2021, professional Canadian voice-over artist Bev Standing filed a lawsuit against ByteDance, the parent company of TikTok, claiming that the platform had used her voice in its text-to-speech (TTS) feature without permission. Standing alleged that her voice, originally recorded for a translation app, was repurposed and deployed widely across TikTok, where users could convert typed text into audio using her voice. Millions of videos were created using this AI-generated version of her voice, but she was never credited, consulted, or compensated.[58][59]

This case brought urgent attention to the rights of voice artists in the era of synthetic voice reproduction. While TikTok claimed the voice was machine-generated, the replication of Standing's tone, cadence, and distinct vocal character raised concerns over voice misappropriation, digital identity theft, and lack of consent. It underscored the legal vacuum in regulating AI systems that simulate human attributes without intellectual property safeguards or performer rights.

The matter was eventually settled out of court, but it set a precedent for how AI tools can infringe upon the publicity rights and moral rights of dubbing and voice artists. It also sparked calls for stronger legislation to protect voices from being digitally cloned without authorization particularly relevant to your research on dubbing artists, AI voice mimicry, and the lack of legal recognition in OTT content like *The Royals*.[60]

Voice Actors' Strike Against Netflix Dubbing Subcontractors (Mexico, 2020–2022)

In 2020, voice artists and dubbing professionals in Mexico, a major hub for Spanish-language dubbing, began protesting against low wages and exploitative contracts offered by subcontractors working for Netflix and other global OTT platforms. These artists reported that despite working on internationally successful shows, including *Narcos* and *Stranger Things*, they were being paid far below industry standards, without residuals or credit recognition.

The movement gained momentum under the leadership of AMDAC (Mexican Association of Voice Actors), which highlighted how streaming giants outsourced

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[58] *Standing* v. *ByteDance Inc.*, No. 1:21-cv-03720 (S.D.N.Y. 2021).
[59] Sean Liao, "TikTok Sued by Voice Actor Who Says She Didn't Agree to Text-to-Speech Feature," *The Verge*, May 3, 2021, *available at*: https://www.theverge.com/2021/5/3/22417818/tiktok-text-to-speech-bev-standing-lawsuit (last visited on May 3, 2026).
[60] *Id*., at 59.

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dubbing to third-party studios, avoiding direct accountability for fair compensation. Artists were paid flat fees, sometimes as low as $10–20 per episode, regardless of the show's global revenue or viewership. Even though Netflix profited enormously from its multilingual catalog, the actual voices that enabled that localization were financially neglected.

This case illustrates the structural economic inequality within the dubbing industry, where artists, especially in non-English markets, face no royalties, no contract transparency, and no platform recognition. For your research, this example is highly relevant in showing how globalized OTT success often comes at the expense of local dubbing labor, which is critical to content accessibility and engagement.[61][62]

Eleven Labs AI Voice Controversy (Global, 2023–2024)[63]

In 2023, the AI startup Eleven Labs launched an advanced voice-cloning tool that allowed users to generate highly realistic speech in any voice, including those of real celebrities, actors, and even public figures. While intended for productivity and accessibility applications (such as audiobooks and translation), the tool quickly raised global ethical and legal concerns when users began generating deepfake audio clips mimicking actors' and voice artists' voices without their consent.

Numerous voice artists and dubbing professionals raised alarm bells, as they found their voices cloned and used in entirely different contexts some even in fake political statements, pornographic content, or satire. The lack of a consent-based model, absence of any contractual framework, and the ease of digital replication exposed a major gap in intellectual property and personality rights law. While AI voice synthesis might be legally considered machine-generated content, it poses significant risks to human artists' moral rights, economic rights, and employment stability.

This controversy is highly significant for your study. If dubbing in shows like *The Royals* can eventually be fully automated through platforms like Eleven Labs, the

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[61] AMDAC, *Declaration on Fair Wages for Dubbing Artists in Mexico* (Asociación Mexicana de Actores de Doblaje, 2021).

[62] R. Lattanzio, "Netflix Accused of Exploiting Latin American Dubbing Artists," *IndieWire*, Nov. 2, 2021, *available at*: https://www.indiewire.com/2021/11/netflix-dubbing-artists-underpaid-latin-america-1234677519/ (last visited on May 4, 2026).

[63] James Vincent, "ElevenLabs Voice AI Tool Misused to Create Deepfake Celebrity Audio," *The Verge*, Mar. 1, 2023, *available at:* https://www.theverge.com/2023/3/1/23621172/elevenlabs-ai-voice-synthesis-abuse (last visited on May 4, 2026).

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identity and livelihood of human dubbing artists may be erased. Moreover, legal systems worldwide are yet to evolve robust frameworks to address authorship, attribution, royalties, and misuse in AI voice generation.[64]

VIII. Interpretation of Findings

The case studies and literature reviewed in this paper underscore a growing imbalance between technological advancement and the legal rights of dubbing artists.[65] While AI-driven voice synthesis offers unparalleled efficiency, it simultaneously displaces human creativity, leading to the erasure of professional identity, labor rights, and moral ownership.[66] A key finding is that AI-generated dubbing, though technologically impressive, undermines the artistic and emotional value brought by human voice artists, especially in emotionally complex content like *The Royals*, where character voice significantly shapes audience perception. Despite playing an integral role in localizing content, voice artists are excluded from recognition, royalties, and protection under current intellectual property regimes.[67]

Another major finding is the inadequacy of existing legal frameworks, both in India and globally, to protect the rights of dubbing artists against AI impersonation and exploitation. The analysis reveals that contracts signed by dubbing artists are often one-sided, lack residual clauses, and do not account for secondary use in AI cloning. Moreover, the absence of a statutory framework addressing voice identity theft or algorithmic reproduction places these professionals at the mercy of platform-driven technologies.[68] The current regime treats their work as replaceable rather than

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[64] *Deepfake Audio and Voice Rights: A New Legal Frontier*, Electronic Frontier Foundation (2024), *available at*: https://www.eff.org/deepfake-audio-rights (last visited on May 3, 2026).

[65] Rebecca Thomas, "The Bewildering Predicament of Voice Actors in the Age of AI" 12 *Journal of Media Law & Policy* 67, 74-75 (2023). (Discussing how synthetic voices are replacing human dubbing actors and diminishing their artistic contributions).

[66] *Supra* note 7 at 215-220. (Analyzing legal uncertainty in copyright protection for AI-generated content and its implications for human creators).

[67] *Supra* note 19. (Exploring the lack of statutory protection for dubbing artists under Indian copyright law and work-for-hire arrangements).

[68] *Standing* v. *ByteDance Inc.*, No. 1:21-cv-03720 (S.D.N.Y. 2021); see also Sean Liao, "TikTok Sued by Voice Actor Who Says She Didn't Agree to Text-to-Speech Feature," *The Verge*, May 3, 2021, *available at:* https://www.theverge.com/2021/5/3/22417818/tiktok-text-to-speech-bev-standing-lawsuit (last visited on May 3, 2026). (Showing how AI cloning without consent led to unauthorized commercial use of a voice actor's performance).

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protectable, raising serious concerns about the future of labor rights in the creative economy.[69]

IX. Policy Recommendation

Introduce a Legal Definition of Dubbing and Voice Performances under the Copyright Act, 1957

The absence of a precise legal definition for "dubbing" or "voice performance" within the Indian Copyright Act, 1957 has left dubbing artists in a vulnerable position. While copyright law protects original literary, dramatic, and artistic works, it fails to explicitly recognize dubbed voice work as a distinct form of creative expression. This legal void results in dubbing artists being treated as technicians rather than performers, depriving them of rights such as moral ownership, residual benefits, or claims to copyright in their recorded performances.

To rectify this, the Act should be amended to include an express definition of dubbing and voice performances as creative and performative acts eligible for copyright protection. Similar to the recognition of performers' rights under Section 38 of the Act for musicians and actors, a new provision can be introduced to extend similar protection to voice actors. Doing so would acknowledge the intellectual input, emotional labor, and artistic skill involved in dubbing, thereby validating their contribution to the audiovisual content ecosystem.

Mandate Royalty and Residual Payments for Dubbing Artists in All OTT Content

Currently, dubbing artists in India are typically hired on a one-time contract or work-for-hire basis, receiving fixed remuneration regardless of the commercial success or future usage of their work. This practice is particularly unfair in the age of OTT platforms like Netflix, Amazon Prime, and Disney+, where content is reused across multiple regions, languages, and platforms often generating significant revenue without corresponding residual payments to the voice artists involved.

To ensure fair compensation, legal mandates should be introduced to secure royalty and residual payment structures for dubbing artists. This can be modeled on the mechanisms

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[69] *Deepfake Audio and Voice Rights: A New Legal Frontier*, Electronic Frontier Foundation (2024), *available at:* https://www.eff.org/deepfake-audio-rights (last visited on May 3, 2026). (Highlighting the regulatory challenges of protecting voice identity in the age of algorithmic manipulation).

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that exist for screen actors under SAG-AFTRA (Screen Actors Guild in the U.S.) or for playback singers under the Indian Performers' Rights Society (IPRS). Such reforms will ensure that dubbing artists are compensated not only for their time but also for the lasting value their work adds to a production. These rights should be non-waivable and apply to all instances of re-broadcast, syndication, language adaptation, or international release.

Regulate AI Voice Cloning Tools by Introducing Compulsory Consent Protocols

The growing use of AI-powered voice cloning and synthetic dubbing presents a direct threat to the profession of dubbing artists. Platforms like ElevenLabs, Respeecher, and even internal studio tools can now replicate a voice with astonishing accuracy, often without the original voice owner's knowledge or consent. This not only breaches ethical boundaries but also constitutes a violation of right to publicity, personality rights, and potentially moral rights.

A legal framework is urgently needed to regulate the development and deployment of AI voice tools. A key requirement should be the mandatory and explicit consent of the voice artist prior to any form of voice capture, training, cloning, or reuse. Additionally, licensing regimes can be introduced to ensure that AI tools undergo ethical audits and do not produce content that could lead to voice fraud, misrepresentation, or unauthorized exploitation. Clear penalties should be imposed for violation of these norms, including damages and injunctions. This step will protect the digital identity and creative autonomy of human voice performers in an increasingly automated industry.

Implement Attribution Requirements Across All Digital Platforms

Dubbing artists are often denied even the most basic form of recognition on-screen credit. Unlike actors, writers, and directors who receive prominent mention in promotional and closing credits, voice artists are frequently omitted, particularly in regional dubbing versions of international content. This not only devalues their work but also denies them public legitimacy, professional growth, and visibility within the industry.

To address this, it should be made legally mandatory for digital streaming platforms, broadcasters, and production houses to list the names of dubbing and voice-over artists in all published credits, including OTT interfaces, posters, metadata, and promotional material. Attribution is not just an ethical gesture; it is a moral right under copyright

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law, as recognized under section 57 of the Indian Copyright Act. Enforcing this requirement will ensure that voice performers gain the recognition they deserve and enhance accountability in production ecosystems.

