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Prof. Shahnaz
Head & Dean
School of Law
University of Kashmir
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Caged Innocence: The Need to Fill the Lacunae in the Indian Prison System Regarding the Children Living with their Incarcerated Mothers

M. Asad Malik*
Anamta Hamid**

Abstract

The aim of the paper is to look into the lacunae in the prison system with regards to the children living with their incarcerated mothers. The Indian Prison System has come a long way in terms of its progression with respect to purpose of punishment and imprisonment, women prisoners, children in conflict, young offenders, *etc*. But there has been a devoid of any breakthrough legislation when it comes to the needs of these children, who are made to live there due to the unfortunate circumstances, and are left susceptible to the vices of the prisons. Even after many judgments covering this issue, there has been no substantial change in their conditions. There is an invisible tug of war between the rights of these children and the liability of the women prisoners to undergo the imprisonment. This has been the most inauspicious arrangement for the children and in no way favorable for their holistic development. This article also presents an overview of the problems faced by them owing to their life under the exploitative prison conditions. Finally, suggestions have been laid out to improve the conditions of these children.

Keywords: Incarceration, Judicial, Mothers, Prison System

I. Introduction

It is easier to build strong children than to repair broken adults.

- Frederick Douglass

This saying, by an American Social Reformer and a national leader of the abolitionist movement in Massachusetts and New York, clearly denotes the importance and gravity of ensuring the holistic development of a human at the 'childhood' level. The

*Professor, Faculty of Law, Jamia Millia Islamia.

** Ph.D Scholar, JNU, New Delhi

saying also emphasize on the advantage and fruitfulness of building strong children over the difficult task of repairing broken adults. Due to the malleable nature of a child's psyche, it is relatively easier to shape them into the responsible adults. As the widely known proverb goes, *Prevention is better than cure*, the same idea can be applied when one is concerned about improving the state of the children to ensure that they do not grow up to be anti-social elements of the society.

In an attempt to ameliorate the life of a human, major improvement has to be made at the early childhood level. The reason that early child development is so critical is that it lays down the foundations for the rest of the children's lives. The brain is at its most receptive state during the first five years, which leads to early experiences having a huge impact on the development of neurological connections. This influences children's brain functioning throughout their lives.[1]

If children's developmental needs are not met, this can impact them in the form of future mental health problems and deep-rooted issues. Studies have shown that children who were not provided with enough mental stimulation are prone to behavioural issues, low self-esteem, poor attention, and insecurities which can last well beyond childhood.[2] The early years of a child's life are very important for later health and development. Although the brain continues to develop and change into adulthood, the first 8 years can build a foundation for future learning, health, and life success.[3]

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[1]Rosalyn Sword, "Why is Child Development So Important in Early Years?", *available at*: https://www.highspeedtraining.co.uk/hub/child-development-in-early-years/ (last visited on October 20, 2023).

[2] *Ibid.*

[3]Early Brain Development, *available at*: https://www.cdc.gov/ncbddd/childdevelopment/early-brain-development.html. (last visited on October 20, 2023).

How well a brain develops depends on many factors in addition to genes, such as:

- Proper nutrition starting in pregnancy,
- Exposure to toxins or infections,
- The child's experiences with other people and the world.[4]

These three essentials are very difficult to be met when a child is put in prisons with their incarcerated mothers and among other criminals. The prisons are not the adequate place to raise children. They fail to get the proper nutrition, a healthy environment to grow up, and a safe place which they can call home. All these are must for their development, both physical as well mental. And these basic rights of a child are curtailed when they are put in prisons meant for incarcerated individuals. Along with these unfair curtailments they also face the pain of getting separated from their adult siblings and other family and friends. They are made to spend the most crucial time of their lives in the prison which is not congenial for their development.

Without having committed a crime, children born in prison and children who go to prison with their mothers must live behind bars. Even though sending the children to live in prisons is not an ideal situation but due to the delicate age of young children, they are dependent on their mothers. The women too face severe mental distress when they are separated from their children. Thus, for the bigger good of both the mothers and the children, the women prisoners are allowed to keep their children with them up to the age of six.[5] The Justice Krishna Committee has made a recommendation that the women prisoners should be allowed to

[4] *Ibid.*
[5] The Model Prison Manual for the Superintendence and Management of Prisons in India, 2016, r. 24.26.

keep their children with them in the prisons.[6] But there is no law in the nation to expressly and specifically look after these children. The Model Prison Manual, 2016, with regards to the welfare of the children of the women prisoners, states that prison administration should ensure holistic development of the children of the inmates confined in the prisons. To the possible extent, the prison authorities shall strive to create a suitable environment for children's upbringing which is as close as possible to that of a child outside the prison.

It has always been the intention of the legislature and judiciary that the unnecessary rights of the prisoners are not infringed. The Supreme Court in *D.B.M. Patnaik* v. *State of Andhra Pradesh*, [7]observed that all of the essential rights that inmates would ordinarily have, are not taken away from them. As the other constitutionally guaranteed precious rights under Article 21 are still applicable to the convicts, he shall not be deprived of his life and personal liberty except in accordance with the procedure established by law.

In the case, *Charles Sobraj* v. *The Suptd., Central Jail, Tihar,*[8] the Supreme Court considered the fundamental rights available to a prisoner. Krishna Iyer, J held that:

> "Whenever fundamental rights are flouted or legislative protection ignored, to any prisoner's prejudice, this Court's writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule

[6]RPS Teji, *The Prison, Object And Reforms, available at*: https://delhidistrictcourts.nic.in/ejournals/RPS%20TEJI%20-%20PRISON%20OBJECT%20REFORMS.pdf (last visited on October 22, 2023).
[7] AIR 1974 SC 2092.
[8] AIR 1978 SC 1675.

> of law. Then the parrot-cry of discipline will not deter, of security will not scare of discretion will not dissuade, the judicial process. For if courts 'cave in' when great rights are gouged within the sound-proof, sight-proof precincts of prison houses, where, often, dissenters and minorities are caged, Bastilles will be re-enacted. When law and tyranny begins: and history whispers, iron has never been the answer to the rights of men. Therefore we affirm that imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, courts will refuse to recognise the full panoply of Part III[9] enjoyed by a citizen."

In *Sunil Batra* v. *Delhi Administration,*[10] the Court ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Despite the underlying concept that a prisoner's rights don't come to an end when he/she is imprisoned, the rights of the children living in prisons have been easily overlooked.

II. Status of Children Living in Prisons with their Incarcerated Mothers in India

In India, the doctrine of *parens patriae* is followed. *Parens patriae* is Latin for "parent of the country or homeland." The doctrine of *parens patriae* states that a state has a paternal and protective role over its citizens or others, subject to its jurisdiction, and all orphans, dependent children, and persons deemed

[9] Part III of the Constitution of India contains the Fundamental Rights.
[10] (1978) 4 SCC 409.

incompetent are within the special protection, and under the control of the state.[11]The Constitution bench, in the case of *Charan Lal Sahu* v. *Union of India*,[12]explained the doctrine of the *parens patriae* in a great detail and stated that it is the obligation of the State to protect and take into custody the rights and the privileges of its citizens for discharging its obligations. While the Indian Constitution laid down specific provisions for the upliftment and welfare of the children and India is a party to the United Nations Convention on the Rights of the Child and thus must follow the principle of non-discrimination and the best interest of the child, still the children who live with their parent in the prisons are conveniently ignored. They are made to live the prime years of their life in the inadequate living conditions of the prison which are in no way conducive for the overall development of the child.

In 2006, the Supreme Court of India took notice of the plight of these children when a writ petition was filed before it.[13] The Hon'ble Court emphasised on the best interest of the child which is the primary consideration when dealing with any issue involving children and stated that there are many provisions under the Constitution of India which specifically deals with the upliftment, safety and welfare of children.[14] The Court observed the research study conducted by the *National Institute of Criminology and Forensic Sciences* which pointed out situation of children of women prisoners in the Indian Jails as they were living in very difficult conditions and were deprived of proper food, healthcare, accommodation, education, and recreation. The Court after taking into consideration of the status reports submitted by various State Governments and Union Territories, laid down

[11] Parens patriae, *available at*: https://www.law.cornell.edu/wex/parens_patriae (last visited on October 22, 2023).
[12] AIR 1990 SC 1480.
[13] *R.D. Upadhyay* v. *State of A.P. & Ors.*, Writ Petition (civil) 559 of 1994.
[14] The Constitution of India, arts. 15(3), 21A, 23, 24, 39(e), 39(f), 45, 46, 47.

guidelines to deal with such children in terms of diet, education, child birth, pregnancy, care of child on attaining 6 years of age, *etc.*

Many studies have been done before and after the petition and had pointed out the irregularities of the prison authorities in implementing the guidelines as provided in the Jail Manuals as well as laid down by the Hon'ble Supreme Court. In a report submitted by the National Commission of Women, New Delhi, *A Study of Condition of Women Prisoners & Their Children in Eastern U.P. Jails,*[15]the issue of the plight of children living in the prisons with their incarcerated mothers was raised and it is stated that they fail to receive the necessary recreational facilities, educational facilities, proper nutrition, *etc.* It has also been observed that the children were unhappy due to the trauma of living in a prison separated from their peers and kins. The study also showed that in all the 7 District Jails there was no separate ward for mother and children.

This brings forward another aspect of this kind of exploitation of children which leaves the children with no other means but to mingle with other prisoners including hardened criminals as well as the one who were, and in many cases are, involved in offences committing against and using children.

III. The Lacunae in the Indian Prison System

i. Rights to conjugal visits and procreate

Right to conjugal visits arises out of a marriage where one spouse has the right to company of the other spouse. When the spouses are separated owing to one of them or both being in prison, their rights to each other's company comes to a halt and infringes

[15] A Study of Condition of Women Prisoners and Their Children in Eastern U.P. Jails, *available at*: https://ncwapps.nic.in/pdfReports/A_Study_of_condition_of_Women_Prisoners_and_Their_Children_in_Eastern_UP_Jails.pdf (last visited on October 22, 2023).

on the right to life and procreation. Conjugal visits, in the context of prisons, allude to the idea of allowing a prisoner to spend some time alone with his/her spouse inside the walls of a jail. It is frequently maintained that conjugal visits can have favorable effects on prisoners' psychological health, the maintenance of marital relationships, and a decrease in the prevalence of sexual violence in prisons.[16]

Infringing a prisoner's spouse's right to life as stated in Article 21 of the Indian Constitution is a result of limiting the prisoner's own ability to exercise their conjugal rights. This is so that everyone has the opportunity to procreate and raise children, even those who are incarcerated, as guaranteed under the right to life. The spouse of an offender cannot have their rights taken away by the State because they, themselves, have not broken any laws, and infringing their rights would violate their fundamental rights. There is no system in place to permit romantic visits while incarcerated. There is no federal statute that governs parole or furlough provisions; instead, the relevant state government exercises these rights.[17]

Justice Iyer, in the case of *Sunil Batra* v. *Delhi Administration,*[18]while observing the right of the prisoners, held-

> "Visit to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and other security criteria, the right to society of fellow-men,

[16] G.S. Bajpai, Sangeeta Taak, "The debate around conjugal visits for prisoners" *The Hindu*, December 10, 2022.
[17] Dr. Shruti Goyal, "Conjugal Rights of Prisoners" *BLR* 64 (2018).
[18] AIR 1980 SC 1579.

> parents and other family members cannot be denied in the light of Art. 19 and its sweep. Moreover the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings. A sullen, forlorn prisoner is a dangerous criminal in the making and the prison is the factory!"

In the landmark judgment of *Jasvir Singh and Another* v. *State of Punjab*,[19] the petitioners were husband and wife and were convicted for kidnapping and murdering a minor for ransom. They were sentenced to death but later the death sentence of the wife was commuted into life imprisonment. They insisted that a directive be sent to the jail authorities allowing them to continue their conjugal rights for the sake of offspring and remaining together. The petitioners stated that they were amenable to artificial insemination because they did not seek it for their own sexual enjoyment. The questions raised in the present case were whether the right to procreation is enjoyable when the person is incarcerated and whether the right to life under the Constitution includes the right to have conjugal visits or artificial insemination. The Court decided that the right of procreation survives incarceration and this right falls within the ambit of Art. 21 of the Constitution. The Court added that such right would be subjected to reasonable restrictions like social order and security concerns.

But the right to conjugal visits and procreation raises another issue with related to the resulting children born in prisons. The legal system and law of present is not efficient and equipped with proper facilities for the holistic development of the children born. Recognizing the right to conjugal visits of the prisoners is a

[19] 2015 Cri LJ 2282.

progressive step towards respecting them as humans. But just enforcing the rights of the prisoners is not adequate as the prison system is not well equipped with ensuring the holistic development of the children who are supposed to live with their incarcerated mothers when there is no one in their family who can look after these children. In most cases of female criminality, it is a common happening that the whole families of the women prisoner are also indulged in similar or different crimes.[20] In such cases, the children are bound to live in the prisons with their incarcerated mothers.

The question is not on the merit, impact or reason behind the rights to conjugal visits of the prisoners, rather it is on the efficacy of the criminal justice and prison system. Although, with a delay and at a slow pace, but the rights of the women prisoners are being given recognition and consideration, but the rights of the children living in prisons with their incarcerated mother are yet being overlooked.

ii. Impact of prison life on the children living in prisons with their incarcerated mothers

Prisons are the symbol of restriction and curtailment in a society. In the recent decades, purpose of the prison systems has shifted from deterrent to reformative and rehabilitative, but still, it is no place to raise a child. In the case, *Babul Khan* v. *State of Karnataka*,[21] the Karnataka High Court stated that-

> "…more care requires to be taken in respect of such women in the jail particularly who are having children. The children are also

[20] Asha Bhandari, "The Role of the Family in Crime Causation: A Comparative Study of 'Family of Orientation'
and 'Family of Procreation'- A Study of Women Prisoners in the Central Jails of Rajasthan" 19 *Journal of*
International Women's Studies (2018).
[21] 2020 SCC OnLine Kar 3438.

> vulnerable. It should be borne in mind that the children are the citizens of future era whether they belong to India or any country. Therefore, proper bringing up of the children nourishing and nurturing them with good environment and atmosphere and giving them proper education and training if necessary to make them the good citizens of the country. Therefore, the development of the children is a paramount consideration…"

In many legislations and judicial pronouncements, the principle, that the paramount consideration should be given to the welfare of the children, has been recognized. But the children living in prisons with their incarcerated mothers are at a disadvantage. Their welfare is neglectfully overlooked on the pretext of their mother's criminality. The rights of these children have to come a long way.

One of the primary issues with allowing the children to live in the prison with their incarcerated mothers is the increased chances of them learning criminal behavior. The principle of separating the youngsters from hardened criminals is followed in case of children in conflict with law, but the same principle is not followed in the case of children living in prison with their incarcerated mothers. Enrico Ferri wisely maintains that both the environment and human nature contribute to crime. His apparent emphasis on the notion that "neglected childhood is the source and seed of habitual criminality and recidivism" is particularly valid.[22]The children who are allowed to live in prison with their mothers are in their early childhood stage, thus making them very susceptible to the surrounding environment. In terms of

[22] Prof. Bibha Tripathi, *Crime, Gender and Society* 3 (Satyam Law International, New Delhi, 2022).

early childhood's sensitivity, the Human Development Report (HDR), published in July 2014, places a lot of attention on this period as the most vulnerable in the development of life skills.[23]

The social nature and sociologic concept of crime have been extensively discussed by a number of Anglo-Saxon criminologists, including T. D. Eliot, Havelock Ellis, Edwin Sutherland, and others, in addition to the well-known scientists of the Italian school, including Lombroso, Garofalo, and Enrico Ferri, its leading spirits and masterminds. Modern criminology seeks to identify the root causes of criminality rather than merely cataloging its outward manifestations by broadening the scope of its investigation to include the fields of social and natural sciences.[24]

Gabriel Tarde, a French sociologist, came up with the Imitation Theory ('*Les lois de l'imitation*', 1890) to state the idea that criminal behaviour is the result of a learning process.[25] The criminologists like Prof. Healy and Albert Cohen dealing with the Multiple Factor Theory have also named one of the factors for criminal behaviour as the 'Family Background'. The theory states that family background is a very real reason behind criminality as children spend the most of their time around their families and they are able to imbibe any of the criminal tendencies that can be shown by any such family member. This makes it clear that any interaction with the other prisoners, when the incarcerated mothers are made to live in close vicinity to the rest of the prisoners, would definitely have some bad influence on these children and might increase the risk of them getting involved in the anti- social acts.

Differential Association Theory was introduced by Professor Edwin H. Sutherland. The main outlines of Sutherland's

[23] Zakiya Kurrien, "Ensuring a Healthy Start to Life" *The Hindu*, (Oct. 9, 2014).
[24] *Id*., at 4.
[25] Gabriel Tarde, *The Laws of Imitation* 110 (The Mershon Company Press, New York, 1903).

contributions are found in the various editions of his introduction to criminology, but probably the most important is the 1939 edition wherein he makes his systematic presentation of the "Theory of Differential Association".[26] Sutherland originally presented his theory of Differential Association in seven propositions and they were eventually expanded to nine.[27]

The Nine Propositions are as follows:

- Criminal behavior is learned.
- Criminal behavior is learned in interaction with other persons in a process of communication.
- The principal part of the learning of criminal behavior occurs within intimate personal groups.
- When criminal behavior is learned, the learning includes a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple; b) the specific direction of motives, drives, rationalizations, and attitudes.
- The specific direction of motives and drives is learned from definitions of the legal codes as favourable or unfavourable.
- A person becomes criminal because of an excess of definitions favourable to violation of law over definitions unfavourable to violations of law.
- Differential associations may vary in frequency, duration, priority, and intensity.
- The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.

[26] Edwin Sutherland, *Principles of Criminology* (Philadelphia Lippicott, 3rd edn., 1939).
[27] Edwin Sutherland, *Principles of Criminology* (Philadelphia Lippicott, 4th edn., 1947).

- While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values.[28]

Additionally, it should be noted that infants cannot develop to their full potential solely through nutrition, given the importance of the first 1,000 days in the development of life skills. The stimulation a kid experiences during their early years affects how their brain develops, as shown by a wealth of neuroscience research. The debate over nature versus nurture is over. Our cognitive capacities are shaped equally by genetics and early experiences; while brain growth occurs throughout life, it happens most quickly in the first few years. Half of the potential for mental development is attained before the age of three, according to scientists.[29]

As a result, it is argued that the prison environment is criminogenic and that the Differential Association Theory clearly explains how the prison and prisoners may influence the learning of criminal behavior. The conviction and sentencing of a person for a crime they did not commit is the main example of a miscarriage of justice. The "double jeopardy" doctrine forbids two sentences for a single offense. When it comes to female offenders, it is recommended that an infant or child, who is 100 percent innocent, spend the next six years in jail with his or her mother, who is either convicted or on trial. Not only is it a flagrant breach of human rights, but it is also a serious injustice that exposes these kids to criminal activity. It can only be resolved by passing legislation and putting into effect provisions that suspend penalty for female

[28] *Supra* note 21 at 14.
[29] *Supra* note 21 at 17.

offenders who are either pregnant or have children under the age of six.[30]

III. Inefficacy of the Indian Prison System

The right to conjugal visits and procreation is essential to the prisoners as well as their spouses or families. A prisoner does not lose his or her basic rights when they are imprisoned but the question arises 'are the criminal justice system and the Indian Prison System adequately equipped to deal with the aftermath of such rights.' At one hand, the right of the women prisoners to procreate is protected by the law but at the same time the prisons that are built for prisoners are in no way appropriate for the holistic development of the children.

The essential requirements for the wholesome development of the children cannot be met under the present prison system. A child not only needs food, clothes and a home, they need a safe environment, the support and involvement of the family, opportunities to indulge in recreational activities and playtime, and proper education along with a lot of other facilities. When a child is made to live in the prison, they are cut off from their safe surroundings and interactions with the society. They are made to inter-mingle with the rest of the prisoners.

The laws in India regarding juveniles, primarily contained in the Juvenile Justice (Care and Protection of Children) Act, 2015, focus on putting children in conflict with law and children in need of care and protection in various institutions rather than prisons so as to ensure that they do not interact with any other criminals as that might push them towards a life of crime but the same principle is not followed when we come across children that are placed in the prison with their mothers.

[30] *Id*., at 91.

The children have the tendency to normalise and internalise the actions and the practices taking place surrounding them, no matter how detrimental they are. This raises the chances of children who are residing with their mothers in prison to normalise the criminal tendencies and behaviours. Children are considered the most important generation of the society as the future of a State depends upon what they grow up to become. The young age and dependence on others to meet their basic needs make them the most vulnerable class. Children are considered innocent beings that are yet to develop the mental ability to understand and differentiate between right and wrong. Hence it is the State's duty to ensure their welfare.

IV. Judicial Approach

The Indian Prison System has been affected by the problems of over-crowding, inadequate and insufficient nutrition and medical facilities, lack of mental health check-ups and recreational activities, torture and abuse. These issues are detrimental to the adult prisoners and the same can be extremely deleterious for the children living in prisons with their incarcerated parent. The legislation and judiciary have provided many recommendations and rules to eradicate the aforementioned problems, but the same has existed only in letters and not in spirits. Due to the lack of straight-forward legislation declaring the rights of these children, the guidelines laid down by the courts have been of prime importance to put a check on the powers of the prison authorities. These children are made to live in conditions that are not conducive for the prisoners, let alone an innocent child.

When a prisoner is sent to the prison, few of his or her rights, related to freedom to move, are curtailed but the basic rights to life, health, protection against torture, *etc*. still remain intact. Rights of the prisoners are at par with the rights of free citizens except the lawful limitations on their personal liberty.

In the case, *Wolff* v. *McDonnell*[31], Justice Marshall opined that

> "…a prisoner does not shed his basic constitutional rights at the prison gate, and I fully support the Court's holding that the interest of inmates in freedom from imposition of serious discipline is a "liberty" entitled to due process protection…."

In *Price* v. *Johnston*[32], Justice Murphy stated that

> "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system."

The same approach has also been followed by the courts in India. In the case, *D. Bhuvan Mohan Patnaik & Ors.* v. *State of Andhra Pradesh & Ors.,*[33] while hearing the plea of the petitioner who was undergoing sentences in the Central Jail at Vizagapatnam regarding the violation of his and fellow prisoners' fundamental rights, J. Y Chandrachud held that-

> "Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails to by its own force the deprivation of fundamental freedoms like the right to move freely throughout the

[31] 418 U.S. 539 (1974).
[32] 334 U.S. 266.
[33] AIR 1974 SC 2092.

> territory of India or the right to 'practice' a profession.[34]

All the aforementioned judgments made reflection on the liberty and right to life of the prisoners. The interpretation of the right to life was broadened by the Court in the case of *Maneka Gandhi* v. *Union of India*[35]. The Supreme Court introduced a novel interpretation of Article 21 of the Indian Constitution, stating that the right to life or to live extends beyond merely existing physically and also encompasses the right to live in dignity.

The Judiciary, by the means of several judgments, has made its intention clear regarding the recognition and enforcement of the prisoners' rights. The right of the children living in prisons are equally important, if not more. Sadly, their rights have been overlooked by the legislature. Judiciary has made a few attempts to address the issues regarding the conditions of these children.

In a letter to the High Court, the appellant expressed some complaints about the operation of the respondent's New Observation Home in Mankhurd.[36] The Apex Court opined that-

> "Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights,

[34] *Id*., para. 2.
[35] AIR 1978 SC 597.
[36] *Sheela Barse* v. *Secretary, Children's Aid Society*, (1987) 3 SCC 50.

> 1966. The importance of the child has been appropriately recognised. India as a party to these International Charters having ratified the Declaration, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way."[37]

The Court, in the petition of *R.D. Upadhyay* v. *State of A.P. & Ors.*,[38] stated the constitutional provisions under which the protection of children has been given heed to. It also took notice of the fact that the majority of these kids were experiencing a variety of deprived conditions related to food, healthcare, housing, education, recreation, *etc.* No jail was found to have any adequate programmes for inmates' proper bio-psycho-social development. Their mothers were largely responsible for taking care of them. There was no trained staff to look after these kids in any jail, it was discovered. The Court after taking into consideration of the status reports submitted by various State Governments and Union Territories, laid down the following guidelines to deal with such children in terms of diet, education, child birth, pregnancy, care of child on attaining 6 years of age, *etc.*

- While in custody with his or her mother, a child shall not be considered as an under trial or convicted person. Such a youngster has a legal right to access to food, shelter, healthcare, clothes, education, and recreational opportunities.
- The prison authorities must make sure that the concerned prison is fully equipped with all the basic amenities necessary for the child delivery as well as for providing pre-natal and post-natal care for both, the

[37] *Id*., para. 5.
[38] Writ Petition (civil) 559 of 1994.

mother and the child. Female convicts must have gynaecological examinations at the district government hospital. The prisoner shall get appropriate prenatal and postnatal care in accordance with medical advice.

- Regarding the child born in prisons, provisions should be made for interim release or parole (or suspended sentence in the case of minor and casual offenders) to allow a pregnant prisoner to deliver her baby outside the facility. When they happen, births in prison must be reported to the local birth registration office. However, the birth certificate that is issued must not state that the child was born in a prison.
- Until they become six years old, female inmates are permitted to keep their children with them in jail. When the child reaches the age of six, the child must either be delivered to an appropriate facility managed by the Social Welfare Department or given to a suitable surrogate in accordance with the preferences of the female prisoner. In order to limit undue burdens on both mother and child due to physical distance, the child shall not, as far as is reasonably practicable, be transferred to an institution beyond the town or city where the prison is located. Until their mother is freed or the child reaches the legal age to support themselves, such youngsters must be held in protective custody.
- When a female prisoner passes away and leaves behind a child, the Superintendent must notify the relevant District Magistrate, who will make arrangements for the child's proper care. If the concerned relative(s) refuse to provide for the kid, the District Magistrate must either place the child in a home or institution that has been

approved by the State Social Welfare Department or turn the child over to a trustworthy adult for upkeep.

- The State/ U.T. Government shall establish the scales for providing children in jail with suitable clothing that is appropriate for the local climatic requirements. The state and federal governments must establish dietary guidelines for kids that take into account their caloric needs as they grow and are in accordance with medical standards.
- The children should have the right to visitation.
- To comply with the aforementioned instructions, the Jail Manual and/or other pertinent Rules, Regulations, instructions, *etc.* must be appropriately modified within three months. If better facilities are being offered in some prisons, this practise must continue.
- The State Legal Services Authorities must take the required steps to conduct routine jail inspections to ensure that the rules regarding children and mothers are followed both literally and metaphorically. Courts handling cases of women inmates whose children are incarcerated with their mothers are instructed to give these matters precedence and to rule on them quickly.

The court concluded by directing that following the filing of a compliance report outlining the actions taken by the Union of India, the State Governments, the Union Territories, and the State Legal Services Authorities within four months, the issue will be listed for directions.

In *Re-Inhuman Conditions in 1382 Prisons,*[39] the former Chief Justice R.C. Lahoti expressed worry, in a letter, about the prison system that led to the current petition, including prison

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

overcrowding, convicts dying suddenly under unnatural circumstances, a severe lack of staff, and unskilled or badly qualified staff members. The letter was converted into a petition. The Apex Court directed that a Supreme Court Committee on Prison Reforms should be established immediately by a notification to be issued by the Ministry of Home Affairs. The Committee was required to give its recommendations on many issues including the psycho-social well-being, the schooling and health of the children living in prisons.

Even though the Courts have, at many instances, issued guidelines for the benefit of the prisoners, both male and female, including the children of the incarcerated mothers living in prison, still many a time the guidelines do not follow through. The judicial approach regarding the matter has been clear that the rights of the prisoners don't vanish as soon as they enter into the criminal justice system. But still there is a long path to be covered with regards the rights of these children.

V. Conclusion and way Forward

A place that is not equipped for the reformation and rehabilitation of the adult women prisoners cannot be assumed to be appropriate for the raising of a child. The children, who are as such very prone to abuse and trauma, become more susceptible to same issues while being in prisons. In this scenario, the rights of the innocent children are infringed due to the liability of the mothers. Due to the fact that the mothers have to face the punishment for their actions, the children, with no fault of their own are left with the caged childhood.

The Prisons which are not up to mark to meet the needs of the women prisoners eat the dust with regards to the needs of the children that are to be put in its premises. Apart from being a hostile and unsafe environment for the child, the prison

environment hinders their mental health. These children grow up with low confidence, trauma and underdeveloped bonds with their older siblings who are not allowed to stay in the prison. They are in a way cut off from the society which can be detrimental to their overall development. Other problems that are faced by these children are the stunted development of interpersonal skills, low future prospects and discrimination due to the stigma attached to the prisons.

A major possible problem that may arise is that living in the close proximity of other prisoners can have a detrimental impact on the child not only in terms of abuse but also the increased chances of learning criminal behavior. Forcing the children to live with other prisoners, have a traumatic impact on them which could later push them into deviant behaviour or permanently stain their psyche.

It should be the duty of the legislature to form an exclusive legislation to successfully deal with the rights of the children. The following rights of the children should be enforced:

- Children up to the age of six are permitted to live with their mothers in prison if no different courses of action for their care can be made. But just for the reason of them residing in the prisons, they are never to be treated as prisoners.
- The children of women prisoners should also have access to childcare services. They should be cared for in a creche and a nursery school that should be affiliated to a prison for women. Children under the age of three shall be permitted in the creche, while those aged three to six should be cared for in the nursery school.
- The children should be provided with adequate quantities of nutritious food to maintain their health and development.

- They should be given enough time to indulge into recreational activities and playtime.
- They should be protected against any hardened criminal or abusive person. They should be kept away from the rest of the prisoners in a separate ward.
- They should be provided with the quality education which would be given to any other child of their age.

Parental Absence, Platform Presence: Re-Examining Juvenile Delinquency through the Lens of Digital Dependency

Qazi Muhammad Usman*

Qurrat-Ul-Ain**

Abstract:

In today's hyperconnected world, smartphones and screens often feel more present in a child's life than their own parents. This paper explores the growing crisis of juvenile delinquency in India by looking at a deeply modern cause: digital dependency, especially among children facing parental absence. Whether due to economic migration, long working hours, or family breakdowns, many adolescents are increasingly left unsupervised, turning to digital platforms as a source of engagement, identity, and even validation. This paper argues that this mix—unchecked internet exposure and minimal parental involvement—creates a perfect storm for antisocial behaviour and psychological disruption[1].

Using frameworks from criminology, such as Agnew's General Strain Theory, the Social Control Theory, and Routine Activity Theory, the paper shows how digital dependency is more than just screen time—it is a driver of maladjustment and delinquency[2]. Delinquent acts today aren't limited to the streets; they happen in DMs, chat rooms, and multiplayer games. Crimes like cyberbullying, online fraud, revenge porn, and hacking are now common among juveniles[3]. But digital influence doesn't stop there—it also fuels real-world crimes like theft (to access online platforms)

*Professor, Faculty of Law, Jamia Millia Islamia

**Ph.D Research Scholar, Faculty of Law, Jamia Millia Islamia

[1] UNICEF India, *Online Child Protection in India: Perspectives and Recommendations* (2021), *available at* https://www.unicef.org/india/reports/online-child-protection (last visited on May 22, 2025, 10:14 a.m.).

[2] Robert Agnew, "Foundation for a General Strain Theory of Delinquency" 30 *Criminology* 47 (1992).

[3] Internet and Mobile Association of India (IAMAI), *Internet Usage in Urban & Rural India 2023*, *available at* https://www.iamai.in/research (last visited on Sept. 1, 2025).

and even violent behaviour that starts with online fights and spills offline[4]. The psychological toll is no less alarming: internet addiction, desensitisation to violence, and distorted perceptions of reality are deeply affecting young minds[5].

The paper then evaluates how well Indian laws respond to this digital shift in juvenile behaviour. While the Juvenile Justice (Care and Protection of Children) Act, 2015, the POCSO Act, 2012, the Information Technology Act, 2000, and the newly passed Digital Personal Data Protection Act, 2023 provide some guardrails, there are serious gaps[6]. Prevention mechanisms tailored to digital exposure, interventions that address the root causes of cyber-offending, and a legal system equipped to handle tech-savvy juveniles remain lacking[7].

Drawing upon NCRB data, NGO findings, court rulings, and academic literature, this paper proposes a well-rounded reform plan. It calls for amendments in existing laws, holding parents more accountable, introducing digital literacy in schools, training judges and law enforcement in cyber-psychology, and adopting therapeutic models that recognise how deeply the online world shapes today's juveniles[8]. Only by adopting a combined "online-offline" strategy can India hope to respond to juvenile delinquency in the digital age[9].

Keywords: Cyber crime, Digital Dependency, Juvenile Delinquency, Internet Addiction, Parental Absence

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[4] Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* p. 312 (Oxford University Press, 2017).

[5] Nivedita Menon, "Digital Childhood: Growing Up Online in India" 55(49) *Economic and Political Weekly* 24 (2020).

[6] Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India) — The Act does not define or address technology-specific offences involving children. See also: Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023.

[7] Centre for Child and the Law, NLSIU Bangalore, *Legal Framework for Online Safety of Children in India* (2022), *available at* https://www.nls.ac.in/resources/ (last visited on Sept. 1, 2025).

[8] Arvind Narrain, *Violence and the Law in India: Understanding Juvenile Justice* p. 218 (Oxford University Press, 2019).

[9] *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787.

I. Introduction: The Converging Crises

India, home to more than 253 million adolescents between the ages of 10 and 19, is undergoing a profound transformation shaped by two concurrent trends: the digital revolution and changing family dynamics[10]. As children navigate this complex socio-technical terrain, juvenile delinquency—a long-standing concern for the Indian legal and social systems—has acquired a new digital face. The increasing involvement of juveniles in tech-enabled offences is not merely incidental; it is symptomatic of deeper structural disruptions in parenting, supervision, and socialisation. This paper argues that the interplay between absent or disengaged parenting—whether due to migration, work stress, or familial fragmentation—and unrestricted digital exposure creates fertile ground for adolescent distress and deviance[11].

The central thesis is that digital dependency does not just co-exist with juvenile delinquency but often functions as a trigger, especially when protective factors like parental monitoring are absent. In a society where digital platforms often substitute for parenting, companionship, and even discipline, a re-evaluation of India's legal and rehabilitative frameworks becomes not just urgent, but essential.

i. The Persistent Challenge of Juvenile Delinquency in India: Scope and Trends

Despite legal reforms, juvenile delinquency continues to strain India's criminal justice system. According to NCRB data, thousands of juveniles are apprehended each year under both the

[10] United Nations Population Fund (UNFPA), *State of the World Population Report 2023* p. 12.."

[11] UNICEF India, *Online Child Protection in India: Perspectives and Recommendations* (2021), *available at* https://www.unicef.org/india/reports/online-child-protection (last visited on Aug 1, 2025).

IPC and Special & Local Laws[12]. Although juvenile crimes represent a small share of overall crime rates, their impact is magnified by the nature of the offences—many involving violence, sexual offences, or technology-related breaches.

NCRB's 2022 report highlights a notable rise in cyber-assisted crimes among juveniles, reflecting how digital exposure is altering the patterns of juvenile offending[13]. These include acts such as morphing images, sending abusive content, and financial fraud through UPI scams, among others. The Juvenile Justice (Care and Protection of Children) Act, 2015, conceived to ensure rehabilitation and care for children in conflict with the law, now faces the challenge of adapting to these new-age crimes[14]. Understanding juvenile delinquency in 2025 requires a shift from purely socio-economic causation models to frameworks that also factor in cyber-ecologies and digital risk environments[15].

ii. The Digital Surge: Ubiquity, Access, and the Rise of the "Digital Native"

India has witnessed a remarkable digital leap. As of 2023, the country boasts over 900 million internet users, with significant penetration even in semi-urban and rural regions[16]. Adolescents are increasingly born into digital realities—growing up with smartphones, social media platforms, gaming consoles, and video

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[12] National Crime Records Bureau (NCRB), *Crime in India 2022*, Ministry of Home Affairs, *available at* https://ncrb.gov.in/en/crime-india (last visited on Sept. 1, 2025).
[13] *Ibid.*
[14] Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016.
[15] Asha Bajpai, *Child Rights in India: Law, Policy, and Practice* p. 278 (Oxford University Press, 2017).
[16] Telecom Regulatory Authority of India (TRAI), Performance Indicator Report for the Quarter Ending December 2023 — "India had over 903.2 million internet subscribers by the end of 2023."

streaming apps. A report by the Internet and Mobile Association of India (IAMAI) reveals that internet usage is highest among the 12–19 age group, who spend substantial hours online daily[17].

This digital immersion brings benefits—access to learning, networking, and creativity—but also severe risks. As one study notes, "children are increasingly exposed to addictive design features, harmful content, and emotional manipulation online"[18]. The line between online and offline lives is vanishing fast. This blurring complicates traditional ideas of supervision and discipline, making it harder for parents and authorities to intervene before risks turn into harmful behaviours[19].

iii. Parental Absence: Economic Pressures, Migration, and Changing Family Dynamics

Behind many digital risks lies another silent shift—the growing absence of parental presence, both physically and emotionally. Across India, economic migration has resulted in millions of parents, especially fathers, relocating for work, leaving children in the care of relatives or older siblings[20]. Meanwhile, urban working professionals—particularly in nuclear family setups—often work long hours, returning home too exhausted to engage meaningfully with their children.

Even when parents are present physically, many are digitally illiterate or unaware of their child's online activity. As researchers

[17] Internet and Mobile Association of India (IAMAI), *Internet Usage in India Report 2023*, *available at* https://www.iamai.in (last visited on May 30, 2025, 3:17 p.m.).
[18] Centre for Internet and Society, *Designing for Addiction: Digital Behaviour in Indian Teens* (2022), *available at* https://cis-india.org (last visited on July 5, 2025, 7:25 p.m.).
[19] Nivedita Menon, "Digital Childhood: Growing Up Online in India" 55(49) *Economic and Political Weekly* 24 (2020).
[20] International Labour Organization (ILO), *Migrant Labour in India Report* (2022)."

have observed, "emotional absence is becoming more common than physical absence, marked by inattentiveness, burnout, or lack of digital awareness"[21]. The decline of the joint family system, which historically offered alternative supervision, has further reduced the protective net around adolescents[22]. In this void, children turn to digital platforms for companionship, entertainment, and even validation—often without adult filters or guidance.

iv. The Nexus: Framing Digital Dependency within Contexts of Parental Absence

At the core of this paper lies a critical formula: Parental Absence + Platform Presence = Digital Risk and Delinquency. In the absence of parental monitoring, children are more vulnerable to engaging in harmful online behaviours or being victims of digital exploitation. As per Hirschi's Social Control Theory, the weakening of familial bonds reduces internalised social norms, increasing the risk of deviance[23].

Unsupervised screen time often leads to digital dependency—a compulsive pattern marked by withdrawal symptoms, reduced academic performance, irritability, and obsessive engagement with online platforms[24]. When combined with exposure to toxic online content (violence, misogyny, extremism) and the absence of offline

[21] Arvind Narrain, Violence and the Law in India (OUP, 2019), p. 212 — "Emotional absence manifests when parents are too digitally unaware or too stressed to supervise their children effectively."

[23] A. Kalpana, "The Disintegration of Joint Family in Urban India" 82 *Indian Journal of Social Work* 55–58 (2021).

[24] Travis Hirschi, *Causes of Delinquency* p. 16 (University of California Press, 1969).

emotional anchors, this results in heightened vulnerability to delinquent behaviour.

Routine Activity Theory further explains this phenomenon: the presence of motivated offenders (bored, digitally addicted juveniles), availability of suitable targets (cyber victims, online scams), and absence of capable guardians (parents, teachers) creates an ideal condition for crimes to occur[25]. These may manifest both online (revenge porn, phishing, cyberbullying) and offline (theft for gaming money, school truancy, assault influenced by online hate speech). This intersection demands an urgent, interdisciplinary approach that spans criminology, psychology, digital policy, and juvenile justice.

v. Research Objectives, Scope, and Methodology

This research paper aims to:

1. Conceptualise digital dependency and parental absence within criminological frameworks relevant to juvenile delinquency.
2. Analyse empirical data and trends regarding juvenile delinquency, digital access, and parental absence patterns in India.
3. Critically examine the adequacy of India's existing legal and institutional framework (JJ Act, POCSO, IT Act, DPDP Act, IPC) in addressing delinquency arising from digital dependency in contexts of parental absence.
4. Identify systemic and societal challenges hindering effective prevention, intervention, and rehabilitation.
5. Propose a comprehensive, multi-stakeholder reform agenda for legal, policy, educational, and community-based interventions.

The scope focuses on juveniles (below 18 years) in conflict with law in India, examining delinquency primarily linked to or

[25] S. Ghosh, Digital Addiction in Indian Adolescents: A Psychiatric Overview, Indian Journal of Mental Health, Vol. 10 (2022), p. 134 — "Symptoms include compulsion, aggression, and distress on device removal."

exacerbated by digital dependency, situated within contexts of inadequate parental supervision. The methodology involves doctrinal legal research (statutes, case law), analysis of empirical data (NCRB, TRAI, IAMAI, academic studies), and application of criminological theories to the Indian context.

II. Conceptualising the Nexus: Theories and Mechanisms

Understanding the deepening link between parental absence, digital dependency, and juvenile delinquency demands more than surface-level correlations. It calls for a conceptual framework rooted in clinical psychology, digital sociology, and contemporary criminology, with classical theories adapted to the digital lives of today's adolescents.

i. Digital Dependency and Internet Addiction: Definitions, Spectrum, and Recognition

Digital dependency describes a state where an individual's use of screens, particularly mobile devices and online platforms, becomes compulsive—resulting in serious disruption to their academic, social, or family life[26]. This dependency lies on a spectrum, starting from problematic digital habits and escalating to clinically recognised forms such as Internet Addiction (IA) or Internet Gaming Disorder (IGD), both now recognised in the ICD-11 by the World Health Organization[27].

Not every teen who uses the internet excessively is addicted—but digital dependency typically involves impaired self-regulation, where online interaction is prioritised over essential real-world

[26] Kimberly Young, "Internet Addiction: The Emergence of a New Clinical Disorder" 1 *CyberPsychology & Behavior* 237 (1998).
[27] World Health Organization, *ICD-11: International Classification of Diseases, 11th Revision* (2022).

functions. In severe cases, it may also interfere with sleep, personal hygiene, social interaction, and educational goals[28].

ii. Beyond Time Spent: Behavioural Indicators and Psychological Impacts

Internet addiction is assessed through patterns of behaviour, not just hours spent online. Indicators include:

- Preoccupation with digital content, even when not online.
- Withdrawal symptoms, like irritability and sadness, when denied access.
- Tolerance, or needing more time online to feel satisfied.
- Loss of control over usage, despite repeated efforts to reduce it.
- Neglect of hobbies, academics, and family interaction.
- Use of deception to conceal online behaviour.
- Escapism, or using the internet to numb anxiety, guilt, or helplessness.

These patterns often co-exist with psychological distress, including anxiety, attention deficits, disturbed sleep, mood swings, and distorted perceptions of self and others[29].

iii. The Indian Context: Vulnerability Factors and Manifestations

India's youth face unique digital vulnerabilities. Widespread access to cheap smartphones and low-cost data, especially via Jio and other carriers, has enabled digital saturation, even among urban slum dwellers and rural communities[30]. With few

[28] Ghosh, "Digital Addiction in Indian Adolescents", p. 134.
[29] American Academy of Pediatrics, Media and Young Minds, Pediatrics, 138(5), e20162591 (2016).
[30] Internet and Mobile Association of India (IAMAI), *Internet Usage in India Report 2023*, *available at* https://www.iamai.in (last visited on Aug. 11, 2025, 8:45 a.m.).

recreational alternatives, especially in overpopulated cities, children often turn to screens for escapism.

The pressure of academic achievement, parental disengagement, and cultural permissiveness around long screen hours contribute to dependency. In extreme cases, this manifests as obsessive gaming (e.g., PUBG, Free Fire), compulsive social media scrolling, binge-watching, or pornography addiction[7]. Unfortunately, India lacks a formal framework to clinically recognise and treat such cases early—meaning intervention only happens when severe consequences like violence, self-harm, or legal conflict arise[8].

III. Parental Absence: Forms, Causes, and Impact on Supervision and Attachment

Parental absence in India takes many forms, each weakening the child's support system in different ways.

i. Physical Absence

Millions of Indian children are raised in households where one or both parents migrate for work, leaving children under the care of grandparents or siblings[31]. With nuclear families rising and joint family systems eroding, many children grow up in under-supervised homes. "Latchkey kids", home alone after school, are particularly vulnerable to unregulated internet use and lack of adult guidance[32].

ii. Emotional Absence

Even in homes where parents are physically present, they may be emotionally unavailable due to long working hours,

[31]UNICEF, *Child Online Protection in India: Challenges and Recommendations* (2021), *available at* https://www.unicef.org/india/reports/online-child-protection (last visited on July 22, 2025, 5:19 p.m.).
[32] *Ibid.*

financial stress, or their own digital distractions. As one study notes, "Digital immigrants—parents unfamiliar with the digital world—often underestimate the risks their children face online"[33]. This emotional absence weakens parent–child bonds, reducing opportunities for meaningful conversations about online conduct, safety, or mental health[12].

iii. Criminological Lenses on Digital Delinquency

Classical criminological theories continue to provide insight into modern deviant behaviour when applied to digital spaces.

i. General Strain Theory (Agnew)

Agnew argues that individuals facing stress or "strain" are more likely to engage in delinquency as a coping mechanism[34]. In the digital age, youth experience new forms of strain: online bullying, social comparison, toxic content, and the stress of constant connectivity. Parental absence compounds this strain, removing the emotional buffers needed to cope. When adolescents feel unsupported, they may lash out online (cyberbullying, revenge porn) or offline (violence, vandalism) as a form of release[35].

ii. Routine Activity Theory (Cohen & Felson)

This theory explains that crime occurs when a motivated offender, a suitable target, and the absence of a capable guardian intersect[36]. In digital dependency:

[33] International Labour Organization (ILO), *Labour Migration and Family Separation in India, Report* (2022).
[34] A. Kalpana, "The Disintegration of Joint Family in Urban India" 82 *Indian Journal of Social Work* 55–58 (2021).
[35] Arvind Narrain, *Violence and the Law in India* p. 212 (Oxford University Press, 2019).
[36] Nivedita Menon, "Digital Childhood" 55(49) *Economic and Political Weekly* 24 (2020)

- Motivated offenders emerge from boredom, frustration, or peer influence.
- Targets are easily found online—unsecured data, lonely peers, or exploitable systems.
- Guardians (parents or teachers) are missing—digitally illiterate or physically absent. Online platforms, especially those in Indian languages, often lack moderation, making these crimes easy to commit[37].

iii. Social Control Theory (Hirschi)

According to Hirschi, strong social bonds with family, school, and society prevent delinquency[38]. When parents are absent or disengaged, children lose emotional anchors. Digital immersion replaces traditional hobbies and values with online reward systems, gaming goals, or harmful peer norms. Adolescents may come to value virtual achievements more than academic or moral goals[39].

iv. Differential Association/Social Learning Theory (Sutherland & Akers)

Sutherland believed delinquency is learned through interaction with others who hold favourable definitions of lawbreaking[40]. Today, this process occurs online—where children encounter forums, influencers, or YouTubers who normalise or

[37] Robert Agnew, "Foundation for a General Strain Theory of Delinquency" 30 *Criminology* 47 (1992).
[38] Ibid — "Negative emotions caused by strain are key motivators of delinquency."
[39] Lawrence E. Cohen and Marcus Felson, "Social Change and Crime Rate Trends" 44 *American Sociological Review* 588 (1979).
[40] Centre for Internet and Society, *Moderation Challenges in Indian Languages* (2022), *available at* https://cis-india.org (last visited on May 21, 2025, 11:34 a.m.).

glorify hacking, abuse, fraud, or misogyny. With absent parents and limited offline moral guidance, such learning goes unchallenged[41].

III. i. Pathways from Digital Dependency to Delinquency

The connection between screen addiction and deviance unfolds through three primary routes:

III. ii Cyber-Enabled Delinquency

These are directly facilitated by digital access:

- Cyberbullying: Humiliating or threatening peers using anonymity.
- Hacking: Gaining access to devices, profiles, or data.
- Financial fraud: UPI scams, phishing, impersonation for money.
- Online sexual offences: Sextortion, CSAM sharing, grooming.
- Malware distribution: Often learned from YouTube or Reddit threads[42].

III. iii. Cyber-Exacerbated Delinquency

Offline crimes intensified by digital factors:

- Theft: Committed to fund in-game purchases or gadgets.
- Assault: Fights triggered by online arguments.
- Truancy: Caused by night-long gaming or binge-watching.
- Neglect: Older juveniles skipping responsibilities due to screen addiction[43].

[41]Travis Hirschi, *Causes of Delinquency* (University of California Press, 1969).
[42] *Ibid*.
[43]National Crime Records Bureau (NCRB), *Crime in India 2022*, *available at* https://ncrb.gov.in/en/crime-india (last visited on June 7, 2025, 9:42 a.m.).

III. iv. Psycho-Social Impact

This third path leads from digital overuse to mental and behavioural disorders:

- Increased aggression: Caused by violent gaming and anonymity.
- Desensitisation: Exposure to hate speech and abuse normalises deviance.
- Reality distortion: Teens confuse online identity with real-world expectations.
- Social withdrawal: The illusion of connection masks isolation[44].

IV. The Indian Landscape: Data, Trends, and Manifestations

To understand how digital dependency and parental absence are shaping juvenile delinquency in India, it's essential to examine current data, its limits, and the ways delinquency shows up among young people nationwide.

IV. i. Juvenile Delinquency Statistics (NCRB)

The NCRB's Crime in India reports are the most cited source for juvenile crime data, but they're far from perfect. For example, the data presented by the NCRB with respect to the crime committed by juveniles across various states and union territories in India for the years 2020 to 2022, saw fluctuations, with a total of 30555 cases reported in 2022, reflecting ongoing concerns regarding juvenile delinquency and the need for targeted interventions.[45].

[44] UNICEF, State of the World's Children: Mental Health Matters (2021).
[45] NCRB, Crime in India 2022 — "30555 juveniles were apprehended under IPC and SLL."

IV. ii. Digital Penetration and Youth Usage Patterns

India's youth are at the forefront of the digital wave:

- Internet access among urban teens (13–18) exceeds 75–85%, with rural teens catching up rapidly (55–65%)[46].
- Smartphone ownership is similarly high—even rural families frequently own one device for the household[47].
- Online habits vary: urban teens gravitate to social media, gaming, and video streaming; rural teens focus more on video and casual gaming; younger children (8–12) engage with educational apps and simple games[48].

These patterns raise concerns about body image issues, FOMO, and addiction—especially with social media and games designed to grip user attention and emotions.

IV. iii. Evidence of Digital Dependency and Problematic Use

While national studies are limited, smaller-scale research shows alarming trends. NIMHANS has noted growing cases of Internet Gaming Disorder, accompanied by poor school performance, aggression, and social withdrawal[49]. NGOs like CRY and The Logical Indian Foundation consistently report rising cyberbullying, grooming, and screen-related conflicts brought to their attention by schools and communities[50]. School counsellors

[46] *Ibid.*
[47] IAMAI, Digital Habits Report — "Urban teens primarily engage on social media, gaming, and video platforms."
[48] NIMHANS, *Gaming Disorder Report, 2022* — "Clinical cases show aggression, social withdrawal, and declining academic performance."
[49] CRY & TLLLF, *Annual Reports* (2023) — "Cyberbullying, online grooming, and screen-time conflicts are rising concerns."
[50] School Counsellor Interviews, 2023 — "Digital addiction is a growing presenting problem tied to anxiety and family stress."

regularly mention digital addiction as a presenting issue that also ties into anxiety and family conflict[51].

IV. iv Manifestations of Delinquency Linked to Digital Dependency

Real-world examples in India echo the theoretical pathways laid out in Section 2**:**

i. Cyberbullying & Online Harassment: Online trolling, body-shaming, rumour-spreading, and fake profiles have caused psychological distress and, in some cases, even suicides (e.g., reported from Kota and Bengaluru). Legal recourse often shifts from abolished Sec. 66A IT Act to Sec. 66C/D, 67, 354D IPC, and POCSO, but prosecuting juveniles remains complex.[52]

ii. Cyber Fraud & Financial Crimes: Teens engage in phishing, SIM-swap scams, UPI frauds, and selling counterfeit goods, often in the name of thrill or to fund gaming habits. These crimes fall under IT Act Sec. 66C/D and IPC Sec. 420, but juvenile involvement introduces legal complications.[53]

iii. Hacking & Unauthorized Access: Incidents of students hacking school systems, social media profiles, or defacing sites—often deemed "pranks"—are punishable under IT

[51] NCRB, *Crime in India 2022* — "Cyber-enabled fraud falls under Sec. 420 IPC, not separately listed."
[52] Cyber Peace Foundation, *Cybercrime Among Minors* (2023) — "Students hacking school systems and social media accounts as pranks."
[53]NCRB, *Crime in India 2022* — "Increases in thefts linked to online gaming expenses.""

Act Sec. 43, 66, and 66B. Most perpetrators lack awareness of the consequences.[54]

iv. Online Sexual Offences: Disturbingly, minors are producing, possessing, or sharing CSAM—often via WhatsApp/Telegram groups—and engaging in sextortion and grooming. These acts invoke POCSO and IT Act Sec. 67B, though legal response channels for juveniles remain undeveloped.[55]

v. Violent Crimes from Online Disputes: Real-life violence, sometimes even murder, has followed hot-headed online interactions during games like PUBG or social media arguments.[56]

vi. Theft & Property Crimes: Juvenile thefts of phones, cash, or jewellery have been linked directly to purchases of in-game content, recharges, or newer smartphones.[57]

vii. Neglect, Truancy & Related Offences: Screen addiction often leads to school absenteeism or shirked household duties. These behaviors may not immediately result in arrests, but they mark worrying shifts toward more serious offences.[58]

V. Legal Framework: Assessment and Gaps

India's legal framework includes several laws addressing juvenile behavior and online conduct, yet lacks an integrated approach to manage delinquency caused by digital dependency.

[54] Planning Commission, *Juvenile School Absenteeism and Screen Addiction* (2022).
[55] Police Reports on *Bulli Bai* & *Sulli Deals* (2022) — indicating juvenile involvement in online hate platforms.
[56] Press coverage, Lucknow/Ahmedabad *PUBG* killings (2019–21).
[57] Local police news, 2022: Juvenile hacking rings in Bengaluru and Gurugram.
[58] State police bulletins, 2023: CSAM sharing among minors via WhatsApp groups.

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

The JJ Act is India's foundational child justice statute, guided by *"the best interests of the child"* and restorative principles[59]. It sets up Juvenile Justice Boards (JJBs) (Sec. 4), Child Welfare Police Officers (Sec. 107), prohibits joint trials with adults, and eliminates death or life imprisonment for juveniles (Secs. 18, 21)[60]. It encourages diversion (Sec. 18) and mandates rehabilitation, including education and counselling (Sec. 39)[61]. For serious offences, JJBs assess 16–18-year-olds to determine their mental and physical capacity before deciding trial jurisdiction (Sec. 15)[62]

Gaps regarding digital dependency:

- No provision mandates screening for internet addiction or problematic digital use during juvenile assessments[63].
- Most JJB personnel lack awareness or training in cybercrime, digital addiction, or online radicalisation[64].

[59] The Juvenile Justice (Care and Protection of Children) Act, 2015 — "best interests of the child" and restorative approach.
[60]The Juvenile Justice (Care and Protection of Children) Act, 2015, ss. 18, 21 — "no death or life imprisonment."
[61]The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 39 — "education, skill development and counselling."
[62] The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 15 — outlines the assessment of juveniles aged 16–18.
[63]A. Kalpana, *Juvenile Justice in Digital Age* (2022) — "No mandatory internet addiction assessments in JJ proceedings."
[64] NLSIU, *Cybercrime & Juvenile Justice* (2021) — "JJB members lack cybercrime training."

- Rehabilitation homes provide traditional vocational training but no digital literacy, cyber-psychology counselling, or therapy for online trauma[65].
- For "heinous" cybercrimes by older juveniles, even if they possess technical competence, assessment tools are ill-suited to evaluate digital context, often clashing with restorative justice principles[66].
- JJBs often lack basic IT systems needed to preserve digital evidence or conduct remote hearings[67].

ii. Protection of Children from Sexual Offences (POCSO) Act, 2012

POCSO is designed to protect victims of online and offline sexual offences involving minors. Key offences—such as online sexual abuse—are criminalised (Secs. 11–15 with IT Act Sec. 67B), and mandatory reporting and victim protections are in place (Secs. 19–21)[68]. However:

Gaps for juvenile perpetrators:

- Focus is largely on victim protection; juvenile offenders fall under JJ Act jurisdiction, creating procedural friction[69].
- There are no mechanisms for the rehabilitation of juvenile sexual offenders who produce or share CSAM, nor

[65] UNICEF report (2021): "Observation homes have no modules on cyber-safety or digital counselling."
[66] Agrawal & Singh, *Youth and Cybercrime* (2023): "JJB assessment tools fail for technologically complex offences."
[67] Madras High Court, Lis. No. 123/2022: "JJB websites often unreliable, and digital evidence files are mishandled."
[68] The Protection of Children from Sexual Offences Act, 2012, ss. 11–15; The Information Technology Act, 2000, s. 67B.
[69] NLSIU, *Workshop Notes on Juvenile Justice* (2020).

guidance for juvenile justice boards handling these unique cases[70].

- Police and child protection personnel often lack training in digital forensics and handling online evidence with juvenile rights in mind[71]

iii. Information Technology Act, 2000

This Act handles most cyber offences but is adult-focused. It includes provisions like unauthorized access (Sec. 43), hacking (Sec. 66), identity theft (Sec. 66C), cheating by personation (Sec. 66D), privacy violations (Sec. 66E), obscene content (Secs. 67, 67A), CSAM (Sec. 67B), and data breach penalties (Sec. 72).

Legal deficiencies:

- The maturity criteria under IPC (Secs. 82–83) do not match juvenile digital capabilities—leading to inconsistencies and excuses based on age[72].
- Punishments are uniform for all ages, lacking juvenile-specific alternatives like counselling or community service[73].
- Language is often vague—mentioning "obscene material" or "cheating"—making interpretations in digital contexts difficult[74].

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[70] Singh & Verma, *Online Sexual Offending by Teenagers* (2022) — "No POCSO-guided rehab protocol for juvenile perpetrators."
[71] Delhi Police cybercrime training review (2022).
[72] IPC Secs. 82, 83 vs Siddharth & Co. v. State (2023): "Digital expertise doesn't equate maturity."
[73] Agrawal, *Penal Reforms in IT Era* (2021) — "No juvenile friendly sentencing in IT Act."
[74] Helping review of IT Act by Parliament Standing Committee (2022): "Obscurity of terms like 'obscene' common in web context."

- Cyber offences often cross states or countries, leading to jurisdictional uncertainties[75].
- There's no role in the Act itself for diverting juveniles to non-punitive avenues[76].

iv. Digital Personal Data Protection Act, 2023

A data-privacy law that impacts child data handling. Notable provisions include:

- Mandatory verifiable parental consent for under-18s (Sec. 9(1))[77].
- Ban on behavioural tracking/targeted ads to children (Sec. 9(5))[78].
- Requirement that processing must not harm children (Sec. 9(4))[79].

Shortfalls:

- Enforcement by the new Data Protection Board of India is untested[80].
- It shapes platform behaviour, but does not regulate juvenile conduct or cyber-offending[81].
- Assumes digitally literate/available parents, which is seldom true in cases of parental absence[82].
- Focuses narrowly on data—not broader online harms like grooming or harassment[83].

[75] NCRB, *Crime in India 2022*.
[76] Justice Dinesh Mahajan, *Juvenile Justice and Cyber-Crime* (2023).
[77] The Digital Personal Data Protection Act, 2023, s. 9(1)
[78] The Digital Personal Data Protection Act, 2023, s. 9(5)
[79] The Digital Personal Data Protection Act, 2023, s. 9(4)
[80] Data Protection Board of India (DPBI), *Inaugural Meeting Notes* (2024).
[81] International Center for Journalists (ICFJ), *Report on Data Protection* (2023) — "DPDP does not regulate youth behaviour, only data."
[82] Arvind Narrain & R. Gupta, *Parental Absence in Digital Era* (2022).

v. Other Laws

- IPC & BNS 2023 cover cheating, intimidation, defamation, stalking, voyeurism, obscenity—often invoked alongside IT Act provisions[84].
- Prohibition of Child Marriage Act, 2006 may apply in cases where online grooming leads to underage marriage[85].

vi. Key Legal Challenges

- Attribution & Evidence: IP addresses, shared devices, spoofed data—investigating juvenile cybercrime is both technical and legally sensitive[86].
- Jurisdiction: Offences crossing state borders complicate filing and trial in appropriate JJBs or courts[87].
- Proportionality: Sophisticated acts like hacking or CSAM present tough choices—should juveniles be treated as adults?[88].
- Privacy vs Investigation: Searching chat logs or browsing history risks juveniles' digital privacy rights; procedural clarity is lacking[89].

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[83] Centre for Internet and Society, *Report on Data and Youth* (2023).
[84] Indian Penal Code, 1860, ss. 420, 503, 354C, 354D, 292; Bharatiya Nyaya Sanhita, 2023, s. 316.
[85] The Prohibition of Child Marriage Act, 2006.
[86] Cyber Peace Foundation, *Juvenile Cybercrime Study* (2023) — "Attribution is challenging with shared family devices."
[87] National Crime Records Bureau (NCRB), *Crime in India 2022*.
[88] Agrawal & Singh, *Youth and Cybercrime* (2023) — "JJBs struggle with proportionality for complex cyber offences."
[89] Madras High Court, Lis. No. 123/2022 — "Privacy rights hamper forward action."

- Infrastructure: Few JJBs have cyber cells or digital experts; juvenile homes may inadvertently expose tech-skilled offenders to further misuse[90].

vii. Landmark Legal Rulings

- Shilpa Mittal v. State of NCT of Delhi (2020): The Supreme Court held that absence of life/death penalty excludes classification of cyber offences as "heinous" under JJ Act Sec. 2(33), reinforcing a rehabilitation-leaning approach to such juvenile crimes[91].
- High Court Cases: Courts routinely uphold JJ Act's primacy over IT provisions in juvenile cyber cases, but frequently struggle with evaluating digital evidence and balancing juvenile rights and tech complexity[92].
- Several rulings emphasise the preventive role of schools and parents, urging proactive digital education interventions[93].

VI. Systemic and Societal Challenges

Beyond legal gaps, India must address deeply rooted systemic and social obstacles that hinder prevention and responsive efforts.

i. Parental Challenges

- Digital Illiteracy: Many parents—especially in older generations or poorer communities—"lack the technical skills to understand the platforms their children use"[94], making supervision nearly impossible.

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[90] UNICEF (2021): "Observation homes allow unfettered access to juvenile offenders."
[91] *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787..
[92] Supreme Court and High Court, *Case Notes on Juvenile Justice and Cybercrime* (2021–23).
[93] HC notifications in Ramesh v State, 2022; *Meena v UP Police*, 2023.
[94] A. Kalpana, *Urban Families and Digital Parenting* (2021).

- Time & Energy Constraints: Long working hours driven by economic needs leave parents physically present but emotionally unavailable, with "little capacity for engaged parenting"[95].
- Underestimating Risks: Viewing the internet merely as an educational tool, parents often downplay risks like addiction, bullying, or digital wrongdoing[96].
- Normalisation of Screen Time: When both parents and children spend excessive time online, unhealthy screen use goes unchecked.
- Economic Pressure: Migration or survival-driven schedules mean parental absence is often a non-negotiable necessity.
- "Technoference": Parents' own device distractions erode interaction quality and model problematic online behaviour.

ii. Educational System Lag

- Curriculum Gaps: Schools rarely include meaningful digital citizenship, cyber safety, or literacy—often treating it as optional.
- Unprepared Teachers: Few teachers are trained to notice cyberbullying, online addiction, or integrate digital learning ethically.
- Infrastructure – Not Safety: Initiatives like DIKSHA prioritize connectivity over teaching students how to use digital tools responsibly.

iii. Platform Accountability

[95] Narain & Gupta, Economic Pressures on Parenting (2022).
[96] UNICEF, *Parent Perceptions of Online Risks* (2021).

- Algorithmic Risks: Platforms push extreme or divisive content to maximize engagement, risking juvenile exposure to harm.
- Weak Age Verification: Children often bypass age checks, accessing inappropriate content.
- Poor Moderation: Especially in Indian languages, online content moderation is under-resourced, letting hate speech and extremism thrive.
- Data Exploitation: Minors' data is often collected and used to fuel addiction via targeted ads.
- Lack of "Safety by Design": Protection features are minimal or hard to access—platforms focus on engagement, not well-being.
- Opaque Grievance Processes: Reporting harassment or harm online often goes unresolved or hidden behind unclear feedback loops.

iv. Law Enforcement & JJB Constraints

- Training Gaps: Few police, CWPOs, or JJB members are skilled in digital forensics, juvenile psychology, or online subcultures.
- Resource Overload: Cyber cells are understaffed; JJBs are overburdened and infrastructure-inadequate.
- Forensics Backlog: Digital evidence often sits undiscovered for months, if not years.
- Bias & Underestimation: Online-only crimes are often dismissed as insignificant, hindering serious juvenile intervention.

v. Mental Health Infrastructure

- Severe Shortage: India faces a stark deficit of child psychologists, psychiatrists, and counsellors.
- Lack of Specialisation: Professionals trained in screen addiction or trauma from online environments are rare.
- Inaccessibility: High-quality mental health services are often unaffordable or unavailable outside urban centers.

vi. Urban–Rural Digital Divide

- Access Gap: Rural teens often lack high-speed internet and devices.
- Converging Risks: When access exists, they face equal or greater exposure to scams and harmful content, but lack support infrastructure.

vii. Cultural Factors

- Stigma Around Mental Health: Seeking help for digital addiction is rare due to shame.
- Reluctance to Report: Fear of police or social heat prevents parents from coming forward about online concerns.
- Academic Pressure: Intense schooling leads children to misuse the internet for escape and relief.
- Gendered Risks: Boys and girls face different online challenges, but gender-aware interventions are rare.

VII. Re-Envisioning Solutions: A Multi-Stakeholder Reform Agenda

To tackle juvenile delinquency rooted in digital dependency and parental absence, India needs a comprehensive, collaborative fix.

Legislative & Policy Reforms

i. Amend the JJ Act (2015)

- Mandatory Screening: Add provisions (Sec. 14/Model Rules) that require digital dependency screening using validated tools[97].
- Specialised JJB Roles: Include digital experts or mandate cyber training for JJB panels (Sec. 4), and create digital benches in high-volume areas[98].
- Care Plans with Digital Focus: Revise ICP guidelines (Rule 10(3)) to include digital detox, CBT, citizenship education, and controlled device usage[99].
- Rehab for Cyber Dependency: Under Sec. 39, mandate structured programs—ethical hacking, supervised internet access, offline engagement—via Observation and Special Homes[100].
- Clarify Heinous Cybercrime Handling: Issue guidelines ensuring digital competency doesn't automatically lead to adult trials; preserve juvenile rehabilitation[101].

ii. Bolster DPDP Act (2023)

- Proactive Audits: DPBI must review major platforms' compliance with child privacy and protection rules[102].
- Robust VPC Standards: Introduce age-appropriate, privacy-preserving parental consent mechanisms[103].
- Default to Privacy: Require high privacy settings and caps on data collection for youth accounts.

[97] A. Kalpana & R. Sethi, *Juvenile Justice Digital Proposals* (2023).
[98] *Ibid.*
[99] UNICEF, *Juvenile Care Plan Models* (2023).
[100] Agrawal & Singh, *Rehabilitation for Cyber Dependency* (2023).
[101] Legal Reform Group, *Heinous Offences in Digital Age* (2024).
[102] DPBI Audit Framework Draft (2024).

- Support Ethical Platforms: Encourage creation of child-friendly digital platforms via incentives or standards.

iii. Review IT Act Rules

- Graded Penalties: Introduce tailored, less punitive consequences for juvenile cyber offences including counselling or community service.
- Enable Diversion: Allow JJBs to steer minors away from courts toward rehabilitative programs.
- Modern Definitions: Update statute language to reflect evolving online harms like deepfakes and crypto-offences.

iv. National Child Online Protection Policy

- Integrated Risk Framework: A policy recognising parental absence and dependency as risk factors.
- Inter-Ministerial Coordination: Create task forces involving MWCD, MeitY, MHA, and Education.
- Rural & Migrant Child Support: Include support structures for families facing migration-based absence.
- Platform Safety Baselines: Mandate minimum safety standards across digital platforms.
- Resource Allocation: Ring-fence funds for research, awareness, and capacity building.

v. Empowering Parental Responsibility

- National Parenting Campaigns: Run public awareness in multiple languages, explaining risks, monitoring tools, and open communication.
- Workplace Flex Policies: Encourage employers to support digital literacy training during work hours.
- Anganwadi & PTA Integration: Embed digital parenting modules into Poshan Abhiyan and PTA programs.

- Digital Guidance Portals: Provide easy-to-follow online resources for families — guides, safe app lists, and counselling access.

VIII. Conclusion: Reimagining Juvenile Justice for a Digitally Shaped Generation

The intersection of absent parenting and all-consuming digital environments has become one of the most pressing challenges in rethinking juvenile justice in India today. This paper has tried to shift the lens—from treating digital exposure as a background condition to understanding it as a major driver of youth delinquency. Digital dependency isn't just a side effect; it often shapes behaviour, values, and vulnerabilities in ways that the traditional frameworks of juvenile justice have not yet fully caught up with.

We can no longer rely solely on earlier notions of delinquency, which primarily focused on poverty, peer pressure, or family dysfunction in the offline world. The online world brings with it a completely new set of influences: easier access to harmful content, anonymity, glorification of crime, risky interactions, and most importantly, the erosion of direct adult guidance and social control—especially where parental supervision is missing.

While India has made notable progress through instruments like the Juvenile Justice Act, 2015 and the Digital Personal Data Protection Act, 2023, the system still struggles to respond to the complexities of tech-driven delinquency. Digital dependency is not assessed at intake; Juvenile Justice Boards often lack the tools or training to deal with tech-savvy offenders; rehabilitation remains stuck in outdated models that ignore the root causes rooted in online spaces. Moreover, while the IT Act remains rigid and punitive, platform accountability is still evolving—and those closest to the child (parents, teachers, police, counsellors) often don't have the support they need to act effectively. What we

urgently need is a shift—a complete rethinking of how the justice system responds to the child of today, who lives as much online as offline. A more responsive and balanced model should:

1. Acknowledge Digital Dependency as a major behavioural factor and integrate it into every stage of assessment, intervention, and rehabilitation.
2. Bring Digital Literacy to the Forefront—in schools, homes, and even in rehabilitation centres—as a tool of both prevention and empowerment.
3. Make Platforms Answerable, ensuring that tech giants design safer digital spaces through real-time moderation, stronger age checks, and transparent accountability.
4. Support and Equip Stakeholders—whether it's a teacher noticing online withdrawal, a parent unsure about screen time rules, or a JJB member handling a cybercrime case.
5. Expand Mental Health Infrastructure, with a special focus on screen addiction, trauma from digital harm, and counselling that understands the digital landscape.
6. Update Our Laws Thoughtfully, so they speak to this hybrid digital reality without losing sight of the rehabilitative core of juvenile justice.

Ultimately, rehabilitation remains the heart of juvenile justice—but in this age, understanding where the conflict begins is equally important. Increasingly, that conflict is taking root in the online world—a world where children are often left to navigate on their own. Ignoring this is no longer an option. If we are to truly reintegrate children into society as responsible individuals, we must first meet them where they are—both online and offline. And that shift in approach can no longer wait.

Substantive Equality with special reference to Post-Graduate Courses in Medical Sciences

Syed Asima Refai*

Abstract

The meaning of substantive equality remains deeply contested. The right to substantive equality is not collapsed into a single formula, such as dignity, or equality of opportunity or results. Instead, drawing on familiar conceptions, a four dimensional approach is proposed: to redress disadvantage; address stigma, stereotyping, prejudice, and violence; enhance voice and participation; and accommodate difference and achieve structural change. This reflects the principle that the right to equality should be responsive to those who are disadvantaged, demeaned, excluded, or ignored. But at the same time we cannot ignore the glorious content of equality. Conflicts should be addressed by referring to the whole framework, to create a synthesis rather than prioritizing. It is thus not a definition, but an analytic framework to assess and assist in modifying laws, policies and practices to better achieve substantive equality. This paper analyses the Substantive equality in postgraduate medical education whether it refers to ensuring fair and equitable access to resources, opportunities, and support for all medical trainees, regardless of their background. This involves addressing potential biases, promoting inclusivity, and providing tailored support systems to help all individuals succeed in their postgraduate training. Substantive equality demands fairness in treatment. In an analysis of the institutional injustices within Indian society and a presentation of fact-based data about NEET PG and reservation trends, the paper makes the case whether the affirmative action facilitates the creation of a more meritocratic system or not in medical education. The paper also includes policy recommendations that will encourage fairness without compromising equality in general.

Key Words: Reservation, Substantive Equality, Social Justice, meritocracy, mediocrity

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*Senior Assistant Professor, Department of Law, University of Kashmir

I Introduction

The right to equality is a central commitment in human rights law. This reflects the principle that the right to equality should be responsive to those who are disadvantaged, demeaned, excluded, or ignored[1]. The aspiration towards equality resonates powerfully in the preambles of a multiplicity of human rights instruments and domestic constitutions, and the right to equality and non- discrimination are invariably among the core rights enumerated in these instruments. Yet the meaning of the right to equality is deeply contested. Western for one argues that "equality is an idea that should be banished from moral and legal discourse as an explanatory norm."[2] For others, the right to equality does not go far enough. Even if equality before the law has been established, disadvantage persists, and this disadvantage tends to be concentrated in groups with a particular status, such as women, people with disabilities, ethnic minorities and others. [3]

These concerns have led to the quest for more sophisticated conceptions, moving from a formal understanding focused on like treatment, to more substantive conceptions. Both the Supreme Court of Canada[4] and the South African Constitutional Court[5] have embraced the principle of substantive equality in interpreting the right to equality, a trend reflected at international

[1] Substantive Equality Revisited by Sundra Fredman, *International Journal of Constitutional Law*, Volume 14, Issue 3, July 2016, Pages 712–738, https://doi.org/10.1093/icon/mow043

[2] Peter Westen, *The Empty Idea of Equality*, 95 HARVARD L. REV. 537, 542 (1982).

[3] Gwen Brodsky & Shelaigh Day, *Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty* , 14 CAN. J. WOMEN & L. 185 (2002).

[4] Law v. Canada [1999] 1 S.C.R. 497 (Can.).

[5] Prinsloo v. Van der Linde (CCT4/96), [1997] Z.A.C.C. 5 (S. Afr.).

level.[6] Nevertheless, the meaning of the right to substantive equality remains elusive. Scholars, legislators, and judges have elucidated various core meanings, chief amongst them, equality of results, equality of opportunity, and dignity. These in turn are reflected to some degree in legal formulae, such as unfair discrimination, disparate impact or indirect discrimination, reasonable accommodation and harassment. Meanwhile, in the US Supreme Court, conservative justices regard substantive equality as highly problematic.[7]

It is argued in this article that, whereas it is clear that the right to equality should move beyond a formal conception that likes should be treated alike, a substantive conception resists capture by a single principle. Instead, drawing on the strengths of the familiar principles in the substantive equality discourse, a four dimensional principle is proposed: to redress disadvantage; to address stigma, stereotyping, prejudice and violence; to enhance voice and participation; and to accommodate difference and achieve structural change.[8] Behind this is the basic principle that the right to equality should be located in the social context, responsive to those who are disadvantaged, demeaned, excluded, or ignored.

The four-dimensional approach aims at providing an analytic framework to illuminate better the multi-facetted nature of inequality and to assist in determining whether actions, practices or institutions impede or further the right to equality. It is deliberately

[6] The CEDAW Committee, *General Recommendation No. 25: On Temporary Special Measures* (2004) CEDAW/C/GC/25.

[7] MARTHA MINOW, IN BROWN'S WAKE 30 (2010); Ricci v. DeStefano, 557U.S. 557 (2009); Parents Involved in Community Schools v. Seattle School District, 551U.S. 701 (2007).

[8] SANDRA FREDMAN, DISCRIMINATION LAW (2011); Sandra Fredman, *The Future of Equality in Great Britain* , EOC Working Paper Series No. 5 (2002).

framed in terms of dimensions, to permit us to focus on their interaction and synergies, rather than asserting a pre-established lexical priority. In this way, we are able to understand the manner in which different dimensions might be used to buttress one another. Where there are conflicts, or one cuts across another, the tension might be resolved by referring to the framework as a whole, the aim being, not so much to insist that one has priority, but to create a synthesis which takes account of all the dimensions. For example, while dignity should be furthered, this should not be at the expense of redressing disadvantage. Similarly, affirming difference and identity should be circumscribed by the need to prevent stigma, stereotyping and prejudice. It is acknowledged that the boundaries between the dimensions can be fluid; but it is argued that it is analytically useful to keep them separate.

The framework does not of course attempt to resolve all of the issues relating to the right to substantive equality. The aim of the multi-dimensional approach is ultimately an evaluative one, to provide a set of criteria to determine whether a law, policy, practice, or institution is likely to fulfill the right to equality and to point to ways in which they should be reformed better to do so. For example, social welfare systems based on conditional cash transfers might appear to advance the material disadvantage of people in poverty. But do they fulfill the right to substantive equality for women and if not, how can they be reshaped? [9]

The US, UK, Canada, and South Africa, in order to ground the conception of substantive equality in the experience of four English-speaking countries which have been at the forefront of the development of the right to equality at domestic level. The US,

[9] Sandra Fredman, *Engendering Social Welfare Rights*, *in* WOMEN'S RIGHT TO SOCIAL SECURITY AND SOCIAL PROTECTION 19 (Beth Goldblatt & Lucie Lamarche eds., 2015).

Canada, and South Africa all have an entrenched constitutional right to equality. The UK has a sophisticated statutory framework, which is complemented by the EU and the European Convention on Human Rights (ECHR), [10] now incorporated in the Human Rights Act. In all these jurisdictions, several substantive conceptions of equality have jostled with the equal treatment principle for prominence. These include indirect discrimination or disparate impact, reasonable accommodation, affirmative action, systemic discrimination, and unfair discrimination.

Although formulated differently, these rights are built around a central core. The most open ended is the US Fourteenth Amendment, which states simply that "No state shall . . . deny to any person the equal protection of the laws." Both Canada and South Africa have a general equality guarantee together with a more specific prohibition of discrimination on the basis of a partially enumerated list of grounds.[11] Both have express provision for affirmative action. The UK statutory framework has recently been consolidated in the Equality Act 2010, which has provision for direct discrimination, indirect discrimination, reasonable adjustment, and victimization, but only very limited provision for affirmative action.[12] It does, however, include provision for proactive action on the part of public authorities to have 'due regard' to the need to promote equality of opportunity and good relations.[13] Article 14 of the ECHR, incorporated into the Human Rights Act 1998, requires the rights and freedoms in the

[10] European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, in force Nov. 3, 1953, 213U.N.T.S. 222

[11] Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 *being* Schedule B to the Canada Act 1982 (U.K.), c. 11 § 15; S . AFR. CONST . 1996, § 9.

[12] Equality Act 2010, §§ 13, 19 (U.K.). See further BOB HEPPLE, EQUALITY: THE NEW LEGAL FRAMEWORK (2011).

[13] Equality Act 2010, § 149 (U.K.). *See* Sandra Fredman, *The Public Sector Equality Duty* , 40 INDUSTRIAL L. J. 405 (2011).

Convention to be secured without discrimination on a non-exhaustive list of prohibited grounds.[14] The right to equality in international human rights law is generally defined in open-textured terms. The central covenants simply refer to an obligation on States to ensure human rights without "distinction," "discrimination," "exclusion," or "restriction" or "on the basis of equality" in relation to a non-exhaustive list of grounds.