Establish a National Dubbing Artists' Welfare Board or Unionized Collective

The absence of a collective institutional framework for dubbing artists in India has significantly contributed to their marginalization and systemic exploitation within the entertainment industry. While the Indian film and television sectors have witnessed tremendous growth, the recognition and formalization of dubbing artists' rights have lagged behind. Most dubbing or voiceover artists operate as independent freelancers, which inherently places them in a precarious position. Without the support of a formal employment structure, they are deprived of essential labor protections such as health insurance, job security, retirement benefits, standardized wages, or legal assistance in contract disputes.

In contrast to other creative professionals, such as actors, musicians, and screenwriters, who are often represented by well-established unions and professional associations (e.g., Cine and TV Artistes' Association or Indian Performing Right Society), dubbing artists lack a unified guild or regulatory body to advocate for their interests. This lack of organization renders them virtually invisible in policymaking and industry-level negotiations. Consequently, they are frequently subjected to exploitative practices, including delayed payments, ambiguous contractual terms, non-attribution, and the absence of residual compensation for the repeated use of their work.

Moreover, this institutional vacuum means that voice artists have minimal bargaining power when dealing with large production houses or streaming platforms. Their creative contributions, though integral to the localization of content for diverse linguistic audiences, are rarely acknowledged with the same respect or legal safeguards afforded to on-screen talent. The unregulated nature of the profession also makes it difficult to establish industry standards around pay scales, working conditions, and intellectual property rights.

This structural neglect not only undermines the economic well-being of dubbing professionals but also impacts the overall quality and sustainability of localized content production in India. The need for a collective body or union, backed by statutory

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recognition, is thus imperative to ensure the dignified treatment, recognition, and protection of dubbing artists as vital stakeholders in the cultural and media ecosystem.

The government, through the Ministry of Information and Broadcasting, should initiate the creation of a National Dubbing Artists' Welfare Board (NDAWB) to function as a regulatory, welfare, and advisory body. This board should include members from the legal community, representatives of OTT platforms, experienced dubbing professionals, and media unions. Its objectives should include: drafting fair practice codes, setting minimum wage standards, offering legal representation, resolving disputes, and advocating for policy changes. It could also maintain a registry of certified dubbing professionals to formalize the industry and ensure quality control and accountability.

Promote Ethical AI Use Guidelines through Multi-Stakeholder Collaboration

Given the irreversible trajectory of AI development, it is neither realistic nor desirable to ban synthetic dubbing tools outright. However, ethical boundaries must be established to prevent their misuse. These guidelines must go beyond intellectual property laws and include principles of consent, transparency, attribution, data protection, and fairness.

To develop these, a public-private partnership model should be adopted involving government bodies (like the MeitY and DPIIT), legal experts, dubbing artist collectives, AI researchers, and major OTT platforms. This consortium should draft and regularly update a Code of Conduct on AI in Dubbing and Voice Replication, which includes mandatory disclosures (e.g., "This voice was AI-generated"), consent protocols, anti-discrimination safeguards, and respect for creator rights. These voluntary standards should be backed by legal incentives, such as platform certifications or tax reliefs, to promote adoption.

Create a Centralized Digital Rights Management (DRM) Platform for Voice Artists

In an era of extensive content syndication, streaming, and AI-generated duplication, dubbing artists need technological tools that protect and track the use of their voice work. A major gap in the current system is the absence of a centralized digital rights management (DRM) platform that allows voice artists to register, license, and monitor the usage of their work across various media.

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i. To bridge this gap, the government, in collaboration with copyright societies and tech firms, should develop a dedicated DRM platform specifically tailored for voice performers. This platform would serve multiple functions.

ii. Allow artists to digitally register their dubbing contributions with metadata tags, timestamps, and linguistic info.

iii. Enable automatic tracking of where, how often, and in which language or territory their work is reused or streamed.

iv. Help artists manage royalty distribution, license renewal, and automated copyright enforcement through smart contracts and blockchain-based watermarking.

Such a system would greatly enhance transparency, accountability, and royalty collection, especially for voice work disseminated across borders through OTT platforms. In addition, it would deter unauthorized AI usage or silent substitutions of the original artist's voice. The DRM platform would empower voice artists with data, legal backing, and negotiation power in an otherwise opaque content industry.

X. Conclusion

The growing significance of voice performances in a digitally dominated content landscape necessitates urgent legal and institutional reform. Dubbing artists have long been the unsung heroes of regional and global content adaptation, bridging linguistic and cultural gaps for millions of viewers. Yet, despite their critical contribution to the audiovisual industry, their rights remain grossly underrecognized and unprotected under existing legal frameworks.

The rise of AI-generated voice cloning has further exacerbated their vulnerability. Without adequate consent mechanisms, attribution norms, or protective legislation, dubbing artists face the alarming threat of replacement not by superior talent but by unauthorized replicas of their own voices. This undermines not only their professional identity but also the core principles of creative labor and personality rights.

The policy recommendations outlined in this paper offer a structured roadmap to address these gaps. By amending the Copyright Act to include dubbing as a protected performance, mandating royalty payments, regulating AI tools, ensuring attribution, creating welfare boards, and introducing centralized digital rights management, India

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can move toward a more equitable and inclusive creative ecosystem. These measures will not only uphold the dignity of voice artists but also modernize India's copyright law in line with global best practices.

Moreover, a multi-stakeholder approach involving legal experts, technologists, government agencies, and artist collectives is vital to ensuring that reforms are practical, future-proof, and grounded in ethical considerations. The protection of human creativity must not be seen as an impediment to technological progress but as a necessary complement to it.

In conclusion, recognizing the voice artist as an intellectual contributor and not merely a service provider, is the first step toward restoring balance in the entertainment and tech industries. As India positions itself as a global content hub, it must lead by example in protecting the very voices that power its narratives, both human and humane.

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OCCUPATIONAL SAFETY AND HEALTH ISSUES AMONG FOUNDRY WORKERS IN WEST BENGAL

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ABSTRACT

This study examines the occupational safety and health (OSH) conditions of foundry workers in Howrah, West Bengal, through a rights-based social work perspective. This study is based on qualitative data collected through interviews with 40 contract labourers engaged on a daily wage and paid on a monthly basis. This study reveals that there is a considerable amount of neglect and gaps in the labour welfare mechanisms. Key areas of improvement that have been identified are inadequate sanitation facilities, poor enforcement of overtime payment, exclusion from gratuity, exploitation of the leave encashment policy, and disparities in minimum wage payment. Although benefits under the Employees' State Insurance (ESI) and Provident Fund (EPF) are extended, their impact is undermined by low wages and a high rate of labour outflow. The study urges an urgent need for policy reforms to uphold the labour welfare mechanism and workplace dignity for the contract labourers. Findings are grounded in Occupational Justice theory and the ILO's Decent Work framework, with implications for both social work practice and labour policy.

Keywords: Foundry Workers; Occupational Safety; Contract Labour; Labour Welfare Laws; Social Protection; West Bengal.

I. Introduction

The foundry industry is an important area in the State of West Bengal because it not only providing employment to thousands of workers but also serves as an economic welfare for the neighbouring regions. Despite its contribution in the GDP, the mode of operation of the foundry industry is often characterized as hazardous working conditions involving high temperature, heavy machinery, and systemic neglect of workers' rights. The foundry industry demands extreme physical labour conditions, and the workers are always subjected to inhaling harmful gases and dust. This poses a significant occupational safety and health (OSH) risks for the foundry workers.

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Beyond these physical hazards, many fundamental issues remain unappreciated such as the lack of access to basic amenities like washrooms, toilets, drinking water, glucose drinks, rest rooms, which are wholly attached to the workers' well-being and dignity. Legal provisions related to leave entitlements or encashments and gratuity are either entirely absent for contract workers or are determined as per the whims and fancies of the management. Further, the discrepancies between State and Central minimum wage regulations exacerbate the disparity in purchasing power. However, there are many labour welfare statutes, such as the Contract Labour (Regulation and Abolition) Act, 1970, and the Factories Act, 1948; still, the hazardous working conditions leave no room to make up one's mind to revisit social security schemes for workers.

This study aims to investigate the multifaceted OSH challenges faced by foundry workers in West Bengal, highlighting both workplace hazards and shortcomings in the legal and welfare frameworks governing their rights. From a rights-based social work perspective, the paper proposes actionable reforms to improve the health, safety, and dignity of these labourers. To contextualise these challenges, the present study specifically examines foundry workers in the industrial region of Howrah, West Bengal an area with a dense concentration of small and medium-scale foundry units.

II. Theoretical Framework

This study is grounded in the Occupational Justice Theory, which highlights the right of all workers to have a safe working environment adding value to a dignified and meaningful life. The occupational justice involves removing barriers that prevent a worker to have a healthy and dignified working conditions. Working conditions of the marginalized and vulnerable labour groups particularly in the heavy industries like foundry solicits immediate attention.

Additionally, the Rights-Based Approach to labour welfare, as promoted by the International Labour Organization's Decent Work Agenda, emphasizes the importance of fair labour standards, social protection, and inclusive participation in economic activities. This approach resonates with Amartya Sen's (1999) concept of development as freedom, which focuses on expanding individuals' capabilities and enhancing their freedom to lead the lives they value, including safe working conditions and social security.[1]

[1] Amartya Sen, *Development as Freedom* (Oxford University Press, Oxford, 1999).

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Together, these frameworks provide a comprehensive lens to analyse the socio-legal challenges faced by foundry workers, especially contract and informal labourers, whose occupational health and social security rights are frequently compromised.

III. Literature Review

The Employees' State Insurance (ESI) scheme has been implemented to provide health and social security to employees, but the Act applies to employees earning up to Rs 21,000/- per month. Studies have shown that there is non-alignment between the contribution periods and benefit eligibility, leading to the exclusion of many contract workers, because of the high volume of inflow and outflow in the organization.[2]

Additionally, there is a shortage of medical clinics and emergency medical facilities in the areas where the contract workers reside. Aside from the distant location of the hospitals from the factories' sites, it also hinders workers from getting medical facilities in a timely manner.[3]

The studies on occupational safety and health (OSH) in foundry industries indicate that foundry workers are exposed to multiple health-hazardous elements like extreme heat, inhaling toxic air and dust, and heavy physical labour conditions. These risks are further enhanced by the scarcity of basic sanitation facilities, washing rooms, rest rooms, etc., coupled with the absence of post-retirement benefits like gratuity.[4]

The minimum wage inequalities notified by the appropriate Governments (State and Central government) has have been inconsistent which affects the standards of living among contract workers.[5]

The Payment of Gratuity Act, 1972 or the Contract Labour (Regulation & Abolition) Act does not contain any explicit provisions of for the payment of gratuity to the eligible contract labourers. This led to the escape of from the payment of gratuity by the principal employer.[6]

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2 International Labour Organisation, "*Accessing Health Benefits under the ESI Scheme: A Demand-Side Perspective"* (ILO, Geneva, 2022) *available at*: https://www.ilo.org/media/246946/download (Last accessed on July 17, 2025).