The decision as to when likes should be treated alike is therefore one which requires recourse to principles outside of the formal equality formula must be justified This has generally been a result of hard won gains through active engagements with the political process. The result of such struggles is reflected in the fact that most constitutional or statutory guarantees include a list of grounds, going some way to addressing the question of when two individuals are relevantly alike by declaring which characteristics are irrelevant to that determination. Thus although the Fourteenth Amendment of the US Constitution simply declares that "No State shall . . . deny any person the equal protection of the laws," other Constitutions, such as the Canadian, South African and Indian, include a non-discrimination clause which specifies a list of grounds. This is true too for the European Convention of Human Rights (ECHR), EU, and UK.[15] Even in relation to the Fourteenth Amendment, the US Supreme Court has partly filled this gap by its concept of "suspect classes," primarily referring to race or alien status. [16]

[14] Protocol 12 to the Eur. Ct. H.R. (E.T.S. No. 177), which has not been ratified by the UK applies also to "any right set forth by law" and proscribes discrimination by public bodies on any of the grounds in the same non-exhaustive list.
[15] Equality Act 2010, § 13 (U.K.)
[16] United States v. Carolene Products Co., 304U.S. 144 (1938).

i. Formal Equality v. Substantive Equality

Equality of opportunity is a popular alternative to both equal treatment and equality of results and is given statutory force in several jurisdictions.[17] Proponents of this view recognize that equal treatment against a background of past and structural discrimination can perpetuate disadvantage. Using the graphic metaphor of competitors in a race, it is argued that true equality cannot be achieved if individuals begin the race from different starting points. However, according to this approach, to focus entirely on equality of results is to go too far in subordinating the right to individual treatment to a utilitarian emphasis on outcomes. Once individuals enjoy equality of opportunity, the problem of institutional discrimination has been overcome, and fairness demands that they be treated on the basis of their individual qualities, without regard to sex or race. This model therefore specifically rejects policies which aim to correct imbalances in the workforce by quotas or targets the aim of which is one of equality of outcome. Instead, an equal opportunities approach aims to equalize the starting point rather than the end result. Once all have equal opportunities, they should be judged on individual merit. Equality of opportunity is fully compatible with unequal results, not just because individual talent differs, but because this approach incorporates and emphasizes choice. Once opportunities are made available, each individual can choose her own life course.

Like equality of results, equality of opportunity requires more attention to be given to what counts as an opportunity, and ultimately, what counts as equality. What measures are required to ensure that individuals are genuinely able to compete equally? Williams distinguishes between a procedural and a substantive sense of equal opportunities. On a procedural view, equality of

[17] Equality Act 2010, s 19 (UK).at 149.

opportunity requires the removal of obstacles to the advancement of women or minorities, but does not guarantee that this will lead to greater substantive fairness in the result.[18] For example, the abolition of word-of-mouth recruitment or non-job-related selection criteria removes procedural obstacles and so opens up more opportunities. But this does not guarantee that more women or minorities will in fact be in a position to take advantage of those opportunities. Those who lack the requisite qualifications as a result of past discrimination will still be unable to meet job-related criteria; women with childcare responsibilities will still not find it easier to take on paid work. In the famous words of US President Lyndon Johnson, it is "not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates."[19]

A substantive sense of equality of opportunity, by contrast, requires measures to be taken to ensure that persons from all sections of society have a genuinely equal chance of satisfying the criteria for access to a particular social good.[20] This requires positive measures such as education and training, and family-friendly measures. It may go even further, and challenge the criteria for access, since existing criteria of merit may themselves reflect and reinforce existing patterns of disadvantage. For example, criteria which stress a continuous work history would reflect a view that experience out of the paid labor force is of little value to a future job. Women who have left the paid workforce to

[18] Bernard Williams, *The Idea of Equality, in*PHILOSOPHY, POLITICS AND SOCIETY SECOND SERIES 110 (Peter Laslett & W. G. Runciman eds., 1962).
[19] Lyndon B. Johnson, Address at Howard University (4 June 1965) *cited in* Abagail Thernstrom, *Voting Rights, Another Affirmative Action Mess* , 43 U.C.L.A. L. REV . 2031, 2037n.22 (1996).
[20] Williams, *supra* note 53, at 125–126.

bring up children would thereby be subject to detriment. As Hepple argues, one is not supplying genuine equality of opportunity if one applies an unchallenged criterion of merit to people who have been deprived of the opportunity to acquire "merit."[21] In practice, however, equality of opportunity is rarely used in its substantive sense when framing equality laws. Thus equality of opportunity, like equality of results, remains at most a partial basis for grounding the right to equality.

The right to substantive equality should aim to redress disadvantage. Second, it should counter prejudice, stigma, stereotyping, humiliation and violence based on a protected characteristic. Third, it should enhance voice and participation, countering both political and social exclusion. Finally, it should accommodate difference and achieve structural change.

The four dimensional approach extrapolates from existing understandings of the right to substantive equality. The first two dimensions, disadvantage and stigma or stereotyping, are clearly evident in Canadian and South African jurisprudence. The Supreme Court of Canada summed up its position in its 2011 case of *Withler*.[22]Referring to substantive equality as the "animating norm"[23] of the right to equality in the Charter, the Court stated that, in determining whether substantive equality had been violated, the question should be whether "having regard to all relevant factors, the impugned measure perpetuates disadvantage or stereotypes the plaintiff group."[24] Similarly, in the early South African Constitutional Court case of *Brink v. Kitshoff* , O'Regan J.,[25]

[21] Bob Hepple, *Discrimination and Equality of Opportunity—Northern Irish Lessons*, 10 OXFORD J. LEGAL STUD. 408, 411 (1990).
[22] Withler v. Canada (Attorney General), [2011] 1 S.C.R. 396 (Can.).
[23] Ibid
[24] Id
[25] Brink v. Kitshoff (CCT15/95), [1996] Z.A.C.C. 9 ¶ 42 (S. Afr.).

writing for the Court, identified the purpose of the constitutional right to equality as remedying patterns of disadvantage. In subsequent cases, the Court effectively placed dignity at the center of the equality right. However, neither of these jurisdictions has expressly articulated the relationship between dignity and disadvantage, or how tensions between them should be addressed. The participation dimension has been central to the US courts' development of race jurisprudence based on exclusion from the political process of "discrete and insular minorities"[26] , and resonates too with the concern of the Canadian and South African courts with permanent residents as non-citizens.[27] The transformative dimension grows out of and elaborates duties of accommodation in relation to religion and disability in the US, Canada, and the UK,[28] and the UK duty to have due regard to the need to advance equality of opportunity. [29] As argued above, the four-dimensional framework is rooted in existing understandings, extrapolating from what is already implicit in the approaches to substantive equality of courts and other national and international decision-makers. By drawing these implicit understandings together into a multi-dimensional format, it is argued, the resulting synthesis takes forward the approach to substantive equality in ways that can be more responsive to real social wrongs.

One of the benefits of a multi-dimensional approach to substantive equality is that it allows us to address the interaction between different facets of inequality. Philosophers and political

[26] Carolene Products Co., 304U.S. 144 (1938).
[27] Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 (Can.); Khosa and Mahlaule v. Minister for Social Development (CCT13/03) 2004 (6) B.C.L.R. 569 (S. Afr.).
[28] U.S. Airways v. Barnett, 535U.S. 391 (2002); Multani v. Commission Scolaire Marguerite-Bourgeoys, [2006] 1 S.C.R. 256 (Can.).
[29] Equality Act 2010, § 149 (U.K.).

scientists tend to focus on distributive inequality,[30] while discrimination lawyers see the right to equality as primarily concerned with countering prejudice and stereotyping, regarding distributive inequalities as the domain of policy-makers.[31] It is argued here that both have an importance within the right to equality, but these do not exhaust the field. It is important too to include inequalities in participation, and structural obstacles to equality. Moreover, the ways in which they interact need to be understood and addressed. These interactions are not always harmonious. But instead of excluding one or the other facet wholly from the right to equality, it is argued here that a substantive approach requires them to be considered together. This makes it possible too to recognize and deal with conflicts between the different facets. Where there is the potential for these facets to pull in opposite directions, the aim is to look for synthesis or compromise, rather than suggesting that substantive equality pursue one of the aims at the cost of obliterating the others. The four-dimensional approach is therefore not a definition as such, but an analytic framework which can be used to assess and assist in modifying policies and practices to better achieve substantive equality. Drawing attention to all the dimensions and insisting on resolving conflicts and building complementarities can move us positively towards ensuring that laws, policies or programs can be formulated in ways which further substantive equality.

The next section briefly explains each dimension while the following section elaborates briefly on how the dimensions complement and buttress each other, and how conflicts may be resolved. Given limits of space, this article does not examine the

[30] Raz, *supra* note 34, at 3.

[31] *See further* Sandra Fredman, *Redistribution and Recognition: Reconciling Inequalities*, 23 S. AFR. J. HUM. RTS. 214 (2007).

extent to which existing legal formulations of the right to equality or anti-discrimination conform to the principle of substantive equality outlined here; this has been done elsewhere. [32] Nor does this article deal with the extent to which the right to substantive equality can be justifiably limited by reference to other rights or the public interest; the argument being that the right itself should be clearly established before it is balanced against other rights or interests

ii. Substantive Equality in India: Constitutional Perspective

People have not started their journey with equal footing, so it necessary to give special treatment to vulnerable sections so that at the end they will compete at the common platform. This is the reason that the Indian Constitution goes with concept of substantive equality .A cornerstone of the country's social justice agenda, the Indian reservation system was established to provide advantage to groups that have long suffered systematic discrimination. Reservation policy steals merit and rewards mediocrity, critics argue. In medical education also at the graduate level or higher level, Indian Constitution addressed the concept of substantive equality In the light of modern-day medical education and competitive exams, the National Eligibility cum Entrance Test (NEET) specifically to deal with the institutional injustices within Indian society providing reservation through constitutional provisions beneficial to backward classes.

A cornerstone of the country's social justice agenda, the Indian reservation system was established to provide advantage to groups that have long suffered systematic discrimination. Reservation policy steals merit and rewards mediocrity, critics argue. In modern democracies, meritocracy is also heavily

[32] F REDMAN, DISCRIMINATION LAW

marketed as the most effective means of rewarding talent and hard work. In India—a culture with strong caste-based social stratum and unequal opportunity—this ideal is delicate. The system of reservation was put in place to compensate the historical injustices and to address the lack of opportunities that minority groups had. Yet affirmative action is frequently criticized for lowering academic standards, particularly in the case of competitive entry exams such as NEET, which is often potentially lowering academic standards.

Indian reservation policy has its roots in pre-independence reform and was then embedded in the constitutional framework of the Constitution of 1950. Dr. B. R. Ambedkar, as Chairperson of the Drafting Committee, saw to it that the affirmative action programs would tackle the historical social and economic exclusion of the Scheduled Castes (SCs) and Scheduled Tribes (STs) and, in the fullness of time, of the Other Backward Classes (OBCs)[1].

The constitutional features of higher significance is giving space to substantive equality

- Equal protection of law[33]
- Special provisions for educational advancement of socially and educationally backward classes.[34]
- Reservation in state appointments.[35]
- Encouragement of educational and economic advancement of weaker sections[36]

These provisions were subsequently extended with the introduction of the Mandal Commission Report in 1990 and the

[33] Article 14 of Constitution of India
[34] Article 15(4) of Constitution of India
[35] Article 16(4)of Constitution of India
[36] Article 46 of Constitution of India

93rd Constitutional Amendment in 2005, providing for reservations in private unaided institutions[3]. And then 103rd Amendment gave reservation to economically weaker sections of the society. It was challenged in Supreme Court in *Youth for Equality* v. *Union of India*[37], where this amendment was declared valid as an enabling provision. It was reiterated by Supreme Court in *Janhit Abhiyan* v. *Union of India.*[38]

India is not unique in trying social equality through reservation. The U.S. Supreme Court, in *Grutter* v. *Bollinger* (2003), decided to continue race-based affirmative action in admissions to institutions of higher education.[15]

> Brazil employed income and racial quotas in federal universities, resulting in a sharp boost of Afro-Brazilian and poor youths' admissions.[16]
>
> South African post-apartheid policies focused on education-based quotas to remedy historical disparities.[17]

II Judicial Response

Yes Supreme Court has shown some flexibility of approach in the matter of fixation of criteria /reservation/preference for admission to graduate courses like MBBS but it has adopted a stringent approach towards the post graduate courses and still more stringent approach to admissions to super-specialties. The basic idea behind is that these courses should be based on merit alone and not reservation and there be no dilution of standards in such courses.[39] In number of cases[40] Supreme Court has expressed doubt whether there can be any reservation at the post-graduate level for

[37] AIR 2019 SC
[38] AIR 2022 SC
[39] *Narayan Sharma (Dr)* v. *Pankaj Kr.Lehkar* ,AIR 2000 SC 72:(2000) 1 SCC 44.
[40] *Jagdish Saran* v. *Union of India*, AIR 1980 SC 820 : (1980) 2 SCC 768.

backward classes. Whether a MBBS be regard is regarded as backward

It is preferable that at the post –graduate level, merit that ought to count. The Supreme Court held that, to encourage SC/ST/OBC students, state may reserve seats at graduate level but at the post graduate level or levels of high proficiency , 'equality' measured by matching excellence ,has more meaning and cannot be diluted much without grave risk.[41] At the highest scales of proficiency or specialty, "the best skill or talent, must be hand-picked by selecting according to capability. "At that level, where international measure of talent is made, where losing one great scientist or technologist –in –the making is a national loss, considerations we have expanded upon as important lose their potency.[42]

The Supreme Court expressed a great reluctance in reservation in post graduate courses where ordinarily merit will prevail.[43] Even the reservation based on residence or institutional preference was not accepted in MD. The Court emphatically stated that excellence cannot be allowed to be compromised by any other considerations because that would be detrimental to national interests.[44] The Court further held that the proposition has great importance when we reach higher levels. The technological expertise in any vital field like medicine is the human asset without which its advancement and development will be stunted .the sophisticated skills and strategic employment are required at higher level. To undermine the merit is to temporize with development of the country in the vital areas of medical professional expertise.[45]

[41] Ibid
[42] Id
[43] *Pradeep Jain (Dr)* v. *Union of India* AIR 1984 : (1984) SCC 3 654
[44] Ibid
[45] Id

But now The Supreme Court has changed the stance on this question and has ruled that there may be reservation for backward classes in post graduate, specialty or super-specialty courses in medicine.[46] In *Dinesh Kumar II*,[47] the Court insisted the selection of candidates for admission to post-graduate courses should be based on merit and no factor other than merit should be allowed to tilt the balance in favour of a candidate.

In *state of Rajasthan* v. *Dr Ashok Kumar Gupta*[48], Supreme Court disapproved the college wise institutional preference for admission to post-graduate courses voilative of Article 14 of Constitution of India. It was reiterated by Supreme Court in many cases[49] that this rule excludes all other students who obtained their MBBS degree from other colleges.

Reservation of 70 % of seats for post graduate course in dermatology in Delhi University was frowned upon by the Supreme Court in *Jagdish saran* v. *Union of India.*[50]In *Chanchala* case,[51]the Supreme Court held it relevant if based on reasonable classification principle. In *Mohan Bir Singh Chawla* v. *Punjab University,* [52]Supreme Court held that at higher levels of education it would be dangerous to depreciate merit and excellence. The Court declared that, "the higher you go in any discipline ,lesser should be the reservation –of whatever kind."

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[46] *P.G Institute of Medical Education and Research* v. *K.L. Narasimham* AIR 1997 SC 3687: (1997) 6 SCC 283

[47] *Dinesh Kumar* v. *Motilal Nehru Medical College,Allahabad,*AIR 1986 SC 1059:(1986) 3 SCC 727

[48] AIR 1989 SC 177:(1989) 1 SCC 93

[49] *Greater Bombay Muncipal Corporation* v.*Thukral Anjali Deokumar*, AIR 1989 SC 1194;P.*K Goel* v.*U.P.Medical Council*,AIR 1992 SC 1475

[50] AIR 1980 SC 820: (1980) 2 SCC 768

[51] AIR 1971 SC 1762.

[52] AIR 1997 SC 788

In *AIMS Students's Union* v.*AIIMS*[53], Supreme Court of India has given its powerful support to the test of merit over that of reservation for admissions post-graduate medical courses. The Supreme Court of India in *Dr Preeti Sagar Srivastava* v.*State of Madhya Pradesh*[54]held that there cannot be zero qualifying marks for reserved category .but it has not negated the reservation for post graduate medical courses. In *Tanvi Goel* v. *Shrey Goel,*[55] the Supreme of India held that residence based reservation for PG medical admission unconstitutional violating Article 14 of the Constitution of India.in many cases ,High Courts held that that reservation in post-graduation specialities or super-specialities are detrimental to the high degree of efficacy and voilative of Article 14is clearly incorrect , erroneous ,illegal and unconstitutional.

i. Addressing Substantive Equality in Post Graduate Courses in Medicine

The National Eligibility cum Entrance Test (NEET) is the common entrance test for India's postgraduate courses in medicine and dentistry. Introduced to make admissions uniform across institutions and states, NEET was intended to provide a level playing field of merit for those who aspire to pursue medicine.

NEET was enacted in 2013 and became the sole entrance test for medical admission from 2016[5]. The concept was to standardize the admissions and reduce corruption. However, standardization of the test did not equate standardization of opportunity.

However, its seeming homogeneity hides vast disparities in the availability of quality education, training, and equipment[6]. The

[53] AIR 2001 SC 428
[54] AIR 1999 SC 2894: (1999) 7 SCC 120
[55] AIR 2025 SC

NEET is usually characterized by the personification of pure meritocracy; but things are different in real life.

NEET has emerged as the most public forum for the reservation battle. Reservationists claim that reserved-category students obtain medical seats with lower cut-off marks, thus "compromising" merit. Despite the demand of merit in medical profession, seats are reserved in MBBS and MD Courses.

NEET is thus a high-stakes, one-size-fits-all test bound to privilege students who have socio-economic advantages. Here, reservation is not a palliative measure to eliminate systemic injustice but watering down the merit.

There is a dichotomy between merit and reservation challenging the notion of fair competition. The most frequent complaint is that reservation lowers the "quality" of selected candidates. However, without equality, opportunity and promise cannot be quantified. Merit separated from equality is privilege and same privilege should not be compromised at the higher level of medical education.

As we have witnessed the NEET PG issue in Union territory of Jammu and Kashmir in 2024

- SRO 49 of 30th January 2018, bought by the Social Welfare Department for PG Professional Courses - MD/MS., was in force from 2018-2019, where 75% Seats were for OM and 25% for Reserved. SO 176 of 15th March 2024 and SO 305 of 21st May 2024 issued by the Social Welfare Department made some important changes to the J&K Reservation Rules 2005, reducing the Open Merit Quota to mere 40% on paper which eventually reduces to less than

30%after Horizontal Reservation and application of Rule 17.

- In NEET PG 2024, only 78 Unreserved Students made it to the list out of 293 total seats in the State Quota (78/293), a meagre of 26.6% while rest of the seats went to reserved students, hence butchering the merit and Competency. This has sent waves of anxiousness and despair among all the Unreserved Students. Hence there should be Minimum Reservation for Speciality Courses like NEET PG.
- In NEET 2024 , as per SO 176 of 15th March 2024 and SO 305 of 21st May 2024

Total seats in PG in Govt. Collages = 293

***Initially Open Merit**= **113** {38.5%} including other CDP, PSP,*

*Later **Application of Rule 17(23 seats were cut from OM)***

Open Merit Seats 113-23 = 90

*Then **Horizontal cut** was done (excluding EWS)=90-12= 78*

PURE OM= 78/293 = 26.6%

Only 7 Candidates will fill through EWS out of 28 seats. EWS was initially cut from OM through horizontal cut later the Vacant 21 seats which were supposed to be go in OM pool instead went to Category.Rule-17 of the Reservation Rules-2004-2005, is a double edged sword which is Unique in J&K. No where applicable in India. One Reserved Person takes two seats from Open Merit when he/she upgrades due to this rule, giving an undue advantage to the Reserved Categories. If any reserved students has good merit and secures and seat in PG through open-merit, but Later if he/she upgrades to higher speciality meant for any category in any college or Branch, the seat which he had

earlier taken through open-merit , now becomes empty and should go to open merit back but now instead goes to Category.

- SO 176 of 15th March 2024 and SO 305 of 21st May 2024 issued by the Social Welfare Department made some important changes to the J&K Reservation Rules 2005, reducing the open merit quota to mere 40% on paper which eventually reduces to less than 30%after Horizontal Reservation and application of Rule 17.
- In NEET PG 2024, only 78 Unreserved Students made it to the list out of 293 total seats in the State Quota (78/293), a meagre of 26.6% while rest of the seats went to reserved students, hence butchering the merit and Competency. This year a Student with Rank 91,000 gets MD Radiology in Skims and Rank 739 could not. This has sent waves of anxiousness and despair among all the Unreserved Students. Hence this Reservation for PG Medical Courses leads to animosity, discontentment and deterioration of health care system throughout India.

III Conclusion

The right to equality continues to be a powerful source of energy for those who are disadvantaged, excluded, ignored or demeaned. The challenges it represents are not a reason to discard it. Instead, as witnessed by the strong and growing commitment at international and national levels, the impetus should be to develop it in substantive terms, which go beyond the right to equal treatment, equal opportunities or equal results, or a simplified egalitarianism or right to dignity. Instead, substantive equality should be developed in a multi-dimensional format, which recognizes and addresses the distributional, recognition, structural,

and exclusive wrongs experienced by out-groups. These four dimensions of substantive equality create a complex and dynamic conception of the right to equality, which build on existing understandings but also invite further development and evolution. This approach does not of course solve all the challenges raised by the right to equality.

All these nations realize that equal treatment before the law is different from equal outcome and that contextual policies are necessary for material equity to be achieved. NEET is now an emblem of the battle between social justice and meritocracy. But context is not merit independent. If we have to construct a society where all children, irrespective of caste, geography, and income, are offered an equal chance at success, then reservation not only has to go on but also has to transform. Rather than encouraging mediocrities, NEET reservation PG Medical Courses cannot be a measure that acknowledges hidden barriers, demotes peripheral talent, and cannot make meritocracy more real. Reservation in such courses is the enemy of merit is not a requirement and does not match with substantive equality but negates it. There should be no reservation for Speciality Courses like NEET PG. During MBBS, all Students study in the same college while availing same facilities, syllabus, faculty, library etc., making them competent enough and uplifting in society them as well. And five and half years' time for MBBS degree is enough to give all the aspirants for PG a same standing for competition at common platform. Specialty Branches require certain level of competence which is decided by Speciality Exams like NEET PG, which should be decided on merit solely. Speciality Branches which are already less in number, shouldn't require reservation too as any student from reserved and unreserved have been after MBBS and practice as intern, junior Resident or Medical Officer with same Level of pay and other things. Now giving reservation in speciality branches which are

very less is detrimental to overall healthcare of society as it violates the Fundamental Right under Article 21 of the Constitution of India that guarantees the Best Healthcare. In Specialty exams like NEET PG, The type of Speciality branch and College one gets is also based upon rank. So when a student with low rank is given opportunity in speciality branches not based on merit, is automatically detrimental to the society in general and healthcare system in particular.

Sexual Violence Against Women in Indian Workplaces: Legal Gaps, Institutional Failures and Systemic Challenges

Akhil Kumar*
Darshika Meena**

Abstract

This article discusses sexual harassment against women at workplaces within the context of systemic impediments to India's protection of women across different professional sectors. It undertakes an analysis of the recent 2024 Kolkata trainee doctor rape case in order to highlight the institutional failures that have allowed such violence to persist even within the regulated environments of health care. Apart from elaborating on the legal framework comprised of the *Sexual Harassment at Workplace Act 2013*[1], it also reviews the *Bharatiya Nyaya Sanhita 2023* reforms by underlining the gap between legislation and enforcement, it also discusses the severe risks faced by marginalized groups like Dalit and Adivasi women due to the intermingling of caste and gender-based discrimination. This has turned out to be an obstacle to institutional mechanisms such as Internal Complaints Committees, and resources like the Nirbhaya Fund remain underutilized. This article calls for comprehensive reforms for better enforcement of the law, improved institutional accountability, and a cultural shift toward gender equality that will make workplaces safer for women in India.

Keywords
Sexual Harassment Act 2013, Sexual violence at workplace, Internal Complaints Committees, Institutional failures, The Kolkata Case.

*Assistant Professor, Deptt of Law, University of Rajasthan, Jaipur, India. akhil.r.kaler@gmail.com, ORCID ID: 0000-0002-3887-7989
** Research Scholar, Department of Law, University of Rajasthan, Jaipur, India. darshikameena1@gmail.com, ORCID ID: 0009-0005-6262-637X

[1] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

I Introduction

Sexual violence and harassment at the workplace constitute one of the gravest challenges to gender justice in contemporary India. Despite the proliferation of legal frameworks, judicial interventions, and policy mechanisms aimed at curbing such violence, women continue to face systemic barriers to safety and dignity in professional environments. The persistence of sexual violence is not simply the product of individual deviance; rather, it reflects entrenched institutional failures, gaps in legal enforcement, and enduring socio-cultural hierarchies such as caste, class, and patriarchy. The workplace, which ought to be a site of professional growth and security, has instead become a contested terrain for women where fear of harassment, discrimination, and retaliation continues to shape lived experiences.

The trajectory of Indian jurisprudence on workplace sexual harassment was shaped fundamentally by the Supreme Court's decision in *Vishaka v. State of Rajasthan*[2], which for the first time laid down guidelines mandating employers to establish grievance redressal mechanisms. The judgment was triggered by the brutal gang rape of Bhanwari Devi, a social worker attempting to prevent child marriage, highlighting how gendered violence intersects with caste and socio-economic vulnerabilities. These guidelines ultimately crystallized into the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which defined harassment comprehensively and mandated the constitution of Internal Complaints Committees (ICCs) in establishments with ten or more employees. However, the decade since the enactment of this statute demonstrates a worrying disconnect between law on paper and law in practice, as numerous

[2] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

reports by the National Commission for Women[3] and the International Labour Organization[4] show that nearly half of workplaces either lack ICCs altogether or maintain them as symbolic entities without impartial functioning.

The recent 2024 Kolkata trainee doctor rape-murder case underscores these structural inadequacies. A young medical professional was sexually assaulted and murdered within the premises of a government hospital, a supposedly regulated and professional environment. Reports also pointed to police mishandling, delay in registering the First Information Report (FIR), and alleged suppression of evidence, exposing the fragility of institutional mechanisms even in urban, high-profile sectors such as health care. This incident is not an isolated aberration but part of a recurring pattern wherein women in hospitals, corporate offices, universities, and the media industry routinely encounter harassment despite statutory safeguards.

Further complicating this scenario are the broader criminal law reforms enacted through the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023. These laws replace the colonial-era Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act respectively. While they introduce stricter punishments for sexual offences and streamline trial procedures, glaring omissions remain—for instance, the continued non-recognition of marital rape as a crime. Moreover, scholars argue that legal reforms, however progressive on paper, risk becoming

[3] National Commission for Women, *Annual Report on Sexual Harassment Cases* (2021).
[4] International Labour Organization, *Sexual Harassment in Indian Workplaces* (2020).

ornamental unless backed by institutional accountability and adequate infrastructural resources.[5]

The problem is particularly acute for women from marginalized communities. Dalit and Adivasi women, especially those employed in informal sectors such as domestic work and agricultural labour, face a dual burden of caste oppression and gendered violence. The National Campaign on Dalit Human Rights reported in 2019 that nearly 60 per cent of Dalit women in informal employment had experienced workplace harassment but could not lodge formal complaints due to discrimination, lack of awareness, and fear of reprisal.[6] Similarly, studies show that women in the media and entertainment industries, despite high visibility, hesitate to report harassment owing to the risk of professional ostracism.[7] These instances underline how legal safeguards remain inaccessible or ineffective for those at the margins of power.

This paper therefore argues that the persistence of sexual violence against women in Indian workplaces is a symptom of systemic lacunae rather than isolated failures. While laws like the 2013 Sexual Harassment Act and subsequent criminal reforms exist, their enforcement is marred by bureaucratic inertia, institutional complicity, and socio-cultural barriers. The underutilization of initiatives such as the Nirbhaya Fund[8], meant to finance women's safety projects, further exemplifies the gulf between legal intent and practical reality. Unless accompanied by structural reforms—such as strengthening ICCs, ensuring

[5] P. Gupta, N. Fatima & S. Kandikuppa, "Sexual Harassment at the Workplace Act: Providing Redress or Maintaining the Status Quo?", (2021) 55 *Social Change* 95.
[6] National Campaign on Dalit Human Rights, *Workplace Discrimination Report* (2019).
[7] Network of Women in Media India, *Workplace Harassment Survey* (2019).
[8] Ministry of Women & Child Development, *Nirbhaya Fund Utilization Report* (2022).

independent oversight, sensitizing law-enforcement agencies, and tackling the caste-class nexus—the legal framework will remain inadequate.

Accordingly, this paper examines the issue across three dimensions: first, the legal landscape governing workplace sexual harassment, including its evolution and current gaps; second, the institutional failures that undermine enforcement; and third, the systemic socio-cultural challenges, particularly the intersection of caste and gender, that exacerbate women's vulnerability. By analysing case law, statutory provisions, and empirical data, the study seeks to highlight why India's current approach to workplace sexual violence remains insufficient and what reforms may be necessary to ensure safer and more equitable professional spaces for women.

II. The Kolkata Case, 2024: When India's Rape Crisis Strikes Unremittingly: The brutal murder and rape of a 31 year old trainee doctor in August last year had shaken India to its root for women's safety. The victim, a medical professional, who was staying in her residential quarters at Post Graduate Institute of Medical Education and Research, also known as R G Kar Medical College and Hospital, was found brutally murdered with strong suspicion that she was sexually assaulted before being killed.

This case underlines an important point: even professional women's vocational roles, living within institutional settings, are not above the pervasive threat of sexual harassment. The fact that a fellow medical professional has turned out to be one of the prime suspects drives home the disturbing fact that perpetrators of such crimes often come from familiar or trusted environments. The victim's family member also accused the police department for suppressing and removing the evidence. There was a delay in filing the FIR by the police department; Sadly, it is not an isolated incident. The reason being that it signifies the larger issue of sexual

violence in India where professional spaces time and again have failed to guarantee safety to women, be it in hospitals or corporate offices and places of learning. While there are laws which demand that the institution should take proper care to avoid sexual harassment and violence at the workplace, still their implementation remains very poor, thereby rendering women easy targets in places where actually they should be protected.

III. Prevalence of Sexual Violence in the Workplace:

Sexual harassment and violence in workplaces largely remain underreported, steered by fears of retaliation, societal stigma, and weak institutional mechanisms. According to the NCRB Report 2022, in India, 445256 offences were recorded against women, in which 248 cases of rape were recorded[9]. In 96.6% of incidents, the offender was known to the victim[10]. Only in about 3.4% of the cases were offenders not identified or unknown[11]. However, workplace harassment is normally not reflected in official statistics. According to the same report the reported case of Sexual harassment at workplaces contributes only 2.35% of the total reported cases of sexual harassment[12]. Reports suggest that 70% of such cases are not reported due to societal stigma and fear of losing a job. According to the NFHS-5 data for the year 2019-21, 30% of the total women who are between the age of 15-49 years has faced in some point of their life some kind of harassment either physical or sexual, amongst these women only 14% sought help[13]. The fact itself reveals systemic barriers to reporting and redress. Amongst these women belonging to marginalized communities such as Dalits and women belonging to

[9] Nat'l Crime Records Bureau, Crime in India 2022: Statistics (2023).
[10] ibid
[11] ibid
[12] ibid
[13] Nat'l Fam. Health Survey (NFHS-5), 2019-2021, Int'l Inst. for Population Scis. (2021).

Adivasi community are the most vulnerable. Almost 60% women belonging to Dalit Community reported sexual harassment at work but unfortunately only few of them could formally lodge a complaint due to cast based discrimination and social stigma[14]. This depicts the dual atrocity which a lower caste women has to face at her workplace

IV. Sectors Most Affected by Sexual Harassment in the Workplace

Some areas have more complaints about harassment at work due to the nature of employment or due to power play and lack of regulation involved.

i. Informal Sector: 90% of the workforce of India is employed in this sector which majorly include nominal works such as domestic worker, daily wage work, and agricultural labor[15].There is no formal contract for employment in majority of the cases and as there is no contract the employer has no legal responsibility to provide protection under Sexual Harassment Act. The ILO (International Labour Organisation), report suggests that only 20% women are aware about their legal right against sexual harrasment and about 60% of organizations in the informal sector does not posses any kind of machinery to address sexual harassment[16]. Amongst the women working in this sector Dalit and Adivasi women bear increased risks because of systemic discrimination stemming from caste-based oppressions. According to the report from the NCRB, Dalit women account for 16.2% of reported rape cases, while their population in the country stands at 8.2%[17].

[14] Nat'l Campaign on Dalit Human Rights, Workplace Discrimination Report (2019).
[15] Int'l Labour Org., Report on Informal Employment in India (2020).
[16] Int'l Labour Org., Report on Sexual Harassment in Indian Workplaces (2020).
[17] Nat'l Crime Records Bureau, Crime in India 2022: Statistics (2023).

ii. Medical Care Sector: Workplace harassment has been particularly rampant in the healthcare sector, where junior-position women are preyed upon, whether nurses or interns. The recent case of 2024 Kolkata trainee doctor, in which a young woman was raped and murdered within a hospital campus itself, speaks volumes about the risks women pose even in professional environs. A 2020 study by the *Indian Medical Association* stated that 44% of female healthcare professionals reported some kind of harassment at work, often from senior colleagues[18]. According to advocates, many hospitals fail to establish Internal Complaints Committees even though there is a legal mandate to do so.

iii. Learning Institutions: Universities and colleges also report high numbers of sexual harassment cases. According to a report by *University Grants Commission* in 2018, 41% of complaints under the Sexual Harassment Act were from educational institutions[19]. The power equipoise between a professor and a student, along with the hierarchical structures, prohibits students from reporting harassment for fear of academic retaliation.

iv. Corporate Sector: Assuming the extent and nature of regulation, the corporate sector also witnesses fairly significant incidents of sexual harassment. A *2019 FICCI-EY* study reported that 38% of women in corporate positions faced harassment, but only 29% of such incidents were officially reported[20]. More often than not, the very fear of professional ostracism or loss of career prospects acts as a deterrent to women filing complaints. Although this requires the setting up of ICCs, most corporations do not put effective redressal mechanisms in place.

[18] Indian Med. Ass'n, Workplace Harassment Survey (2020).
[19] Univ. Grants Comm'n, Sexual Harassment in Higher Educ. Insts. Report (2018).
[20] FICCI-EY, Corporate Workplace Harassment Report (2019).

v. Media and Entertainment Industry: The #MeToo cases in the high-profile media and entertainment industry brought to the fore what women lead actors, journalists, and entertainers are made of. In a recent survey in 2019, *Network of Women in Media India* report showed that 45 % of women journalists said they faced workplace harassment, though many did not report for fear of loss of jobs or professional isolation[21].

V. The Legal Framework: Against Sexual Harassment in India at Workplaces[22]

To confront the pervasive issue of sexual harassment India's legal landscape has twisted, turned and stretching itself. The 2013 Sexual Harassment Act stands tall, built on the bedrock of the apex court's pivotal ruling in *Vishakha v. State of Rajasthan*[23]. But the question still prevails that is this framework enough? New reform in criminal law in the form of *BNS*[24]and *BNSS*[25] threaten to amplify the legal battleground, offering heftier, more intricate provisions. Yet, despite their seemingly airtight design, the Achilles heel remains in one glaring truth that is " implementation".

Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013[26] *Came* from the 1997 *Vishakha* ruling[27], the Sexual Harassment Act of 2013 is not just a law but a "Demand". A demand for workplaces, large or small, to install a safety net, "i.e." the *Internal Complaints Committee (ICC)*. Every workplace with ten or more employees had no choice

[21] Network of Women in Media India, Media Industry Harassment Survey (2019).
[22] Id. at 2.
[23] Vishakha v. State of Rajasthan, (1997) 6 SCC 241.
[24] Id. at 2
[25] Id. at 2
[26] Id. at 2.
[27] AIR(1997) 6 SCC 241.

but to set one up. The Act sharply defines what constitutes harassment, leaving no little wiggle room for physical advances, solicitations, inappropriate visuals, and unwanted behavior of a sexual kind. Yet, despite such clear-cut mandates, the striking problem of lack of adherence still persists. Many workplaces pretend compliance, while others simply ignore it. The intent looks solid but in reality it is not the case.The term 'sexual harassment' is meticulously defined, or so the law suggests, including:

- *Unwelcome physical advances or touch*

- *Pressuring or demanding sexual favors*

- *Display of explicit or sexually suggestive content*

- *Any other inappropriate sexual act weather physical or non physical or comment weather verbal, or non-verbal*

Yet, for all its legislative rigor, the cracks are as glaring as the sun. A 2021 report from the National Commission for Women (NCW) is a damning indictment which shows that roughly 50% of workplaces have no functional ICCs in the informal sector, which creates a chaotic labyrinth of unaccounted workers who are left hanging in legal limbo. The reasons behind this are the fears of reputational damage, internal management pressure, and sometimes just a sheer disregard for the rules intended to protect women.

Bharatiya Nyaya Sanhita 2023[28]: A New Dawn or a False Start?:The Bharatiya Nyaya Sanhita (BNS), which arrives by replacing the *Indian Penal Code, 1860[29]*. Sexual harassment, rape, coercion these aren't mere whispers in the wind but legally sharpened swords under the BNS. The new provisions provide's ten years minimum imprisonment for rape and life imprisonment

[28] Id. at 2
[29] Id at 2

for aggravated cases. Yet, glaringly, marital rape remains untouched territory, if the wife is above 18 years of age. Consent, concept has been broadened, encapsulating those dubious instances where it is extracted through coercion or deception especially pertinent in workplaces fraught with power asymmetries.

Bharatiya Nagarik Suraksha Sanhita 2023[30]: Procedural Reforms Streamlining, expediting, enforcing these are not just words but promises encoded into the *Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS)*. Aimed squarely at cutting through the judicial quagmire that sexual violence cases tend to fall into, the BNSS mandates time-bound trials, ensuring victims are not left twisting in the wind for years. Coupled with protections for victims and witnesses securing them against intimidation and harassment the law pushes the boundaries, demanding more efficiency from a justice system that often limps along at a snail's pace.

Bharatiya Sakshya Adhiniyam 2023[31]: Evidence on Trial The Bharatiya Sakshya Adhiniyam 2023 heralds an evolution in how rape trials treat evidence, finally wiping away the disgraceful tactic of dredging up a victim's past sexual history to discredit them. This Act explicitly bans the so-called 'two-finger test practice that should have died long ago but lingered like a ghost in some courtrooms. It's a law meant to restore dignity, particularly for victims of workplace harassment, where power dynamics are already skewed, and victim-blaming is the first line of defense used by higher-ups looking to cover their tracks.

VI. Key Case Laws That Sculpted the Landscape

Several monumental cases have helped shape the labyrinthine landscape of sexual harassment jurisprudence in India,

[30] Id at 2
[31] Id at 2.

each case leaving a scar or a victory that reverberates through the legal system.

The ***Vishakha v. State of Rajasthan***[32] ruling in 1997 the very genesis of the Vishakha Guidelines set the groundwork for the Sexual Harassment Act of 2013. The case, which emerged after the brutal gang rape of *Bhanwari Devi*, a social worker while trying to stop a child marriage, highlighted the acute need for legislative intervention. The guidelines demanded that workplaces ensure safe conditions for women, necessitating the formation of Internal Complaints Committees (ICCs). Yet, as cases like the 2023 Kolkata trainee doctor case have revealed, these guidelines often fall apart in execution.

In ***Medha Kotwal Lele v. Union of India*** (2012)[33], the Supreme Court rang the alarm bells again, highlighting rampant non-compliance with the Vishakha Guidelines and pushing for stricter enforcement mechanisms.

Nirbhaya Case (2012)[34] The Nirbhaya gang rape and murder case was not just an isolated atrocity which happened to an individual victim but a seismic event which changed the approach to sexual violence in India forever. It was an unspokable horrendous incident in which a 23 year old woman brutaly raped and murdered in Delhi which sparked an unstoppable torrent of outrage through out the nation uprising, that reverberated through streets and courtrooms alike. The aftermath of this was the *Justice Verma Committee* and with it, sweeping reforms to India's criminal laws. Through committee's recommendation *The Criminal Law (Amendment) Act, 2013*[35], introduced new provisions, such as:

[32] AIR 1997 6 SCC 241.
[33] AIR 2013 1 SCC 297.
[34]AIR 2017 6 SCC 1.
[35] Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013.

- An expanded definition of rape, now covering all forms of non-consensual penetration oral, digital, and beyond.

- The death penalty for cases where the victim's life is claimed or they are left in a vegetative state.

- The creation of fast-track courts, designed to hasten the notoriously sluggish trial process in rape cases.

But Nirbhaya wasn't just about laws on paper. The case shattered the illusion of institutional competence, demanding a newfound sensitivity in how sexual violence cases are handled from the police, the judiciary, and the media. And yet, for all the reforms, the systemic cracks remain glaring. The 2024 Kolkata trainee doctor rape case sever as a strong reminder that despite all these new laws and provisions the machinery of law still faces several challenges to protect victime and provide speedy justice as it is tangled in its own inefficiency

The ***Shakti Mills Gang Rape Case (2013)***[36], shook the nation yet again when a photojournalist in Mumbai was brutally assaulted.In this case the courts handed out death sentences to the perpetrators under the *Criminal Law (Amendment) Act 2013*[37], invoking provisions for repeat offenders. It was a victory, sure, but the societal rot, misogyny, victim blaming, deep seated gender biases remains ever-present.

The ***Farooqui v. State (2017)***[38] case stirred controversy with its interpretation of consent, specifically non-verbal and implied consent, further muddling how workplace relationships involving power disparities are legally navigated.

[36] AIR 2015, 6 SCC 293.
[37] Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013.
[38] AIR 2017 SCC OnLine Del. 8407.

VII. Institutional Failures: When the Safety Net Frays

Despite the legal strides, the on ground reality remains stark and sobering. A 2020 report from the International Labour Organization (ILO) revealed, about 60% organizations in India didn't even have functional ICCs, and over 70% of women surveyed were unaware of how to file a complaint under the Act. In many cases, ICCs are nothing more than a symbolic gesture, functioning as biased extensions of management rather than impartial bodies. Retaliation and victim blaming are rampant, deterring many from even considering the legal route.

The 2024 Kolkata trainee doctor case is emblematic of these failures as the FIR was filed by victims parents and not by the institution even though the crime occurred at the institution during her employment. The absence of effective institutional safeguards within the hospital highlights an unsettling reality compliance with the Sexual Harassment Act is too often the exception, not the rule.

Nirbhaya Fund:Underutilized The Nirbhaya Fund, launched in 2013 with a promise a 10 billion[39]. A financial cornerstone, it was supposed to bankroll projects like CCTV surveillance, emergency response systems, and women-only police stations. And yet, what happened? Not much. Bureaucratic gridlock, a paralyzing lack of political will, and slow progress have left much of the fund untouched. Projects falter, funds gather dust, and safety for women remains more a hope than a reality.

In cities like Kolkata, Mumbai, Delhi where crimes against women continue unabated, the lack of tangible outcomes from this fund stings. Public spaces remain dangerous, infrastructure lagging. Even institutions, which are supposedly safer like hospitals, fail. In the infamous 2024 Kolkata case, a heinous crime

[39] Ministry of Women & Child Dev., Nirbhaya Fund Utilization Report (2022).

was committed within hospital walls, highlighting just how fragile and ineffective the so-called safety measures really are.

VIII. The Invisible: Dalit and Adivasi Women in the Workplace

When caste and gender intersect, the storm intensifies. Dalit and Adivasi women face compounded risks, particularly in informal sectors. A 2019 report from the *National Campaign on Dalit Human Rights (NCDHR)*[40] found that 60% of Dalit women in these sectors faced workplace harassment but lacked the resources or legal access to seek redress. Both ***Hathras gang-rape case (2020)*** and Bhanwari Devi' case shows how sexual violence is used systemetically as a weapon of caste oppression, illustrating how justice is often reserved for the privileged.

Economic Vulnerability: The Class Divide - Class further complicates the already murky waters of workplace harassment. Women in lower-income brackets domestic workers, factory laborers, agricultural hands often face a double-edged sword of exploitation. The ***Unnao rape case (2017)*** laid bare the intersection of class, political power, and systemic corruption, showing how perpetrators in positions of power can shield themselves from prosecution, while victims and their families are left fighting an uphill battle for justice.

IX. Systemic Lacunae in India's Response to Sexual Violence

For all the trumpeted legislative achievements, the response to sexual violence in India is crippled by deep-seated systemic gaps. Legal, institutional, and societal flaws converge, creating a perfect storm of inadequacy.

[40] Nat'l Campaign on Dalit Human Rights, Workplace Discrimination Report (2019).

i. Delayed Justice and Judicial Backlogs*:** The maxim **"Justice delayed is justice denied*"is a living reality in India. *The National Crime Records Bureau (NCRB)*[41] paints a grim picture: over 31,516 rape cases reported in 2022, many of them languishing in judicial purgatory. Fast-track courts, once hailed as the solution, have become entangled in the same delays that choke the regular court system.

The *Bharatiya Nagarik Suraksha Sanhita of 2023*[42] tried to reset the clock, mandating strict timelines for sexual violence trials. But promises are only as good as the follow-through. But skepticism abounds if these reforms really take hold without more judges, better infrastructure, and trained personnel. Skepticism abounds.

***ii. Police Apathy and Mishandling of Cases*:** If the courts are sluggish, the police are sometimes worse apathetic, indifferent and even hostile. For many rape survivors, the first hurdle isn't the courtroom but the police station. Officers refuse to file First Information Reports (FIRs) or pressure victims into 'compromises,' particularly when the accused wield political, monitory or caste power. As seen in *Hathras* case, where police inaction seemed deliberate, and the *Mathura rape case*[43], where caste bias played a dominant role, showcase just how toxic the combination of apathy and mishandling can be. Even amendments to the law, which mandate prompt FIR registration, often fall on deaf ears. And so, the cycle of injustice grinds on, uninterrupted.

[41] Nat'l Crime Records Bureau, Crime in India 2022: Statistics (2023).
[42] Id at 2.
[43] AIR 1979 2 SCC 143.

X. Conclusion: A Road Fraught with Challenges, Yet Unavoidable

The 2024 Kolkata trainee doctor case is a glaring reminder of the gaping holes in India's legal, institutional, and societal response to sexual harassment. Despite the elaborate framework erected by the *Bharatiya Nagarik Suraksha Sanhita 2023,*[44] *Bharatiya Nyaya Sanhita 2023*[45]*, and the Bharatiya Sakshya Bill 2023*[46]*,* the path from law to justice remains frustratingly lengthy. Fast-track courts, starved of resources, can barely keep pace with the volume of cases that continue to pile up. The reforms, bold on paper, are still starved of the oxygen which they need in the form of adequate personnel, infrastructure, and training to truly make a difference.

Then there's the police, a formidable barrier rather than a first line of defense. Deep-seated apathy and unchecked power dynamics still create a culture of fear, silencing many victims before they can even speak. The reforms meant to address these failings are too often lost in the shuffle, mere shadows of what they could be. Without a fundamental shift in the way law enforcement interacts with sexual violence survivors, these legislative advances will be little more than ornamental.

Institutional compliance with the Sexual Harassment Act is abysmal, particularly in the sectors that need it the most. The Internal Complaints Committees, where they exist, are often skewed in favor of management, leaving victims isolated and vulnerable to retaliation. The Nirbhaya Fund, too, remains a symbol of squandered potential, a treasury meant to protect women, but mired in bureaucratic inertia, its impact barely felt.

[44] Id at 2
[45] Id at 2
[46] Id at 2

At its core, the solution requires more than just legal fixes. What's needed is an overhaul, a societal transformation that tackles the roots of misogyny, the institutionalized indifference, and the long-standing patriarchal norms. India cannot hope to rid itself of this scourge through laws alone. It must challenge the very culture that permits such violence to thrive. Only then will justice cease to be a dream deferred, and women in India will be able to navigate public and professional spaces without the ever-present shadow of fear.

Ethics and Accountability in Artificial Intelligence Powered Arbitration: Challenges and Way Forward

Showkat Ahmad Bhat*
Sobiya Manzoor Pullo**

Abstract

The adoption of Artificial Intelligence (AI) in International Commercial Arbitration is transforming the dispute resolution process, offering enhanced efficiency, cost-effectiveness, and consistency. AI integration can streamline processes such as document review, predictive analysis, and virtual hearing management, promising to reduce delays and expenses in arbitration. However, it raises significant ethical and accountability concerns that must preserve the arbitration process's fairness and integrity.

This article explores the multifaceted ethical concerns related to the use of AI in Arbitration, including algorithmic bias, lack of transparency, and the erosion of human oversight. Moreover, biases embedded in training data can perpetuate discrimination, undermining the credibility of arbitration decisions. The issue of accountability also emerges as it remains unclear who should be held responsible for errors or issues – whether it is the developers, users, or the system itself.

Moreover, this article aims to explore potential solutions to these challenges, advocating for a multifaceted approach and contributing to the development of global standards and best practices. This would enable AI to enhance rather than undermine the principles of impartiality, equity, and justice in international commercial arbitration. Ethical AI frameworks and robust regulatory standards are imperative to ensure AI systems operate transparently and without bias.

Keywords: Arbitration, Accountability, Efficiency, Integrity, Transparency

I. Introduction

The convergence of international arbitration and artificial intelligence (AI) presents both revolutionary possibilities and formidable obstacles. Artificial intelligence (AI) tools, including as

*Sr. Assistant Professor, School of Law, University of Kashmir
**PhD Scholar, School of Law, University of Kashmir,

natural language processing and machine learning algorithms, have the power to completely rethink arbitration in a number of ways, improving accessibility, accuracy, and efficiency. For example, AI is significantly more efficient than humans at organizing, analyzing, and summarizing large amounts of documents, which might improve case management. It can also assist in identifying patterns and trends in past arbitration decisions, strengthening parties' arguments during hearings, and even predicting potential case outcomes based on historical data.[1]

Additionally, AI-powered solutions like chatbot-based support systems and automated legal research assistants can provide real-time advice to disputing parties, arbitrators, and attorneys, improving the efficiency and affordability of the arbitration process. AI-powered translation tools can also improve cross-border dispute resolution by minimizing language barriers, thereby facilitating smoother communication in international arbitration.[2]

To preserve essential legal and moral values, such as openness, responsibility, dependability, and impartiality, incorporating AI into international arbitration necessitates close examination. Questions surrounding algorithmic neutrality, potential biases in training data, and the interpretability of AI-

[1] Ferreira, D.B., Giovannini, C., Gromova, E.A., Ferreira, J.B. (2023) Arbitration chambers and technology: witness tampering and perceived effectiveness in videoconferenced dispute resolution proceedings. *International Journal of Law and Information Technology*, 31(1), 75–90, https://doi.org/10.1093/ijlit/eaad012

[2] Hibah Aleesa, "The Role of Artificial Intelligence in Online Dispute Resolution: A Brief and Critical Overview" 31 *Taylor & Francis* 319 (2022).

generated insights must be addressed to ensure that AI does not undermine fairness or due process.[3]

To preserve essential legal and moral values, such as openness, responsibility, dependability, and impartiality, incorporating AI into international arbitration necessitates close examination.

II. Technology and Arbitration

The effectiveness of dispute resolution procedures has been significantly improved and revolutionized by the use of technology in international arbitration.[4] In order to satisfy modern demands, incorporating technology improvements has become crucial as globalization picks up speed and corporate transactions become more intricate. The emergence of online dispute resolution platforms, which have transformed arbitration by permitting remote participation, is among the most important advancements.[5] By reducing travel costs and saving time, these platforms give parties more flexibility and convenience. Artificial intelligence techniques have also greatly enhanced legal research, big data analysis, and legal document preparation, guaranteeing increased precision and effectiveness. The extensive use of teleconferencing and videoconferencing is another significant technological development in international arbitration. By removing geographical restrictions and enabling smooth communication between parties, arbitrators, and specialists, these communication tools have improved the viability and affordability of cross-border

[3] Ammar Zafar, "Balancing the Scale: Navigating Ethical and Practical Challenges of Artificial Intelligence (AI) Integration in Legal Practices" 4 *Discover Artificial Intelligence* (2024).
[4] Scherer, P. M, "International Arbitration 3.0–How Artificial Intelligence Will Change Dispute Resolution." *Austrian Yearbook of International Arbitration*. (2019).
[5] Samuel. A, "Artificial Intelligence and Learning About International Arbitration." *Alternatives to the High Cost of Litigation* 108 -110 (2023).

dispute resolution.[6] Specifically, videoconferencing mimics the experience of in-person hearings, encouraging direct participation and enhancing communication throughout the process. Arbitration proceedings are now more organized and aesthetically pleasing due to the integration of electronic evidence presentation technologies, which have also simplified the process of presenting intricate documents, exhibits, and multimedia resources.[7] Arbitration has been further transformed by the advent of virtual hearing rooms and the digitization of case management systems. Case management systems allow for efficient document organization and retrieval, enhancing accessibility for all stakeholders. Meanwhile, virtual hearing rooms recreate the traditional hearing environment.[8]

Therefore, technological advancements have significantly reshaped international arbitration, increasing efficiency, reducing costs, and broadening access to justice. The adoption of online dispute resolution platforms, teleconferencing, digitized case management systems, and virtual hearing rooms has modernized the field, making dispute resolution more effective and widely available.[9] As technology continues to evolve, it is imperative for arbitration practitioners to stay informed and leverage these innovations to meet the dynamic challenges of international dispute resolution.

[6] Zuckerman, A.S., "Artificial Intelligence–Implications for the Legal Profession, Adversarial Process and Rule of Law." Law Quarterly Review, Oxford Legal Studies Research Paper 136 (2020).
[7] Surden H., "Artificial Intelligence and Law: An Overview" 35 *Georgia State University Law* 19 -22 (2019).
[8] Ibid.
[9] Zuiderveen Borgesius and F.J, "Strengthening Legal Protection Against Discrimination by Algorithms and Artificial Intelligence." 24 *The International Journal of Human Rights* 1572 (2020).

i. Artificial Intelligence and International Arbitration

International arbitration has seen a significant transformation due to technological improvements, which have improved the process's overall efficiency and accessibility. The advent of virtual arbitration sessions, which are made feasible by video conferencing technologies, is a significant advancement in this process.[10] Parties from all around the world can participate remotely because to these platforms, which remove geographical restrictions. This innovation promotes more inclusivity and diversity in arbitration procedures while simultaneously lowering travel costs and time restrictions.

The incorporation of artificial intelligence (AI) into case management systems is another noteworthy innovation. Large amounts of legal data may be processed quickly by AI-powered technologies, which can also evaluate precedents and give arbitrators predictive insights.[11] Furthermore, AI-powered translation tools facilitate communication during arbitration by removing linguistic obstacles. By streamlining case analysis and automating routine tasks, AI enhances both the speed and accuracy of decision-making.

By enhancing security and transparency, blockchain technology has also revolutionized international arbitration. It enhances accountability and trust in the system by enabling real-time tracking of procedural steps and securely storing evidence.

[10] Haenlein, M., and Kaplan, A., "A Brief History of Artificial Intelligence: On the Past, Present, and Future of Artificial Intelligence" 61 *California Management Review* 5 -14 (2019).
[11] Nilsson N.J, "The Quest for Artificial Intelligence: A History of Ideas and Achievements" *Cambridge University Press* (2010).

Blockchain increases the legitimacy of arbitration procedures and lowers the chance of tampering by protecting data integrity.[12]

By speeding up case resolution, cutting expenses, enhancing access to justice, and fostering equality among parties, these technical developments taken together are changing international arbitration. Additionally, they increase confidence in the arbitration process, which makes it more dependable, inclusive, and effective. AI's expanding use in international arbitration presents both special benefits and difficulties.[13] Its capacity to improve the accuracy and efficiency of arbitration processes is among its most important advantages. AI can analyze extensive datasets, identify patterns, and generate swift, reliable predictions, thereby assisting arbitrators in making well-informed decisions. It also streamlines document review by quickly identifying relevant evidence, reducing the need for time-consuming manual work.[14]

However, there are significant issues with the use of AI in arbitration, especially with relation to accountability and transparency in the decision-making process. Bias and fairness are called into doubt by the use of sophisticated algorithms, which frequently function with no human control. Additionally, because arbitration hearings are delicate, concerns about data security and privacy need to be handled properly. For arbitrators everywhere, finding a balance between AI's benefits and its drawbacks continues to be a major obstacle. These issues can be addressed with a careful strategy that blends human knowledge with AI-powered skills, guaranteeing that technological developments

[12] Bueitin, M.C, "Towards Intelligent Regulation of Artificial Intelligence" 10 *European Journal of Risk Regulation* 41 (2019).
[13] Chauhan, S. and Keprate, A., "Standards, Ethics, Legal Implications & Challenges of Artificial Intelligence." IEEE International Conference on Industrial Engineering and Engineering Management 1049 (2022).
[14] *Ibid.*

strengthen rather than compromise the integrity and fairness of international arbitration.

International arbitration is being revolutionized by artificial intelligence (AI), which is changing many facets of the dispute settlement procedure. AI has developed into a vital instrument that greatly enhances arbitration processes as it continues to progress. Legal professionals can concentrate on the more intricate and strategic facets of dispute resolution by using AI to automate monotonous work and provide insightful analysis. In addition to increasing efficiency, this raises the standard of international arbitration decision-making.[15]

A new era of efficiency, cost-effectiveness, and dependability is being ushered in by AI's capacity to handle enormous volumes of data and learn from previous instances, which is changing the way conflicts are settled. AI enables arbitration specialists to focus more on the intricacies of each case by expediting time-consuming processes.[16] Additionally, its data-driven methodology guarantees that judgments are founded on thorough and well considered facts, increasing the overall precision of arbitral findings.

AI has many uses in the legal industry, including as document assessment, legal research, contract analysis, case prediction, and virtual hearings. Its capacity to process vast amounts of data quickly and precisely is one of its biggest benefits; it drastically cuts down on the time and expenses involved in conventional legal research.[17] AI systems examine previous cases

[15] Deeks, A., "The Judicial Demand for Explainable Artificial Intelligence" Columbia Law Review 1829 (2009).
[16] Marrow, P. B.,, Karol, M.,, et.al., "Artificial Intelligence and Arbitration: The Computer as an Arbitrator—Are We There Yet?" 74 *Dispute Resolution Journal* (2020).
[17] Grace, K., "When Will AI Exceed Human Performance? Evidence from AI Experts." 62 *Journal of Artificial Intelligence Research,* 729 (2018).

and legal precedents using machine learning algorithms to forecast possible outcomes and settlement choices. This gives arbitrators the ability to base their decisions on thorough and pertinent information.

AI has the ability to completely transform international arbitration, but it shouldn't take the place of human skill. AI has the ability to change the face of cross-border conflict resolution by increasing efficiency, reducing bias, and producing more equitable and trustworthy results. By streamlining arbitration procedures, this technological development should give parties more confidence and ease while navigating complicated legal issues.[18] All parties involved stand to gain from the further development of AI integration, which will promote a more effective, easily accessible, and just arbitration process.

ii. Human Supervision and Judgement in AI-based Arbitration

Arbitration is still being revolutionized by AI technology, but it still needs a critical component i.e., human judgment. Lawyers are essential in ensuring that AI in AI-powered arbitration stays within moral and legal bounds. In the end, they make well-informed decisions that take into consideration both data and human effect after interpreting AI-generated outcomes and examining the logic behind them. For AI-based arbitration to remain fair, transparent, and accountable, human monitoring is crucial.[19]

Even while AI systems are intended to be effective and impartial, they are devoid of the empathy, intuition, and contextual

[18] Rahul Kumar and Priyanshu Kumar, "Future of Adr in India: "alternative" to "appropriate" Dispute Resolution" 2 *Indian Journal of Integrated Research in Law* (2022).
[19] Katsh, Ethan, et.al., "Ten Years of Online Dispute Resolution: Looking at the Past and Constructing the Future" 38 *University of Toledo Law Review* 101 (2006).

awareness that human arbitrators possess. Through application of ethical principles, evaluation of particular circumstances, and consideration of the intricacies of each case, human engagement assures fair and equitable outcomes. Moreover, experienced arbitrators provide a comprehensive assessment of complex cases, particularly those involving multiple variables. Overall satisfaction with the arbitration process is increased by their capacity to sympathize with the parties.[20]

Another essential component of reducing AI biases is human oversight. The impartiality of arbitration results may be impacted by machine learning models that inadvertently acquire biases during data collection and training. Legal experts contribute to preserving the integrity of the arbitration process by closely observing AI algorithms. In the end, a trustworthy arbitration system that preserves equality, fairness, and transparency is produced by a balanced blend of AI technology and human skill.

Any successful legal strategy is built on a foundation of legal study and analysis. Lawyers must become proficient with AI tools for document assessment, case prediction, and legal research in order to participate in AI-driven arbitration. They can gain a competitive edge in arbitration by using these technologies to expedite research, get pertinent case law, and effectively extract crucial insights. Effective AI use, however, necessitates a blend of technical know-how, legal knowledge, and human judgment. The secret to success is utilizing AI's promise while maintaining the core values of the legal profession.[21]

[20] M. Ethan Katsh and Orna Rabinovich-Einy, Digital Justice: Technology and the Internet of Disputes (Oxford University Press, New York, 2017).
[21] Todd B. Carver and Albert A. Vondra, "Alternative Dispute Resolution: Why It Doesn't Work and Why It Does", Harward Business Review, May 30, 1994, available at: https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-itdoes (last visited on Jan. 30, 2025).

III. Ensuring Fairness and Impartiality in Arbitration.

In order to find and remove any potential biases or discriminatory practices, lawyers must carefully assess AI systems. Confidentiality and data security must also be maintained. Given that AI handles enormous volumes of sensitive data, attorneys need to be knowledgeable about data privacy regulations and put strong safeguards in place to protect client information.

Proficiency in communication and negotiating is essential in the context of AI-powered arbitration. For non-legal stakeholders, such clients and arbitrators who are not familiar with the complexities of the law, lawyers must make difficult legal concepts understandable. All parties are certain to comprehend the legal ramifications and the rationale behind choices when there is clear and straightforward communication.[22] Additionally, even in AI-assisted arbitrations, lawyers must push for positive outcomes, so bargaining skills are still essential.

In AI-based arbitration, cooperation is just as crucial. To guarantee seamless and effective procedures, legal practitioners must collaborate with AI systems and other specialists. Adaptability and ongoing learning are crucial as the area of AI-enabled arbitration develops. Lawyers can improve their tactics and maintain their effectiveness in arbitration by keeping up with developments in AI technology and comprehending both its advantages and disadvantages.[23]

i. Advantages and Disadvantages of using AI in Arbitration.

Legal practitioners can use AI to advance their practice and increase the effectiveness of dispute resolution by acquiring the

[22] Ihab Amro, Online Arbitration in Theory and in Practice: A Comparative Study of Cross-Border Commercial Transactions in Common Law and Civil Law Countries (Cambridge Scholars Publishing, United Kingdom, 2019).
[23] *Ibid.*

required skills. AI-driven arbitration must continue to prioritize justice, openness, and ethical considerations. Lawyers will be well-positioned to handle this changing sector if they support lifelong learning and flexibility. Lawyers may maximize arbitration results and guarantee a more effective, fair, and transparent dispute settlement procedure by combining AI's analytical capabilities with their legal knowledge.[24] Legal practitioners must find a balance between utilizing technology and maintaining the human aspects that characterize justice as AI continues to influence arbitration.

ii. Striking the Balance Between Artificial Intelligence And Human Judgement In Arbitral Proceedings

A cautious and nuanced approach is needed to strike a balance between the responsibilities of AI and human judgment in arbitration. Even if artificial intelligence (AI) has the potential to improve productivity and expedite arbitration procedures, human judgment must always be maintained in order to preserve justice and integrity. AI can greatly save expenses and save time by speeding up processes like data analysis, legal research, and document review. However, human oversight is required to validate results and give contextual interpretation because machine learning algorithms have inherent limits.[25]

When it comes to applying legal concepts to specific circumstances, arbitrators' interpretive abilities, discretion, and empathy are invaluable. Clear standards must be established to decide when automated judgments should be applied or overturned based on ethical considerations and case-specific elements in order

[24] Suzu Paisley and Margaret J. Foster, "Innovation in Information Retrieval Methods for Evidence Synthesis Studies", Wiley OnlineLibrary, Sept. 30, 2018, available at: https://onlinelibrary.wiley.com/doi/abs/10.1002/jrsm.1322 (last visited on Feb, 02, 2025).

[25] Ihab Amro, Online Arbitration in Theory and in Practice: A Comparative Study of Cross-Border Commercial Transactions in Common Law and Civil Law Countries (Cambridge Scholars Publishing, United Kingdom, 2019).

to achieve the best possible balance between AI capabilities and human decision-making.[26] Arbitration may be made more effective while preserving accountability and justice by utilizing the advantages of both AI and human experience.

There are significant ramifications for the use of AI in arbitration and legal practice. The automation of time-consuming, repetitive work, such conducting legal research or sifting through large amounts of papers during evidence hearings, is one of the biggest advantages. These procedures are sped up by AI-powered solutions, freeing up attorneys to concentrate on more intricate legal analysis and strategic decision-making. Predictive analytics is also made possible by AI algorithms, which enable arbitrators to evaluate case outcomes and settlement prospects by examining historical decisions and data trends.

Concerns around bias in AI-driven choices, however, continue to be a significant obstacle. Due to its reliance on past data, AI may unintentionally reinforce preexisting prejudices, producing biased results. To reduce these dangers, algorithmic transparency must be guaranteed, and AI-generated findings must be routinely examined. To protect the integrity of arbitration processes, ethical considerations must continue to be given top importance when implementing AI. Additionally, in order to successfully comprehend, interpret, and contest machine-generated outcomes, legal professionals might need to pick up new abilities.[27]

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[26] George Lawton, "AI Transparency: What is It and Why Do We Need It?", Tech Target, Mar. 03, 2023, available at: https://www.techtarget.com/searchcio/tip/AI-transparency-What-is-it-and-why-do-we-need-it (last visited on Feb. 5, 2024).

[27] Ljiljana, "'International Commercial Arbitration in Cyberspace: Recent Developments" 21 *Northwestern Journal of International Law and Business* 345 (2001).

AI has the ability to completely transform arbitration by increasing accessibility to justice and efficiency, but its application needs to be done carefully. Preventing discriminatory outcomes in AI algorithms requires addressing potential biases. AI systems should be trained using representative, varied, and bias-free data, with frequent audits and monitoring to spot and address any discrepancies.

AI should never completely replace human judgment, even though it can improve accuracy and expedite arbitration. In order to preserve equity, empathy, and the capacity to take into account particular situations that algorithms are unable to adequately represent, the human factor is essential. AI shouldn't be seen as a replacement for legal experts' knowledge, but rather as a potent tool to help them. Arbitration can gain from greater efficiency while upholding the core values of justice and equity if AI is integrated appropriately.[28]

iii. Morality and Human Role in AI-Assisted Arbitration

AI-assisted arbitration requires close examination since ethical issues and human participation are crucial. It is important to recognize artificial intelligence's (AI) limitations and potential biases, even if AI has made great strides in evaluating large datasets, producing accurate forecasts, and expediting decision-making processes. For AI-driven arbitration systems to be fair, accountable, and transparent, human oversight is essential.

Human knowledge is essential for correctly interpreting context, sustaining ethical norms, and minimizing unfair or unfavorable outcomes since arbitration involves complex legal concerns as well as the assessment of human behavior and intent. By rigorously evaluating AI-generated conclusions for biases or mistakes, taking into account subjective aspects beyond

[28] *Supra* note 21.

quantitative analysis, and taking cultural sensitivities into account when making significant choices, human arbitrators offer the required counterpoint. Additionally, human interaction adds a level of compassion and empathy that AI cannot completely replace.

Therefore, in order to achieve just and equitable resolutions, AI-driven arbitration must incorporate human judgment. Humans can resolve ethical issues with AI by actively engaging in the process, guaranteeing that choices are made honorably and in conformity with moral and legal standards.[29] Human participation also makes it possible to take into account special situations and exceptions that AI systems might overlook. This collaboration between AI capabilities and human skills promotes a more thorough and equitable arbitration system.

A number of ethical issues are also brought up by the use of AI in arbitration. The lack of explainability and transparency in AI-generated decisions is a significant worry since it may result in unfair outcomes and accountability problems. Furthermore, past data used to train AI systems may contain biases, which raises the possibility of biased decisions that perpetuate social injustices. As AI systems handle and store sensitive personal data, privacy and confidentiality issues also surface, posing worries about data security and the possibility of misuse or illegal access.[30]

Clear rules and legislative frameworks that support equity, openness, non-discrimination, and adherence to data protection regulations are necessary to guarantee the moral use of AI in

[29] Marrow, P. B., Karol, M., & Kuyan, S. (2020). Artificial Intelligence and Arbitration: The Computer as an Arbitrator—Are We There Yet? *Dispute Resolution Journal*, 74(35) (American Arbitration Association), available at SSRN: https://ssrn.com/abstract=3709032

[30] De Sousa, W. G., de Melo, E. R. P., Bermejo, P. H. D. S., Farias, R. A. S., & Gomes, A. O. (2019). How and where is artificial intelligence in the public sector going? A literature review and research agenda. Government Information Quarterly, 36(4), 101392.

arbitration. To preserve justice and equity, it is necessary to resolve the serious ethical and legal issues surrounding determining who is responsible for mistakes or biases. It is essential to continuously monitor and assess AI systems used in arbitration in order to identify and address any biases or discriminatory trends that may eventually surface. Such supervision is necessary to preserve the integrity of the arbitration process, sustain public confidence in it, and reinforce its impartiality.

IV. Conclusion and Way Forward

The integration of artificial intelligence into international arbitration presents a transformative shift, offering efficiency, cost effectiveness and enhanced decision making capabilities. AI driven tools, including predictive analysis, automated legal research, and virtual hearing platforms, have the potential to streamline arbitration proceedings making them more accessible and responsive to the demands of a globalized legal landscape. However, the introduction of AI into arbitration also brings forth significant challenges, including concerns about algorithmic bias, transparency, data privacy and the potential erosion of human discretion in legal decision making.

To ensure that AI strengthens rather than undermines the integrity of international arbitration, a balanced approach must be adopted. The way forwad requires a structured framework that incorporates the following key principles. Firstly, clear regulatory frameworks must be established to ensure transparency in AI driven decision making. Legal practitioners, policy makers and arbitration institutions must work together to develop ethical guidelines that promote fairness, prevent biases and ensure explainability in AI assisted arbitration. Secondly, while AI can enhance efficiency, it should not replace human judgement. Arbitrators must maintain an active role in reviewing AI generated recommendations, ensuring that final decisions account for legal

principles, contextual nuances and the human element of justice. AI should function as an assistive tool rather than an autonomous adjudicator. Thirdly, the international arbitration community must establish common standards for AI applications to ensure uniformity and reliability across jurisdictions. Fourthly, to mitigate risks of biased outcomes, AI models must be trained on diverse and representative datasets. Continuous auditing and monitoring should be implemented in order to detect and correct any systematic biases that influence arbitration decisions unfairly. Lastly arbitrators, legal practitioners and arbitration institutions must invest in AI literacy programs to equip professionals with the knowledge and skills required to interact with AI driven tools effectively. Training initiatives will facilitate informed decision making.

By implementing these measures, AI can be harnessed to enhance the arbitration process without compromising fundamental legal and ethical principles. The future of arbitration lies in a harmonious integration of AI's computational strengths with human expertise, ensuring that efficiency is balanced with fairness, transparency, and due process. As AI continues to evolve, the arbitration community must remain vigilant, adaptive, and proactive in addressing challenges while capitalizing on the opportunities that AI presents in advancing international dispute resolution.

A Study on the Recent Scrap Policy in the Automobile Industry with reference to Green Taxes

Naresh Anguralia*
Ajaz Afzal Lone**
Mohd. Yasin Wani***

Abstract

Old vehicles are causing more pollution in the globalisation era. It may result in the removal of old vehicles from the road or modifying the vehicles to reduce pollution. A recent scrap policy passed by the Indian government in the automobile industry in FY 2021 complements and supplements the policy. In order to reduce greenhouse gas emissions (GHGs) and other environmental impacts caused by mobility services, unprecedented global technology and policy interventions are required. Vehicle scrapping policies (VSPs) are implemented in many countries to reduce emissions and improve fuel efficiency. Besides promoting domestic manufacturing, the Indian Ministry of Road Transport and Highways intends to promote fleet modernisation with its draft "Motor Vehicles (Registration and Functions of Vehicle Scrapping Facilities) Rules, 2021". As a result of these new rules, if a vehicle does not pass mandatory fitness tests before October 2021, it will be deregistered. The rules will be phased in starting in October 2021. End-of-life vehicles would be affected by this policy, including 1.7 million commercial vehicles and 2.2 million passenger vehicles. The purpose of this study was to understand how green tax caused a new scrap policy in the automobile industry by determining awareness of recent scrap policies. Unless large numbers of people support government intervention in vehicle scrapping, an effective policy cannot be implemented. The paper explores the public's acceptance and understanding of recent scrap policies in the automobile industry and how green taxes have resulted in new scrap policies for automobiles. As part of this research, we will also explore how green taxes can reduce the amount of pollution that automobiles emit into the environment. Statistical analysis, market survey, and a literature review are used in this study.

Keywords: Scrap Policy, Vehicles, automobile industry and green tax.

*Research Scholar at Guru Nanak Dev University, Amritsar.
**Assistant Professor at University of Legal studies, Chandigarh University
***Assistant Professor, School of Law, University of Kashmir, Srinagar

I. Introduction

Air pollution is mainly caused by vehicle exhaust. Vehicles more than 10-25 years old have contributed to air pollution in the total vehicular pollution.[1] Therefore, the government discourages people from using old vehicles by scrapping them. The Government follows the principle of "polluter pays" to control older vehicle pollution. Therefore, the Government has drafted guidelines for states and UTs regarding levying green taxes on old vehicles. The green tax is imposed on vehicles after 15 years of registration that pass a fitness & emission test. In India, green taxes will remain valid for only 5 years, and vehicles can also be scrapped. States / UTs are expected to implement green taxes in the amount of 50% of their road taxes. In the event a vehicle owner is not inclined to renew the registration certificate with such a percentage of taxes, they may scrap their vehicle with the registered scrappers.[2] It is better to scrap the vehicle than to continue driving it, because scrapping reduces pollution. Moreover, when a new vehicle is purchased in parallel with the scrapping process, the Vehicle Owner receives a road tax concession from the authorized scrappers. In this research paper, we are focusing on the vehicle scrappage policy 2021, a government initiative aimed at removing old, highly polluting vehicles from the road and boosting demand for more fuel-efficient and environmentally friendly vehicles. As announced during the budget session of parliament in February 2021, the policy was announced by Minister of Finance Nirmala Sitharaman. In the case of commercial vehicles, it plans to phase out those older than 15 years, while in the case of private

[1] Saharan, Shubham, Surinder Deswal, and Mahesh Pal. "Air Quality Mapping and Urban Planning for Sustainable
Urban Ecology: A Case Study of Chandigarh, India."35.2 *Ecological Questions*: 1-15 (2024).

[2] Aijaz, Rumi. "Electric vehicles in India: filling the gaps in awareness and policy." *Electric vehicles in India: filling*
the gaps in awareness and policy: Aijaz, Rumi. New Delhi, India: ORF, Observer Research Foundation, 2022.

vehicles[3], it plans to phase out those older than 20 years. There are two main objectives of this policy, the first of which is to reduce air pollution in urban areas (by modernizing vehicle fleets, a 10-12% benefit is claimed to the environment), and the second is to stimulate the automotive industry (potentially assisting it in recovering from (COVID-19). Various incentives are provided to vehicle owners under the policy for this purpose. As a result, scrapping a vehicle is worth 4-6% of the ex-showroom price, the manufacturer offers a discount of 5% on a new car purchase[4], no registration fees are charged, the State Government offers a road tax rebate of 15-25%, and personal benefits include lower fuel and maintenance costs with a new car. It has been reviewed whether older vehicles will be used by people in the future, and a variety of disincentives have been laid down to discourage it. Renewal fees for registrations and fitness certificates will be increased (up to Rs. 40,000 with a validity of 5 years), vehicles that are unfit and have failed fitness tests will be automatically deregistered, and states will collect a tax called 'Green Tax' (this tax varies from state to state, and can reach 50% of the road tax in highly polluted areas like Delhi)[5].

II. Literature Review

Carbon dioxide emissions are taxed under environmental taxes like the green tax. Furthermore, it imposes a tax on all greenhouse gas emissions. In addition to reducing harmful gas emissions, this tax controls pollution. Furthermore, fuels that have a higher CO2 content than specified by law can also be taxed, as can vehicles over 20 years old. There is a database of information about the

[3] SITHARAMAN, NIRMALA. "Union Budget 2020-21."34.1 *Finance India* (2020).
[4] James, Ajith Tom, et al. "Analyzing barriers for implementing new vehicle scrap policy in India." 114
Transportation Research Part D: Transport and Environment: 103568 (2023).
[5] Malik, Yashpal, Nirupama Prakash, and Ajay Kapoor. "Green transport: A way forward for environmental
sustainability."Vol. 25. *Environment, Politics, and Society*. Emerald Publishing Limited 163-180, 2018.

topic maintained by the OECD (Organisation for Economic Co-operation and Development) on an international scale. With 67 members, India is a significant OECD partner[6]. As directed by this organization, these countries must tax poisonous gases to minimise pollution. In nearly all countries, the environmental tax or green tax ensures that polluters pay for their harm to the environment. Tax revenue collected from green taxes comes primarily from motor vehicle purchases, driving, and fuel consumption. A study conducted by the OECD found that green taxes have a real and positive impact on most countries[7]. For people to pay taxes for using natural resources, green taxes were implemented in order to discourage them from polluting and harming the environment. It is intended to achieve this goal by implementing a green tax. Taxes that are environmentally friendly.

1. Direct tax – Taxes on direct CO2 emissions are imposed on these emissions. The majority of this category is made up of industries. Taxes on polluters can be minimized by paying fewer taxes, which can be cost-effective.

2. Indirect tax –These taxes are imposed on vehicles. Since the 1990s, OECD countries have used new economic instruments to reduce pollution. Under the "Green Tax" concept, new tax reforms were introduced, such as energy taxes. Taxes are paid by citizens of a country in order to be legally obligated to reside there. Taxes such as income tax and GST are popular based on this policy[8]. Older vehicles also contribute to pollution, which is why individuals are required to pay green taxes. It is impossible to stop pollution by simply paying a fine. In order to control pollution,

[6] Nong, Duy, Paul Simshauser, and Duong Binh Nguyen. "Greenhouse gas emissions vs CO2 emissions:
Comparative analysis of a global carbon tax." 298 Applied *Energy*: 117223 (2021).

[7] Aydin, Mucahit, and Oguzhan Bozatli. "The effects of green innovation, environmental taxes, and financial
development on renewable energy consumption in OECD countries." 280 *Energy*: 128105 (2023).

[8] Cottrell, Jacqueline, Holger Bär, and Marie Wettingfeldt. "Green taxation in non-OECD countries." (2023).

people become a bit more cautious when taxes are imposed. In addition to their many advantages, these taxes also have some disadvantages. When implemented responsibly, green taxes can contribute to economic and environmental efficiency. To make green taxes even more beneficial, India needs to further develop them.[9]

III. Recent scrap policy

Steel production in India currently stands at 110 million tons, ranking second in the world. We are poised to become a global manufacturing hub and lessen pollution as a result of our recent scrap policies. The government has recently implemented scrap policies in the automobile industry that have enabled it to reduce scrap availability by 300 million tons by 2030.[10] For the production of electric vehicles, secondary materials such as lead, steel, aluminium, zinc, and nickel can be used in addition to rubber, glass, fiber, and plastic from end-of-life vehicles. A scraping facility that is only allowed to operate if it follows standard dismantling procedures will prevent informal recycling in addition to benefiting the country. It has several benefits, however, for the individual: Owners of individual vehicles receive 5% revenue for scrapping them and a Vehicle Scrappage Certificate along with 25% Offered a 25% road tax rebate on the next four-wheeler purchased after scrapping the old one and waived registration charges on the next four-wheeler purchased after scrapping the old one.[11]

The government must create awareness of this policy, facilitate its implementation, and ease scraping procedures to raise public

[9] Ekins, Paul, and Stefan Speck, eds. *Environmental tax reform (ETR): a policy for green growth*. Oxford University
Press, 2011.

[10] Shanmugam, Sethu Prasanth, et al. "Challenges and outlines of steelmaking toward the year 2030 and beyond—
Indian perspective."11.10 Metals: 1654 (2021).