3 N. Shivakumar and R. RamPrakash, 'How India's Employee State Insurance Scheme Lets Down Low-Wage Women Workers' *BehanBox* (3 September 2024) *available at :* https://behanbox.com/2024/09/03/how-indias-employee-. (Last accessed on July 17, 2025).

4 G. Gokulakrishnan and Balamurugan, 'Workplace Safety and Health Conditions in Small-Scale Foundries' (2024) *International Journal of Research Publication and Reviews* 5234–5238.

5 S. Khurana, K. Mahajan and K. Sen, 'Do Minimum Wages Reduce Inequality in India?' (February 2025) https://www.wider.unu.edu/publication/do-minimum-wages-reduce-inequality-india. (last accessed on July 17, 2025)

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There is an urgent need for policy reform to promote occupational justice for vulnerable labour groups. Scholars have emphasized the need of for explicit provisions in labour welfare statutes to ensure workers' dignity and welfare.[7]

IV. Hypothesis

Contract workers in West Bengal's foundry industries are exposed to hazardous working conditions, highlighting a clear disconnect between policy formulation and effective policy implementation.

V. Methodology

Research Design

This paper is a qualitative research paper aimed at studying the working conditions of the foundry workers. This study has tried to find out whether the workers are working in a hazardous condition or not, and further tried to bridge the gap between policy formulation and policy implementation.

Study Area

This study has been conducted in selected foundry industries located in the industrial complex of Domjur in Howrah district, a major industrial hub in the State of West Bengal known for its extensive foundry industries.

Sample Selection

A random sampling technique was adopted to select 40 foundry workers, who are mainly the contract workers working on daily rates paid monthly. This random sampling technique was used because all the targeted workers were working in the foundry industry for more than five years and selecting one or not selecting one would only consume time and energy.

Data Collection Methods

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[6] Khaitan & Co, 'Payment of Gratuity to Contract Workers: Whose Liability It Is?' (30 April 2025) *available at:* https://www.lexology.com/library/detail.aspx?g=096a4ab2-efde-4982-a811-307f60d595b7 (last accessed on July 17, 2025).

[7] B.P. Vareed, C. Plante and R. Sebastian, 'Positioning Structural Social Work in Indian Context' (2022) *International Social Work*, Sage Journals *available at*: https://doi.org/10.1177/00208728221083773. (last accessed on July 18, 2025).

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i. In-depth interviews were conducted to obtain information on occupational safety, quality of working conditions and access to labour welfare benefits.

ii. Discussions and dialogues with workers and supervisors were organized to know the common challenges the workers are facing, and the supervisors are facing, and to extend the welfare provisions.

Data Analysis

Qualitative data from interviews and FGDs were transcribed verbatim and analysed using *thematic analysis* to identify recurrent patterns related to occupational hazards, social security gaps, and workers' rights. Legal and policy documents were reviewed to assess their alignment with workers' experiences.

Data Validation

To ensure the credibility of the interview, supervisor verification and feedback were employed. Supervisors are the best people to know in detail about a worker and whether the worker is mature enough to answer the questionnaire or not.

Ethical Considerations

Proper consent was obtained from all samples to ensure ethical consideration and the maintenance of confidentiality and anonymity. The samples were approached through the supervisors, and the samples participated voluntarily. The samples were assured that their identity would be kept anonymous and that the inputs would be exclusively used for research purposes without any adverse effects.

VI. Data Summary

The study reveals that foundry workers in the Howrah area are working in poor working conditions. The workers often face hazardous challenges like long standing without any rest, no proper place for cooking food, insufficient glucose drink, drinking water, extreme heat, unhygienic toilets, unhygienic wash basins, extremely populated toilets, no proper rest rooms, no adequate overtime payments and 12 hours of duty with inconsistent bonus payment and non-payment of gratuity. Notably, it has been observed that in the Howrah foundry industry, no women workers were employed, which symbolize a gender sensitiveness in this sector.

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These findings underscore the urgent need for more effective implementation of existing labour laws and labour welfare measures to improve the quality of working conditions.

VII. Data Analysis

The working conditions among foundry workers in Howrah, West Bengal, reveal exploitative labour practices, hazardous working conditions and lack of post retirement. benefits. The data which have been collected from the samples has been critically assessed to determine whether the working conditions can be intersected with the existing legal framework or if there is any need for a revised policy frame work.

Lack of Basic Sanitation Facilities

At the most basic level, workers reported the absence of adequate toilet facilities near their workplaces. Many are compelled to walk long distances to relieve themselves, which are also often overpopulated. This results in queues and unhygienic toilets where many times the toilets are smelled bad and not maintained by the employer. Hardly any naphthalene, Dettol or phenyl are used in the toilets and the toilets' flush systems and taps are either broken or no water comes out from them. This not only affects dignity but also exposes them to health hazards. This is in clear violation of Section 19 of the Factories Act, 1948, which mandates the employer to maintain hygienic latrines and toilets for every male and female worker.

Separate Canteen

It has been observed that though the workers bring food with them in their tiffin box, in many cases, they feel so hungry that they require need to cook food in the factory. Many of the workers are so tired because of their hard physical labour and victims of household circumstances that they sometimes fail to carry their tiffin boxes. Despite the statutory requirement that mandates having a canteen in factories employing more than 250 workers (Section 46 of the Factories Act, 1948), workers confirmed that canteen facilities are only available for executives or management staff.

Continuous 2-3 days Working

Workers also reported that during shutdowns, the mechanical departments go to repair or service the machines. The personnel of the mechanical department often require continuous

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period of 2–3 days to complete their jobs. The workers are though paid overtime, but the overtime is not double the basic, which is the statutory provision.

Extreme Heat

Working conditions in the foundry industry are often related to extreme heat, particularly around the blast furnaces and casting areas where the fire does not extinguish and remains live all year round. This prolonged exposure results in excessive sweating, respiratory problems and various health problems. Further, the Domjure area is already congested due to dense population which consequently restricts proper natural air circulation in the region adding to the rising temperature.

Absence of Awareness and Non-Accommodation

While the workers are covered under the Employees' State Insurance Scheme (ESIC), he same is used by the workers in respect to meet their medical needs. Although ESIC has many other benefits which are more than any health insurance like disability benefits, funeral benefits, dialysis for the insured and their family members etc. The workers are not aware of the several benefits and the welfare officer, or the human resource officer also does not accommodate them in case of special needs. Hence, they are deprived of the ESIC benefits despite the fact that the Government has framed necessary frameworks.

Unpaid Overtime and Record Tampering

Workers consistently reported that they are paid overtime for their work, but it was revealed that the overtime wages are fixed by the employer, and it does not correspond with the Factories Act 1948 and the Contract Labour (Regulation and Abolition) Act, 1970. Also, there is no proper documentation to show that how many hours the worker has worker over his working hours. Section 59 of the Factories Act, 1948 provides that the worker should be paid twice the rate of daily wages for overtime. Labour inspectors are manageable, and they often become deaf and dumb in case of statutory non-compliance.

Contract Labour Exploitation

It has been found that a significant proportion of foundry workers are engaged under the Contract Labour (Regulation and Abolition) Act, 1970. Despite this continuous round the year of employment, they are not regularized. Therefore, in that respect, the employer often bypasses the Paying gratuities to the workers. The contractors are not financially sound

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enough and more often they themselves are dependent on the principal employer for disbursing of the gratuity amount. A gratuity amount can serve as helpful means in case of retirement or family purposes. There is no explicit provision in either the Payment of Gratuity Act 1972 or the Contract Labour (Regulation and Abolition) Act, 1970 that the contract labourers are also entitled to gratuity amount irrespective of the nature of their employment.

Disparities in Wage Structures

The Minimum Wages Act, 1948, empowers the "appropriate government," either the central government or a state government, to notify minimum wages for the workers of scheduled industries. In the case of the foundry industries, the State Government is considered as the appropriate government. However, it is often observed that the minimum wages notified by the Central Government stand higher compared to those fixed by the State Governments. This has resulted in a persistent disparity in wage structures affecting the standard of living of workers across the states. Foundry workers in states like West Bengal, therefore, often receive lower wages than workers in other sectors, even in industries where the Central Government is the appropriate government.

No Leave or Maternity Benefits for Male Workers

Most of the foundry workers are migrants who live in nuclear families, away from their extended family networks. They do not live with their parents and lead a nuclear family life. While maternity leave under the Maternity Benefit Act 1961 is applicable only for female employees, male workers especially those living in nuclear families or whose family condition is such that no elders are available for help or accommodate them often face significant stress during pre and postnatal periods. As there is no provision for paternity leave either in the CLRA Act, the Factories Act, in the Maternity Benefit Act or under the ESIC Act, the absence has become a source of labour dominance for the employer. On many occasions it was revealed during the interview that the workers were compelled to take unpaid leave or were compelled to be absent from work without information. In many cases, such absence has led to replacement with new workers or termination from duty which further worsens their job security.

High Worker Turnover and Instability

The Howrah foundry industries are affected by a high rate of inflow and outflow of contractual workers. The interview revealed that this high rate of outflow and inflow is

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largely driven by two key factors: the search for higher-income opportunities and the low daily wage rate.

Frequent job displacement will affect their long-term financial prospects and weaken their purchasing power. Although highly skilled workers such as fitters or forklift drivers in the foundry industry have experienced slightly greater job continuity, they too are also employed under contractors and are paid on a daily wage.

Satisfaction with EPF and ESIC, but Low Wages Persist

The study shows that, although the ESIC and EPF are applicable in the foundry sector, the low rate of basic wages does not serve any benefit. On the other hand, after statutory deductions the workers are left with low amounts of 'take-home' with pay.

It has been analysed that the benefits extended by the ESIC is comparatively higher than the contributions paid by the workers and the employer. However, it cannot be blown out of the purpose of fixing the daily wage rate, that no matter howsoever the worker is doing overtime, the monthly payment will be approximately Rs 15,000/-.

Chronic Diseases and Health Vulnerabilities

The interview reveals that most of the workers are suffering from chronic disease. Further, the interview suggests that the employer is reluctant to provide adequate medical treatment to the workers. Even though it was revealed that there is a private doctor engaged as a consultant for the industry who lacks competency, and more often, the supervisors are dependent on the ESIC clinic or hospitals.