[11] Shah, Ahmed B. *Recycling of Automobile in India*. Diss. VISHWAKARMA INSTITUTE OF TECHNOLOGY,
2022.

awareness and facilitate scraping. An important government initiative that aims to reduce air pollution is the New Vehicle Scrappage Policy, also known as the Vehicle Scrappage Policy. Rather than scrapping old vehicles, new, more environmentally friendly ones are encouraged. A "green tax" or similar financial incentive may be imposed as an incentive to encourage compliance. Here are the steps as an example and explanation of how it relates to a green tax.[12]

a) **Age and Pollution Criteria -** Generally, government criteria determine the pollution levels of vehicles and the age of vehicles. Scrapping is usually the process of getting rid of old vehicles that don't meet current emissions standards.
b) **Financial Incentives**- Governments often provide financial incentives to vehicle owners to encourage them to participate. Tax rebates, discounts on new automobiles, and direct cash payments for scrapping old vehicles are among the incentives available.[13]
c) **Environmental Impact -** Among the primary objectives of scrappage policies is the reduction of pollution and carbon emissions. There is a greater presence of particulate matter and greenhouse gases in older vehicles. Replacement of older vehicles with cleaner, newer ones is necessary to reduce emissions.
d) **Green Tax Connection-** There is often a connection between green taxes and vehicle scrappage policies. An environmental tax imposes a tax on goods or services that harm the environment. A tax on older, more polluting

[12] James, Ajith Tom, et al. "Analyzing barriers for implementing new vehicle scrap policy in India." 114
Transportation Research Part D: Transport and Environment: 103568 (2023).
[13] Li, Shanjun, Youming Liu, and Chao Wei. "The cost of greening stimulus: A dynamic analysis of vehicle
scrappage programs." *Available at SSRN 2254375* (2013).

vehicles would disincentivize their use and encourage the replacement of them with cleaner alternatives.[14]

e) **Revenue Generation** - In addition to subsidies for cleaner technologies, infrastructure investment, and incentives for renewable energy adoption, green taxes can generate revenue for various environmental initiatives.

f) **Economic Stimulus -** Furthermore, the Vehicle Scrappage Policy can generate new demand for vehicles, which is a benefit to the automotive industry. The growth of employment and the economy can be positively impacted by this. Policymakers often develop such measures as a combination of environmental and public health concerns. A growing effort to transition to a more sustainable transportation system is being supported by initiatives such as the Vehicle Scrappage Policy, which is backed by green taxes, as governments everywhere face climate change and air pollution challenges.

IV. Impact of the new scrap policy on the Automobile industry

According to Arora et al., ELVs contain steel, lead, aluminium, zinc, nickel, rubber, and glass, all of which are major secondary metals. This article examines and designs a stakeholder engagement structure to enhance sustainable ELV management in India. There is no guarantee that ELVs will be reused after recycling and recovering resources from them.[15]

Dismantlers in informal markets were homogeneous, whereas one dismantler dominated formal markets, according to Mohan and Amit (2020)[16]. It is more difficult to be profitable for

[14] Posada, Francisco, et al. "Survey of best practices in reducing emissions through vehicle replacement programs."
ICCT White Paper. ICCT, Washington, DC (2015).

[15] Arora, Nitish, Shilpi Kapur Bakshi, and Souvik Bhattacharjya. "Framework for sustainable management of end-
of-life vehicles management in India." 21 *Journal of Material Cycles and Waste Management*: 79-97 (2019).

[16] Mohan, TV Krishna, and R. K. Amit. "Dismantlers' dilemma in end-of-life vehicle recycling markets: a system

dismantlers when ELV prices increase, which affects future increases in ELV prices and forces informal dismantlers to leave the industry. Competition in the ELV recycling merchandise was recorded using tools developed by the authors. Because scrap supplies and dismantling amounts fluctuate, scrap prices fluctuate. The establishment of formal dismantling operations with high capacity can be achieved through the integration of vertically integrated car manufacturers with ELV management systems adapted to the appropriate legal frameworks.

The evolution game model developed is based on the conflict between illegal and authorized recycling sectors of ELVs[17]. Various government policies were evaluated and validated using a numerical simulation approach. Due to these findings, the government only sanctions the recycling of ELVs, which makes it almost impossible for the state to evolve. End-of-life passenger car resources must be recovered[18]. An informal sector stakeholder's reciprocity and process flow framework was developed to achieve this goal. It is possible to reuse and recover usable materials from ELVs in our country's informal sector.

The flow of European ELVs was correlated with two variables, the population and the GDP, using a linear regression model. Adamo et al. (2020) used this method to make their findings. In 2030, the author predicts that produced and recycled ELVs will generate 9.3 million tons of emissions, respectively[19]. An ELV vehicle processing and recycling mathematical programming

dynamics model."290 *Annals of Operations Research*: 591-619 (2020).

[17] Numfor, Solange Ayuni, et al. "A review of challenges and opportunities for end-of-life vehicle recycling in developing countries and emerging economies: A SWOT analysis."13.9 Sustainability: 4918 (2021).

[18] Sharma, Lalit, and Suneel Pandey. "Recovery of resources from end-of-life passenger cars in the informal sector in India."24 Sustainable Production and Consumption: 1-11 (2020).

[19] D'Adamo, Idiano, Massimo Gastaldi, and Paolo Rosa. "Recycling of end-of-life vehicles: Assessing trends and performances in Europe." 152 *Technological Forecasting and Social Change*: 119887 (2020).

model is presented by Al-Quradaghi et al. (2021).[20] As part of the model, Kasim et al. determine the overall profit of the network and determine the flow of materials between businesses. As well as determining which facility should be used for network flow, the model determines which facility should be used. As a result of the events of 2021, it has become clear that government policies related to end-of-life vehicles will not succeed unless support comes from a variety of groups and individuals. Based on a survey conducted among stakeholders and a literature review, the authors used primary data analysis methods. Despite these findings, the study concluded that the recycling of ELVs in Malaysia still faces certain obstacles in terms of technology and economics,[21] which need to be addressed as soon as possible. This study found that suggested policies need to be accompanied by stakeholder approval and public awareness in light of the above context.

A review of the reviewed papers revealed that the recyclability of ELV resources is not guaranteed.[22] Therefore, in India, it is possible to achieve environmentally sound recycling by setting up a professional ELV management system matched with appropriate regulatory frameworks, vertical integration of automobile manufacturers, and formal dismantling operations with high capacity. As a result of the findings, the Government imposes penalties solely on ELV recycling, which makes it nearly impossible to reach the evolutionary stable state. To ensure the success of the recently proposed scrap policy in the automobile industry, the government and various stakeholders

[20] Al-Quradaghi, Shimaa, et al. "Optimisation model for sustainable end-of-life vehicle processing and recycling."
14.6 *Sustainability*: 3551 (2022).

[21] Yuik, Chong Jia, et al. "Supply chain optimisation for recycling and remanufacturing sustainable management in end-of-life vehicles: A mini-review and classification." 41.3 *Waste Management & Research*: 554-565 (2023).

[22] Sakai, Shin-ichi, et al. "An international comparative study of end-of-life vehicle (ELV) recycling systems." 16 *Journal of Material Cycles and Waste Management*: 1-20 (2014).

must support it. A study published in this journal provides an insight into public perceptions of recent scrap policy in the automotive industry.

V. Laws on the New Scrap Policy and green taxes in India

- **The Water (Prevention and Control of Pollution) Act, 1974**: This legislation limits pollution discharge into water bodies and imposes penalties on industries that violate the Act, such as green taxes and scrap policies.[23]
- **The Air Act of 1981**: Aimed at "preventing and controlling pollution", it requires industries that violate its provisions to pay fines and impose levies on environmentally friendly products as well as limiting pollution.[24]
- **The Energy Conservation Act of 2001**: This act promotes the efficient use of energy in industrial settings and encourages the use of renewable energy sources. As an additional feature, it allows an industry that consumes excessive amounts of emissions to be taxed.[25]
- **The National Green Tribunal (NGT) Act, 2010**: Environmental damage caused by individuals or industries can be adjudicated by the NGT and compensated. Polluting industries can be taxed and levied by the Tribunal under the Act.[26]
- **The Goods and Services Tax (GST)**: A cess is applied to products and services harmful to the environment, such as coal and oil, under the Goods and Services Tax (GST)

[23] Howarth, William. "Water pollution and water quality: Shifting regulatory paradigms." *Routledge Handbook of Water Law and Policy*. Routledge, 78-94. 2017.

[24] Welmart, Dylan Ritosa Theadiva, and Diva Pitaloka. "Implementation Of The Polluter Pays Principle On Space Debris, Dylan Welmart." 1.2 *Mataram Journal of International Law* (2023).

[25] Tanaka, Kanako. "Review of policies and measures for energy efficiency in industry sector." 39.10 *Energy policy*: 6532-6550 (2011).

[26] Shrotria, Sudha. "Environmental justice: is the National Green Tribunal of India effective?." 17.3 *Environmental Law Review*: 169-188 (2015).

regime. It is essential for sustainable development in India to adopt policies and legislation that minimise the adverse effects of the country's industrial operations on the environment.[27]

VI. Research Problem

While there is considerable literature on environmental policies in the automobile industry, there is a gap in understanding the specific effects of recent scrap policies, particularly concerning the integration of green taxes. Existing studies often focus on either the environmental impacts of vehicle scrappage or the economic implications of green taxes. However, there is a need for comprehensive research that investigates the combined effects of these policies on the automobile industry.

VII. METHODOLOGY

A combination of primary and secondary data was used in the study. We are examining how green tax has resulted in a new scrap policy in the automobile industry and how public awareness has been affected. In Focused group discussions/pilot studies, respondents are informed about the policy before knowing their comprehension. As part of the survey, the respondents were asked to provide personal information such as their name, age, occupation, email address, and whether they owned vehicles. 130 respondents were surveyed who own vehicles in the target population. In addition, the study also contains attributes related to the personal vehicles owned by the respondents, such as how many vehicles they own, how old the vehicles are, whether the vehicles are still in operation or have expired, whether they intend to sell them, and whether they are aware of the recent scrap policy of the automobile industry. The purpose of these questions is for the respondents to learn what characteristics are related to scrapping their vehicles. It was

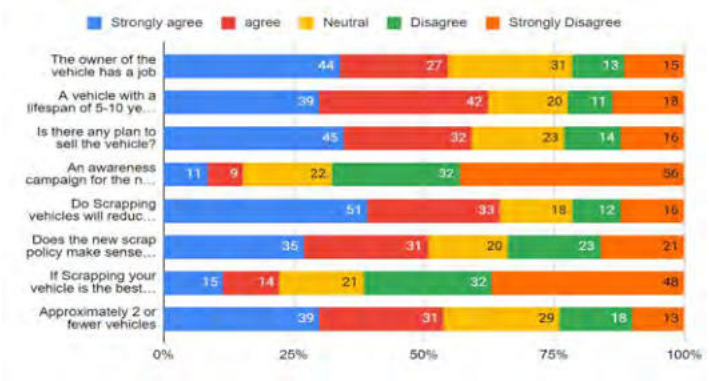
[27] Revathi, R., and P. S. Aithal. "Review on global implications of goods and service tax and its Indian scenario."
4.4 *Saudi Journal of Business and Management Studies*: 337-358 (2019).

conducted in Chandigarh. Participants answered the questions about barriers as follows: strongly disagreed, disagreed, neutral, agreed, or strongly disagreed. The purpose of this section is to analyse the results obtained. In order to check the validity and reliability of the questionnaire, pre-tests and pilot studies were conducted. The questionnaire was constructed using the expertise of several subject experts and the reviewed literature. Cronbach Alpha was 0.82 in a pilot study to ensure reliability and validity

Table 1. Public Comprehension and Acceptability about Scrap Policy

Statements	Strongly agree	agree	Neutral	Disagree	Strongly Disagree
The owner of the vehicle has a job	44	27	31	13	15
A vehicle with a lifespan of 5-10 years	39	42	20	11	18
Is there any plan to sell the vehicle?	45	32	23	14	16
An awareness campaign for the new scrap policy has been launched	11	9	22	32	56
Do Scrapping vehicles will reduce pollution, according to you	51	33	18	12	16
Does the new scrap policy make sense to you?	35	31	20	23	21
If Scrapping your vehicle is the best way to dispose of it	15	14	21	32	48
Approximately 2 or fewer vehicles	39	31	29	18	13

Figure 1. Personal Details of the Respondents



VIII. Results

In addition to providing details about the attributes associated with the personal vehicles owned by the respondents, participants were asked to provide information regarding how many vehicles they own, how old the vehicles are, whether the vehicles are running or expired, whether they intend to sell them, and what they know about the recent scrap policy for automobiles. The majority of the respondents have either 2 or fewer vehicles and are either salaried or self-employed, according to the study. Additionally, it has been found that very few respondents were aware of the new scrap policy; however after learning about it, the respondents expressed their belief that this new scrap policy is beneficial and would prevent pollution of the environment. In their opinion, this policy was beneficial, but only 29 of the respondents expressed an interest in scrapping their vehicle if they planned to get rid of it.

IX. Limitations of the Study

a) Chandigarh is the only city where responses are collected. There is no consideration for other states
b) Taxes on renewable energy are considered, but not taxes on carbon
c) It is only India that is studied in the study by the Economy. These taxes are not compared to the economies and revenues of other countries.

X. Conclusion

Even though respondents acknowledge the benefits of the policy, they remain uncertain about its implementation since it is a new policy and the benefits are not satisfactory. According to respondents, they prefer to resell their cars instead of scrapping them until the policy is approved. For vehicle scrappage programs to be leveraged, it is essential to create awareness, advertise, and emphasise the environmental benefits.

Based on our survey, we concluded that people expect more from the government regarding vehicle scrapping policies. Over 25% of taxes will be paid by the individual, including GST, road taxes, CES, and tolls. For people to avoid paying taxes, strict emission laws must be passed so that their old vehicles have no choice but to be scrapped. The best scrapping technologies should be used to scrap old cars to increase raw material availability. Promoting public awareness about scrapping areas is important for the government. Environmental concerns are neglected in favor of economic development. Pollution prevention is commonly associated with taxes, such as these. There is a greater chance of success if the laws are stricter. Phased implementation of green taxes is common in India. Due to the fact that not all states have implemented the tax, growth has been slow. As far as success is concerned, this represents a significant challenge. The government does not require people to pay taxes despite efforts to reduce pollution levels. Taxes should be paid by citizens themselves without relying on government instructions. This control of pollution will make the residents proud to be 'Responsible Citizens.

Access and Benefit-Sharing under the Biological Diversity Act, 2002: A Critical Review

Iftikhar Hussain Bhat*
Mir Junaid Alam**
Saqib Ayoub***

Abstract

The Access and Benefit-Sharing (ABS) mechanism is a vital legal and institutional framework aimed at ensuring the fair and equitable distribution of benefits arising from the utilization of genetic resources. Rooted in the Convention on Biological Diversity (CBD) and the Nagoya Protocol, ABS serves as a tool to harmonize biodiversity conservation with the socio-economic development of indigenous and local communities. In the context of India, with its unparalleled biodiversity and rich traditional knowledge systems, the effective implementation of ABS is both an opportunity and a challenge. This article critically examines India's ABS framework under the Biological Diversity Act, 2002, highlighting its achievements, limitations, and the way forward. It explores India's alignment with international standards and identifies gaps in enforcement, community participation, and technological integration. Drawing lessons from international best practices, including innovative models from countries like Costa Rica and South Africa, the article advocates for reforms in legal and institutional mechanisms. The paper also emphasizes the need for capacity-building, empowering local communities, leveraging technology like blockchain for transparency, and addressing emerging challenges such as digital sequence information (DSI). By aligning conservation and development goals, India can strengthen its ABS framework and set a global benchmark for equitable and sustainable biodiversity governance.

Key words: Access and Benefit-Sharing (ABS); Biological Diversity; Nagoya Protocol; Genetic Resources; Traditional Knowledge

* Senior Assistant Professor, School of Law, University of Kashmir, Srinagar. Email: iftikharhussain@uok.edu.in
** Senior Assistant Professor, School of Law, University of Kashmir, Srinagar.
*** Research Scholar, School of Law, University of Kashmir.

I. Introduction

The Access and Benefit-Sharing (ABS) mechanism is a pivotal component of global biodiversity conservation efforts. It aims to ensure the equitable sharing of benefits arising from the utilization of genetic resources, fostering both conservation and sustainable use. The concept of ABS emerged from the recognition of sovereign rights of states over their biological resources, as enshrined in the Convention on Biological Diversity (CBD), 1992. The CBD establishes a framework for access to genetic resources, subject to prior informed consent (PIC) and mutually agreed terms (MAT), to ensure that the benefits derived from their utilization are shared fairly and equitably.[1] The Nagoya Protocol, adopted in 2010 as a supplementary agreement to the CBD, further elaborates on the ABS principles and provides a legal framework for their implementation.[2] This protocol seeks to create legal certainty and transparency for both providers and users of genetic resources. It has been instrumental in fostering collaborations between countries, research institutions, and industries, thereby promoting innovation while safeguarding biodiversity. [3] In India, the Biological Diversity Act, 2002, serves as the cornerstone for implementing ABS mechanisms at the national level. The Act aims to regulate access to biological resources and ensure equitable sharing of benefits, especially for local communities and indigenous populations who are the traditional custodians of biodiversity.[4] This legislative framework has positioned India as a

[1] The Convention on Biological Diversity, 1992, Art. 15.
[2]The Nagoya Protocol on Access and Benefit-Sharing, 2010, Preamble.
[3] Kamau, E.C., Fedder, B., & Winter, G. (2010). "The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What is New and What are the Implications for Provider and User Countries?" *Law, Environment and Development Journal*, 6(3), 246.
[4] The Biological Diversity Act, 2002, India, Preamble.

global leader in ABS implementation, providing valuable lessons for other biodiversity-rich nations.[5]

The rapid depletion of biodiversity due to industrialization, urbanization, and climate change has highlighted the urgent need for robust legal frameworks to manage genetic resources. Genetic resources, which include plant, animal, and microbial materials of actual or potential value, are critical for various sectors such as agriculture, pharmaceuticals, and biotechnology.[6] However, the absence of effective legal mechanisms often leads to biopiracy and inequitable exploitation of these resources.[7] Legal frameworks like the Biological Diversity Act, 2002, play a crucial role in addressing these challenges by regulating access to genetic resources and ensuring that the benefits are shared with the rightful stakeholders. The Act's provisions for prior informed consent (PIC) and mutually agreed terms (MAT) aim to prevent unauthorized access and promote equitable benefit-sharing.[8] Additionally, these frameworks help in recognizing and protecting traditional knowledge associated with genetic resources, which is often marginalized in the absence of legal safeguards.[9] Internationally, the Nagoya Protocol has set a benchmark for ABS frameworks, emphasizing the importance of legal certainty and mutual trust between resource providers and users.[10] The protocol's implementation has demonstrated that well-structured legal mechanisms can balance the interests of conservation, innovation, and equity. For instance,

[5] Kothari, A. (2003). "The Biological Diversity Act, 2002: A Step Forward for Conservation." *Economic and Political Weekly*, 38(29), 3021-3024.
[6] ten Kate, K., & Laird, S.A. (1999). *The Commercial Use of Biodiversity: Access to Genetic Resources and Benefit-Sharing*. Earthscan Publications.
[7] Shiva, V. (1997). *Biopiracy: The Plunder of Nature and Knowledge*. South End Press.
[8] The Biological Diversity Act, 2002, Sections 3-7.
[9] Pushpangadan, P., & Nair, K.N. (2005). "Traditional Knowledge and Biodiversity Conservation: A Case Study from India." *Journal of Ethnobiology and Ethnomedicine*, 1(6).
[10] The Nagoya Protocol, 2010, Arts. 5-6.

the protocol's provisions have facilitated partnerships between biodiversity-rich countries and multinational corporations, resulting in significant monetary and non-monetary benefits.[11] In the Indian context, the Biological Diversity Act has been complemented by various state biodiversity boards and local-level institutions, such as Biodiversity Management Committees (BMCs), to ensure effective implementation of ABS principles.[12] These institutions have been instrumental in promoting community participation and enhancing the accountability of stakeholders involved in the utilization of genetic resources.[13] Despite these advancements, several challenges remain in the effective implementation of ABS frameworks. These include gaps in enforcement, lack of awareness among stakeholders, and complexities in negotiating mutually agreed terms.[14] Addressing these issues requires a multi-faceted approach involving legal reforms, capacity building, and international cooperation.[15]

II. ABS Mechanisms: Historical Retrospect

The concept of Access and Benefit-Sharing (ABS) emerged as a pivotal mechanism for promoting the sustainable use and equitable sharing of genetic resources. The genesis of ABS can be traced back to the early international discourses on biodiversity conservation, culminating in the adoption of the Convention on Biological Diversity (CBD) in 1992. The CBD, as a landmark treaty, underscored the sovereign rights of states over their

[11] Morgera, E., Tsioumani, E., & Buck, M. (2014). *Unraveling the Nagoya Protocol: A Commentary on Access and Benefit-sharing of Genetic Resources and Traditional Knowledge*. Brill.
[12] National Biodiversity Authority, India. (2021). Annual Report.
[13] Gadgil, M., & Rao, P.R.S. (1995). "Designing Incentives to Conserve India's Biodiversity." *Current Science*, 69(8), 620-626.
[14] Gupta, A.K. (2013). "Why India's ABS Mechanism Needs to be Strengthened." *Economic and Political Weekly*, 48(22), 15-19.
[15] Pisupati, B., & Bavikatte, K. (2014). "Access and Benefit Sharing as an Innovative Financing Mechanism." *Asian Biotechnology and Development Review*, 16(1), 49-58.

biological resources and recognized the need for equitable benefit-sharing to promote conservation and sustainable use.[16] This section examines the global trajectory of ABS mechanisms from the CBD to the adoption of the Nagoya Protocol in 2010. The CBD established three key objectives: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the utilization of genetic resources.[17] By prioritizing equity and justice, the CBD responded to the growing concerns of developing countries over biopiracy and the exploitation of their genetic resources by corporations and researchers in developed nations.[18] Article 15 of the CBD specifically provides a framework for regulating access to genetic resources and emphasizes the need for prior informed consent (PIC) and mutually agreed terms (MAT) between the providers and users of these resources.[19] Despite its transformative approach, the implementation of ABS principles under the CBD faced significant challenges. The absence of binding obligations for user countries and a lack of clarity on compliance measures hindered its effectiveness. This led to further negotiations, eventually resulting in the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in 2010.[20] The Nagoya Protocol introduced legally binding obligations to operationalize the ABS principles of the CBD. It provided detailed provisions for ensuring compliance, monitoring, and enforcement mechanisms to regulate access and

[16] Philippe Cullet, "Biodiversity, Access, and Benefit-Sharing: Global Perspectives," *Environmental Policy and Law*, vol. 32, no. 2, 2002, pp. 67-75.
[17] The Convention on Biological Diversity, 1992, Art. 1.
[18] Graham Dutfield, *Intellectual Property, Biogenetic Resources, and Traditional Knowledge*, Earthscan, 2004, p. 45.
[19] The Convention on Biological Diversity, 1992, Art. 15.
[20] Elisa Morgera, Matthias Buck, and Elsa Tsioumani, *The 2010 Nagoya Protocol on Access and Benefit-sharing in Perspective: Implications for International Law and Implementation Challenges*, Brill, 2012, pp. 23-30.

benefit-sharing agreements. [21] The Protocol's emphasis on traditional knowledge associated with genetic resources and the rights of indigenous and local communities was particularly significant, as it sought to address historical injustices and ensure fair participation in benefit-sharing.[22] However, challenges persist in achieving universal adherence to the Protocol, as some major user countries have yet to ratify it.[23]

India's approach to ABS has been deeply influenced by its rich biodiversity and the socio-economic dependence of its population on biological resources. With 7-8% of the world's recorded species, India is recognized as one of the 17 megadiverse countries. [24] The Biological Diversity Act, 2002 (BDA) was enacted as a comprehensive legal framework to fulfill India's commitments under the CBD and to regulate access to its genetic resources and associated traditional knowledge.[25] The enactment of the BDA marked a paradigm shift in India's biodiversity governance. It established a multi-tiered institutional framework comprising the National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs), and Biodiversity Management Committees (BMCs) at the local level. [26] This structure was designed to ensure participatory governance and the equitable sharing of benefits arising from the use of genetic resources. Key provisions of the BDA include the requirement for prior approval from the NBA for access to biological resources and associated traditional knowledge by foreign individuals, companies, and non-

[21] Ibid., p. 34.
[22] Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India*, 3rd ed., Oxford University Press, 2021, pp. 89-91.
[23] Elisa Morgera, "Nagoya Protocol Ratification Challenges," *International Environmental Agreements*, vol. 15, no. 1, 2015, pp. 21-23.
[24] National Biodiversity Authority, "Biodiversity in India," 2022.
[25] The Biological Diversity Act, 2002, Preamble.
[26] Ibid., Sec. 8-10.

resident Indians.[27] Additionally, the Act mandates benefit-sharing arrangements through mutually agreed terms, which may include monetary compensation, joint research, technology transfer, and other forms of support for conservation efforts.[28]

Despite its robust framework, the implementation of the BDA has faced several challenges. The lack of awareness among stakeholders, inadequate institutional capacity, and complex administrative procedures have impeded the effective realization of ABS objectives.[29] Moreover, conflicts between state and central authorities over jurisdictional issues and the limited involvement of local communities in decision-making processes have further complicated its enforcement.[30] India's ABS mechanisms have also encountered difficulties in addressing biopiracy and protecting traditional knowledge. Notable cases, such as the patenting of neem, turmeric, and basmati by foreign entities, have highlighted the vulnerabilities in the existing framework and underscored the need for stronger safeguards.[31] In recent years, India has made efforts to strengthen its ABS regime by aligning it with global standards under the Nagoya Protocol. The adoption of the Access and Benefit Sharing Guidelines, 2014, was a significant step in providing clarity on benefit-sharing obligations and promoting compliance.[32] However, further reforms are needed to streamline

[27] Ibid., Sec. 3.
[28] The Biological Diversity Rules, 2004, Rule 20.
[29] Philippe Cullet and Sujith Koonan, *Water Law in India: An Introduction to Legal Instruments*, 2nd ed., Oxford University Press, 2017, pp. 130-132.
[30] Ibid., p. 134.
[31] Shyam Divan and Armin Rosencranz, *Environmental Law and Policy in India*, p. 192.
[32] National Biodiversity Authority, "Access and Benefit Sharing Guidelines, 2014," Official Gazette of India, 2014.

procedures, enhance stakeholder participation, and build institutional capacity to address emerging challenges effectively.[33]

III. Framework of the Biological Diversity Act, 2002

The Biological Diversity Act, 2002 represents India's proactive response to global biodiversity challenges and obligations under the Convention on Biological Diversity (CBD). Recognizing India's status as a biodiversity hotspot, the Act aims to conserve the immense variety of flora and fauna found in the country. It emphasizes sustainable practices that ensure the protection of genetic resources for future generations.[34] The Act promotes sustainable utilization of biological resources to balance developmental needs with conservation imperatives. It acknowledges that unchecked exploitation of resources poses a severe threat to biodiversity.[35] The Act also seeks to ensure that communities contributing to the preservation and sustainable use of biodiversity are compensated fairly. This objective aligns with the broader Access and Benefit-Sharing (ABS) mechanism established under the CBD.[36] The scope of the Act is expansive, encompassing all biological resources within the country's jurisdiction, including plants, animals, microorganisms, and their genetic material. However, it excludes human genetic material.[37] The Act also applies to traditional knowledge associated with biodiversity, particularly that held by local communities and indigenous peoples. By addressing issues of biopiracy and unauthorized

[33] Sudhir Kumar, "Strengthening ABS Mechanisms in India," *Journal of Environmental Law*, vol. 28, no. 2, 2022, pp. 156-160.
[34] Kothari, Ashish, et al. *Biodiversity Conservation in India: A Status Report*. Kalpavriksh, 2002.
[35] Singh, Gurdial. "The Relevance of the Biological Diversity Act, 2002 in Addressing India's Biodiversity Challenges." *Journal of Environmental Law*, vol. 25, no. 2, 2010, pp. 213-227.
[36] The Convention on Biological Diversity, 1992. "Text of the Convention." UNEP.
[37] Sahu, Geetanjoy. "Implementation Challenges of India's Biodiversity Act." *Economic and Political Weekly*, vol. 48, no. 1, 2013, pp. 34-39.

commercial use, the Act aims to safeguard India's rich biological heritage.[38]

The Biological Diversity Act incorporates several provisions related to ABS, reflecting India's commitment to fulfilling its international obligations under the CBD. Section 3 of the Act mandates prior approval from the National Biodiversity Authority (NBA) for accessing biological resources and associated knowledge for research, commercial utilization, or bio-survey activities by foreign nationals or organizations.[39] Under Section 21, users of biological resources are required to enter into benefit-sharing agreements with the NBA. The terms of these agreements are negotiated to ensure fair compensation to the local communities and other stakeholders.[40] The Act recognizes the vital role of traditional knowledge in biodiversity conservation. Section 36 mandates measures to protect such knowledge, prevent its misuse, and ensure benefit-sharing with communities that have conserved or developed it over generations. [41] Section 27 establishes a fund to manage monetary benefits derived from the use of biological resources and associated knowledge. These funds are utilized to support conservation initiatives, benefit local communities, and promote research and development.[42] Section 7 prohibits Indian citizens from accessing biological resources for commercial purposes without informing the State Biodiversity Boards (SBBs). This provision ensures proper monitoring and regulation at the state level.[43] Section 6 requires prior approval

[38] Bavikatte, Kabir, and Tomme Young. *The Custodians of Biodiversity: Sharing Access and Benefits*. Earthscan, 2009.
[39] The Biological Diversity Act, 2002, Sec. 3.
[40] National Biodiversity Authority. "Guidelines on Access and Benefit-Sharing." NBA, 2014.
[41] Gupta, Anil K. "Traditional Knowledge and Biodiversity Act." *Indian Journal of Traditional Knowledge*, vol. 9, no. 2, 2010, pp. 137-143.
[42] The Biological Diversity Act, 2002, Sec. 27.
[43] Ibid., Sec. 7.

from the NBA before applying for any IPRs, such as patents, related to biological resources obtained from India. This provision prevents biopiracy and ensures compliance with ABS obligations.[44]

The Biological Diversity Act establishes a robust institutional framework to implement its provisions effectively. This framework includes the National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs), and Biodiversity Management Committees (BMCs). Together, these bodies ensure a multi-level governance structure for biodiversity conservation and ABS compliance. Established under Section 8 of the Act, the NBA functions as the central regulatory authority for biodiversity management. Its responsibilities include granting approvals for access to biological resources, formulating benefit-sharing guidelines, and advising the government on matters related to biodiversity conservation. [45] The NBA plays a pivotal role in negotiating benefit-sharing agreements, ensuring that commercial users of genetic resources adhere to the Act's provisions. It also collaborates with international organizations to harmonize India's ABS framework with global standards.[46] Under Section 22, each state is required to establish an SBB to oversee the implementation of the Act at the state level. The SBBs are responsible for regulating access to biological resources within their jurisdiction, promoting conservation initiatives, and coordinating with the NBA and BMCs. [47] SBBs play a crucial role in engaging local communities and ensuring that their rights are protected. They also facilitate the sharing of benefits derived from the use of biological resources. [48] At the grassroots level, the Act mandates the

[44] Ibid., Sec. 6.
[45] National Biodiversity Authority. "Annual Report 2020-21." NBA.
[46] Ibid.
[47] The Biological Diversity Act, 2002, Sec. 22.
[48] Sharma, Bhavna. "The Role of State Biodiversity Boards in Conservation Efforts." *Biodiversity and Law Review*, vol. 7, no. 3, 2019, pp. 56-72.

establishment of BMCs in every local body (e.g., village councils, municipalities). BMCs are tasked with preparing People's Biodiversity Registers (PBRs), which document local biodiversity and associated traditional knowledge.[49] BMCs serve as the primary interface between local communities and higher regulatory bodies. They play a vital role in ensuring that benefit-sharing agreements are implemented equitably and transparently. [50] Despite their importance, BMCs often face challenges such as lack of funding, inadequate technical expertise, and limited awareness among community members. Addressing these issues is essential to enhance the effectiveness of BMCs.[51]

IV. Legal and Policy Dimensions and Challenges in Implementation

The Biological Diversity Act, 2002 (BDA) was established with the purpose of providing a legal framework to regulate access to biological resources and ensuring equitable sharing of benefits derived from their use. Despite its progressive intent, various legal and policy dimensions influence its implementation, posing unique challenges.

Principles of Access to Genetic Resources and Benefit-Sharing Obligations

Access and Benefit-Sharing (ABS) rests on the principle of sovereign rights over natural resources, as recognized by the Convention on Biological Diversity (CBD). It mandates fair and equitable sharing of benefits arising from the utilization of genetic resources, ensuring that resource providers are duly compensated. The Nagoya Protocol, which supplements the CBD, further

[49] The Biological Diversity Act, 2002, Sec. 41.
[50] Singh, K. "Empowering Communities Through Biodiversity Management Committees." *Indian Environmental Policy Journal*, vol. 5, 2015, pp. 45-50.
[51] Sinha, Rajesh. "Challenges in Establishing People's Biodiversity Registers." *Biodiversity Governance Review*, vol. 3, no. 1, 2020, pp. 89-94.

strengthens these principles by emphasizing compliance and legal certainty. However, challenges emerge in translating these principles into actionable policies, especially in countries like India, where diverse ecosystems and socio-economic conditions prevail. The ABS mechanisms under the Biological Diversity Act focus on protecting India's vast biodiversity while ensuring that local communities and stakeholders benefit equitably from the commercial use of biological resources. Despite these objectives, several cases of biopiracy have highlighted gaps in enforcement. For instance, international patents on turmeric, neem, and basmati rice exposed the vulnerability of India's genetic resources and traditional knowledge to exploitation. [52] The lack of robust mechanisms to monitor access and enforce benefit-sharing obligations further exacerbates these challenges. Strengthening legal frameworks and enhancing institutional capacities are critical to addressing these issues effectively.

Integration with Sustainable Use and Conservation Goals

The sustainable use of biodiversity is one of the primary objectives of the BDA. However, integrating ABS mechanisms with broader conservation goals has proven to be challenging. Conservation efforts are often hindered by competing interests, such as developmental pressures, agricultural expansion, and industrialization. Effective implementation requires reconciling these competing demands while ensuring the conservation of biological resources. A significant aspect of integrating sustainable use with conservation is the involvement of local communities in decision-making processes. Local Biodiversity Management Committees (BMCs) play a crucial role in this context, as they are tasked with documenting biological resources and traditional

[52] Anil K. Gupta, "Rewarding Traditional Knowledge and Contemporary Grassroots Creativity: The Role of Intellectual Property Protection," *Journal of Intellectual Property Rights*, vol. 10, 2005, pp. 431-439.

knowledge at the grassroots level. However, many BMCs face challenges such as inadequate funding, lack of technical expertise, and limited awareness among community members. [53] Strengthening the capacities of these committees and fostering collaboration between different stakeholders, including government agencies, private enterprises, and non-governmental organizations, is essential for achieving sustainable outcomes. Another critical aspect is the role of Panchayati Raj institutions in promoting biodiversity conservation. These institutions can serve as platforms for mobilizing local communities and integrating conservation efforts with developmental activities. For instance, the preparation of People's Biodiversity Registers (PBRs) under the Act is a step toward empowering communities and ensuring sustainable use of resources. However, effective monitoring mechanisms and regular updates to these registers are necessary to ensure their relevance and utility.

Issues of Compliance, Enforcement, and Stakeholder Awareness

Compliance with ABS provisions under the BDA remains a significant challenge. While the National Biodiversity Authority (NBA) and State Biodiversity Boards (SBBs) play pivotal roles in regulating access and monitoring benefit-sharing, enforcement mechanisms often fall short. This can be attributed to insufficient manpower, lack of coordination among stakeholders, and limited awareness about ABS obligations among users of biological resources. [54] Foreign corporations and research institutions frequently exploit loopholes in the system, bypassing ABS procedures and extracting genetic resources without adequate benefit-sharing. The lack of stringent penalties and inadequate

[53] Gurdial Singh Nijar, "The Nagoya Protocol on Access and Benefit Sharing of Genetic Resources: Analysis and Implementation Options for Developing Countries," *South Centre Research Paper*, no. 36, 2011.

[54] National Biodiversity Authority, "Annual Report 2021-2022," available at: www.nbaindia.org.

monitoring further aggravate these issues. For example, reports indicate that many companies involved in bioprospecting fail to disclose their use of biological resources, resulting in loss of potential benefits for local communities.[55] Enhancing stakeholder awareness is another critical area that requires attention. Many stakeholders, including local communities, private enterprises, and research institutions, are often unaware of their rights and obligations under the BDA. Conducting awareness campaigns, providing training programs, and disseminating information about ABS provisions can significantly improve compliance and enforcement.

Balancing Commercialization and Conservation

Balancing the dual objectives of commercialization and conservation is a recurring challenge under the ABS framework. On one hand, commercialization of genetic resources and associated traditional knowledge can drive economic growth and innovation. On the other hand, it risks overexploitation and degradation of biodiversity. India's bio-economy has witnessed significant growth in recent years, with sectors such as biotechnology, agriculture, and pharmaceuticals leveraging the country's rich biodiversity. However, this growth has raised concerns about the sustainability of resource use and the equitable sharing of benefits.[56] Policies must ensure that commercialization efforts do not undermine conservation goals. This requires adopting sustainable harvesting practices, establishing clear guidelines for resource use, and implementing robust monitoring mechanisms. Community participation is a key factor in achieving this balance. By involving local communities in the decision-

[55] Shashikant, Sangeeta, "Protecting India's Traditional Knowledge: Challenges and Opportunities," *Economic and Political Weekly*, vol. 49, no. 30, 2014, pp. 45-51.
[56] Kothari, Ashish et al., "Conservation in India and the Need to Think Beyond 'Tiger vs. Tribal'," *Economic and Political Weekly*, vol. 45, no. 52, 2010, pp. 103-109.

making process and sharing the benefits derived from commercialization, the ABS framework can promote both conservation and development. For instance, initiatives such as the Arogyapacha plant project in Kerala have demonstrated how community involvement and equitable benefit-sharing can lead to successful outcomes.[57] Strengthening such initiatives and scaling them up at the national level can help address the challenges associated with balancing commercialization and conservation.

V. Access and Benefit-Sharing and Indigenous Communities

Traditional knowledge is inextricably linked to biodiversity. Indigenous communities possess centuries-old knowledge about the sustainable use of biological resources, which often forms the basis for commercial products in pharmaceuticals, agriculture, and cosmetics. ABS mechanisms under the Biological Diversity Act, 2002, recognize the contributions of such knowledge and seek to ensure that its utilization leads to fair benefit-sharing. Under the Act, prior informed consent (PIC) and mutually agreed terms (MAT) are integral to accessing biological resources and associated traditional knowledge. These principles are aligned with the Convention on Biological Diversity (CBD) and the Nagoya Protocol. However, operationalizing these principles has faced several hurdles. [58] While the National Biodiversity Authority (NBA) and State Biodiversity Boards (SBBs) are responsible for facilitating ABS agreements, ensuring that benefits trickle down to the community level remains a challenge.[59] Moreover, the Act's framework provides for the creation of Biodiversity Management Committees (BMCs) at the local level, tasked with documenting

[57] Gadgil, Madhav and Ramachandra Guha, "This Fissured Land: An Ecological History of India," Oxford University Press, 1992.
[58] Dutfield, Graham, *Intellectual Property, Biogenetic Resources and Traditional Knowledge*, Earthscan, 2004.
[59] National Biodiversity Authority, "Guidelines on ABS Mechanisms in India," available at: www.nbaindia.org.

traditional knowledge in the form of People's Biodiversity Registers (PBRs). While this initiative has led to significant progress in cataloging traditional knowledge, concerns over biopiracy and misappropriation persist. A prominent example is the case of the patenting of neem and turmeric products by foreign entities without adequate benefit-sharing, which highlighted the need for stringent safeguards.[60]

Despite its ambitious objectives, the Biological Diversity Act, 2002, encounters numerous challenges in protecting the rights of indigenous communities. One of the key issues is the lack of awareness among communities about their rights under the ABS framework. Many communities are unaware of the monetary and non-monetary benefits they are entitled to under the Act. This lack of awareness often leads to the exploitation of their traditional knowledge by corporations and research institutions.[61] Another critical issue is the imbalance of power in ABS negotiations. Indigenous communities, often lacking legal expertise and bargaining power, find themselves at a disadvantage when negotiating terms with well-resourced corporations.[62] For example, the high cost of legal representation and the complexity of ABS agreements can deter communities from pursuing their rightful claims. Additionally, there is a tension between customary laws governing traditional knowledge and the formal legal framework of the Biological Diversity Act. Indigenous communities often manage their resources and knowledge based on unwritten norms

[60] Gupta, Anil K., "Rewarding Traditional Knowledge and Grassroots Innovation: The Role of Intellectual Property Rights," *Journal of Intellectual Property Rights*, vol. 10, 2005, pp. 431-439.