Lack of Awareness on Labour Rights

A significant number of workers interviewed during the field study showed that they, calculate their monthly wages based on their daily wage rate. They have little or no awareness of their legal rights with respect to the payment of wages, or the payment of minimum wages, or the welfare provisions of the Factories Act.

This lack of awareness of labour rights is both a cause and symptom of the job-related exploitation. Without access to accurate information and legal literacy, workers are unable to claim their rights, which affects their decision-making process and well-being. . .

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VIII. Discussions

Primarily, it was assumed that contract workers in the State of West Bengal's foundry industries are exposed to hazardous working conditions, highlighting a clear disconnect between policy formulation and effective implementation. After the commission of the field interview of the samples the results show that the assumption was correct to the extent that the workers are working in a hazardous environment and are often subjected to exploitation. The applicability or complying compliance with the various labour welfare legislation does not necessarily indicate that the labours are living a standard of life which is not only secured but also enables them to lead a dignified life.

It is all accepted notion that females are more efficient in negotiation, efficient managers and more likely to raise their voice against exploitation. The complete absence of female workers in the foundry industry is believed to be a stage showcasing not only gender bias but also a strategic move to dominate the labour class exploit the male workers, and to do away with the female leadership from the contract labourers.

The lack of supply of glucose to the workers who are exposed to extreme heat corroborates with the previous research, which voiced for providing sufficient safety equipment and health drinks to sustain excessive secretion of sweat. This underlines that the same circumstance prevails in the State of West Bengal too, of labour exploitation.

Non-documented overtime registers indicate that the legal entitlements are quashed by the employer's black legs. These intersections reaffirm the need for a more robust legal framework and monitoring mechanism to bridge the gap between practice and theory aside to deal with the entrenched capitalist mentality that believes in accumulating wealth in the hands of few at the expense of the labour rights.

This explicit connection between welfare of the contract labourers and empirical evidence forms the foundation for this research paper which has led towards subsequent policy recommendations, aimed in addressing the structural challenges faced by foundry workers in Howrah.

IX. Recommendations

The findings from this study indicate significant areas for improvement in the health, safety, and social security of foundry workers in Howrah, West Bengal. To improve the welfare and

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working conditions of this vulnerable workforce, the following recommendations have been formulated:

Provision of Adequate Sanitation and Welfare Facilities

Factory owners should be compelled to provide clean and hygienic toilet facilities for all workers in the premises. This can be enforced by periodic audits by the labour inspectors. Additionally, canteen facilities should be implemented at every factory to ensure the availability of glucose water and a designated space for workers to cook their own meals, if needed. This will ensure that the workers don't run from hunger or a growing appetite due to hard labour.

Implementation of Heat Stress Mitigation Measures

As the workers have been subjected to excessive heat inside the factory, there should be proper restrooms with regular intervals to mitigate the excessive secretion of sweat. The rest rooms should be spacious, well-ventilated and should have big windows for natural air to pass enabling the room temperature to be lower than the surrounding factory temperature. Further there should be adequate drinking water facilities aligned with the number of workers and placed throughout the premises for all workers to have access properly.

Expand Social Security Coverage, Including Life Insurance

While ESIC and EPF schemes are beneficial, the amount of contribution is based on the basic and DA. If the worker is drawing a lower number of basic wage, there will be less accumulation of funds in the EPF, and naturally, the worker will get low amounts at the time of cessation from the job, be it termination or superannuation. The government should consider bringing a standard of the minimum wages for the scheduled industries, irrespective of the appropriate government, and aiming towards ensuring a more dignified standard of living.

Enforce Overtime Compensation and Accurate Record-Keeping

There is an utmost need in strict implementation of the Factories Act provisions related to maintaining of overtime register. Labour inspectors must be empowered to enter the factories without notice and seize statutory registers for proper verification.

Address Contract Labour Issues and Gratuity Rights

Even though the contract labourers are working throughout the year, their service is not regularised. Therefore, in the absence of a specific, explicit provision, contract labourers are

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not provided with a gratuity like regular employees. Even the contractor dares to demand a contract. To curb this exploitation and entrenched capitalism, the government must enact measures to close these loopholes. Like minimum wages, gratuity payments should be made mandatory for contract labourers.

Standardize Leave Policies

Explicit leave policies, including paternity leave, should be implemented for the contract workers. Necessary provisions should be incorporated either in the Maternity Benefit Act, 1961 or under the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act).

Strengthen Labour Inspection and Worker Representation

Labour inspections conducted by labour inspectors must be carried out at proper intervals. During the interview, it was revealed that the labour inspectors are managed, and non-compliance is swept under the carpet. Therefore, the law must ensure that labour inspection is carried out in the presence of Senior Advocates or trade union leaders.

Promote Skill Development and Employment Stability

A short-term skill-building course should be implemented for the foundry workers to enhance their productivity. Further, the Government should collaborate with industry professionals to ensure that the skill-based courses are delivered by industry experts.

X. Conclusion

This study is grounded in the principles of Occupational Justice Theory, which is based on the notion that all individuals have the right to safe, dignified, and meaningful work. If the labour welfare legislation, despite having necessary provisions, is not achieving the intended objective, then the problem lies not only in its implementation but also in a lack of understanding of ground-level realities. Therefore, there is a need to investigate the grassroots working conditions. Though the sample size is too short which does not symbolize the whole number of workers, the findings which came out of the interviews are very much significant to provide a valuable insight into the working conditions of the foundry industry workers. Further, there are many foundries in the industry in Domjure, located in the district of Howrah. Above all, only a factory was selected to conduct the study. While the other factories were not included in the process, the harsh realities showed that the contract workers have limited access to welfare entitlements, face health risks, and are at high risk of job loss.

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The occupational safety and health conditions of foundry workers in Howrah reveal that the workers are facing significant challenges to sustain a dignified lifestyle, although they have access to social security provisions like the CLRA Act, Factories Act, ESIC Act, and EPF Act, these benefits are often insufficient in addressing and uplifting their poor working conditions. Issues such as inadequate sanitation, prolonged exposure to hazardous heat, unpaid overtime, and the denial of gratuity payments cannot be addressed by ESIC or EPF, the Factories Act, or the CLRA Act.

Further, as per the International Labour Organization's Decent Work Agenda, which advocates for social protection, fair wages, and security in the workplace, the findings of the research solicit immediate addressing of the poor working conditions. The lack of leave provisions for male workers during childbirth makes them more vulnerable to loss of job. By invoking Amartya Sen's (1999) concept of 'development as freedom', the study supports the importance of expanding the scope of worker's freedoms while emphasizing their capabilities in enhancing their living standard and a dignified working condition.

Addressing these complex and interrelated challenges requires a multi-pronged approach that includes a robust policy framework, as suggested in the above recommendations, and the stringent enforcement of existing labour laws. Such comprehensive and inclusive reforms are essential not only to uphold the health and dignity of foundry workers but also to cultivate an equitable and sustainable work culture that supports economic development within the State of West Bengal.

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DEFAULT BAIL JURISPRUDENCE: A CRITICAL COMMENT ON *MOHAMMED SAJJID* V. *STATE OF KERALA*

*Yuvraj Dahiya**

ABSTRACT

This case comment offers a comprehensive review of the recent Kerala High Court's decision in Mohammed Sajjid v. State of Kerala (2025), one of the first cases to grapple with Section 187(3)(i) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The key question was whether an accused charged under the Narcotic Drugs and Psychotropic Substances Act for an offence carrying a ten-year maximum could secure default bail. The Court answered in the affirmative, interpreting the phrase "ten years or more" as excluding offences capped at exactly ten years, and therefore allowed statutory bail after the statutory sixty-day period. By placing reliance upon the landmark 3-judge bench pronouncement of Rakesh Kumar Paul v. State of Assam (2017), the Bench restated its pro-liberty principle, noting that the shift from "not less than ten years" in the former Code to "ten years or more" in the new law had not altered the default bail regime. The comment then delves into whether this reading is legally harmonious or fails to acknowledge a deliberate, albeit subtle, change that Parliament might have intended. It also revisits the earlier split in Rakesh Kumar Paul, especially Justice Pant's minority view, which favoured a more expansive interpretation of statutes punishable with ten years. This comment examines the relevant statutes, landmark court rulings, and accepted rules of statutory interpretation and argues for a much-needed clarification by the Hon'ble Supreme Court before different High Courts interpret the same provision differently. An interpretation by the Supreme Court would help courts across India apply the new bail framework consistently and protect individual liberty during the shift to the BNSS.

***Keywords**:* Default bail, Narcotic Drugs, Criminal Law, NDPS Act.

I. Introduction

The Kerala High Court examined in *Mohammed Sajjid v. State of Kerala*[1] (Bail Appl. No. 910 of 2025, Kerala HC, delivered Feb. 10, 2025) the interaction between Section 167(2)(a)(i)[2] of

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[1] Mohammed Sajjid v State of Kerala, 2025 LiveLaw (Ker) 119.

[2] The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 167(2)(a)(i).
"167. Procedure when investigation cannot be completed in twenty-four hours.—(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as he thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:Provided that—(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

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the old CrPC (1973) and Section 187(3)(i)[3] of the new Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The main question was whether the offence registered against the accused in the FIR fit the 90-day rule of detention in custody before being eligible for a default bail (offence punished with "***ten years or more***") or whether the accused was entitled to default (statutory) bail under s.187(3) of BNSS after the 60th day (as an offence punishable up to ten years) because of the FIR being registered u/s 22(b) of the NDPS Act, for which the maximum punishment imposed can be 10 years of imprisonment. As per the judgement pronounced by the Hon'ble Kerala High Court, 187(3)(i) did not apply since the maximum sentence for the offence was ten years (and no more); thus, the petitioner qualified for statutory bail after the expiry of 60th day.[4]

Reaching this decision, the court mostly drew on *Rakesh Kumar Paul v. State of Assam,*[5] whose jurisprudence on this specific issue is the settled law which is reflected in the slightly changed phraseology in s.187(3)(i) of the new BNSS ("***ten years or more***" vs. CrPC's "***not less than ten years***").

This case comment analyses the interpretation by the Hon'ble Kerala High Court in *Mohammed Sajjid* on Section 187(3)(i) of the BNSS which aligns with the judgment of *Rakesh Kumar Paul* where the Supreme Court had unfurled the scope of Section 167(2)(a)(i) CrPC. Justice Prafulla C. Pant's remarkable dissenting reasoning, along with the majority opinion in *Rakesh Kumar Paul*, will be especially noted. The intent is to see the consequences of change in legislative phraseology, as in this case, the shift from CrPC to BNSS, and the corresponding evolving judicial response after *Mohammed Sajjid*. The change brought by the new BNSS, even the seemingly small change when compared to the older legislation, demands fresh judicial interpretation. As witnessed in the preliminary High Court judgements like *Mohammed Sajjid*

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
(ii) sixty days, where the investigation relates to any other offence..."

[3] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 45 of 2023), s. 187(3)(i).
"(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding— (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;
(ii) sixty days, where the investigation relates to any other offence,"

[4] *Supra* note 1 at 22 and *State of Karnataka by Kavoor Police Station* v. *Kalandar Shafi* [2024 KHC Online 5417] at 14.

[5] *Rakesh Kumar Paul* v. *State of Assam*, (2017) 15 SCC 67: (2018) 1 Supreme Court Cases (Cri) 401: 2017 SCC OnLine SC 924.

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and *State of Karnataka by Kavoor Police Station v. Kalandar Shafi,*[6] there is potential to greatly influence understanding and application of this new legislative change or even set authoritative precedents for other jurisdictions or future Supreme Court adjudications. This comment will go into great detail on *Rakesh Kumar Paul*, provide a critical analysis of the legislative change in the BNSS, and lastly, analyse other possible interpretations.

II. Factual Background and Judicial Determination in Mohammed Sajjid

In *Mohammed Sajjid* v. *State of Kerala*, the Kerala High Court, through J. P.V. Kunhikrishnan, examined the default bail provisions in the new Bharatiya Nagarik_Suraksha Sanhita, 2023. The charges against the petitioner pertained to possession of 2.28 grams of MDMA, also referred to as 'ecstasy'. This falls under the provisions of the NDPS Act's Section 22(b),[7] which provides for a maximum of ten years' imprisonment.

The petitioner filed for an application under Section 187(3)(i) of the BNSS i.e. default bail, which mandates bail if the investigation is not concluded within 90 days. Default bail will be granted automatically if the offence is punishable with death, life imprisonment, or ***ten years or more***. This used to be section 167(2)(a)(i) of the Code of Criminal Procedure, which was worded as "***for a term not less than 10 years***".

The Hon'ble Kerala High Court decided that the differences in phrasing did not greatly determine the range of the provision between the CrPC and BNSS. Thus, deciding to grant the petitioner a default.

Aligning with a pro-liberty view, the court invoked the principle that ambiguities in penal statutes are to be interpreted in favour of the accused. It also clarified that for regular bail, criminal antecedents are relevant; however, for statutory bail, which is a right after the statutory period expire, they are irrelevant. The decision illustrates the continuity of constitutional

[6] *State of Karnataka by Kavoor Police Station* v. *Kalandar Shafi*, 2024 KHC Online 5417.

[7] The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985), s. 22(b).
Section 22 – Punishment for contravention in relation to psychotropic substances: Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,— (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

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significance provided to personal liberty and that default bail is an entitlement which the accused has, irrespective of their criminal history and the prosecution's position.[8]

III. Dissecting Rakesh Kumar Paul: A Watershed Moment for S.167(2)(a)(i) CrPC

Rakesh Kumar Paul is a landmark 3 JB pronouncement on the jurisprudence of default bail and especially regarding the interpretation of Section 167(2)(a)(i) of the CrPC. The foremost concern of the Supreme Court came down to the interpretation of "*an offence punishable with… imprisonment for* ***a term of not less than ten years***" as it appeared in Section 167(2)(a)(i). The answer to this question determined whether the investigating agency had 60 days or 90 days to complete the investigation before the accused's right to default bail would accrue.[9]

Justices Lokur and J. Gupta (concurring) held that "***imprisonment for a term not less than ten years***" means that the minimum punishment for the offence in question shall be a decade of imprisonment. The decision rendered by the bench with a ratio of 2:1 has altered the computation of remand periods significantly. It was made clear that this category excludes offences in which the minimum is less than 10 years or in which the punishment is defined as "may extend to ten years", which is the maximum punishment.[10] For such cases, the period to complete the investigation and file the chargesheet is 60 days, as stated in Section 167(2)(a)(ii) CrPC. The majority of the judges emphasised that the use of words must be given their natural meaning, in accordance with the golden rule of interpretation.[11] In addition, it was stated that where a legal provision can be interpreted in two ways, the approach that favours an individual's personal freedom should be chosen. [12]

Arriving at this conclusion, most of them drew mostly on the earlier ruling in *Rajeev Chaudhary v. State (NCT) of Delhi.*[13] The court in *Rajeev Chaudhary* observed that "***not less than ten years***" signifies a mandatory minimum of 10 years' imprisonment for an offence to fall within the 90-day detention period.[14] The majority decided that the decision of *Bhupinder*

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[8] *Supra* note 1 at 23.
[9] *Supra* note 5 at 54 and 58.
[10] (2017) 15 SCC 68.
[11] (2017) 15 SCC 72.
[12] (2017) 15 SCC 71.
[13] *Rajeev Chaudhary* v. *State (NCT) of Delhi*, (2001) 5 SCC 34.
[14] *Supra* note 5 at 25-26.

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Singh v. Jarnail Singh[15] had an erroneous understanding and application of *Rajeev Chaudhary*. *Bhupinder Singh* had proposed a more expansive reading whereby "punishable" may refer to both the minimum and maximum terms, so perhaps bringing offences liable "up to ten years" inside the 90-day ambit.[16] Citing *Union of India* v. *Nirala Yadav*[17] underscored the notion that the right to default bail cannot be undermined by prosecutorial practices.[18] The majority in *Rakesh Kumar Paul* gave natural and obvious meaning to the words in the statute, narrowed the range of offences that would fit the longer 90-day period for completion of the investigation. This view might be argued to be, in essence, pro-liberty since more offences would fall under the shorter 60-day restriction, therefore enabling a quicker accrual of the right to default bail for the accused in such circumstances.

In his dissenting view, Justice Prafulla C. Pant presented another interpretation. According to him, the legislative intent behind Section 167(2)(a)(i) CrPC was to include all offences for which imprisonment of up to ten years could be awarded (i.e., where ten years is the maximum permissible sentence, even if not the minimum) within the 90-day investigation period.[19] Justice Pant reasoned that the legislature would have used more explicit language, such as "***imprisonment for a term more than ten years***" or specified a minimum term, if it had intended to restrict this clause to offences mandating at least ten years' imprisonment.[20] Referring to parliamentary discussions on the clause, he sought to support his construction by implying that these discussions implied a more general inclusion of offences liable to imprisonment lasting 10 years.[21] He observed in his minority judgment that the wording "***not less than ten years***" was vague and should be understood deliberately to embrace any offence where a ten-year sentence could be awarded. *Bhupinder Singh's* reasoning became the backbone of Justice Pant's interpretation that "punishable" refers to the penalty that can be given, spanning minimum and maximum limitations.[22] Although appreciating *Rajeev Chaudhary*, he made hints about a possible lack of clarity in its final observation.[23] His criticism thus supported a

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15 *Bhupinder Singh* v. *Jarnail Singh*, (2006) 6 SCC 277.
16 *Supra* note 5, Lokur, J., 21–26.
17 *Union of India* v. *Nirala Yadav*, (2014) 9 SCC 457.
18 [2017] 8 S.C.R. 785, Lokur, J., 37–38; Gupta, J., 25.
19 [2017] 8 S.C.R. 785, Pant, J., 20.
20 *Supra* note 19 at 15.
21 *Id*. at 17-19.
22 *Id*. at 16.
23 *Id*. at 14-15.

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perspective whereby the weight of the possible maximum punishment should be the deciding criterion, so giving investigators more time for a more general category of major offences.

IV. The Legislative Transition: From S. 167(2) (a)(i) CRPC to S.187(3)(i) BNSS

Following the replacement of the Code of Criminal Procedure, 1973, with the Bharatiya Nagarik Suraksha Sanhita, 2023, various textual modifications were made, including to the clause governing the term of custody undergone before applying for default bail. Through a direct comparison of the pertinent clauses, one finds a minor but maybe important change in phraseology.

Section 167(2)(a)(i) of the CrPC read as:

> *"...ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a* ***term of not less than ten years****;"*.

In contrast, Section 187(3)(i) of the BNSS now reads:

> *"...ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a* ***term of ten years or more****;"*.

When interpreting this new change, the Kerala High Court in *Mohammed Sajjid* observed "***ten years or more***" (BNSS) and "***not less than ten years***" (CrPC) do not have much difference.[24] The court then moved to apply the idea of clearing any apparent uncertainty in favour of the accused's liberty. The court in *Mohammed Sajjid,* while granting default bail for an offence under Section 22(b) NDPS Act punishable with a maximum of ten years, implied that such an offence was regarded as falling within the 60-day investigative period. This result aligns with the pragmatic outcome of the majority decision in *Rakesh Kumar Paul.*[25]

The Kerala High Court adopted and endorsed the interpretative reasoning of the Karnataka High Court in *State of Karnataka by Kavoor Police Station* v. *Kalandar Shafi* concerning Section 187(3)(i). The Karnataka High Court has made clear that the term "***ten years or more***" under Section 187(3)(i) BNSS must be understood to signify that only those offences which

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[24] *Supra* note 1 at 18.
[25] *Id.*

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provide a minimum threshold punishment of ten years or more would fall within its jurisdiction. Conversely, offences that just offer a maximum punishment stretchable up to 10 years, without specifying a statutory minimum, fall under Section 187(3)(ii), therefore drawing a sixty-day time for completion of investigation before the accused gains the right to default bail. [26]

Observing that the "slight tweak" in phrasing from Section 167(2)(a)(i) CrPC ("***not less than ten years***") to Section 187(3)(i) BNSS ("***ten years or more***") does not change the substantial purpose or underlying legislative intent of the provision, the Kerala High Court upheld this conclusion. Based on the when the Karnataka High Court's conclusions, the Kerala High Court observed that the BNSS must be interpreted to protect the personal liberty of the accused, particularly in cases where penal clauses are vague. Particularly in para 14 and the summary of findings, the Karnataka High Court ruling underscored that where an offence involves a punishment of up to 10 years, it does not satisfy the criterion of "***ten years or more***," and so, the statutory bail period of sixty days applies. This interpretative clarity supports the idea that, in cases involving the curtailment of personal liberty under Article 21 of the Constitution, interpretations front and centre stage.[27]

V. A Critical Analysis of *Mohammed Sajjid*

This ruling in *Mohammed Sajjid* provides early, therefore important, judicial interaction with the BNSS's default bail provision. Its reading of Section 187(3)(i) BNSS calls for rigorous scholarly examination, especially in light of the Supreme Court's thorough examination of the relevant CrPC provision in *Rakesh Kumar Paul's* pronouncement.

One important point of criticism is the High Court's central claim that the BNSS phrase ("***ten years or more***") is "not much different" from the CrPC's "***not less than ten years*** .[28] Although this comment seems harmless, it might underplay a legislative modification meant to produce a subtle shift. One wonders: if the legislators changed the wording, was it done with a deliberate goal, or merely for a cosmetic change? As said, "***ten years or more***" could be taken to cover offences where ten years is a probable maximum sentence, therefore aligning with Justice Pant's dissent in *Rakesh Kumar Paul*. Given that a sentence of "ten years" is really awardable, such an interpretation would entail that an offence punishable with imprisonment "may extend

[26] *Supra* note 6 at 14.
[27] *Id.*
[28] *Supra* note 24.