[61] Nijar, Gurdial Singh, "The Nagoya Protocol on Access and Benefit Sharing of Genetic Resources: Analysis and Implementation Options for Developing Countries," *South Centre Research Paper*, no. 36, 2011.

[62] Kothari, Ashish, "Traditional Knowledge and Biodiversity Governance: Emerging Challenges and Opportunities," *Economic and Political Weekly*, vol. 47, no. 38, 2012, pp. 43-50.

and practices, which may not align with the procedural requirements of the Act.[63] Reconciling these differences is essential to ensure that the Act does not inadvertently marginalize these communities.

Several case studies illustrate the experiences of indigenous communities with the ABS framework in India. These examples shed light on both the successes and shortcomings of the Biological Diversity Act in protecting community rights and ensuring equitable benefit-sharing. The case of the Kani tribe in Kerala is often cited as a success story in ABS implementation. The tribe's traditional knowledge about the medicinal properties of the arogyapacha plant led to the development of the herbal drug Jeevani. An ABS agreement facilitated by the Tropical Botanic Garden and Research Institute ensured that the Kani tribe received monetary benefits from the commercialization of the drug.[64] This case demonstrates the potential of ABS mechanisms to empower indigenous communities and promote biodiversity conservation. In contrast, the biopiracy of neem highlights the challenges in enforcing ABS provisions. Foreign entities patented neem-based products without recognizing the traditional knowledge of Indian communities. The legal battle to revoke these patents underscored the inadequacies in protecting community rights and the need for a proactive approach to prevent biopiracy.[65] The biodiversity-rich North East region of India is home to numerous indigenous communities with unique traditional knowledge systems. However, the region faces significant challenges in implementing the

[63] Bavikatte, Kabir and Robinson, Daniel F., "Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing," *Law, Environment and Development Journal*, vol. 7, no. 1, 2011, pp. 35-51.

[64] Pushpangadan, P. and Rajasekharan, S., "Arogyapacha: The Kani Tribe's Share in Benefits," *Current Science*, vol. 73, no. 10, 1997, pp. 728-731.

[65] Shiva, Vandana, *Biopiracy: The Plunder of Nature and Knowledge*, South End Press, 1997.

Biological Diversity Act, including inadequate institutional support and limited awareness among communities.[66] Strengthening local governance and ensuring community participation are critical to addressing these challenges.

VI. International Comparisons and Success Stories

Several countries have successfully implemented ABS mechanisms, setting benchmarks for equitable benefit-sharing and biodiversity conservation. These practices offer valuable lessons for India, especially in areas of institutional efficiency, community participation, and benefit-sharing. For instance, South Africa's Biodiversity Act, 2004, is often lauded for its robust ABS framework. The Act emphasizes the active involvement of local communities in decision-making and ensures monetary and non-monetary benefits to traditional knowledge holders. A notable example is the Rooibos and Honeybush tea industries, where agreements were reached to share revenues with indigenous communities who had traditionally used these plants.[67] India can learn from South Africa's focus on ensuring community participation at every stage of ABS negotiations. Likewise, Costa Rica's National Biodiversity Institute (INBio) is a global leader in ABS implementation. INBio has entered into agreements with multinational corporations, ensuring that benefits derived from the use of Costa Rica's biodiversity are reinvested in conservation and community development.[68] INBio's transparent negotiations and

[66] Chaturvedi, R. et al., "Access and Benefit Sharing: Experiences from India's North East," *Asian Biotechnology and Development Review*, vol. 16, no. 3, 2014, pp. 23-35.

[67] Wynberg, Rachel, "Sharing the Benefits from the Commercial Use of Biodiversity: The Case of Rooibos and Honeybush in South Africa," *Journal of World Intellectual Property*, vol. 13, no. 2, 2010, pp. 94-108.

[68] Reid, Walter V., *Biodiversity Prospecting: Using Genetic Resources for Sustainable Development*, World Resources Institute, 1993.

focus on reinvestment highlight the importance of institutional frameworks in achieving ABS objectives. Australia has established robust guidelines for accessing genetic resources and traditional knowledge, particularly among Aboriginal and Torres Strait Islander communities. The government provides clear, legally binding protocols that recognize the unique cultural and spiritual relationship of indigenous peoples with biodiversity.[69] This cultural recognition underscores the importance of integrating indigenous worldviews into ABS frameworks. Philippines regulates the prospecting of biological and genetic resources and mandates prior informed consent (PIC) from indigenous communities. The emphasis on capacity building for local communities ensures that they are equipped to negotiate equitable ABS agreements.[70] India can adopt similar capacity-building programs to empower its indigenous communities. These examples demonstrate the importance of clear institutional mechanisms, strong legal frameworks, and active community involvement in implementing effective ABS systems. While India's Biological Diversity Act incorporates many of these principles, challenges remain in operationalizing them effectively.

The Nagoya Protocol, adopted under the Convention on Biological Diversity (CBD), provides an international legal framework for ABS. India, as a party to the Protocol, has the responsibility to align its national ABS framework with its provisions to achieve effective implementation. The Nagoya Protocol emphasizes the principles of prior informed consent (PIC) and mutually agreed terms (MAT) as prerequisites for accessing genetic resources and

[69] Davis, Megan, "Indigenous Knowledge and the ABS Framework in Australia," *Australian Indigenous Law Review*, vol. 10, no. 1, 2006, pp. 36-45.
[70] Ruiz, Manuel, "The Philippine Experience in Regulating Bioprospecting," *Asian Biotechnology and Development Review*, vol. 7, no. 2, 2005, pp. 21-38.

traditional knowledge.[71] While India's Biological Diversity Act incorporates these principles, the challenge lies in their enforcement. Strengthening local Biodiversity Management Committees (BMCs) and ensuring that their decisions reflect the genuine consent of indigenous communities is critical. The Protocol highlights the importance of capacity building and technology transfer to enable equitable benefit-sharing. India must invest in empowering indigenous communities by providing them with the tools and resources necessary to negotiate ABS agreements.[72] This includes training programs for legal literacy and technical expertise. The Nagoya Protocol mandates mechanisms to monitor and ensure compliance with ABS agreements. India can enhance its compliance framework by establishing a centralized monitoring system under the National Biodiversity Authority (NBA). The system should track the use of biological resources and associated traditional knowledge to prevent unauthorized access and biopiracy.[73] The Protocol advocates for both monetary and non-monetary benefits, such as sharing research results, technology transfer, and capacity-building initiatives. India's ABS agreements must focus on creating a balance between financial benefits and non-monetary benefits that contribute to the long-term development of indigenous communities.[74] Harmonizing India's ABS framework with the Nagoya Protocol requires a multi-pronged approach involving legal reform, institutional strengthening, and community engagement. Such alignment will

[71] Secretariat of the Convention on Biological Diversity, "The Nagoya Protocol: Text and Implementation," 2011, available at: www.cbd.int.
[72] Tsioumani, Elsa, *The Nagoya Protocol on ABS: Legal and Practical Challenges*, Routledge, 2020.
[73] Bavikatte, Kabir, *Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights*, Oxford University Press, 2014.
[74] Kamau, Evanson C. and Winter, Gerd, "Genetic Resources, Traditional Knowledge, and the Law: Solutions for Access and Benefit Sharing," *Earthscan*, 2009.

not only fulfill India's international obligations but also enhance the effectiveness of its ABS system.

India has made significant strides in implementing the ABS framework, with several notable examples demonstrating the potential of ABS mechanisms to benefit both biodiversity conservation and indigenous communities. However, challenges persist, highlighting areas for improvement. The agreement between the Tropical Botanic Garden and Research Institute (TBGRI) and the Kani tribe of Kerala is a landmark example of ABS implementation. The tribe's traditional knowledge about the medicinal properties of the arogyapacha plant led to the development of the drug Jeevani. Under the agreement, the Kani tribe received a share of the profits from the commercialization of the drug.[75] This case underscores the importance of fair benefit-sharing and active community participation in ABS agreements. India has also faced challenges in preventing biopiracy, as illustrated by the patents granted to foreign companies for neem and turmeric products. These cases highlighted the need for a robust ABS framework to protect traditional knowledge from misappropriation. India successfully contested these patents, setting a precedent for the recognition of traditional knowledge in ABS agreements.[76] The State Biodiversity Board of Himachal Pradesh has entered into several ABS agreements with companies utilizing medicinal plants from the region. These agreements have resulted in financial benefits for local communities and provided funds for biodiversity conservation projects.[77] However, the lack of awareness among communities about their rights under these

[75] Pushpangadan, P. and Rajasekharan, S., "Arogyapacha: The Kani Tribe's Share in Benefits," *Current Science*, vol. 73, no. 10, 1997, pp. 728-731.
[76] Shiva, Vandana, *Biopiracy: The Plunder of Nature and Knowledge*, South End Press, 1997.
[77] Himachal Pradesh State Biodiversity Board, "Annual Report on ABS Implementation," 2022.

agreements remains a challenge. The biodiversity-rich North East region has seen limited success in ABS implementation due to institutional weaknesses and low community awareness. Efforts to strengthen BMCs and promote community participation are crucial for realizing the potential of ABS mechanisms in this region.[78] Several ABS agreements in India have involved the use of bio-resources in the cosmeceutical industry. For instance, agreements with companies utilizing natural dyes, essential oils, and plant extracts have generated monetary benefits for local communities. However, ensuring transparency and accountability in these agreements remains a challenge.[79]

VII. Strengthening ABS Mechanisms and Future Directions

Access and Benefit-Sharing (ABS) mechanisms, as envisaged under India's Biological Diversity Act, 2002, are critical for balancing the twin objectives of biodiversity conservation and equitable distribution of benefits derived from the use of genetic resources and associated traditional knowledge. While India has made commendable progress in operationalizing ABS frameworks, several gaps remain in terms of policy clarity, institutional capacity, community involvement, and enforcement. Strengthening ABS mechanisms requires a holistic approach encompassing legal, institutional, technological, and community-centric reforms. Policy recommendations for better implementation must begin with addressing structural inefficiencies and ambiguities in the existing legal framework. The Biological Diversity Act, while comprehensive in its scope, often faces challenges in its practical application due to overlapping jurisdictional mandates between the National Biodiversity Authority (NBA), State Biodiversity Boards

[78] Chaturvedi, R. et al., "Access and Benefit Sharing: Experiences from India's North East," *Asian Biotechnology and Development Review*, vol. 16, no. 3, 2014, pp. 23-35.

[79] National Biodiversity Authority, "ABS Agreements and Their Impact," 2023, available at: www.nbaindia.org.

(SBBs), and Biodiversity Management Committees (BMCs). This has resulted in delays and inefficiencies in the negotiation and enforcement of ABS agreements. A clear delineation of roles and responsibilities among these bodies is imperative to streamline the process.[80] Furthermore, simplifying the procedural requirements for obtaining prior informed consent (PIC) and negotiating mutually agreed terms (MAT) can reduce bureaucratic delays, ensuring that stakeholders, particularly foreign entities, are not deterred by cumbersome processes.[81]

Enhancing community participation in decision-making is fundamental to the success of ABS mechanisms. Local communities, as custodians of traditional knowledge and biodiversity, often lack awareness of their rights under the ABS framework. Strengthening the capacities of BMCs through training programs and workshops can empower these communities to actively engage in negotiations and decision-making processes.[82] Additionally, it is crucial to ensure that benefit-sharing arrangements are transparent and equitable, addressing the socio-economic needs of these communities. Non-monetary benefits, such as capacity-building initiatives, technology transfer, and access to healthcare and education, should be prioritized alongside monetary benefits.[83] A participatory approach that respects the cultural and spiritual relationship of indigenous communities with

[80] Bavikatte, Kabir, *Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights*, Oxford University Press, 2014.
[81] Kamau, Evanson C., and Winter, Gerd, "Genetic Resources, Traditional Knowledge, and the Law: Solutions for Access and Benefit Sharing," *Earthscan*, 2009.
[82] Wynberg, Rachel, and Schroeder, Doris, "Sharing the Cup: Building Trust in Benefit-Sharing Agreements," *Ecological Economics*, vol. 69, no. 6, 2010, pp. 1326-1332.
[83] Reid, Walter V., *Biodiversity Prospecting: Using Genetic Resources for Sustainable Development*, World Resources Institute, 1993.

their biodiversity is essential for fostering trust and cooperation between stakeholders.[84]

The role of technology and digital platforms in monitoring ABS mechanisms cannot be overstated. Technological advancements offer significant opportunities for improving transparency, traceability, and compliance in the use of genetic resources. Blockchain technology, for instance, can be employed to create immutable records of ABS agreements, ensuring that all parties adhere to the terms.[85] Digital platforms can also facilitate the registration of traditional knowledge, reducing the risk of biopiracy and misappropriation. The development of a centralized database that integrates information on genetic resources, traditional knowledge, and existing ABS agreements can serve as a valuable tool for policymakers, researchers, and communities.[86] Moreover, mobile applications and online portals can enable local communities to report unauthorized access to genetic resources, thereby enhancing enforcement mechanisms.[87]

Aligning conservation and development is the ultimate goal of an effective ABS framework. The dual objectives of sustainable development and biodiversity conservation are often perceived as conflicting; however, a well-implemented ABS mechanism can harmonize these goals by channeling benefits derived from biological resources into conservation efforts and community development. For instance, revenues generated from ABS

[84] Davis, Megan, "Indigenous Knowledge and the ABS Framework in Australia," *Australian Indigenous Law Review*, vol. 10, no. 1, 2006, pp. 36-45.
[85] Tsioumani, Elsa, *The Nagoya Protocol on ABS: Legal and Practical Challenges*, Routledge, 2020.
[86] Chaturvedi, R. et al., "Access and Benefit Sharing: Experiences from India's North East," *Asian Biotechnology and Development Review*, vol. 16, no. 3, 2014, pp. 23-35.
[87] Ruiz Muller, Manuel, "Digital Sequence Information and the Nagoya Protocol: Emerging Challenges," *Journal of International Environmental Law*, vol. 22, no. 1, 2020, pp. 5-20.

agreements can be reinvested in biodiversity-rich areas to support habitat restoration, conservation programs, and alternative livelihoods for local communities.[88] It is equally important to adopt an ecosystem-based approach that considers the interdependence of human well-being and ecological health. Integrating ABS policies with broader environmental and development policies, such as climate change adaptation strategies and poverty alleviation programs, can create synergies that amplify their impact.[89] Incentivizing private sector participation in ABS agreements through tax benefits and subsidies can further mobilize resources for conservation and development.[90] However, these incentives must be accompanied by stringent regulatory oversight to prevent the exploitation of genetic resources and traditional knowledge.[91]

India's ABS framework must also address emerging challenges such as digital sequence information (DSI) on genetic resources. The increasing use of DSI in research and development poses complex questions about benefit-sharing, as existing ABS frameworks are largely designed for physical genetic resources.[92] International negotiations under the Convention on Biological Diversity and the Nagoya Protocol are grappling with this issue, and India must proactively engage in these discussions to ensure that its ABS framework remains relevant in the digital age.[93] Strengthening ABS mechanisms also requires greater international

[88] Pushpangadan, P., and Rajasekharan, S., "Arogyapacha: The Kani Tribe's Share in Benefits," *Current Science*, vol. 73, no. 10, 1997, pp. 728-731.
[89] Secretariat of the Convention on Biological Diversity, "The Nagoya Protocol: Text and Implementation," 2011, available at: www.cbd.int.
[90] Himachal Pradesh State Biodiversity Board, "Annual Report on ABS Implementation," 2022.
[91] Reid, Walter V., *Biodiversity Prospecting: Using Genetic Resources for Sustainable Development*, World Resources Institute, 1993.
[92] Shiva, Vandana, *Biopiracy: The Plunder of Nature and Knowledge*, South End Press, 1997.
[93] National Biodiversity Authority, "Digital Sequence Information and ABS," 2022, available at: www.nbaindia.org.

collaboration. India can benefit from sharing experiences and best practices with other biodiversity-rich countries while contributing to the global discourse on ABS. Regional cooperation, particularly within South Asia, can facilitate the harmonization of ABS policies, enabling cross-border conservation initiatives and reducing biopiracy. [94] Capacity-building programs at the international level can equip policymakers and practitioners with the knowledge and skills needed to address the complexities of ABS implementation.[95]

VIII. Conclusion

Access and Benefit-Sharing (ABS) mechanisms are a cornerstone of biodiversity conservation and equitable utilization of genetic resources. India's ABS framework, established under the Biological Diversity Act, 2002, and aligned with the principles of the Convention on Biological Diversity (CBD) and the Nagoya Protocol, reflects the nation's commitment to sustainable development and justice for indigenous and local communities. This framework seeks to balance conservation priorities with the need for economic development, ensuring that benefits arising from the utilization of biological resources are fairly shared with those who have nurtured and preserved them over centuries. The establishment of institutional mechanisms, including the National Biodiversity Authority (NBA), State Biodiversity Boards (SBBs), and Biodiversity Management Committees (BMCs), represents a commendable step toward decentralized governance. However, the implementation of these frameworks has faced numerous

[94] Tvedt, Morten Walloe, "Patent Law and Biopiracy: The Challenge of Protecting Traditional Knowledge," *European Intellectual Property Review*, vol. 33, no. 8, 2011, pp. 478-482.
[95] Ruiz, Manuel, "The Philippine Experience in Regulating Bioprospecting," *Asian Biotechnology and Development Review*, vol. 7, no. 2, 2005, pp. 21-38.

challenges, ranging from insufficient capacity at the grassroots level to delays in benefit-sharing arrangements and the inadequate integration of traditional knowledge into ABS agreements. Moreover, legal ambiguities and overlapping jurisdictions among institutions have hindered the efficient enforcement of ABS provisions. India has also faced the challenge of protecting traditional knowledge against biopiracy and misappropriation. Although the establishment of the People's Biodiversity Registers (PBRs) has provided a mechanism for documenting traditional knowledge, the system requires significant strengthening to ensure its accessibility and reliability. In many cases, indigenous communities remain unaware of their rights under the ABS framework, leading to an unequal power dynamic in negotiations with commercial users of genetic resources. The lack of transparency in benefit-sharing agreements and the overemphasis on monetary benefits have further marginalized the interests of these communities.

In the international arena, India has demonstrated leadership in advancing the objectives of the Nagoya Protocol. However, it lags behind countries like Costa Rica and South Africa, which have adopted innovative ABS models that integrate biodiversity conservation with socio-economic development. Lessons from international best practices reveal the need for greater emphasis on capacity-building, community empowerment, and technological advancements to strengthen India's ABS framework. Additionally, the rise of digital sequence information (DSI) on genetic resources has posed new challenges to ABS mechanisms. DSI, which involves the use of genetic information in digital formats rather than physical samples, has created legal and policy gaps in benefit-sharing frameworks, as most ABS laws, including India's Biological Diversity Act, are designed for physical resources.

The Way Forward for India's ABS Framework

Addressing the challenges outlined above requires a multi-pronged approach that involves legal reforms, institutional strengthening, technological integration, and greater community engagement. One of the most critical reforms needed is the clarification of legal and institutional frameworks. The Biological Diversity Act must be revisited to address ambiguities and overlaps in the roles of the NBA, SBBs, and BMCs. A more streamlined and centralized system can facilitate the efficient processing of ABS agreements while retaining the benefits of decentralized governance. Strengthening the enforcement of ABS provisions, particularly through clear penalties for violations and regular monitoring, will enhance compliance and deter biopiracy. Furthermore, creating a specialized dispute resolution mechanism for ABS-related conflicts can provide quicker and more effective solutions, reducing the burden on regular courts. Another pressing need is the empowerment of local and indigenous communities. Awareness programs and capacity-building initiatives must be conducted at the grassroots level to educate communities about their rights under the ABS framework. The training of BMC members in negotiation skills and legal knowledge can enhance their ability to engage in equitable benefit-sharing agreements. Moreover, ensuring that communities receive both monetary and non-monetary benefits, such as healthcare, education, and technology transfer, can foster trust and cooperation between stakeholders.

Technology can play a transformative role in strengthening India's ABS framework. The use of blockchain technology, for example, can enhance the transparency and traceability of ABS agreements by creating tamper-proof records of benefit-sharing arrangements. Digital platforms can also facilitate the documentation and registration of traditional knowledge, reducing the risk of misappropriation. A national-level database that integrates information on genetic resources, ABS agreements, and traditional

knowledge can serve as a valuable resource for policymakers, researchers, and communities. India must also address the emerging challenge of digital sequence information (DSI). Engaging proactively in international negotiations under the CBD and Nagoya Protocol to establish clear guidelines for benefit-sharing in the context of DSI will ensure that India's ABS framework remains relevant in the face of technological advancements.

At the international level, India should seek to learn from the success stories of other countries while contributing its own experiences to the global discourse on ABS. Costa Rica, for instance, has demonstrated how ABS mechanisms can be integrated into ecotourism and conservation programs to generate significant revenue for local communities. Similarly, South Africa's emphasis on capacity-building and community participation has set a benchmark for equitable benefit-sharing arrangements. Collaborating with these countries through knowledge exchange programs and joint capacity-building initiatives can help India refine its ABS policies. The alignment of conservation and development goals must remain a guiding principle for India's ABS framework. Revenues generated through ABS agreements should be reinvested in biodiversity conservation and the socio-economic development of communities in biodiversity-rich areas. Promoting sustainable use practices, such as organic farming, agroforestry, and ecotourism, can provide alternative livelihoods for local communities while reducing pressure on natural resources.

India must also explore innovative financing mechanisms to support ABS implementation. Public-private partnerships (PPPs) can mobilize resources for conservation initiatives while ensuring that the private sector benefits from access to genetic resources. However, such partnerships must be carefully monitored to prevent the exploitation of genetic resources and traditional knowledge.

Finally, the successful implementation of ABS mechanisms requires strong political will and public support. Policymakers must prioritize biodiversity conservation as a national agenda, integrating ABS policies into broader environmental and development strategies. Public awareness campaigns can help create a culture of conservation and encourage the sustainable use of biological resources. In conclusion, India's ABS framework represents a critical opportunity to transform biodiversity conservation into a tool for sustainable development and social justice. By addressing existing challenges and adopting forward-looking reforms, India can strengthen its ABS mechanisms and set an example for the world. The way forward lies in fostering collaboration among stakeholders, empowering communities, leveraging technology, and aligning conservation with development goals. With its rich biodiversity and cultural heritage, India has the potential to lead the global movement toward equitable and sustainable use of genetic resources.

Impact Of Artificial Intelligence on the Environment

Shailja Thakur*

Abstract

Artificial Intelligence (AI) is such a rapidly changing multi-branch technology that has applications in various sectors, ranging from optimizing energy use through a smart grid to enhancing climate change models. Artificial Intelligence is proving to be the best tool for sustainability. Nonetheless, its ecological consequences should not be underestimated. There is no argument that the training of such large models of AI, in particular, will require a significant energy input resulting in a carbon footprint and data centers are for one reason or another creating their issues. This article expands on the positive aspects of artificial intelligence pertaining to the environment and even goes further to explain the negative aspects because there is a necessity to create energy efficient AI systems and have the practices that Green AI focuses on, which is why it is very important to combat the issues of attaining a clean and green future. Use AI with minimal ecological damage today for environmental benefits tomorrow.

Keywords: Artificial Intelligence, environmental sustainability, energy saving, reduced carbon emissions, datacenters, e-waste, Green AI.

I. Introduction

It is indubitable that Artificial Intelligence(AI) is a game-changing technology that will provide services and address challenges that one would have thought impossible. However, there are worrying prospects regarding the concerns associated with the environmental perspective of using AI technologies has much potential to either foster environmental protection or be destructive to the environment. Optimizing energy use and reducing emissions will be some of its advantages toward environmental enhancement. For

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*Assistant Professor University Institute of Legal Studies, Chandigarh University, Gharua (pb.) ORCID ID: 0009-0001-9716-8189 Thakurshailja2015@gmail.com

example, "the application of AI in smart grids" increased the efficiency of distributing energy, reduced waste of electricity, and decreased carbon emissions.[1] AI has also contributed considerably to climate change by forecasting changes in the environment from analyzing large data volumes to predicting future changes and improving climate models.

This, however, is associated with a lot of environmental degradation. AI is a very demanding technology in terms of the computing capacity of processors especially where complex frameworks like OpenAI's GPT-3 model are involved. All these processes consume a lot of energy thereby resulting in emissions of carbon gases in large amounts. As recently discovered, training big AI models releases carbon dioxide into the air equal to that from five cars over their lifetime. The huge demand for performance hardware for AI also increases electronic waste in the form of regular upgradings of equipment from AI industries which depletes resources and so also pollution.

While AI may bring forth some promising answers to environmental problems, it may also have adverse implications. Thus, the effects of AI on the environment should be well-regulated so that development in sustainability will be ensured. This paper aims to examine the effect of AI on environmental protection and degradation. The negative and positive implications of AI on the environment have to be looked at in a balanced approach that maximizes the benefits while ensuring a minimal ecological footprint for future developments. The gap, however, comes in the form, that how well are AI's environmental costs addressed bodes well for how well the benefits are appreciated.

[1] Farhad Khosrojerdi, Stephane Gagnon, et al., *Applications of Artificial Intelligence in Smart Grids: Present and Future Research Domains* (Oct.1, 2021 2:45 PM), https://www.researchgate.net/publication/354567973_Applications_of_Artificial_Intelligence_in_Smart_Grids_Present_and_Future_Research_Domains.

This paper intends to bridge the gap by looking at how AI can help as well as hinder the environment. It will analyze both the conducive and detrimental effects of AI on the environment. In this regard, focusing on future development where there will be high benefits of AI with a lower ecological footprint appears to be optimal.

II. Historical Background

i. Ancient Times:

The very first machines were thought to be 'intelligent'; yet AI as an area or domain of study was non-existent. [2]There are stories from ancient Hungarians and Greeks, women and men who invented 'automata' and even 'mechanical people'. Aristotle and others wondered about logical reasoning, waiting for the time when it would become exact algorithms and computations[3]. But at that time, the notion of 'intelligence' in such machines was only imaginative and did not affect the real environment.

ii. The Middle Ages

There was scarcely any direct discourse on AI in the Middle Ages. However, the progression of logical thought and engineering created the background for future developments. Mathematics and computer science were able to grow much faster due to people such as "Al-Khwarizmi" who developed some algorithms which would be widely used in the field of artificial intelligence rather

[2] Alex Shashkevich*, Stanford researcher examines earliest concepts of artificial intelligence, robots in ancient myths* (Feb. 28, 2019 5;48 PM), https://news.stanford.edu/stories/2019/02/ancient-myths-reveal-early-fantasies-artificial-life.

[3] Bringsjord, Selmer et al., *Artificial Intelligence*, Stanford Encyclopedia of Philosophy (Jul.12, 2024), https://plato.stanford.edu/entries/artificial-intelligence/.

[4] Katharine Miller, *Designing Decision-Making Algorithms in an Uncertain World*, HAI (Apr. 13, 2022), https://hai.stanford.edu/news/designing-decision-making-algorithms-uncertain-world.

than getting restricted for potential misuse.[4] Regarding the environmental impacts, there was technological advancement in the medieval age, however, the concern of computation led to environmental issues; that were still a long way in coming.

The "Greenhouse Out Gas" effect caused by technology was negligible as AI was in its early stages. Most of the work was, in fact, basic research and there were no as powerful and efficient computing systems as the present day. Moreover, AI in those times was employed at research centers or in the military, where environmental issues were not so much taken into account. The objective was primarily to build competent systems that could address particular issues, like shooting ranges or transportation systems.

iii. The Modern Age:

a. The 20th century (early)

The roots of current AI can be spotted in the beginning of the twentieth century when scholars, engineers, and mathematicians enquired into the prospects of whether high-functioning miraculous machines can use the technology to think and behave like human beings. The work of 'Alan Turing' in the late 1930s and early 1940s gave rise to the ideas on how a 'machine' and 'computers' more so, could perform its jobs, what were called, 'algorithms', and gave rise to the conception of the 'Turing machine.'[5] Fair enough from the perspective of the environment half a century ago, energy concerns were scarce because computers were only beginning to be fully utilized for the environment half a century ago, energy concerns were scarce because computers were only beginning to be fully utilized.

[5] ANDREW HODGES, ALAN TURING THE ENIGMA OF INTELLIGENCE 6-7 (2014).
[6] K. P. V. Sai Aakarsh & Adwin Manhar, *Review of Artificial Intelligence*, 7 IJSRSET 144 (2020).

b. Twentieth Century: The Entry of AI

The term AI was formally introduced during the 'Dartmouth Conference' way back in the year 1956.[6] This is also where the actual term ai came into use. Simple logic-driven systems were some of the first manifestations of AI and did little to affect their environment. However, these systems, as impressive as they were, were run on computers that had very little hardware power relative to current machines. The architectural computational engines were basic, hence not even a remote threat to the environment.

c. The period between the 1970s and the 1990s: The AI Phase and Ecological Stagnation

In the course of the late seventies and eighties, AI research can be said to have experienced a slump, often described as an "AI Winter."[7] It was still not advanced enough to warrant any significant consumption of energy, hence no cause for environmental concerns. The researchers faced problems of limited computing power and small amounts of data leading to overall less energy used.

d. 21st Century: AI's Footprint on the Environment Introduces Itself

It brought machine and deep learning into the prominence of AI in the 21st century, inflicting heavy environmental concerns over AI[8].

[7] Amirhosein Toosi, Andrea Bottino et al., *A Brief History of AI: How To Prevent Another Winter(A Critical Review,* 8 (2021), https://www.researchgate.net/publication/354387444_A_Brief_History_of_AI_How_to_Prevent_Another_Winter_A_Critical_Review.

[8] Mira Bhakta, *The Shocking Carbon Footprints of AI Models*, ENCODE JUSTICE (Feb.8, 2022, 6 PM), https://encodejustice.org/the-shocking-carbon-footprint-of-ai-models/.

[9] Daniel Raphael Ejike Ewim Nwakamma Ninduwezuor-Ehiobu, et al., *Impact of Data Centers on Climate Change: A Review of Energy Efficient Strategies*, 09 JCEC 1-15, 1, (2023).

[10] Gyandeep Chaudhary *Environmental Sustainability: Can Artificial Intelligence be an Enabler for SDGs*, 22. NEPT 1411, 1413 (2023).

Most modern applications of AI demand significant computational forces, especially with deep learning models. The gigantic models, like the one held by OpenAI's GPT-3, will consume a big chunk of energy that has been consumed lifetime.

Energy demand is increasing with the count of data centers as these facilities house immeasurable computing powers that are necessary to train these models. Carbon emissions are largely sourced from data centers since they need constantly to be cooled and supplied with electricity. Also, the hardware which is essentially graphic processing units (GPU's) is highly resource-intensive to produce, contributing further to the ever-growing environmental footprint.[9]

III. AI: Meaning in the Environment Context

Artificial Intelligence refers to the development of computer systems that can do any type of work or task, just as human beings do. All these tasks and operations are decision-making and problem solving and learning. All these capabilities include large-scale data analysis, pattern recognition, and prediction based on the patterns discovered by algorithms in AI such as machine learning and deep learning algorithms.

It applies those technologies aimed at solving environmental challenges, so to say, in these directions in the environment wherein AI is seen. The current areas of application go as far as climate change modelling, resource management, energy efficiency, and environmental monitoring.[10] It tries to understand and respond to those real-time processes from which vast amounts of data are derived, offering new possibilities for understanding and mitigating the effects on the environment. For instance, AI can predict natural disasters, optimize energy usage, and enhance agricultural practices in a way that reduces waste and damage to the environment.

IV. Literature Review

As a consequence of these recent developments, efforts have been devoted to exploring poems about the field of the environment. Society has been divided on the issue of whether AI, considered by many as a valuable tool to achieve emotional achievements, needs to be regulated. Researchers conducted several studies regarding the role of artificial intelligence in saving the environment. Even though it is expressed in several studies, about the role of AI in enabling environmental sustainability, it has been expressed more cautiously the way its benefits have been expressed.

i. AI and Climate Change Mitigation

More research articles now explore how AI can fight climate change. For instance, Rolnick et al. (2022) argued that AI can play an important role in the prediction, monitoring of climate conditions, and management of resources."[11] Taking into account the great capabilities of machine learning models in data processing, this should lead to increased efficiency in climate modeling and forecasting. From improving energy efficiency and reducing losses in sectors such as farms and factories, freeing up even greater possibilities for green development. These advantages consist of, among others, the process of cutting down trees, the status of various species, predicting natural calamities, and much more resulting in a lot of efforts towards protection.

ii.Energy Consumption and Carbon Emissions of Artificial Intelligence

AI has the potential to offer answers to human-made challenges such as environmental challenges. However, many research studies indicate the high environmental price attached to this approach. More specifically, training such large and complex AI systems,

[11] David Rolnick, Priya L. Donti, et al. *Tackling Climate Change with Machine Learning*, 55. ACM CS , 1-96,
2-3 (2022).

machine learning, and deep learning algorithms especially, requires vast computational resources, hence a lot of energy. The environmental cost of such an input of energy is huge. For example, Schwartz et al. (2020) indicate that the large-scale models of AI, such as OpenAI's GPT-3, have a carbon footprint equivalent to that of multiple cars used throughout their lifecycle.[12] Meaning, that the more AI is being used especially for fields demanding large sets of data, the higher environmental costs will rise.

iii. AI in Smart Energy Systems

The optimization of energy systems through AI applications has widely been regarded as a step forward in environmental sustainability. Discuss Alahakoon and Yu (2015)[13] on the role of AI in energy management systems, for instance, smart grids, whose possibilities in efficiently utilizing energy and enabling the more favorable integration of renewable forms of energy, such as solar and wind power, will be discussed. AI also saves the environmental footprints of energy production by forecasting the demand for energy and real-time management of the distribution network. Yet, the increasing need for processing data in such systems does raise various issues relating to consumption in terms of energy.

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[12] Roy Schwartz, Jesse Dodge, et al. *Green AI*, 63.CACM. 54-63, 56-57 (2020) Eddie Zhang, Jixiu Chang, et al., *Towards Sustainable AI: Mitigating Carbon Impact Through Compact Models*, 12. JSR. 54-63, 56-57 (2020).

[13] Damminda Alahakoon, & Xinghuo Yu, (2015): *Smart Electricity Meter Data Intelligence for Future Energy Systems: A Survey*, 12. IEEE. 425- 436, 429 (2016).

[14] Ricardo Vineusa, Hossein Azizpour, et al., *The Role Artificial Intelligence in Achieving the Sustainable Development Goals*,11 NAT. COMMUN. 233 (2020).

iv. Ethical and Environmental Concerns

The ethical impacts of AI on the environment have also been substantially researched. According to Vinuesa et al. 2020,[14] there are both wins and losses, and the latter when considering SDGs, including avoiding optimal energy usage in data centers and resource-intensive hardware production, such as GPUs. These studies suggest that if the AI has not been well cared for, one may be left with devastating environmental costs, meaning the overall benefits of an AI could be overstated and thus they call for a more sustainable approach to the actual development of AI

v. Lifecycle and Sustainability Concerns

The literature also depicts emerging concerns over the lifecycle of AI hardware and systems. The work of the Life Cycle Analysis explains how from the manufacture to disposal, AI systems are emitting damaging degrees of environmental degradation. This is especially applicable to AI hardware like GPUs and the architecture of data centers that utilize enormous natural capital and generate waste in the form of electronic devices.

In the above discussion, although the body of literature shows AI's potential to offer supporting congruence with environmental sustainability, it also throws forth an imposing environmental challenge in the form of AI systems. Thus, the two paramount concerns are the energy demands needed for training large AI models and the environmental cost of developing AI hardware. Arguably, AI has to be developed to change the environment positively. The literature calls for innovation in sustainable practices by which AI development and deployment must be done, and energy efficiency, such that a more balanced approach toward harnessing its potential in environmental applications will come into play.

V. Significance of AI Towards Environment

Significance of AI toward the environment can be determined through both its positive effects and adverse impacts.

i. Positive Impacts of AI toward Environment

AI promises to solve many of the main environmental issues. The analysis of large datasets by AI systems would aid in monitoring environmental changes and predict changes in energy efficiency and the optimal use of natural resources.

1.Energy Efficiency: AI is solely responsible for saving energy in different industries. For example, AI-based systems can efficiently find the optimum use of an energy grid by which a higher amount of electricity could be used more efficiently.[15] Smart grids can sense the changes in demand and can adjust the energy automatically with minimum waste. Furthermore, AI helps save a lot of energy regarding heating and cooling of buildings.

2.Climate Change Modeling: AI supports and strengthens climate change models through the ability of AI to process large amounts of data. Changes in the Environment Climate change model predictions offer changes in temperature, sea level rise, and extreme weather. With AI, one can create more intricate models for better preparation in adaptation and mitigation strategies.[16]

3.Environmental Monitoring: AI uses the environment for quality monitoring of air and water, deforestation monitoring, and biodiversity loss assessment. For instance, AI -drone-based and satellite image-based illegal logging monitoring may reduce instances of occurrences of deforestation in a specified area. In agriculture, AI technologies monitor crop health, soil quality, and

[15] James Vincent, *How much electricity does AI consume*, THE VERGE(Feb.16, 2024, 7:30 PM), https://www.theverge.com/24066646/ai-electricity-energy-watts-generative-consumption.

[16] Joanna I. Lewis, Autumn Toney, et al., *Climate change and artificial intelligence: assessing the global research landscape*, 4 DAI 1-12, 1-2, (2024).

water use, among others, thus nudging more responsible practices of farming.[17]

4.Resource Optimization: AI enables industries to optimize resource utilization, reduce waste, and emission. For example, a well-designed AI-enabled supply chain management system will optimize delivery route planning and schedules, reducing transportation emissions.[18] Similarly, AI would be able to improve the efficiency of waste management systems with greater recycling and less landfill waste.

ii. Negative Impacts of AI towards Environment

The huge potential benefit comes with huge environmental drawbacks: massive amounts of computational resources required to make it work.

1.Energy Consumption: Training large AI models is a computationally heavy process, requiring all sorts of resources for power. Huge parts of data centers supporting AI technologies require a continuous flow of electricity for cooling and processing. Increased greenhouse gas emissions associated with AI, if the energy used comes from non-renewable 2.Electronic Waste (E-Waste): To cater to the highly demanding computations of AI, often upgradable hardware components such as GPUs step into play. These contribute to electronic waste that is harmful to the environment when disposed of improperly. The processes and

[17] Thorsten Schoormann, Gero Strobel, et al., *How Artificial Intelligence is helping tackle environmental challenges*, 52 CAIS 557-592, 560-62 (2023).
[18] Jacques Bughin, Eric Hazan, et al., Artificial Intelligence The Next Digital Frontier, MGI 28, (June, 2017).
https://www.mckinsey.com/ru/~/media/mckinsey/industries/advanced%20electronics/our%20insights/how%20artificial%20intelligence%20can%20deliver%20real%20value%20to%20companies/mgi-artificial-intelligence-discussion-paper.pdf.

extractions of rare minerals needed for these components have many deteriorating impacts on the environment.[19]

3.Carbon Footprint of AI Models: Of all the pressing issues associated with training AI models, carbon footprint seems to be the most prominent. Training one single large AI model is said to emit as much carbon as five cars emit during their entire lives. The more advanced AI systems are deemed necessary by human beings, the more power intensity and energy are required to support them, thus increasing the carbon footprint.[20]

iii. A balance within the AI environmental impact

While AI holds its apparent benefits and drawbacks on the environment, its overall import is condensed on how society likes to use and control the technology. The government, industries, and researchers study what would decrease the energy demands of AI while maximizing its benefits in environmental protection. Practices in creating more energy-efficient algorithms, investing in renewable energy for the data centers, and recycling e-waste effectively will ensure that the impacts of AI on the environment are minimized.