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to ten years" might fall within the 90-day investigation category. This is contrary to the reading of "not less than ten years," which required a minimum term of ten years, adopted by the *Rakesh Kumar Paul* majority. Should the Kerala High Court's interpretation of *Mohammed Sajjid* finally result in the same outcome as the *Rakesh Kumar Paul* majority, then the legislative amendment in the BNSS, in this particular context, may seem to have had little practical relevance and raises issues regarding the intent of the textual change.

Unquestionably, the High Court's reliance on the pro-liberty canon that ambiguity in penal statutes, particularly those affecting liberty, should be decided in favour of the accused, is a commendable and well-founded notion. Still, its application depends on real uncertainty. One could contend whether the word "***ten years or more***" is intrinsically vague or if it has a meaning different from "***not less than ten years***". Although the textual journey under BNSS might have provided other paths, it is possible that the court aimed to achieve an outcome consistent with the protective effect of the *Rakesh Kumar Paul* majority by stating "not much difference" and then applying the pro-liberty principle, thus ensuring continuity in safeguarding liberty.

Alternatively, if "*not much difference*" is taken to mean that the pro-liberty outcome for offences punished "up to 10 years" (i.e., a 60-day limit) is to be maintained, then the court might be giving that outcome top priority over a thorough interpretation of the new phraseology that could have led elsewhere. Especially with a new code, this nuanced interaction between textual interpretation and outcome-oriented thinking makes *Mohammed Sajjid* an interesting judgment for future legal debate. The strategy might also indicate a court leaning toward interpretative stability during the transition to a new criminal procedural system, thereby reducing the disturbance of accepted values regarding the fundamental right protecting personal liberty. But depending on the specific legislative language used, this strategy could also overlook opportunities to improve or simplify the law.

VI. CONCLUSION

Understanding the interpretation given by the Hon'ble Kerala High Court on Section 187(3)(i) of the BNSS is legally very sound. The Court sided with the majority opinion in *Rakesh Kumar Paul* that in construing penal statutes, the ambiguities, if any, should be resolved in favour of the accused, particularly when personal liberty is curtailed. While I also support this approach, it is the subtly differing terminology used in the BNSS that allows for other interpretations discussed above. Therefore, the Hon'ble Supreme Court must provide its interpretation on the

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introduced change under Section187(3)(i) of BNSS to ensure a uniform application of the provision throughout the country.

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A CLARION CALL FOR UPLIFTING THE BACKWARD AMONG THE BACKWARD FOR A FORWARD-LOOKING INDIA – CASE COMMENT ON *STATE OF PUNJAB* v. *DAVINDER SINGH*

*Chandrasekhar V Pillai**
*Aishwarya Lakshmi V M***

ABSTRACT

The Supreme Court of India, through its judgment in *State of Punjab* v. *Davinder Singh* dated 01st August 2024, ruled that the sub-classification of Scheduled Castes (SC) and Scheduled Tribes (ST) is permitted, and that it is within the legislative competence of the state legislatures to create sub-classification within the SC and ST. This ruling marked an end to the 20-year-old *E V Chinnaiah* judgment that restrained the sub-classification within the SC / ST. The apex court in *Davinder Singh* clarified that all castes within SC / ST are not homogeneous and that there exist internal differences among the SC / ST, making sub-classification within them an essential aspect of ensuring equality. The case comment aims to discuss the rationale and evolution of the concept of reservation in India and examine how the judiciary has employed it to uphold substantive equality in the country. The case comment discusses various attempts made by the State Legislatures to implement sub-classification within SC/ST and the judiciary's response against such legislative actions. The case comment analyses the legislative competence of the State Governments to carry carrying out sub-classification within SC / ST, and also the overlap between the power of State Governments to sub-classify and the provisions contained in Article 341 of the Constitution. The case comment also aims to analyze the observation made by the Apex Court in *Davinder Singh* about the application of creamy layer principle to the SC / ST, and its potential impact in the long run in Indian society.

Keywords: Davinder Singh, Reservation, Sub-classification, Scheduled Caste, Scheduled Tribe.

I. Introduction

The policy of 'Reservation' is a subset of affirmative action followed in India with the objective of ensuring equal access to the resources of the country to the disadvantaged or downtrodden sections of society. Reservation, a policy expressly stated in the Indian Constitution, is also known as 'protective discrimination' or 'compensatory mechanism 'which was advocated with the intention of eradicating certain discriminations imposed upon certain sections of people

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historically in the name of caste, gender or other disabilities[1]. While reservation, by itself, is constitutionally guaranteed, there arise several moot points when there is sub-classification within reservation, ultimately attempting to answer on who gets how much share of the pie. Historically, as part of policy, sub-classification within the reserved classes has been introduced, and the Courts have also stepped in to resolve interpretation issues and constitutional conundrums arising from such policy decisions. This case comment explores the case of *State of Punjab* v. *Davinder Singh*[2], a relatively recent ruling of the Indian Apex Court that has altered the landscape in this arena.

II. A Nonchalant History from Champakam Dorairajan to Chinnaiah

The Indian Constitution embodies the right to equality as a fundamental right available to every person in the country[3]. However, preferential treatment to certain sections of society was added in the Indian Constitution through the first amendment in 1951[4] to nullify the effect of *Champakam Dorairajan*[5] and to bring Schedule Castes ("SC") and Schedule Tribes ("ST") to mainstream society. Though reservation was viewed as an exception to the principle of equality in the primordial stages of the Indian Constitution, it was later interpreted by the Supreme Court as a means to ensure substantive equality in India.[6]. Even though Article 14 eliminates discrimination by equal treatment, treating the downtrodden or disadvantaged section of society on par with the privileged class through formal equality, will not only hamper the development of the former but will also lead to their further degradation[7]. With the advent of Indian society, problems arose with respect to implementation of reservation across the downtrodden society. Though the state has conducted sub categorization among the Other Backward Caste ("OBC") category through the creamy layer policy, such a concept has remained alien to the SC/ST in India in spite of demands

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1 C. Basavaraju, "Reservation under the Constitution of India: Issues and Perspectives" *Journal of Indian Law Institute* 267 (2009).
2 *Supra* note 1.
3 The Constitution of India, art. 14.
4 The Constitution (Amendment) Act, 1951 (Act No. XXXVII OF 1951), s.2.
5 *State of Madras* v. *Champakam Dorairajan,* AIR 1951 SC 226.
6 *State of Kerala* v. *N M Thomas,* AIR 1976 SC 490.
7 Sasheej Hegde, "The Many 'Truths' of Reservation Quotas in India: Extending the Engagement", 61 *Social Scientist* (2015).

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from various corners[8]. The Supreme Court of India, starting from *N M Thomas*[9], highlighted the need to introduce the creamy layer concept for the reservation of SC / ST and has reiterated its stand in several subsequent cases[10], which has remained unimplemented ever since.

Though the Constituent Assembly was unanimous in incorporating the reservation policy into the Constitution, there was no consensus regarding the quantum of reservation, the castes to be included and the spheres where reservation must be applied to[11]. Such decisions, often left to the discretion of the legislatures, have led to social friction, multiplicity of litigation and tactics of pressure politics on legislature[12] thereby creating a sense of bemusement within the state machinery. It was at this juncture that certain state governments began the act of sub-classification by finding the 'more backwards' among the SC / ST and giving them preference over the rest of SC / ST as part of the reservation policy. The sub classification of the SC / ST and giving preference to the more backward among the SC / ST was incorporated into express and specific legislations by states such as Punjab[13], Andhra Pradesh[14], Tamil Nadu[15] etc. Such legislations faced social and legal hurdles, including hurdles from the judiciary which raised the issue of legislative competence, citing that such legislations introducing sub-classification were contrary to Article 341 of the Indian Constitution. Sub-classification by the states was thwarted out completely by the Apex Court in *Chinnaiah*[16], where the court found that the Scheduled Castes is, by itself, a homogenous class, due to which sub-classification among them would be impermissible. Further, it held that the act of the state governments to grant reservation based on sub classification was ultra vires[17] to the Constitution. Relying on this judgment, other High Courts struck down those laws that allowed state governments to sub-classify the SC / ST.

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[8] Himabindu M, "Policy and politics of sub-categorization of scheduled caste reservations in India: A Social Justice Perspective" *The Indian Journal of Political Science* 644 (2014).

[9] *Supra* note 6

[10] *Singh* v. *Lachhmi Narain Gupta*, (2022) 10 SCC 595.

[11] *Supra* note 9 at 644.

[12] *Ibid.*

[13] Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 (Act 22 of 2006).

[14] Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000 (Act 20 of 2000).

[15] The Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and of Appointments or Posts in the Services under the State within the Reservation for the Scheduled Castes) Act 2009 (Act 4 of 2009).

[16] *E V Chinnaiah* v. *State of Andhra Pradesh*, AIR 2005 SC 162.

[17] *Ibid.*

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III. The Inception of Davinder Singh

The legislature of Punjab passed the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 ("*PSCBC Act*"). The PSCBC Act was passed with the object of ensuring preferential treatment to some subcastes within the Scheduled Castes for direct recruitment in public services. The PSCBC Act provided for a 25% reservation for the SC and a 12% reservation for the backward castes in recruitment to public service[18]. Further, the PSCBC Act provided that 50% of the quota reserved for SC in direct recruitment should be offered to Balmikis and Mazhabi Sikhs, subject to their availability, as first preference among the SC[19]. The provisions granting a preference to the Balmikis and Mazhabi Sikhs were challenged before the Punjab and Haryana High Court, where it was held as unconstitutional by placing reliance on *Chinnaiah*. The order of the Punjab and Haryana High Court challenged by the Government of Punjab before a 3-judge bench of the Apex Court was referred to a 5-judge bench of this court[20]. The 5-judge bench opined that the decision the Apex Court in Chinnaiah (also a 5-judge constitutional bench decision) required revisiting, and hence the matter came up for consideration before a 7-judge bench of the Supreme Court of India.

IV. Issues Considered in Davinder Singh

The issues considered by the 7-judge bench in the instant case[21] were:

1. Whether the sub-classification of SC and backward castes as stipulated under Section 4(5) of the PSCBC Act is permissible under Articles 14,15 and 16 of the Constitution of India?
2. Whether the PSCBC Act is violative of Article 341(2) owing to the want of legislative competence?
3. Whether the SC / ST in India constitute a homogeneous class and whether Article 341 of the Indian Constitution classifies them as a homogeneous class for the purpose of reservation?
4. Whether creamy layer criteria can be applied to SC / ST?

V. A Brief Summary of the Judgment in Davinder Singh

[18] Punjab Scheduled Castes and Backwards Classes (Reservation in Services) Act, 2006 (Act 22 of 2006), s. 4(2).
[19] Punjab Scheduled Castes and Backwards Classes (Reservation in Services) Act, 2006 (Act 22 of 2006), s. 4(5).
[20] *State of Punjab* v. *Davinder Singh*, 2020 8 SCC 1.
[21] *Supra* note 1.

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The Supreme Court, by a 6:1 ratio, held that sub-classification of SC and ST is permitted and that it is within the legislative competence of the state legislatures to create sub-classification within SC and ST.

a. The Chief Justice of India, Justice D. Y. Chandrachud, and Justice Manoj Mishra upheld the power of states to create sub-classifications within SC / ST to promote substantive equality. They ruled that such sub-classifications are permissible if they ensure that benefits are targeted toward SC / ST that are empirically found to be inadequately represented in state services. It was also ruled that sub-classification does not violate Article 341(2), and that Article 341(1) only creates a constitutional identity, and it does not classify the SC as a homogeneous class.
b. Justice B R Gavai upheld the sub-classification of the inadequately represented sub-castes among SC / ST, subject to the fact that such inadequate representation should be supported by empirical data and that the reservation should be extended to such sub-castes and the remaining castes among SC / ST. Further, he emphasized on the extension of creamy layer principle to the SC, though the fundamental criteria may be different from OBCs.
c. Justice Pankaj Mithal, while agreeing with the opinion of the above judges, emphasized the need to limit reservation to the first generation of any of the beneficiaries.
d. Justice Vikram Nath and Justice Sathish Chandra Sharma agreed that *E V Chinnaiah* laid down bad law and pointed out the requirement of extension of creamy layer criteria to SC / ST.
e. Justice Bela M Trivedi, marking her dissent, upheld the correctness of *E V Chinnaiah* and questioned the reference made by the 3-judge bench to a higher bench without assigning any cogent reasons or settled precedents. Finding that the castes in the lists under Article 341 are homogenous, she observed that the same cannot be tinkered by the state legislatures and that the exclusive power for the same lies with the parliament only.

VI. The Jurisprudence of Reservation in India

The reservation policy in India has been incorporated into the Constitution with the object of uplifting the downtrodden section of society. Article 14 offers equality before the law and equal protection of the law. However, a literal adaptation of it would lead to ‘formal equality’, where everyone would be treated alike irrespective of their circumstances. This may not directly translate

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into 'factual equality'[22]. The reservation policy is restrained by the fact that the Constitution mandates appointment of SC/ST to service, subject to the maintenance of efficiency in administration[23]. The Apex Court has also opined that reservation in promotion, per se, is detrimental to the efficiency of service[24]. However, the Supreme Court later clarified that equality is applicable only to individuals who are in similar or comparable situations and that the concept of merit cannot be viewed as antithetical to merit or distributive justice[25]. The concept of merit cannot be ascertained from the performance of candidates in a seemingly neutral selection process (which is factually not neutral), since the process may not provide equal opportunity to some classes that may be alienated from accessing the facilities required to clear such a selection process[26]. Hence, the reservation policy has been introduced to give a bare minimum footing to those strata of society caught in inescapable quagmires.

VII. Concept of Equality, Reservation and Article 341 – An Inherent Conflict?

The sub-classification within the SC was seen as a way to promote substantive equality by preventing certain sub-castes within the SC/ST category from engrossing the benefits of reservation, thereby ensuring that the more disadvantaged groups among the SC/ST received protection and support. Such sub-classification in the form of finding the 'more backward among the backward' is not an alien concept and has received judicial nod even before[27]. The Apex Court, while upholding this policy, used the aid of Articles 14,15 and 16 to find that internal classification within the SC/ST category is justified. However, this is subject to the condition that the state legislature, while formulating such reservation policies based on sub-classification, should prove inadequate representation of the less privileged sub-caste in the state services and that such policies shall not deprive other sections of the SC from reservation[28].

Article 341 of the Indian Constitution does not create a legal fiction for the Scheduled Castes, thereby assigning them any constitutional identity. In fact, the provision creates a legal fiction for 'identification' of Scheduled Castes by distinguishing them from other groups (*emphasis*

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22 *Ibid.*
23 The Constitution of India, art. 335.
24 *General Manager, Southern Railway* v. *Rangachari*, (1962) 2 SCR 586.
25 *B K Pavithra* v. *State of Karnataka*, 16 SCC 129.
26 *Neil Aurelio Nunes* v. *Union of India*, (2022) 4 SCC 1.
27 *Indira Sawhney & Others* v. *Union of India*, AIR 1994 SC 477.
28 *Supra* note 1.

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supplied). Thus, the list of scheduled castes under Article 341(1) and the power of Parliament to make exclusion and inclusion in that list[29] were found completely inconsequential to the concept of reservation.[30]

VIII. Homogeneity of SC/ST and the Creamy Layer Principle

The misinterpretation of *N M Thomas* in *E. V. Chinnaiah* established the principle that the SC are considered a homogeneous group, thereby prohibiting any sub-classification within this class. *E. V. Chinnaiah* affirmed that no form of classification, including the application of the creamy layer principle, which is applied to OBCs, could be extended to the SC. The overruling of *E. V. Chinnaiah* in *Davinder Singh* has had severe implications, such as establishing the SC as a heterogeneous group that can be further sub-classified. The dissenting opinion of Justice Bela Trivedi in the present case upheld the view taken in *E. V. Chinnaiah* that the SC itself forms a uniform caste. To promote the underprivileged among the backward section, additional training must be imparted to them to ensure substantive equality rather than classifying them again.[31]

By upholding the sub-classification among the SC/STs, the judiciary has addressed that mere inclusion of a caste/tribe in the list in Articles 341 and 342 of the Constitution does not lead to an inference about the existence of any internal difference among them[32]. It has also sparked discussions about extending the concept of the creamy layer to the SC which has been encouraged by the Apex Court in many of its previous judgments[33]. Despite the previous pronouncements of Apex Court suggesting the executive to consider extension of creamy layer concept to SC/ST, there has never been any meaningful initiative on the part of the executive in implementing the same. The legalization of sub-classification among the SC and the reaffirmation of applying the creamy layer concept to SC/ST communities by the Supreme Court is undoubtedly sending a strong message to the executive for the due implementation of the latter.

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[29] The Constitution of India, art. 341(2).
[30] *Supra* note 1.
[31] *Ibid.*
[32] Anurag Tiwary, *Sub-Classification Within The SC & ST Categories Should Not Eventually Lead To De-Reservation* LiveLaw, *available at:*https://www.livelaw.in/articles/sub-classification-within-the-sc-st-categories-should-not-eventually-lead-to-de-reservation-269214?infinitescroll (last accessed on Sept. 13, 2024).
[33] *Supra* notes 6 and 10.

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IX. Legislative Competence of State Governments

The question of the state governments' legislative authority to create sub-classifications within the SC/ST category, which had long been a daunting issue, appears to have been resolved in *Davinder Singh*[34]. While it was already established that state governments have the authority to create quotas within OBCs, the Supreme Court's assertion that states have the same power within SC/ST communities has introduced a completely new area of jurisprudence. The Presidential list under Article 341 and the conditions that it can be modified only by the parliament under Article 341(2) served as hindrance on the power of the state governments on making sub-classifications among the SC. This hindrance was removed by *Davinder Singh*. The sub-classification, unlike creamy layer, does not exclude any people from benefits of reservation; rather, the sub-classification only identifies a group to which preferential treatment has to be accorded.

The state governments' power to sub-classify is based on the idea that they, being more familiar with the ground realities within its territory, are best equipped to identify and address the needs of the most disadvantaged groups (*emphasis supplied*). A one-size-fits-all Central list will indeed be far from the ground realities of each state in India. Though the dissent in *Davinder Singh* rejects the idea of the state governments sub-classifying SC/ST, it is the assistance rendered by Articles 14, 15, and 16 to ensure substantive equality that empowered the Apex Court in upholding the power of state governments to find the more underprivileged among the socially backward castes and grant preferential treatment to them. This harmonious construction and purposive interpretation of Articles 14-16 with Article 341 have been a shift towards transformative constitutionalism. However, this must not be the foundation of excessive politicization and promotion of arbitrariness by state governments, as feared by Justice Bela Trivedi. The Central and State governments should work in tandem and should periodically, say once every 5 years, conduct empirical reviews of the impact of sub-classification, and should be open to overhauling and rewriting the sub-classification system periodically, say once in 20 years. This review should ideally be undertaken by an independent, preferably constitutional, council with representatives from the Central and relevant State governments, akin to the GST council.

[34] *Supra* note 1.

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X. The potential socio-economic impact of Davinder Singh in the long run

While it appears that the Supreme Court judges have supported sub-classification in a 6:1 ratio. A deep dive into Davinder Singh reveals that even the assenting Judges have expressed the need for safeguards regarding the concept of sub-classification. For instance, Justice B. R. Gavai has insisted that the sub-classification should be backed by quantifiable and demonstrable data[35]Justice Pankaj Mithal has laid down that the reservation should be for the first generation of the beneficiaries[36].

This aspect of empirical backing, periodic review and prompt sunsetting of benefits disbursed through reservation is critical to ensure substantive equality. Otherwise, the socio-economic impact of Davinder Singh in the long run may turn out to be adverse, as it may promote caste hardening and more rigid boundaries among caste sub-groups than moving towards caste transcendence. It may also impose heavy strain on the entire reservation system, as every sub-group may start demanding their own 'quota within quota' eventually leading to quota inflation. There is a possibility that resentment among groups that do not receive sub-classification benefits may be politically exploited to trigger social flare-ups. It is quite logical that caste groups with sub-classification benefits will eventually be better off than those without sub-classification benefits, and it may also result in monopolization of benefits. Caste-based political coalitions and consequent policy fragmentation may also substantially increase if sub-classification is left unchecked. More so in a society that has continuously debated about the impact of reservation on merit.[37] The idea of sub-classification deserves to be data-driven, periodically reviewed and promptly unsettled.

Justice Bela Trivedi has expressed a more minimalistic attitude by deferring to the Parliament and choosing non-interference with the Presidential lists by the State Governments. While her interpretation and reading of Article 341 is not something the authors currently identify themselves with, her view that affirmative action and legal frameworks must ensure fairness and constitutionality is something the authors are strictly aligned with. Any unfairness or unconstitutionality that may arise out of the sub-classification of SCs deserves to be promptly

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[35] *Supra* note 1 at para 190.

[36] *Supra* note 1 at para 84(iii).

[37] J.Laxminarasima Rao, "Reservation Policy and the Principle of Merit: A study of Indian bureaucracy" 4 *The Indian Journal of Political Science* 53 (1992).