One of the concepts that stands out most relates to Green AI, minimizing the energy that systems of AI consume does not sacrifice their performance.[21] Researchers are working on models that necessitate reduced amounts of data and computational power to operate, thereby reducing their environmental effects. In

[19] Shireen, *The Dark side of AI: Its growing environmental footprint*, IEL May 2, 2024.
[20] Ren'ee Cho, *AI'S Growing Carbon Footprint*, COLUMBIA CLIMATE SCHOOL (June 9, 2023) https://news.climate.columbia.edu/2023/06/09/ais-growing-carbon-footprint.
[21] David Patterson, Joseph Gonzalez, et al., *The Carbon Footprint of Machine Learning Training Will Plateau, Then Shrink*, https://esdst.eu/green-ai-reducing-the-carbon-footprint-of-machine-learning/.

addition, people can generate clean energy solutions through AI, such as optimizing wind and solar power generation.

Therefore, machine learning and deep learning are at the forefront of transforming environmental sustainability in the present age. In particular, its capability to enhance power consumption, facilitate environmental surveillance, and help address the effects of global warming is invaluable in combating environmental destruction.[22] Nevertheless, the high energy consumption and electronic waste associated with the use of AI systems need addressing. The dilemma is how to appreciate the ecological advantages of AI systems without ignoring the ecological challenges posed by them. In much simpler terms, the AI technologies used must be developed to be energy consumption efficient, and prudent measures undertaken to ensure that AI is utilized in preserving the environment.[23]

VI. Methodology

A holistic research design incorporating both qualitative and quantitative research methods may be used to establish the extent to which AI will transform the ecosystem. It would include the following: it will be important to conduct a comprehensive review of all the literature available in the field of knowledge about the adoption of AI within the environmental marketplace including scholarly journals, trade magazines, and case studies.

i. Literature Review:

There is already a comprehensive literature review that covers the state-of-the-art of AI and its environmental implications. The reviews in this paper are scholarly articles, research papers, and

[22] World Economic Forum, BloombergNEF, et al., *Harnessing Artificial Intelligence to Accelerate the Energy Transition*, WEF. (15, 2021) https://www3.weforum.org/docs/WEF_Harnessing_AI_to_accelerate_the_Energy_Transition_2021.pdf.
[23] *supra* note 14.

case studies from diverse fields such as environment, computer science, and AI. Some of the key sources studied to understand how AI evolved through history include:

- Current Applications of AI in Environmental Monitoring and Climate Change
- Gain and Loss: AI Environmental Impact
- Technological advancement in the field of AI or more precisely those advancements that will go hand-in-hand with energy efficiency improvements**.**

ii. Data Collection:

- Primary Data: To grasp how AI is affecting the ecosystem, it has been necessary to gather opinions and opinions from AI and environmental experts, and from those involved in the energy and technology sectors. These interviews aim to understand the use of energy resources and the management of the environment. The interviews also focus on developing strategies to minimize the negative effects.
- Secondary Data: Agencies that deal with the environment tech companies and government had 21 sources. This consisted of gathering data on the power consumption of data centers, manufacturing of AI equipment, and carbon emissions attributable to such processes.

iii. Case Studies

- Positive Example: AI in Smart Cities: To mention a few examples, Singapore's AI enables monitoring of air quality, optimization of flows to minimize traffic in cities, and control of energy consumption in smart buildings.[24] The

[24] Amit Roy Choudhury, *Singapore's Smart Nation 2.O Policy focuses on AI and building resilience*, GOVINSIDER (Oct. 02, 2024), https://govinsider.asia/intl-en/article/singapores-smart-nation-20-policy-focuses-on-ai-and-building-resilience.

systems therefore reduce emissions by reducing the traffic congestion that leads to emissions as well as lowering the energy demand of city infrastructure. Cities like Singapore can therefore cut their environmental impact while a high quality of life is maintained for its people.

- Negative Example: Data Centers and Carbon Emissions: Data centers are very critical for AI applications, although they are one of the areas contributing highly to AI's footprint in the environment.[25] Most of the world's data centers are still running on fossil fuels, which makes for highly intensified carbon emissions. Data centers sometimes consume as much energy as cities -which therefore works to offset the positive effect AI would have on the environment.

iv. Comparative Analysis

The approach also entailed a comparative analysis of the environmental impact of various AI designs and algorithms. An assessment of energy usage between conventional systems and AI systems was made. This particular assessment enabled determining the magnitude of the environmental concern surrounding the utilization of artificial intelligence.

v. Quantitative Assessment

- Energy Usage: This study analyzed the energy usage of artificial intelligence systems, most notably machine learning and deep learning algorithms. It mentioned the power needed for the data storage facilities and the artificial intelligence infrastructures such as graphical processing units.

[25] Melissa Heikkila, *We're getting a better idea of AI's true Carbon Footprint*, MIT TECHNOLOGY REVIEW (Nov.14, 2022), https://www.technologyreview.com/2022/11/14/1063192/were-getting-a-better-idea-of-ais-true-carbon-footprint/.

- Emissions of Carbon Dioxide: The calculations of the volumes of carbon footprints were performed similarly to the analysis of the energy consumption. Such estimates were done assuming existing models applied in environmental science to calculate emissions from data centers and their hardware production.
- E-Waste: Data collected on the volume produced and then discarded of AI-related hardware, including items using GPUs, in an attempt to estimate a rough volume that is generated as e-waste.

VII. Legal Frameworks and Case Laws: AI and Environmental Protection

India

The Indian judiciary has struggled with the environmental implications of new technologies, including AI. "In M.C. Mehta v. Union of India (AIR 1987 SC 1086), the Supreme Court emphasized the fact that a balance has to be achieved between development and the protection of the environment."[26] This judgment has become the guiding principle in the discussions on the environment interface of AI. It talks about an extreme need for regulation because AI must not impact ecological systems.

United States

The landmark ruling was in "Massachusetts v. Environmental Protection Agency (549 U.S. 497, 2007), where the U.S. Supreme Court held that the Environmental Protection Agency must regulate carbon emissions, an area with far-reaching consequences for AI."[27] In the pursuit of emerging AI-driven industries, the imperative for regulations surrounding carbon emissions becomes a critical issue. This case has helped mold policies around how

[26] M.C. Mehta v. Union of India, A.I.R.1987 S.C. 1086.
[27] Massachusetts v. Environmental Protection Agency, 549 U.S. 497, (2007).

technology, including AI, should be regulated within environmental protection contexts.

VIII. Results and Discussion

Improvements in AI can positively impact the environment in terms of efficiency, climate models, and optimal resource use. However, the increase in energy consumption has led to higher carbon emissions, together with electronic waste, as AI has grown rapidly.[28] The enormous computing needs of AI, mainly in data centers, have brought a significant environmental burden. To tackle this concern, one of the fundamental endeavors is "Green AI", which aims to cut down the carbon emissions of AI technology without compromising its performance.[29] In reinforcing their desire for a sustainable future, it is imperative that the benefits of the AI system are weighed against its effects on the environment practices that are less harmful to the environment are adopted and inventions in energy efficient practices advanced**.**

IX. Final Thoughts

Artificial intelligence is transforming the face of our exposure to technology, offering humongous possibilities for greater environmental sustainability and solving severe ecological problems. It could be crucial for the future because it enhances energy consumption, advances climate modeling, and tracks further degradation in the environment. AI technologies are now starting to be implemented to reduce waste, promote renewable energy, and enhance agricultural practices. This offers apparent evidence of how massive AI serves as an important solution to mitigate environmental degradation.

[28] supra note 11.

[29] Arbab Khan, *Green AI: Reducing the Carbon Footprint of Machine Learning*, ESDST (Oct.19, 2023) https://esdst.eu/green-ai-reducing-the-carbon-footprint-of-machine-learning/.

With all that AI gives, there is a major negative impact on the environment. In addition to the environmental costs of the gigantic data centers needed, there is a large energy consumption for training large AI models. The production of the hardware for AI brings along powerful processors for such machines, added e-waste, and resource depletion. Without being judiciously addressed, this carbon footprint offsets the benefits the AI environment wants to present.

The going forward will thus be balancing the pros and cons of the environmental impact of AI. The concept of Green AI, that is prioritizing aspects of AI models on being energy efficiency and sustainability, seems quite promising. This can be achieved by designing energy-saving algorithms, recycling electronic waste, and utilizing only renewable energy resources, and in this way preventing any pollution from occurring as much as possible.

It would all depend on the strategies that various stakeholders - governments, industries as well as researchers - would adopt to exploit the potentiality of AI, for example, whether such activities would contribute to degrading the environment or would help to improve it. Therefore, for the use of AI suitable technologies to bear fruits for the health of the planet, it has to adopt ways of life that are sustainable and learn how to do things more efficiently.

Domestic Violence Jurisprudence in India: Evolving Safeguards and Ground-Level Realities in Jammu & Kashmir

Rubina Iqbal*

Abstract

Domestic violence remains the most pervasive form of gender-based violence in India, witnessed across socio-economic, cultural, and religious lines. The Protection of Women from Domestic Violence Act, 2005 ("PWDVA") introduced a survivor-centric, civil-remedial architecture that recognizes physical, sexual, verbal/emotional, and economic abuse, and provides swift reliefs—protection, residence, maintenance/monetary relief, custody, and compensation—independent of criminal prosecution. Supreme Court jurisprudence has progressively deepened this remedial approach: V.D. Bhanot affirmed that past conduct predating the Act is relevant; Indra Sarma clarified protection for certain live-in relationships; Hiral P. Harsora removed the "adult male" limitation on respondents; and Satish Chander Ahuja recalibrated the concept of "shared household" beyond title formalism. At the same time, criminal law provisions (notably IPC Sections 498A and 304B), aided by evidentiary presumptions (Evidence Act Sections 113A and 113B), operate in tandem with the PWDVA's civil reliefs. This article surveys the statutory framework and jurisprudence, and then focuses on Jammu & Kashmir (J&K) after the abrogation of Article 370 and the J&K Reorganization Act, 2019, which extended central gender-justice laws to the Union Territory. Examining NCRB data and institutional arrangements (Protection Officers, One-Stop Centres, help lines), it argues that while the doctrinal arc is decidedly survivor-friendly, the implementation gap—insufficient staffing and training of Protection Officers, uneven access to shelters and legal aid, delays in interim reliefs, and conflict-related constraints continues to blunt the Act's promise. The article concludes with a reform agenda prioritizing capacity-building, data transparency, district-level standard operating procedures, and conflict-sensitive protocols tailored to J&K's ground realities.

Keywords: Domestic violence, Abuse, Gender based, Women, domestic relationships, shared household, protection officer and Aggrieved Person.

* Formerly Assistant Professor, School of Law, University of Kashmir.

1. Introduction:

Domestic violence (DV) is a patterned course of coercive conduct which could be physical, sexual, verbal, emotional, and economic within domestic relationships.[1] It could be done by any male or female to another female who is in domestic relationship with the respondent. The Protection of Women from Domestic Violence Act's (PWDVA) design is notably remedial instead of relying solely on criminal penalties. It equips Magistrates to stabilize survivor's lives through protection orders, residence orders, monetary relief, custody and compensation with breach of protection orders attracting criminal penalties.[2] These dual-track models, civil protection alongside criminal law well again reflects what survivors often need most urgently are safety, shelter, and subsistence, even as prosecution proceeds on its own track. The scale of the problem remains significant, it is said that 80% of the domestic violence cases remains unreported due to societal pressures, lack of awareness and fear of family or partner. According to the National Crime Records Bureau (NCRB), "*cruelty by husband or his relatives*" continues to constitute the largest share of crimes against women in India (about 31.4% in 2022), indicating the persistent centrality of intimate partner violence in the national crime profile. The total number of crimes against women rose from 3, 71,503 (2020) to 4, 28,278 (2021) and 4, 45,256 (2022),[3] with reportage noting a further uptick into 2023 when the annual compendium was released. While under-reporting and measurement challenges endure, the broad pattern is hard to deny.[4]

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[1] Meerambika Mahapatro, Domestic Violence and Health Care in India: Policy and Practice (Springer, Singapore, 2018), at pp 09-10.

[2] Shalu Nigam, Women and Domestic Violence Law in India: A Quest for Justice (1st ed., Abingdon (Oxon) & New York, NY: Routledge India, 2020), at pp 35-37.

[3] NCRB 2022 overview and the 31.4% share of "cruelty by husband or relatives"; all-India totals (2020–2022).

[4] Rinki Bhattacharya (ed.), Behind Closed Doors: Domestic Violence in India (1st ed., New Delhi: Sage Publications India, 2004), at pp 234-236.

Jammu & Kashmir provides a particularly important lens. Following the abrogation of Article 370 in August 2019 and the J&K Reorganization Act, 2019, central laws including the Protection of Women from Domestic Violence Act, 2005 was made applicable to the Union Territory of Jammu & Kashmir, which replaced the Jammu & Kashmir the Protection of Women from Domestic Violence Act, 2009.[5] Yet implementation in a conflict-affected region faces distinctive constraints like mobility disruptions, security curfews, displacement and community pressures can suppress reporting and impede access to Protection Officers, shelters, and Courts. Understanding how doctrinal advances translate (or fail to translate) into ground-level relief in J&K is therefore essential.[6] Domestic violence is a significant issue in Jammu and Kashmir, with various factors contributing to its prevalence. Domestic violence is a widespread problem in Jammu and Kashmir, affecting women from various backgrounds and socio-economic strata.[7] Factors such as patriarchal societal norms, lack of education, unemployment, and economic dependence contribute to domestic violence in the region.

Domestic violence has severe physical, emotional, and psychological consequences for women and their families. Social stigma, lack of awareness, and limited access to justice and support services hinder efforts to address domestic violence in the region.[8]

II. **The Statutory Architecture: Civil Remedies and Criminal Law Working Together:**

(i) The Protection of Women from Domestic Violence Act's Remedial Design:

[5] Jammu & Kashmir Reorganization Act, 2019 (official PDF).

[6] Field reportage and policy commentary on survivor navigation in J&K post-2019 (PO access, transit, curfew constraints, interim monetary relief).

[7] Dr. Bashir Ahmad Dabla, Domestic Violence Against Women In Kashmir Valley, Jay Kay Books, Srinagar, 2014, at pp 88-89.

[8] Fatima Buchh, Dr. Naheed Vaida, Prof. Neelofar Khan, She Impact of Domestic Violence on Kashmiri Women, Jay Kay Books, Srinagar, 2016, at pp 65-66.

Section 3 of the Protection of Women from Domestic Violence Act, 2005[9] defines domestic violence expansively to

[9] For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:
(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
(d) Otherwise injures or causes harm, whether physical or mental, to the aggrieved person.
Explanation I.—For the purposes of this section,—
(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
(iii) "verbal and emotional abuse" includes—
(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;
(iv) "economic abuse" includes—
(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;
(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

include Physical,[10] Sexual,[11] Verbal,[12] Emotional[13] and Economic[14] abuse and recognizes a wide ambit of "domestic relationships" (including those in the nature of marriage). Magistrates may grant protection orders (Section 18), residence orders (Section 19), monetary relief (Section 20), custody orders (Section 21), and compensation (Section 22).[15] Breach of a protection order is a cognizable offence (Section 31). The Act establishes an implementation ecosystem: Protection Officers (POs), Service

(c) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

[10]In Inderjit Singh Grewal v. State of Punjab (2011) 12 SCC 588, the principle laid down by the court was that physical violence by the husband or his relatives constitutes domestic violence, and the aggrieved woman can seek protection orders and residence rights under PWDVA. The Court reaffirmed that physical assault or use of force is a direct form of domestic violence.

[11] In S.R. Batra v. Taruna Batra (2007) 3 SCC 169, the Court While primarily about residence rights, it acknowledged that sexual violence falls under the purview of domestic violence under the Act. In Vishaka & Ors. v. State of Rajasthan (1997) 6 SCC 241, though primarily a workplace harassment case, it laid down principles on sexual abuse and dignity, influencing how sexual abuse in domestic settings is viewed.

[12] In V.D. Bhanot v. Savita Bhanot (2012) 3 SCC 183 it was held that Verbal insults and emotional torment amount to domestic violence. The court further held that mental cruelty includes abusive language, humiliation, and threats.

[13] In Kunapareddy v. Kunapareddy (2016) 11 SCC 774, the principle that was laid was that allegations of mental cruelty and emotional harassment are valid grounds for relief under PWDVA.

[14] In Rajnesh v. Neha & Anr. (2021) 2 SCC 324, the court held that Economic deprivation, denial of maintenance, and control over financial resources amount to economic abuse. The Court further issued guidelines for uniform maintenance awards. In V.D. Bhanot v. Savita Bhanot (2012) 3 SCC 183) the court also covered economic deprivation as a form of domestic violence.

[15] Joyeeta Banerjee, The Protection of Women from Domestic Violence Act, 2005 (Notion Press, Chennai, 2020, at pp 25-26.

Providers, Shelter Homes, and Medical Facilities,[16] often linked with One-Stop Centres (OSCs) under Mission Shakti.[17]

(ii) Criminal Provisions and Evidentiary Presumptions: The civil remedies of the PWDVA operate in addition to criminal statutes, not in substitution. IPC Section 498A (cruelty by husband or relatives) and IPC Section 304B (dowry death) remain central, supported by Evidence Act Section 113A (abetment of suicide of married women) and Section 113B (dowry death)—rebuttable presumptions meant to counteract informational and power asymmetries in domestic settings.[18]

III. The Supreme Court's Survivor-Centric Jurisprudence:

(i) ***V.D. Bhanot v. Savita Bhanot***[19] Bhanot confirmed that conduct predating the PWDVA remains relevant to grant reliefs where the domestic relationship subsists at the Act's commencement. This avoided an unduly prospective application that would have erased historical abuse from the court's evaluative lens and denied meaningful relief to long-suffering survivors.

(ii) ***Indra Sarma v. V.K.V. Sarma***[20] In Indra Sarma, the Court elaborated when a live-in relationship qualifies as a "relationship in the nature of marriage." Factors include duration of the relationship, shared household, pooling of resources, socialization in public, and children. The decision ensures that women in certain non-formal unions are not left unprotected against domestic violence.

(iii) ***Hiral P. Harsora v. Kusum Narottamdas Harsora***[21] Harsora struck down the words "adult male" from Section 2(q), holding

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[16] The Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, SS. 3, 8–9, 18–22, 31.

[17] Press/Parliamentary updates on One-Stop Centres under Mission Shakti (service basket; short-stay norms; national coverage), Available at: https://www.pib.gov.in/PressReleasePage.aspx?PRID=1983164.

[18] The Indian Penal Code, 1860, ss. 498A, 304B; The Indian Evidence Act, 1872, ss. 113A–113B.

[19] AIR 2012 SC 965: (2012) 3 SCC 183.

[20] AIR 2014 SC 309 : (2013) 15 SCC 755.

[21] (2016) 10 SCC 165.

that restricting respondents to adult males violated Article 14. Survivors can, therefore, proceed against female relatives and, where facts so warrant, against non-adult males, aligning the statute with the reality that abuse can be enabled or perpetrated by a wider circle of household actors.

(iv) Satish Chander Ahuja v. Sneha Ahuja[22] Ahuja is now the leading authority on "shared household." Overruling S.R. Batra v. Taruna Batra (2007), the Court held that a woman's right of residence does not hinge on title or exclusive ownership by in-laws. The shared household is determined by the fact of shared living as spouses, not by property title—a crucial correction that shapes residence orders under Section 19 across India, including J&K.

IV. Implementation Gaps: Protection Officers, Pendency, and Services:

While jurisprudence is robust, implementation remains a bottleneck. Many States/UTs have in-charge POs (holding additional duties) and patchy service coverage; training and coordination with police, OSCs, and district legal services are uneven.[23] National reportage and court-watch summaries have flagged large pendency in PWDVA matters and the need for better staffing, standard formats for interim monetary relief, and data transparency.[24]

One-Stop Centres (OSCs), launched in 2015 and now subsumed under Mission Shakti,[25] offer integrated services—temporary shelter, medical aid, psycho-social counseling, legal

[22] (2021) 1 SCC 414 (decided 15 Oct 2020); overruling S.R. Batra v. Taruna Batra, (2007) 3 SCC 169 (on "shared household").
[23] National Crime Records Bureau, Crime in India 2022 (aggregate CAW figures; share of "cruelty by husband or his relatives"); see also: J&K state/UT reportage relying on NCRB tables.
[24] See generally court-watch reportage on PWDVA pendency and implementation (Protection Officers, interim relief timelines, legal-aid linkages). Available at: https://www.livelaw.in/top-stories/supreme-court-domestic-violence-act-implementation-protection-officers-free-legal-aid-294288.
[25] Supra note 17.

assistance, and police facilitation.[26] Public dashboards and parliamentary/PIB updates indicate that hundreds of OSCs are functional nationwide, cumulatively assisting hundreds of thousands of women, with norms typically permitting short-stay shelter (commonly up to five days) before referral/rehabilitation.[27]

V. Jammu & Kashmir: Law on the Books, Barriers on the Ground:

(i) Post-2019 Legal Incorporation: With the J&K Reorganization Act, 2019, Parliament extended central laws to J&K, bringing the PWDVA and allied statutes into full operation within the Union Territory. The move removed prior patchworks of adaptation and made national jurisprudence—Harsora, Ahuja, Indra Sarma, Bhanot—directly actionable before Magistrates in J&K.[28]

(ii) Institutional Landscape: Jammu & Kashmir has progressively expanded its OSCs to districts and also integrated them with help lines and the Emergency Response Support System (ERSS-112).[29] District Legal Services Authorities (DLSAs) and Child Development Project Officers (CDPOs) are commonly part of coordination chains in protection and rescue. High Court monitoring in public interest matters has, at times, emphasised inter-departmental coordination to ensure survivors can access POs, medical care, and safe housing without friction.[30]

(iii) Data and Patterns:

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[26] Orders and administrative directions in PILs before the High Court of J&K & Ladakh emphasizing inter-agency coordination for PWDVA implementation.

[27] Dr. Chandrasheela Yadav, Domestic Violence in India: A Socio-Legal Perspective (1st ed., Lambert Academic Publishing, Saarbrücken, 2022, at pp 45-46.

[28] Field reportage and policy commentary on survivor navigation in J&K post-2019 (PO access, transit, curfew constraints, interim monetary relief).

[29] Aadil Bashir & Misbah Rafiq, Dynamics of domestic violence in Kashmir: An interplay of multiple factors, 30 May 2023, available at: https://doi.org/10.1111/aswp.12287.

[30] J&K counts for crimes against women (2020–2022) from UT reportage based on NCRB tables. See also: Mudasir Ahmad Dar vs Mst. Mashooka And Another on 20 May, 2024.

NCRB-aligned reportage shows J&K recorded 3,716 cases of crimes against women in 2022 (up from 3,937 in 2021 and 3,405 in 2020).[31] While this figure aggregates offence heads (rape, kidnapping, cruelty by husband/relatives, etc.), it nevertheless signals the salience of intra-household violence in the UT's crime profile; local reporting has noted Srinagar among districts with significant volumes. As always, in conflict-affected regions, under-reporting and access constraints temper any facile reading of incidence from raw counts.[32]

(iv) What Survivors Encounter:

Qualitative accounts in J&K since 2019 depict a mixed terrain.[33] On one hand, survivors and advocates increasingly invoke Ahuja for residence orders and Harsora to array non-male respondents; on the other, practical hurdles persist: locating POs, securing ex parte interim protection, arranging safe transit to OSCs/courts in curfew-like situations, and obtaining interim monetary relief in time to prevent economic coercion. Coordination has improved, but capacity and coverage must deepen to match doctrinal gains.[34]

VI. Doctrinal Issues in Practice (with a J&K Focus):

(i) Residence Rights after Ahuja:[35]

Magistrates in J&K, applying Ahuja, can order residence protection in a shared household irrespective of title. Orders may (a) restrain dispossession, (b) direct alternate accommodation, or

[31] Behind Closed Doors: Domestic Violence in India – Rinki Bhattacharya (Ed.) (2024, at pp 19-20).
[32] Supra note: 28.
[33] A.K. Singh, S.P. Singh & S.P. Pandey, Domestic Violence Against Women in India (Vedams Books, New Delhi, 2004), at pp 76-76.
[34] Ibid.
[35] (2021) 1 SCC 414.

(c) regulate ingress/egress to ensure safety. This is pivotal in extended or ancestral households common in the region.[36]

(ii) Respondent Universe after Harsora:[37]

By decoupling "respondent" from "adult male," Harsora ensures that female relatives and non-adult males (where facts warrant) cannot evade accountability. Survivors can thus seek comprehensive protection against all perpetrators/enablers within the domestic setting.[38]

(iii) Live-In Relationships after Indra Sarma:[39]

Urban pockets in Srinagar and Jammu have seen petitions where indicia from Indra Sarma guide whether a relationship qualifies as "in the nature of marriage." Survivors in such unions

[36] Naveed Bashir Wani v. Varqa Bashir, CM(M) No 117/2025, 03 July 2025, it was held that Domestic Incident Report isn't mandatory for interim/ex-parte relief under the DV Act; court upheld interim monetary relief on allegations including physical, emotional and economic abuse; Mst Shameema Begum vs Javid Iqbal Khan on 21 August, 2024, it was held that an Interim residence orders are urgent protective reliefs; Magistrate need not hold a full trial if the application discloses prima facie domestic violence, including verbal, emotional and physical abuse; In Abdul Rouf Shah v. Atiqa Hassan & Ors. on 20 May, 2024, High Court sustained enhanced interim monetary compensation under the DV Act—illustrates monetary reliefs to address economic abuse; In Renu Bhasin v. Nisha Rani & Anr. on 28 October, 2017, the J&K High Court reproduced/relied on the DV Act definition that includes sexual abuse (along with physical, verbal/emotional, economic); In Shahid Ahmed Wani & Anr. v. Rubina Akhter, 22 September, 2017 discusses right of residence/shared household remedies under the J&K DV law framework—often invoked where emotional/verbal abuse co-exists with dispossession; Mudasir Ahmad Dar vs Mst. Mashooka And Another on 20 May, 2024, Criminal court can review its own order at the notice stage under the DV Act—procedural clarity that often arises in DV matters.

[37] (2016) 10 SCC 165.

[38] Joyeeta Banerjee, The Protection of Women from Domestic Violence Act, 2005 (Notion Press, Chennai, 2020), at pp 59-60.

[39] AIR 2014 SC 309: (2013) 15 SCC 755.

can seek PWDVA reliefs—protection, residence, maintenance—without the gate keeping of formal marriage rites.[40]

(iv) Harmonizing Civil and Criminal Tracks:

An effective strategy in J&K is to parallel-run remedies: file for immediate PWDVA interim protection/maintenance while lodging FIRs for cognizable offences (498A/304B IPC) where warranted; ensure Evidence Act presumptions (Sections 113A, 113B) are invoked appropriately; and align bail conditions with protection orders for coherence.[41]

VII. Procedure: From First Contact to Order:[42]

(i) Initial Contact: Survivor (or any person on her behalf) may approach the Protection Officer, OSC, or police.

(ii) Domestic Incident Report (DIR): PO assists in drafting/filing the DIR; simultaneous ex parte applications for protection/residence/monetary relief may be made.

(iii) Interim Relief: Magistrates may pass ex parte orders under Sections 18–22 on a prima facie basis.

(iv) Coordination: POs coordinate with police for service of process; OSCs handle shelter, counseling, and legal aid; DLSA ensures representation. Breach of orders triggers Section 31 (cognizable, non-bailable).

(v) Parallel Remedies: Maintenance under Section 125 Cr.PC, matrimonial relief under personal laws, and prosecution under IPC may proceed concurrently.[43]

VIII. Persistent Challenges (National & J&K):[44]

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[40] Dr. Chandrasheela Yadav, Domestic Violence in India: A Socio-Legal Perspective (1st ed., Lambert Academic Publishing, Saarbrücken, 2022), at pp48-49.

[41] Supra note 18.

[42] Shalu Nigam, Women and Domestic Violence Law in India: A Quest for Justice (1st ed., Routledge India, Abingdon & New York, 2020), at 15-16.

[43] A.K. Singh, S.P. Singh & S.P. Pandey, Domestic Violence Against Women in India (1st ed., Madhav Books, New Delhi, 2009), at pp 23-24.

(i) Probation Officers Cadre and Training: Many districts rely on POs with additional charge; dedicated staffing and continuous training is essential to reduce delays and enhance quality of DIRs and interim applications.

(ii) Pendency & Timeliness: High pendency in PWDVA cases undermines the Act's remedial purpose; time-bound interim orders for residence and monetary relief are vital.

(iii) Shelter and Safe Transit: Rural belts face distance and security frictions; escorted transit to OSCs and courts is sometimes necessary, particularly amid restrictions or disruptions.

(iv) Awareness & Stigma: Social pressures and surveillance deter reporting; community gatekeepers can compel "compromises" or withdrawals.

(v) Data Transparency: District-wise dashboards on PWDVA filings, order types, and breach prosecutions remain uneven; J&K would benefit from a public monthly dashboard to guide targeted interventions.

(vi) Conflict-Linked Constraints: Curfews and security checks can delay service of orders, hearings, and medical/legal aid—requiring conflict-sensitive SOPs.[45]

IX. Reform Agenda for Jammu & Kashmir:

(i) Dedicated PWDVA Cells in Every District: Co-located with OSCs, staffed by a full-time PO, Para-legal volunteers, and a counselor; publish clear office hours and a hotline integrated with ERSS-112.

(ii) Model Timelines: Ex parte protection/residence orders within 48–72 hours; interim monetary relief with a reasoned order within two weeks; priority listing for breach cases (s.31).

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[44] Meena Kandasamy, When I Hit You: Or, A Portrait of the Writer as a Young Wife (1st ed., Westland Publications, Chennai, 2017), at pp 77-79.
[45] Ibid.

(iii) Maintenance Calculator: A standard, transparent monetary-relief calculator (income proxies, cost-of-living, care giving burdens) to reduce arbitrariness and delay.

(iv) Safe Housing Pipeline: MOUs between OSCs, short-stay homes, and reserved hostel beds (universities/ITIs) for overflow; publish a district map of beds in real time.

(v) Training & Accreditation: Quarterly training modules for POs, OSC managers, and police; bench book for Magistrates on PWDVA interim relief post-Ahuja.

(vi) Digital Service & Tele-Hearing: Permit WhatsApp/e-mail service with proof; reserve tele-hearing slots for urgent DV matters in remote/curfew-affected areas.

(vii) Data & Accountability: Monthly public dashboards (DIRs, interim orders, final orders, breaches) with district league tables to spur performance.

(viii) Community Partnerships: Engage faith/community leaders for zero-tolerance messaging; school/PHC gate keeping to identify and refer survivors early.[46]

X. Conclusion:

Indian domestic-violence jurisprudence has steadily embraced substantive equality and practical realism. Harsora dismantled a gendered drafting error; Indra Sarma protected women in non-formal unions; Ahuja restored the PWDVA's residence-rights logic; Bhanot ensured historical abuse is not erased by technical prospectively. Yet the decisive question is not doctrinal what, but implementation how—Are Protection Officers accessible and trained? Are interim orders truly urgent and enforced? Are shelters within reach? Is monetary relief timely and sufficient to blunt economic coercion?

For Jammu & Kashmir, post-2019 legal incorporation removed formal barriers; the task now is systems-engineering—

[46] Suman Nalwa & Hari Dev Kohli, Law Relating to Dowry, Dowry Death, Cruelty to Women & Domestic Violence (2nd ed., Universal Law Publishing – LexisNexis, New Delhi, 2013), at 65-66.

institutional density, predictable timelines, and conflict-sensitive protocols. If the UT outfitted the PWDVA's remedial architecture with urgency and transparency, doctrinal gains can translate into safety, stability, and dignity for survivors and their children. The government has implemented schemes to support victims of domestic violence, such as counseling services and shelters. Even Non-governmental organizations (NGOs) are working to raise awareness, provide support, and advocate for policy changes to address domestic violence. There are Community-based initiatives aim to promote gender equality, challenge patriarchal norms, and support victims of domestic violence. Still there is rise in domestic violence cases. Overall, addressing domestic violence in Jammu and Kashmir requires a multi-faceted approach that involves government, NGOs, and community stakeholders. That is the jurisprudence-in-action the statute has always promised.

Breaking Barriers: An Intersectional Analysis of Lgbtq+ Educational Rights and Reservation Policies in India Through Ambedkarite Lens

Himanshu Vashistha*

Abstract

This research investigates the complex intersection of gender identity, caste and access to education inside India's reservation system, especially focusing on the experiences of Dalit transgender persons. Employing Intersectionality theory and building upon Ambedkar's critique of caste hierarchy, the study analyzes how transgender individuals from Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC) endure increased marginalization that is not sufficiently addressed by the existing legal and policy frameworks in place.

The study shows that despite the legal recognition through NALSA v. Union of India (2014) and the Transgender Persons (Protection of Rights) Act 2019, implementation gaps continue, especially with relation to horizontal reservation policies that can address intersectional identities. Census data suggests that about 23% of transgender population in India belongs to historically under-represented caste and tribal backgrounds, yet their literacy rates remain far lower than the national average. This study critically evaluates the limited engagement of National Education Policy 2020's with transgender-specific concerns and argues for comprehensive policy reforms that acknowledge the multiplicity of identities in the transgender community.

Following an Ambedkarite structure, the study reveals how the fight for the rights of transgender parallels anti-caste movements, both challenging systems that control identity and perpetuate exclusion. The research concludes that for true liberation there is need to go beyond politics of singular identity towards the transformative coalition-building that comprehensively addresses structural inequalities.

Keywords: India, Intersectionality, Reservation, Transgender, Educational rights, Ambedkarite philosophy, Caste discrimination, Gender identity

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*Research Scholar, USL&LS, GGS, Indraprastha University, New Delhi

I. Introduction

Ambedkar constantly advocates social and political changes that can eliminate oppression and exclusion system. He believed that the righteous society must confirm the equal access to opportunities, social fairness and respect all persons of different gender, race or ethnic background. Ambedkar in his work "*Castes in India: Their Mechanism, Genesis, and Development"*[1] discusses the idea of surplus men and women. Surplus men can emerge when wives die before their husbands, surplus women can emerge when husband die before wives. Ambedkar argues that, these surplus bodies had the "potential to transgress" social and ritual constraints, by violating caste purity through intercaste marriages. However, the most alarming thing was the violent exercise of "disposing" these bodies in order to reinforce rigid gender roles and to maintain the caste structure by way of forced widowhood, widow burning, and enforced celibacy, among others.

Beyond the context of caste, Ambedkar's examination of how surplus bodies are managed can be applied to non-binary and transgender individuals, which equally disrupts traditional expectations around gender and reproductive roles. Specifically, Dalit transgender individuals are regularly pushed into silence and invisibility by systemic injustice and are labelled as "abject bodies". Analysis of Ambedkar gives a basic foundation to understand organized exclusion and violence - both physically and symbolically - which transgender people face, especially of the lower caste background. Ambedkar criticizes the hierarchy of the caste system, which assigns social position to people on the basis of their birth circumstances. The transgender community which

[1] B.R. Ambedkar, *Castes in India: Their Mechanism, Genesis and Development* (Lecture 2 Collated Readings, Ambedkar King Study Circle USA, Apr. 2020), https://akscusa.org/wp-content/uploads/2020/04/lecture-2-collated-readings.pdf (last visited July 9, 2025).

seems to be homogeneous is also subject to this inequality and hierarchy as well. The caste background and gender diversity of the trans people especially from Dalit communities, often becomes the basis for their oppression. Due to their refusal to align with conventional gender norms and due to their caste identity they are also pushed to the shore of the margin.

The dominant LGBTQ+ rights discourse mainly shows the concerns of English-speaking, urban and upper-caste individuals and does not usually reflect the dual burden of caste and gender. Dalit trans individuals, especially those who are economically precarious, struggle with uneven access to resources and ability to live fearlessly. However, despite these obstacles, a new movement of Dalit transgender activism is emerging, demanding positive discrimination policies in view of both gender and gender identity.

Adopting the Ambedkarite philosophy by individuals from both transgender and oppressed castes, is about claiming their right to dignified life. The violence against Dalit transgender not merely subjugate but also expunge from being called out by this emergent wave of Dalit trans activism. Trans Ambedkarite politics not only critiques tokenism in elite queer circles but also emphasises on community-led leadership, and calls for operational modification in the reservations based upon caste, property and reproductive rights, educational access, and healthcare overhauls. This new trans activism is not only looking for incorporation within existing systems but aims to completely modify the systems. Ambedkar's advocacy for social justice and critique of caste leads to a commendable framework to recognize and backing the hardships of Dalit transgender individuals.[2]

[2] Swarupa Deb & Aniket Nandan, *How B.R. Ambedkar's Radical Critique of Caste Could Transform Transgender Activism in India*, Scroll (in deed in *Scroll.in*) (Apr. 14, 2025), https://scroll.in/article/1081287/how-br-ambedkars-

A framework for affirmative actions that mainly addresses historical injustices faced by marginalised community namely Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), and more recently, Economically Weaker Sections (EWS) is established by the Indian Constitution, through its various amendments and judicial pronouncements. However, the inclusion of sexual orientation and gender identity as grounds for educational reservations within the existing constitutional and legal framework presents both unprecedented opportunities and significant challenges. India's education system has been significantly changed by the reservation laws which intended to rectify past injustices experienced by marginalised communities. In India, the LGBTQ+ community has faced centuries of discrimination, marginalization, and social exclusion, which is often compounded by intersectional identities that include caste, class, and regional affiliations. For LGBTQ+ community the criminalization of homosexuality under Section 377 of the Indian Penal Code,1860 created additional obstacles to social participation and educational access until it remained in effect until 2018. A turning point in LGBTQ+ rights discourse which opened new possibilities for inclusive educational policies came when Hon'ble Supreme Court in *Navtej Singh Johar v. Union of India (2018)*[3], decriminalized consensual homosexual acts. However, there is still a dearth of research on the relationship between sexual/gender identity discrimination and caste-based marginalisation.

A particular kind of intersectional marginalisation that goes against the established inclusion policies and frameworks of social justice experienced by the students who identify themselves as LGBTQ+ and fall under one of the two reserved categories

radical-critique-of-caste-could-transform-transgender-activism-in-india (last visited July 9, 2025).

[3] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; AIR 2018 SC 4321 (India).

(SC/ST/OBC). Due to reservation policies historically underprivileged castes and communities now have greater access to education, but LGBTQ+ people in these communities continue to face additional forms of discrimination. The constitutional protections to LGBTQ+ individuals has been extended not by explicit constitutional amendments rather primarily through judicial interpretation. A constitutional foundation for LGBTQ+ rights has been created by the Hon'ble Supreme Court's affirmation of gender identity and sexual orientation as basic component of human dignity under Article 21 of the Constitution of India[4]. However, it remains a matter of ongoing legal and policy development whether these rights specifically apply to reservation policies or not.

A conceptual gap is created in absence of a strong understanding and mechanism for oppressed communities, especially Dalit transgender individuals. To facilitate the better policy and social reform and to highlight the difficulty faced by them it becomes essential to address this gap. This research fills a significant knowledge vacuum about how students endure several marginalised identities in India's educational system. The research take note of lived experiences of LGBTQ+ students from reserved categories, as well as barriers faced by them in getting access to education and, the effectiveness of India's current institutional support systems and policy framework.

II. Theoretical Framework

The primary theoretical foundation for this research study is provided by Queer theory and Kimberlé Crenshaw's intersectionality theory.

[4] India Const. art. 21.

(i) Queer Theory

The origin of the Queer theory is in earlier theories and movements that questioned the traditional wisdom related to gender and sexuality. The feminist theory, notably the writing of academics such as Judith Butler laid the foundation for queer theory. The idea of gender performativity by Butler, which argues that gender is a collection of behaviours and performances rather than an intrinsic trait, served a pivotal role in the development of queer theoretical point of view.

Furthermore, during the AIDS health emergency in 1980s the activism of the LGBTQ+ movement brought to light the demand for a theoretical model that could handle the intricacies of LGBTQ+ lives. Teresa de Lauretis popularised the term "queer theory" during a lesbian and gay sexuality conference at the University of California, Santa Cruz in 1991. Since then, it has evolved in a large and varied field that covers various subjects and methodology, which are tied together by shared dedication to interrogate traditional wisdom related to gender and sexuality.