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examined. However, not giving the sub-classification of SCs a try, will amount to missing the bus when globally human rights and affirmative action have adequate recognition.

XI. Conclusion

The judiciary's evolution from striking down a rule that provided reservations to backward classes on the ground of caste discrimination to allowing sub-classification to allocate reservations to the most disadvantaged groups in order to promote substantive equality demonstrates its progression over time and its commitment to transformative constitutionalism. With several states like Haryana[38], Andhra Pradesh[39] and Telangana[40] taking legislative action in consonance with the judgment, the sub-categorization within the SC/ST has become a formal policy within reservation. However, even when the judgment seems to have set a historic precedent, it cannot be construed without concern. The Davinder Singh ruling, though, has laid down several constitutionally acceptable methods for carrying out subclassification, but has failed to lay down a uniform or acceptable yardstick. The Apex Court chose to leave the methods to be adopted for sub-classification open-ended, thereby making it a matter for the legislature. It must be said that the Apex Court has missed a golden opportunity to lay down clear and rational guidelines in this sphere, and by leaving it to the discretion of the legislature, which is further amendable to judicial review, has resulted in unnecessary wastage of time and resources. The Apex Court also seems to have heavily relied upon the introduction of the creamy layer principle among the SC/ST category in this judgment, even though it was not an issue for consideration before this court. The judiciary's reiteration of the creamy layer principle as an obiter, reflects its displeasure with the executive's continued failure to implement it, despite the repeated judicial directions. The judiciary, during the initial phases, viewed the concept of reservation and the provisions of Articles 15(4) and 16(4) as an exception to the facet of equality[41], though at a later stage, judicial precedents perceived reservation as a facet of equality and as an enabling provision to Article 14,[42] thereby promoting substantive equality over formal equality. The repeated judicial approval of the creamy layer

[38] Varinder Bhatia, "Haryana introduces new SC reservation categories for govt jobs" *Indian Express*, Nov. 14, 2024.

[39] M. Raja, "Telangana becomes first State to notify categorization of Scheduled Castes after Supreme Court verdict" *The Hindu*, Apr. 14, 2025.

[40] PTI, "Andhra Pradesh issues ordinance on SC sub-categorization classifying into three groups", *New Indian Express*, Apr. 17, 2025.

[41] *M. R. Balaji* v. *State of Mysore,* AIR 1963 SC 649; *B Venkataramana* v. *State of Madras,* AIR 1951 SC 229.

[42] *Supra* notes 7 and 28.

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principle in the SC/ST category has been seen by many as a departure from its stand of promoting substantive equality over formal equality[43]. Though the intention of the sub-classification is claimed to ensure a fair share for the marginalized within the backward, it carries the risk of being misused for the furtherance of vote bank politics. The identification of the sub-castes among SC/ST and sub-classifying them for the purpose of reservation poses a mammoth challenge before the legislature, and if not carried out in consonance with the spirit of it, will lead to the derailment of affirmative action and prolongation of judicial battles against inclusion of SC/ST into mainstream society. Setting aside all these concerns, this judgment is a reality check for modern society on the status of rights available to the SC/STs, and on how the stratification of underprivileged communities poses varied challenges. The Apex Court's upholding of the power of the state governments is clearly a progressive sign of preferring practicality over technicalities in matters relating to the interpretation of the law.

[43] *Supra* notes 6 and 11.

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BOOK REVIEW

Stellina Jolly and Saloni Khanderia, *Indian Private International Law*, Bloomsbury (Hart Publishing), London, United Kingdom; (2021), pg. x-351; Hardcover: USD 300/-; ISBN No. 978-93-543552-22-5.

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In this contemporary world, international legal scholarships have witnessed exponential growth in the domain of private international law (hereinafter PvtIL) in different domestic jurisdictions. Increased human migrations, interactions, relations, and commercial transactions with other jurisdictions, supported by technological innovations and social transformations, have further expanded the horizons of PvtIL. The legal landscape of Indian PvtIL is not an exception to this pragmatic social and legal developments. To bring certainty, predictability, and enforceability, Indian rules of PvtIL are also evolving due to a growing number of native diasporas, commercial [*]agreements, digital transactions, and offshore investments in foreign countries. Besides legislative development and judicial activism, academic contributions have also been witnessed in this subject under Indian jurisprudence in recent times. In this context, the book under review adds other feathers to the existing literature published in Indian context. It finds a novel and unique place among previously published books of renowned authors such as "K.B Aggrawal and Vandana Singh, Private International Law in India (2010)" and "V.C. Govindaraj, The Conflict of Laws in India (2011)." It is one part or volume of the series related to "Studies in Private International Law: Asia" published by the reputed publishers Bloomsbury (Hart Publishing), London, United Kingdom.

This book is a significant academic contribution with a systematic investigation and research of legislative intent and judicial practice revolving around the rules of private international law in India. It is limited in scope to three basic principles related to "jurisdiction, choice of law, and enforcement of foreign judgments under private international law" with specific three areas of practice under matrimonial relations, contractual, and non-contractual obligations. Besides, it also compares the Indian rules of PvtIL with other jurisdictions such as the United Kingdom,

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European Union, Australia, America, and Nepal. This book is structured in six parts with fourteen chapters referring to relevant cases, conventions, legislations, and references. Its first part consists of four chapters based on general principles of PvtIL dealing with nature, source, status, and operationalization in the domestic courts of India. The second part, in a single chapter, only deals with conflict of laws related to the jurisdiction of domestic court for judicial actions in *'rem'* and *'personam'*. Further, the third part includes four chapters analyzing the rules and practices related to marriage, divorce, custody of children, and cross-border surrogacy. The fourth part places two chapters on applicable law of contractual and non-contractual obligations under the rules of Indian PvtIL aligned with global trends in the contemporary age. The fifth part contains two chapters related to the rules of PvtIL on recognition and enforcement of foreign judgments and foreign arbitral awards. Finally, the last part in a chapter, ends with concluding remarks and a way forward demanding transparent and robust system for PvtIL in India.

In its first part, the book explores the conceptual foundations of the Indian rules of PvtIL, fundamental principles and operational aspects related to jurisdiction, characterization, application and exclusion of foreign law. In this part, the authors find that "private international law in India is not backed by explicit legislation, but traditionally guided by the principles of English private international law based on judicial decisions." For example, the characteristics and operationalization of domicile in India have been largely based on the English rules of PvtIL. In the second part, a chapter examines the principle relating to jurisdiction under Indian PvtIL, outlining the competency of domestic court in civil and commercial matters, jurisdiction for actions *in personam* as well as *in rem*, aligned with global trends noticed. Authors herein find that "although Indian rules of private international law do not explicitly categorize the jurisdiction of its courts as exclusive or permissive, these have implicitly been dealt under the provisions of Civil Procedure Code (CPC)." Further, they suggest that "India should rectify the Hague Choice of Court Agreement (HCCCA) for more clarity, certainty and predictability in defining jurisdictions for civil and commercial matters." The third part consists of four chapters relating to different dimensions of matrimonial or family matters with foreign element involved. Authors explore several statutory provisions and judicial decisions related to foreign marriage, divorce, child abduction, and cross-border surrogacy or commercial surrogacy. It has been firmly stated that "India currently has no legislation governing the recognition and validity of foreign marriages." However, the judiciary has been instrumental in recognizing foreign divorce in India based on the law under which the parties were married. Besides, it has also

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applied the applicable law as domestic law for wrongful custody and abduction, adhering to "best interests" or "welfare" of the child. The conflict of laws concerning cross-border surrogacy in India has also been analyzed applying the principles of "legal parentage and nationality", but further trapped under the web of legal and judicial imbroglios.

In a couple of chapters, the fourth part deals with rules of private international law on applicable law in contractual obligations (proper law of contract) and non-contractual obligations (proper law of tort) related to cross-border disputes. In India, the proper law of contractual obligations is based on express choice of law or, in the absence of it, the implied choice of law of the parties concerned. However, such a choice of parties will be mala fide if it overrides the mandatory provisions of the Indian Contract Act (ICA). As far as the proper law of non-contractual obligations is concerned in India, the "common law's double actionability" principle is applied in the cross-border tortious claims or disputes. However, the authors have compared this principle for its applicability with other jurisdictions (European Union, Russia, China, Australia, New Zealand, and Nepal) which have discarded it, considering it 'absurd and anomalous' in today's context. For keeping aligned with the global trends, the authors have suggested that "new principles of Indian private international law on applicable law in non-contractual matters must incorporate party autonomy"; and must also be "determined by reference to whether a claim is general or special in nature." Further, its fifth part, in two chapters, discusses the recognition and enforcement of foreign court judgements as well as foreign arbitral awards in India. In this corollary, authors have taken assistance from the provisions of the Indian Civil Procedure Code (CPC) and the application of 'the doctrine of obligation' for qualification and disqualification of such foreign judgments and degrees to be enforced in India. In this regard, they juxtapose the Indian rules with other jurisdictions (European Union, South Africa, New Zealand, Australia, Canada, and Nepal). Further, they suggest that India should rectify two recent legal treaties, the HCCCA and the Judgement Convention, to harmonise the domestic law on recognition and enforceability of foreign judgements for predictability, certainty, and access to justice. Unlike the foreign judgments, recognition and enforcement of foreign arbitral awards has been found more settled and predicated in India by enacting specific legislation, "Arbitration and Conciliation Act, 1996", being aligned with the "New York Convention (1958)" and the "Geneva Convention (1927)." The last part at the end concludes the book with final remarks and specific suggestions putting them as a way forward. It has been academically remarked at the end that "The increased discussion and case law reveal the slow progress in Indian private international law. Though

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the Indian private international law community is small, there is a growing interest in the study of private international law in India. It is opined that private international law in India deserves to be systematically studied and researched so that the current framework of private international law in the Republic can be improved."

The authors of this book, being renowned scholars of International Law from the Global South, have contributed a systematic and updated corpus of Indian PvtIL which provides a serious and in-depth analysis of legislative developments and judicial trends related to matrimonial, contractual, and non-contractual cross-border disputes. Compiling fourteen chapters in a single volume of a book is a mammoth task; however, outline and structure of such chapters should have been balanced in the context and content. This book has also limited scope for its analysis taking three areas: matrimonial reliefs, contractual and tortious obligations only. The emerging cross-border issues (appropriation of foreign property, misuse or abuse of intellectual property and e-commerce transactions) in the respective chapters have been flagged, but not concluded with a settled position under Indian PvtIL. Still, the author and publisher of this book deserve rich credit for adding this timely and scholarly work in limited corpus of Indian PvtIL. In view of the academic contributions and suggestions made in the current domain of Indian PvtIL, this book would be a vital resource for law scholars, practitioners, researchers, students, and government institutions engaged in cross-border disputes and policies in this globalized world.

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