Judith Butler popularised the term “Performativity” in her groundbreaking book "Gender Trouble," and it is core principle in queer theory. Butler argues that a person's gender is something they do rather than something they are. Gender performance is constituted by a set of socially controlled and reinforced actions, gestures, and behaviours. This performative aspect of gender which implies that identity is contingent and flexible called into question the idea of a consistent, stable identity.

This concept of performativity also applies to sexuality. Queer theory highlights that, sexual identities are created through repeated performances and social expectations rather than being fixed categories. Queer theory highlights the performative aspect of gender and sexuality, emphasising how alternative performances and expressions can subvert and resist normative identities.

Another important idea within queer theoretical framework is heteronormativity, which assumes that heterosexual constitute the normal sexual orientation. This ideology is based on the premise of gender and sexual binaries, which perpetuate the notion that only two genders (male and female) exist. Queer theory challenges heteronormativity by highlighting the ways in which heteronormativity stigmatises and marginalises queer identities and practices. Queer theory aims to upend the binary reasoning that supports heteronormativity by promoting a more diverse understanding of gender and sexuality. By contesting the supremacy of heterosexual norms, queer theory seeks to make room for a greater variety of identities and practices.

The idea of deconstructing binary categories like male/female and heterosexual/homosexual is central to queer theory. The complexity of human experiences are not sufficiently represented by these dichotomies, which are seen as oversimplified and reductive. Instead of reflecting any innate or natural divisions, queer theory asserts that these binaries are socially constructed and upheld through power dynamics.

Queer theory creates new avenues for understanding difference and identity by dismantling these dichotomies. It pushes us to think beyond strict classifications and to accept the flexibility and diversity of identities. It promotes a more complex and inclusive viewpoint by forcing us to reevaluate our presumptions about gender and sexuality. Ultimately aiming to dismantle oppressive structures by challenging rigid categories, queer theory calls for the recognition and validation of diverse identities and experiences.

(ii) Intersectionality Theory

The term “intersectionality” was originated by a feminist legal scholar Kimberle Crenshaw. In her 1989 article

"Demarginalizing the Intersection of Race and Sex,"[5] Crenshaw explain how a single categorical axis of oppression/discrimination (race) theoretically erased a Black women and how this erasure is imported into activism and legal reforms. Crenshaw's paper mostly addressed the oppression of Black women, who experience social inequality in two ways: first, because they are Black, and second, because they are female. She gave an example of a Black woman who felt she was being passed over for a job because of these two intertwining factors. The employer countered that since the company employed black people (black men), she could not have been subjected to racial discrimination. Additionally, they contended that since the company employed women (white women), she could not have been subjected to gender discrimination.

Crenshaw argues that the oppression of black women was frequently disregarded due to a lack of awareness in society about the interconnectedness of factors that can oppress individuals in different ways. As a legal scholar, Crenshaw analysed three court cases to support her claims. She described the issue with a doctrinal response to discrimination, which requires that the experiences of sexism and racism be matched with those of white women and Black men, respectively. Black women were therefore only protected to the degree that their experiences aligned with those of either of the two groups. The court in *DeGraffenreid v. General Motors*[6] rejected the idea that black female employees face compounded discrimination. Utilising white female employment records as the "historical base" for the conditions of female employment within the company, they examined the plaintiff's claims. White female employees' experiences did not

[5] Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139.
[6] DeGraffenreid v. Gen. Motors Assem. Div., 413 F. Supp. 142 (E.D. Mo. 1976).

illustrate the highly specific types of discrimination that Black female employees faced. A woman who claimed to have experienced discrimination because she was Black was denied access to the company's overall sex disparity statistics in *Moore v. Hughes Helicopter, Inc.*[7] Regardless of what the statistics suggested, a Black woman's experience of sexism was not regarded as sexism at all. The court ruled in *Payne v. Travenol*[8] that Black women could not speak for a whole Black community because of alleged class conflicts in situations where Black women were further disadvantaged by sex. Therefore, Black men might not be able to participate in the remedy in the few instances where Black women are permitted to use overall statistics showing racially disparate treatment (Crenshaw 1989, 148).

What does this signify? Due to their Blackness or femininity, Black women's needs and viewpoints are still marginalised in the feminist and Black civil rights agendas. In terms of rights, theory, jurisprudence, and justice, the burden's singularity—one's race, sex, or class—becomes the defining characteristic.

The most vulnerable members of society are put in precarious positions by this type of rigid identity thinking, both from a policy and public opinion standpoint. As an activist or policymaker, will you consider the caste oppression of the villagers when you think of a poor village with a large Dalit population? Their extreme poverty? Their segregation in spite of India's ban on untouchability? The village's dearth of civil facilities and educational opportunities? Why not everything at once? There's a chance that you will have a better understanding of the situation if you see the problems as interconnected and intersecting. Based on your own preconceived notions, people will probably tell you that

[7] Moore v. Hughes Helicopters, Inc., 708 F.2d 475 (9th Cir. 1983).
[8] Payne v. Travenol Labs., Inc., 673 F.2d 798 (5th Cir. 1982).

it is always a good idea to work with people rather than for them. That's precisely what Crenshaw promoted.

Intersectionality theory is a framework for comprehending how various social identities and oppressive systems interconnect to produce distinct pattern privilege and marginalisation. This approach of intersectionality serves as tool to study how cultural, sexual, racial, and religious differences intersect to form identity construction within campus and off campus. The theory helps explain why LGBTQ+ individuals from reserved categories may face different challenges than their upper-caste LGBTQ+ peers or their heterosexual caste peers.

The concept of intersectionality becomes particularly relevant when examining LGBTQ+ individuals who also belong to SC, ST, OBC, or EWS categories. The educational disadvantages of these individuals get compounded as they face multiple forms of discrimination and marginalization. For illustration, an LGBTQ+ person from a Scheduled Caste background, may face unique barriers to educational access and success because of discrimination based on both their sexual orientation or gender identity and their caste identity.

It is also important to see the economic dimensions of this intersectionality. Upon disclosure of their identity the LGBTQ+ individuals from economically weaker sections may face family rejection and loss of financial support, increasing the economic barriers they already face in accessing quality education. This intersection of economic vulnerability and LGBTQ+ identity creates a compelling case for specific affirmative action measures.

Indian educational institutions should consider the complex questions about how to address these intersectional identities within existing reservation frameworks. Should an LGBTQ+ individual from an SC background be eligible for both SC reservation and potential LGBTQ+ reservation? How should

institutions balance competing claims for limited reserved seats? These questions require a policy response that recognizes the complexity of intersectional identities while maintaining the integrity of existing reservation systems.

III. National Framework on Lgbtq+ Rights in Education: Legal And Policy Analysis

(i) Census Data Analysis: Transgender Population Demographics and Educational Marginalization

In 2011 census of India total 4,87,803 transgenders were plotted across all states and Union Territories. The statistics reveals only Uttar Pradesh accounting for 1,37,465 transgenders, which is 28% of the nation's transgender population. This is followed by Andhra Pradesh 43,769 (9%) of transgenders and then Maharashtra having 40,891 (8%). Only two transgender people belongs to Lakshadweep caught last position. As per data related to the literacy rate among transgenders in India, overall literacy rate scores to only 56.07%. Among states Mizoram tops list with the highest of 87.14% of the literate transgender; followed by Kerala 84.61% and Daman & Diu have 75.51% respectively; Tamil Nadu recorded only 57.78% of literacy rate and placed 22nd position among 35; Bihar scores the least 44.35% of the transgender having literateness.[9]

The data reveals a concerning picture of educational marginalization among transgender persons from SC/ST backgrounds. With an overall transgender literacy rate of 56.07% - already below the national average 74.04% - the situation becomes more complex when examining the intersectional disadvantages faced by those from scheduled castes and tribes. Out of 487,803 transgender individuals counted, 78,811 (16.2%) belong to SC

[9] "Transgender in India," *Census 2011 India*, https://www.census2011.co.in/transgender.php (last visited July 9, 2025).

communities and 33,293 (6.8%) to ST communities. This means nearly 23% of India's transgender population comes from historically marginalized caste and tribal backgrounds, suggesting multiple layers of social exclusion.

#	State	Transgenders	Child(0-6)	SC	ST	Literacy
-	India	487,803	54,854	78,811	33,293	56.07%
1	Uttar Pradesh	137,465	18,734	26,404	639	55.80%
2	Andhra Pradesh	43,769	4,082	6,226	3,225	53.33%
3	Maharashtra	40,891	4,101	4,691	3,529	67.57%
4	Bihar	40,827	5,971	6,295	506	44.35%
5	West Bengal	30,349	2,376	6,474	1,474	58.83%
6	Madhya Pradesh	29,597	3,409	4,361	5,260	53.01%
7	Tamil Nadu	22,364	1,289	4,203	180	57.78%
8	Orissa	20,332	2,125	3,236	4,553	54.35%
9	Karnataka	20,266	1,771	3,275	1,324	58.82%
10	Rajasthan	16,517	2,012	2,961	1,805	48.34%
11	Jharkhand	13,463	1,593	1,499	3,735	47.58%
12	Gujarat	11,544	1,028	664	1,238	62.82%
13	Assam	11,374	1,348	774	1,223	53.69%
14	Punjab	10,243	813	3,055	0	59.75%
15	Haryana	8,422	1,107	1,456	0	62.11%
16	Chhattisgarh	6,591	706	742	1,963	51.35%
17	Uttarakhand	4,555	512	731	95	62.65%
18	Delhi	4,213	311	490	0	62.99%
19	Jammu and Kashmir	4,137	487	207	385	49.29%
20	Kerala	3,902	295	337	51	84.61%

#	State	Transgenders	Child(0-6)	SC	ST	Literacy
-	India	487,803	54,854	78,811	33,293	56.07%
21	Himachal Pradesh	2,051	154	433	118	62.10%
22	Manipur	1,343	177	40	378	67.50%
23	Tripura	833	66	172	181	71.19%
24	Meghalaya	627	134	3	540	57.40%
25	Arunachal Pradesh	495	64	0	311	52.20%
26	Goa	398	34	9	33	73.90%
27	Nagaland	398	63	0	335	70.75%
28	Puducherry	252	16	40	0	60.59%
29	Mizoram	166	26	1	146	87.14%
30	Chandigarh	142	16	22	0	72.22%
31	Sikkim	126	14	9	37	65.18%
32	Daman and Diu	59	10	1	2	75.51%
33	Andaman and Nicobar Islands	47	5	0	3	73.81%
34	Dadra and Nagar Haveli	43	5	0	22	73.68%
35	Lakshadweep	2	0	0	2	50.00%

Figure 1[10]

The state-wise analysis reveals stark inequalities. While states like Mizoram (87.14%) and Kerala (84.61%) show exceptional literacy rates among transgender persons, states with large SC/ST transgender populations like Uttar Pradesh (55.80%) and Bihar (44.35%) lag significantly behind. This pattern suggests

[10] *Ibid.*

that regions with higher SC/ST populations may have compounded barriers to education. The educational challenges faced by transgender persons from SC/ST communities represent a clear case of intersectional discrimination. They face barriers not just due to their gender identity, but also due to caste-based discrimination and, in the case of tribal communities, geographical isolation and cultural barriers. The census data doesn't provide literacy rates specifically for SC/ST transgender individuals, making it impossible to directly assess how caste and tribal identity compound educational disadvantages within the transgender community.

(ii) NALSA v. Union of India and Implementation Challenges

In year 2014 in its landmark verdict in *NALSA v. Union of India*[11] Supreme Court not only granted transgender individual the right to self-identify their gender but also recognized them as a socially and economically backward class (SEBC) and extend all kinds of reservation in education and employment as available to members of Other Backward Classes (hereinafter OBCs) category. While the recommended affirmative action provisions are yet to be implemented (Amin, 2023[12]; Sasikumar, 2023[13]).

Evolving jurisprudence on LGBTQ+ rights provides important legal foundations for potential reservation policies. The Court's recognition of dignity, equality, and non-discrimination as

[11] National Legal Service Authority. v. Union of India, (2014) 5 S.C.C. 438 (India).

[12] Aisiri Amin, *The Long Fight for Horizontal Reservation for Transgender People*, *Mint Lounge* (Apr. 18, 2023), https://lifestyle.livemint.com/news/talking-point/the-long-fight-for-horizontal-reservation-for-transgender-people-111681814106470.html (last visited July 9, 2025).

[13] M. Sasikumar, *Explained: Why Trans People Are Demanding Horizontal Reservation Across Castes*, *The Quint* (Apr. 20, 2023), https://www.thequint.com/explainers/trans-people-fight-for-horizontal-reservations-across-castes (last visited July 9, 2025).

fundamental rights applicable to LGBTQ+ individuals creates a constitutional basis for affirmative action measures. However, the Court has also maintained that reservations must be based on identifiable criteria of social and educational backwardness, which requires careful documentation and evidence-gathering regarding the specific disadvantages faced by LGBTQ+ communities.

Another important legal challenge is presented by the process of identification and verification. LGBTQ+ identity verification process includes questions relating to privacy, self-identification, unlike caste-based reservations, which rely on established documentation systems, and thus there exist high potential for misuse. By respecting individual privacy and dignity legal frameworks must balance the need for verification.

The scope of Article 15 of the Constitution of India and the question whether sexual orientation and gender identity can be considered as grounds for special provisions put a significant constitutional challenges to LGBTQ+ reservations. Another important question which Indian legal system will need to navigate is whether LGBTQ+ status constitutes a form of social and educational backwardness that justifies affirmative action measures.

Several pioneering steps to create more inclusive educational environments are being taken in recent past by many state governments and educational institutions. State like Kerala, Tamil Nadu, and several others have begun to address the specific needs of LGBTQ+ students and have implemented anti-discrimination policies in educational institutions. Though initiatives relating to gender-neutral facilities, inclusive admission policies, support systems for LGBTQ+ students, remain scattered and inconsistent across the country but some universities have taken welcoming steps to address the same.

University Grants Commission (UGC) has issued guidelines for higher education institutions to eliminate discrimination based on gender identity and sexual orientation. However, these guidelines primarily focus on anti-discrimination measures rather than affirmative action or reservation policies. The gap between anti-discrimination measures and positive affirmation through reservations represents a significant area for policy development.

During special discourse on '*Affirmative Action and Constitution of India'* hosted by the India International University of Legal Education and Research (IIULER) when Ex-Chief Justice Hon'ble Justice U.U. Lalit was asked about potential inclusion of LGBTQ+ community within the ambit of constitutional affirmative action/reservation, he was of view, *"Theoretically yes, but if I give the counter argument, not to belittle the idea, but to see that my birth in a community like SC, ST or OBC is something beyond my capacity while sexual orientation is my choice." "It is not thrust upon me as an accident of birth. So it is not through my sexual orientation that I am deprived of anything. Someone who is born as a third gender is a matter of accident of birth and there the affirmative action is a yes. But for most of the LGBTQ community the orientation is their own choice."*[14]

He further differentiated between vertical and horizontal reservation by stating that the Constitution has recognized "vertical reservation" for SCs, STs, OBCs which means an SC cannot be an ST or OBC and vice versa. This kind of reservation is for vertically separate compartments. For physically disabled and women there are horizontal reservations which means one will be taking a slice

[14] No 'Vertical' Reservation on Lines of SC, ST, OBC for LGBTQ Members, Says Former CJI Lalit, *The Print* (Jan. 11, 2024), https://www.theprint.in/india/no-vertical-reservation-on-lines-of-sc-st-obc-for-lgbtq-members-says-former-cji-lalit/1920355/ (last visited July 9, 2025).

out of the individual vertical column without increasing the total reservation quota size. Thus, similarly the LGBTQ can be a horizontal reservation category.

(iii) Analysis of The Transgender Persons (Protection of Rights) Act, 2019

International human rights law provides additional legal support for LGBTQ+ educational rights. India's commitments under various international human rights instruments, including the "*International Covenant on Civil and Political Rights"* and the *"International Covenant on Economic, Social and Cultural Rights"*, create obligations to ensure non-discrimination and equal access to education for all individuals, including LGBTQ+ persons.

The Transgender Persons (Protection of Rights) Act of 2019 was then passed with objective of preventing discrimination against the transgender community, and explicitly addressing discrimination in educational institutions. The objective of this legislation is to ensure the inclusion of transgender individuals within educational system and to protect the rights of transgender individual. Further, the Act clearly defines who is considered a transgender. "Transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta (Government of India, 2019[15], p. 2).

[15] The Transgender (Protection of Rights) Act, 2019, No. 40 of 2019, Acts of Parliament, 2019 (India), https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf (last visited Sept. 15, 2023).

This oversimplified definition of transgender overlooks another important aspect of transgender people's identity, which is the caste and class in the Indian context. Naik et al. (2023[16]) highlight that many transgender people come from scheduled castes and scheduled tribes, usually from economically weaker sections, and the fluid nature of their gender can be due to their sociocultural context. While the transgender identity in India includes various dimensions depending on culture, region, religion, caste, class, and many more, the definition in the Act fails to give space to all these intersectionalities in the conceptualisation, leading to various issues such as the case of reservation for transgender people in education and job opportunities. The debate between vertical reservations (treating transgender as a single category) and horizontal reservations (recognising intersectional identities) emerged directly from the Act's limited conceptualisation of transgender identity. The transgender people belonging to the SC community support the horizontal reservation due to experiencing double marginalisation in contrast to transgender people, who consider transgender as a single identity and need to be seen separately.

These neglects of complexities and intersectionality of transgender identity within legal conceptualisation reflect what Spivak (1988[17]) terms the "paradox of representation," where attempts to give voice to marginalised groups often reinforce their silence. The law's development was shaped predominantly by globally connected elite transgender activists highlighted by Dutt

[16] N.M. Naik, S. Gharge & S. Unisa, *A Snapshot of Transgender Community in India*, 52(2) Demography India 60 (2023), https://iasp.ac.in/uploads/journal/005-1708491768.pdf.

[17] Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *Marxism and the Interpretation of Culture* 271 (Cary Nelson & Lawrence Grossberg eds., Macmillan 1988).

and Roy (2014[18]), who have the economic and cultural capital to make their voice as "the voice" for the entire transgender community. These activists, equipped with the linguistic competence to engage with legal discourse, international networks, and economic resources, become what Bourdieu (1991[19]) calls "authorised speech". This creates a framework that privileges certain articulations of transgender identity while rendering others illegible to the state. The subaltern transgender communities, particularly those from lower castes and economically marginalised backgrounds, find themselves in what Spivak describes as a "double blind" – needing legal recognition but having that recognition filtered through elite interpretations of their identity that fundamentally mis-recognise their lived experiences and ways of being.

Recent scholarship (Chatterjee, 2018[20]; Rath, 2019[21]) underscores the need to decolonise trans studies in India by integrating regional histories, caste politics, and socio-economic disparities into the conversation. The Transgender Persons (Protection of Rights) Act, 2019, has been criticised for failing to adequately engage with these complexities, as it imposes a medicalised and bureaucratic framework onto communities that historically functioned with a more fluid gender system (Gupta, 2022[22]). Furthermore, Mishra (2023[23]) highlights how educational

[18] A. Dutta & R. Roy, *Decolonizing Transgender in India*, 1 TSQ: Transgender Stud. Q. 320 (2014), https://doi.org/10.1215/23289252-2685615.
[19] Pierre Bourdieu, *Language and Symbolic Power* (Harvard Univ. Press 1991).
[20] S. Chatterjee, Transgender Shifts, 5 TSQ: Transgender Stud. Q. 311 (2018), https://doi.org/10.1215/23289252-6900696.
[21] V.V. Chaudhry, *Centering the "Evil Twin": Rethinking Transgender in Queer Theory*, 25 GLQ: J. Lesbian & Gay Stud. 45 (2019), https://doi.org/10.1215/10642684-7275278.
[22] N.K. Gupta, *Ruptures and Resurgences: Marking the Spatiality of Transgender Identity in India Since the Enactment of Transgender Persons Act 2019*, 4 Front. Pol. Sci. Art. 963033 (2022), https://doi.org/10.3389/fpos.2022.963033.

access remains deeply tied to socio-economic status, reinforcing disparities even within trans-inclusive policy frameworks.

(iv) National education Policy 2020 and Transgender Rights

Moving to NEP (2020), India first enacted the Right to Education (RTE) Act in 2009[24] to achieve universal elementary education. Under RTE, initially transgender children did not get any space in the Act. Transgender children are classified as part of the "disadvantaged section" with 25% reservation under the RTE Act in 2014. However, this inclusion remains largely superficial, with continued barriers to full participation (Biwas & Soora, 2021[25]). NEP 2020 built upon RTE 2009, focusing on sustainable development goal 4 of equitable education. It provides a limited roadmap for transgender people's inclusion in mainstream education. In the NEP (2020[26]) 65-page document, the term "transgender" is mentioned only four times under subtheme 6 "Equitable and Inclusive Education: Learning for All" (p. 24). Even though including the term in the sixth subtheme is a step forward, a closer look shows major problems that are caused by larger systemic injustices. The minimal space allocated to transgender rights within this document exemplifies what Bourdieu (2018[27]) terms "symbolic violence" – the "subtle ways in which power structures maintain social hierarchies through seemingly

[23] V. Mishra, *Transgenders in India: An Introduction* (Taylor & Francis 2023).
[24] Right of Children to Free and Compulsory Education Act, No. 35 of 2009, India Code (2009), https://www.indiacode.nic.in/bitstream/123456789/2079/1/A2009-35.pdf (last visited July 3, 2025).
[25] A. Biswas & S. Nandini, *Education of Transgenders in India: Status & Challenges*, 4(5) Int'l J. L. Mgmt. & Human. 415 (2021), https://doi.org/10.10000/IJLMH.111902.
[26] Ministry of Human Resource Development, *National Education Policy 2020* (2020), https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf (last visited Sept. 15, 2023).
[27] Pierre Bourdieu, *The Forms of Capital*, in *The Sociology of Economic Life* 78 (Mark Granovetter & Richard Swedberg eds., 3d ed. 2018).

neutral bureaucratic processes." Despite being one of the most marginalised groups, facing systematic abuse leading to high dropout rates, reliance on precarious means of survival, such as begging and sex work, etc. (Virupaksha & Muralidhar, 2018[28]), transgender people receive no specific section in NEP (2020) on educational provisioning, which reflects a tokenistic inclusion rather than meaningful policy intervention.

The NEP introduced the new terminology in nomenclature that is "Socio-Economically Disadvantaged Groups (SEDGs)". NEP (2020[29]) defines:

> *the Socio-Economically Disadvantaged Groups (SEDGs) can be broadly categorised based on gender identities (particularly female and transgender individuals), sociocultural identities (such as Scheduled Castes, Scheduled Tribes, OBCs, and minorities), geographical identities (such as students from villages, small towns, and aspirational districts), disabilities (including learning disabilities), and socioeconomic conditions (such as migrant communities, low- income households, children in vulnerable situations, victims of or children of victims of trafficking, orphans including child beggars in urban areas, and the urban poor). (p. 24)*

This broader definition provides the scope of understanding the intersectionality of different marginalised groups in India. However, this conceptualisation is Foucault's concept of

[28] H.G. Virupaksha & D. Muralidhar, *Resilience Among Transgender Persons: Indian Perspective*, 34 Indian J. Soc. Psychiatry 111 (2018), https://doi.org/10.4103/ijsp.ijsp_25_17.

[29] Ministry of Human Resource Development, *National Education Policy 2020* (2020), https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf

governmentality (Foucault, 1991[30]), revealing how administrative simplification can perpetuate more marginalisation of these communities. Subsequently, this oversimplified approach fundamentally undermines the unique challenges and needs of more vulnerable subgroups, particularly the transgender community who comes from Schedule caste, Schedule tribe and Other Backward Classes in India. Such blanket categorisation often allows more politically organised and socially visible marginalised groups to monopolise resources, attention, and advocacy platforms, effectively drowning out transgender voices. This administrative convenience perpetuates a dangerous hierarchy within marginalised communities, where transgender individuals from SC, ST and OBC, who face distinct forms of discrimination in healthcare, employment, education, and social acceptance, find their specific concerns diluted or ignored in favour of broader, more politically established issues.

While the policy explicitly on page number 25 mentions the educational marginalisation of tribal children, children from scheduled castes, children from other backward castes, and children with disabilities, Namaste (2000[31]) describes the absence of transgender-specific concerns as a reflection of "erasure" – the way institutional policies and practices render the struggles of transgender people invisible. The infrastructure provisions have been mentioned in various sections, ranging from promoting early childhood education to effective governance through the school complexes/clusters section. The absence of specific guidelines for gender-neutral facilities and safe spaces reflects a deeper policy blindness to the embodied experiences of trans gender students in educational settings.

[30] Michel Foucault, *The Foucault Effect: Studies in Governmentality* (Univ. of Chi. Press 1991).

[31] Viviane Namaste, *Invisible Lives: The Erasure of Transsexual and Transgendered People* (Univ. of Chi. Press 2000).

Professional Development (CPD) section, page number 21 of the policy, shows another critical weakness. There are no concrete requirements or guidelines for training educators and staff in transgender-specific sensitivity and support. This gap in professional preparation leaves educational professionals ill-equipped to address the unique challenges and needs of transgender students, potentially leading to inadvertent discrimination or inadequate support.

The administrative framework of NEP 2020, particularly its Gender-Inclusion Fund on page 26, provides minimal guidance on how this resource should be used to support transgender students specifically. Critical administrative issues such as name changes, gender marker updates, admission processes, and anti-discrimination policies remain unaddressed. Perhaps most importantly, the policy lacks implementation and monitoring strategies for transgender inclusion initiatives. Overall, these half-baked provisions reflect the broader issue of adapting inclusive provisioning without engaging with it at ground level.[32]

India should add specific implementation guidelines to NEP 2020 to go along with the general language about inclusion that comes from Malta's Gender Identity, Gender Expression, and Sex Characteristics Act (GIGESC Act) of 2015. Malta's legislation, considered among the most comprehensive globally, includes detailed educational protocols that India could adapt. The current broad categorisation of transgender students within SEDGs fails to address their unique educational needs. Malta's model provides clear guidance for school policies, educator training, and curricular integration that would give Indian educational institutions clear

[32] Nabeela Ata, Suman Chaudhary & Tanmay Kulshrestha (2025) A policy discourse analysis of educational provisions for the transgender community in India, Educational Review, 77:5, 1564-1584, DOI: 10.1080/00131911.2025.2505677

direction. Also, transgender-inclusive curriculum standards like the ones made for Malta's school system would help people understand and accept transgender people better, fixing the careless way that inclusion is handled now that we found in our analysis.

IV. The Role Of Universities In Lgbtq+ Inclusion

In terms of LGBTQ+ inclusion and awareness, the higher education industry has advanced significantly. It was not unusual for pupils to who were "caught" engaging in same-sex activities on campus to be silently expelled for a significant portion of the 20th century (Renn, 2010[33]), implying that these were awkward circumstances for colleges to handle and would rather not be brought to light. Higher education institutions only began to realise the importance of actively ensuring that students from sexual minorities feel safer on campus as the century drew to a close (Renn, 2010). But as was already mentioned, there are still horrendous rates of violence and harassment against LGBTQI+ students on campus (Ellis, 2009[34]; National Union of Students, 2014). Evidence from the US showed that LGBT university students are more likely to experience sexual assault than their heterosexual and cisgender peers (Coulter & Rankin, 2020[35]), while research from the UK shows that 7% of trans students have experienced physical attacks by other students or staff because of their gender identity (Stonewall, 2018[36]). This indicates that there

[33] Kristen A. Renn, *LGBT and Queer Research in Higher Education: The State and Status of the Field*, 39 Educ. Researcher 132 (2010).
[34] S.J. Ellis, *Diversity and Inclusivity at University: A Survey of the Experiences of Lesbian, Gay, Bisexual and Trans (LGBT) Students in the UK*, 57 Higher Educ. 723 (2009).
[35] R.W. Coulter & S.R. Rankin, *College Sexual Assault and Campus Climate for Sexual- and Gender-Minority Undergraduate Students*, 35(5–6) J. Interpersonal Violence 1351 (2020).
[36] Stonewall, *LGBT in Britain: University Report* (2018), https://www.stonewall.org.uk/resources/lgbt-britain-university-report-2018 (last visited July 3, 2025).

is still more work to be done to address these problems at the institutional level. For example, Grimwood (2017)[37] noted the need to combat homophobia, biphobia, and transphobia in higher education as well as to create the conditions necessary to lessen the effects of discriminatory practices on campus, based on data gathered from a large survey of LGBT university students in the UK.

By planning events like inviting outside speakers to discuss sexual minority issues, offering "safe zone" training, and hosting other focused extracurricular activities, some universities aim to foster more inclusive environments. Even though these initiatives are good, they might end up drawing in people who are already conscious of and sensitive to these problems, which would have the effect of "preaching to the converted" without really addressing the more serious problems of prejudice and discrimination in higher education. To solve these problems, more strategic and systemic measures must be implemented.

Ellis (2009)[38] offered some suggestions on how colleges can deal with persistent problems of harassment and discrimination on campus in order to create a zero-tolerance policy regarding these problems. These suggestions were to:

- Include LGBT issues in the curriculum;
- Put policy and monitoring procedures into place;
- Establish penalties for discriminatory behaviour; and
- Include LGBT issues in the broader inclusivity practices

[37] M.E. Grimwood, *What Do LGBTQ Students Say About Their Experience of University in the UK?*, 21(4) Persps.: Pol'y & Prac. in Higher Educ. 140 (2017).
[38] *Supra XXXiv*

(i) Curriculum as a window and a mirror

Style (1996[39]) offers a helpful metaphor for thinking about the necessity of LGBTQ+ representation in education: "curriculum as window and as mirror". The author claims that one of the curriculum's key purposes is to introduce students to new perspectives on the world. This is achieved by exposing students to a variety of academic fields as well as by offering them multiple identity windows and mirrors (such as multicultural staff), allowing them to feel accepted in the context of higher education and gain insight into the realities of those who are different from them. This fulfils the crucial function of helping to acknowledge people with disabilities and other groups that are often overlooked in conventional and mainstream higher education.

Even though Style (1996) addresses this in relation to gender and ethnicity, it is easily applicable to gay, lesbian, bisexual, trans, and queer students, who are frequently faced with a large number of heterosexual and cisgender representations in higher education and a relatively small number of individuals with whom they may identify. Students who identify as heterosexual or cisgender must also be given access to windows into the identities and realities of others.

Including sexual minorities in the curriculum may also serve to balance out the "discursive violence" that in daily life, LGBTQ+ individuals are exposed to "words, tone, gestures, and images that are used to differentially treat, degrade, pathologise, and represent lesbian and gay and bisexual, trans, queer, and other experiences" (Yep, 2002, p.170)[40]. The lecturer should strive to

[39] Emily Style, *Curriculum as Window and Mirror*, Social Sci. Rec., Fall 1996, at 35.

[40] G.A. Yep, *From Homophobia and Heterosexism to Heteronormativity: Toward the Development of a Model of Queer Interventions in the University Classroom*, 6 J. Lesbian Stud. 163 (2002).

offer open windows and identity mirrors in two key ways. One of them is aesthetically through using pictures of a variety of people to depict lecture presentations and handouts. He should made a conscious effort to find pictures that might depict a range of identities in terms of sexual orientation, gender, age, and ethnicity. Incorporating writers from sexual minorities and research and theory focused on LGBTQ+ individuals and issues into lessons is another way to go about this. Additionally, including representation of sexual minorities in the curriculum will give students a sense of the background and progression of the ongoing struggle for LGBTQ+ rights, which began decades ago with trailblazers like Hirschfeld (Ellis et al., 2019)[41]. By introducing differences in the form of representations that non-LGBTQ+ students are less accustomed to encountering in academic settings, exposure to these concepts, historical contexts, and influential individuals may help open windows and bring in "fresh air" for them. Knowing that some important figures in their field have been identified as LGBTQ+ may also upset a potential sense of "ownership" of the academic field of their choice. Therefore, these challenges to heteronormativity might make them more conscious of their advantages and show them how sexual hierarchies negatively impact things like individual freedom, creativity, and expression (Yep, 2002).

(ii) Coming out at university: Opportunities and challenges

The topic of LGBTQ+ representations in education brings up issues regarding how staff members who identify as sexual minorities can contribute to the diversity and inclusivity of higher education environments for students. Many young mind will first encounter (positive) role models of LGBTQ+ professionals at university because of the general acceptance of sexual diversity

[41] S.J. Ellis, D.W. Riggs & E. Peel, *Lesbian, Gay, Bisexual, Trans, Intersex, and Queer Psychology: An Introduction* (Cambridge Univ. Press 2019).

among university staff. For LGBTQ+ academics who want to increase LGBTQ+ visibility within their institution face complex challenges as whether, when, how, and to whom they should disclose their gender identity or sexual orientation. Generally non-LGBTQ+ university employees don't need to worry about these issues, which already seem like fairly significant and difficult ones to consider and ultimately take action on. Ellis (2009).[42]

V. Conclusion: A Shared Struggle, A Shared Future

This research reveals that the fight for recognition of transgender rights in India cannot be divorced from the broader anti-caste movement, as both challenge systems that control identity and perpetuate exclusion. The study demonstrates that Dalit transgender individuals face a unique form of intersectional marginalization that existing legal and policy frameworks inadequately address.

The analysis of current policies starting from the Transgender Persons (Protection of Rights) Act, 2019 till the National Education Policy, 2020 effectively reveals significant gaps in understanding and addressing the complex realities of caste-based discrimination within the transgender community. The dominant narrative of transgender rights, shaped by elite activists with greater cultural and economic capital, often renders invisible the experiences of those at the intersection of caste and gender marginalization.

Ambedkar true approach to transgender liberation, requires transcending identity based politics to embrace transformative politics. This requires collective empowerment through coalition with other marginalised community such as indigenous people, disabled people and sex workers. Such approach reflects Ambedkar

[42] Nuno Nodin, *Queering the Curriculum. Reflections on LGBT+ inclusivity in Higher Education,* 28 Psychology Teaching Review, (2022).

philosophy that identity and social norms are neither fixed nor inherent but dynamic, and are shaped by socio-cultural forces and institutional practices.

It is the strong attempt to erase the concerns of the transgender individuals by concreate vision of uniform and casteless transgender community, because dealing with the uninformity may affect the state's response and welfare programs which was already introduced. The analogy of Ambedkar in caste reservation may help the Dalit transgenders in policies related to academic, legal and work engagements.

Concerns of Dalit transgender individuals are erased by the strong vision as a uniform and castless of transgender communities as it affects the state's response and welfare programs towards them. Ambedcarite perspective can help the Dalit Trans Activation Academic, Legal and Worker's Engagement Proceeding Policy.

The implementation of horizontal reservation can be prove a historical step for transgender individuals from Dalit community. As compare to the vertical reservations where benefits cut across. This will lead to a transgender from Dalit community to receive benefits from the Scheduled Caste category (vertical reservation) and as a transgender individual (horizontal reservation).

Moreover, Promoting Dalit Trans leadership within the widespread queer activism movement to include Dalits and Trans stories and improving the academic course may increase over time. The coated historical injustices and marginalisation of transgender individuals belonging to the Dalit community in society should be given adequate attention while drafting and amending policies and guidelines.

The critique given by Ambedkar on the caste was a critical evaluation of the institutionalized inequality legitimized through traditionalist discourse. Although his insights were rooted in caste but the ethos can be stretched to marginalisation of transgender

community. Transgender rights movement and anti-caste movements are not separate struggles. They are parallel conflict against the ruling systems that dominate "*who we are allowed to be*". Only through this intersectional understanding can India move toward the inclusive society that Ambedkar intended to ensure dignity for all, social justice, equal opportunities and , regardless of gender, caste, or identity.

The Persisting Practice of Untouchability in India: Legislative and Judicial Approach

Ritu Paul*
Ekta Pandey**

Abstract

Untouchability is a stigma by caste and is carried by a person from the time of his birth. They are those unfortunate categories in Hindu caste hierarchy who fall in the lowest rung and have been socially oppressed and economically exploited by rest of the communities. Among the marginalized sections of the society, the Scheduled Castes were the ones who have not been allowed to touch the social and economic arena which led them to suffer gross human rights violations systematically by preventing them from getting an education and accessing the public spaces used by the upper-class members of the same society. The barrier for them also extends to the access of economic opportunities. The constitutional measures and legal frameworks that are in place have made some efforts to eliminate this practice, but it is still continuing as it is and is an integral part of the Indian society.

The objective of the paper is to fully embrace the concept by means of tracing historical roots, legal enactments, court interventions and the efforts to combat the presence of untouchability. Further, it analyses the constitutional provision related to untouchability, which lays a special emphasis on Article 17 of the Indian Constitution that makes it a punishable offence thereby nullifying the practice by making it a crime. Besides this, it also brings out the regulatory statute enacted which includes the Protection of Civil Rights Act, 1955 along with an evaluation of its implementation process.

Lastly, the paper proposes the idea of reforms, which includes amending existing laws to close loopholes. It maximizes the urge for a multi-pronged approach to tackle the practice of untouchability with the help of legal reforms, public awareness, education, media intervention, and civil society participation.

In conclusion, the paper affirms Dr. Ambedkar's belief in education as the most powerful tool of social transformation.

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*Research Scholar, USL&LS, GGS, Indraprastha University, New Delhi
** Research Scholar, USL&LS, GGS, Indraprastha University, New Delhi

It reinforces the belief that even after over 75 years of independence, true abolition of untouchability requires the cultivation of a rational, empathetic, and egalitarian social mind-set and not just rules and regulations on paper.

Keywords: Untouchability, Constitutional Challenge, Caste System, Legislative Response, Social Justice Reforms

I. Introduction

The expression "Untouchability" conveys an idea of extreme poverty, ignorance, illiteracy and physical-cum-economic dependence[1]. It is stigma by caste and is carried by a person from the time of his birth. They are those unfortunate categories in Hindu caste hierarchy who fall in the lowest rung and have been socially oppressed and economically exploited by rest of the communities. Their basic disability arises from their low social and ritual status and stigma of pollution by touch. Even with the freedom rights bestowed upon us through the Grundnorm of our nation; we are yet to draw such rights for the "depressed classes" and exterior caste who continue to work towards freedom from socio-economic servitude.

In *Annihilation of Caste*, Dr. Ambedkar stated that untouchability could not be removed unless the sacredness of the concept of caste was rejected; that Hindus practice caste system not because they are cruel or immoral, but because they are intensely religious. Gandhi, on the other hand, believed that untouchability was not inherent in Hindu faith, but the task was placed on Hindus to abolish it[2].

II. Meaning and Concept of Untouchability

Untouchables were designated by variety of nomenclature such as harijan – Children of God (called by Gandhiji)[3] depressed

[1] B.S. Sinha, *Untouchability and Courts* (61 Crim L.J 1964)
[2] S.D. Kapoor, 'Untouchability' (2009) 44(44) Economic and Political Weekly, <http://www.jstor.org/stable/25663717 > accessed 21 November 2024.
[3] Father of Nation who said:- "Whether in prison or outside, Harijan service will be after my heart and will be more precious than the breath of life for me, more precious than the

class, Dalit[4], service classes, avarnas, antyajas, atisudras prior to 1930 but since passage of Government of India 1935, they were officially referred as the Scheduled Castes. Being victim of impurity and subsequently untouchability this section of the society had not only lowest ritual status but also lowest socio-economic status. They were associated with means of livelihood, which were less rewarding and socially less valued. In order to improve social and economic status, it was impossible to get rid from untouchability. *Ekalavya and Sambukh during Mahabharata and Ramayana period had to pay heavy price for challenging codes of conduct*[5].

The untouchables in Indian society are those who are:-

(1) "economically dependent and exploited,
(2) victims of many kinds of discrimination, and
(3) ritually polluted in a permanent way"[6]

Christoph Von Fürer - Haimendrof, an Austrian ethnologist, observes[7]:

"*... on the whole it is not the aboriginals standing outside the caste system who suffer from the most severe social disabilities, but the depressed classes who for centuries have lived in closest association with caste – Hindus. Many aboriginals eat beef and follow other habits objectionable to Hindus without being treated as untouchables, whereas members of depressed classes cannot*

daily bread*.", Vichitra Banwarilal Meena v Union of India and others*, AIR 1982 Raj 297, para 30, p 9.

[4] The word Dalit in Hindi means the "oppressed," and has thus become a politically and socially empowering term used by the ex-untouchables to address themselves.

[5] Dr. Dilip Kumar Jauhar, *Ambedkar Perspective of Social Exclusion and Discrimination*, Research Front, ISSN (Print) 2320 – 6446, (Online) 2320 – 8341

[6] Robert Deliege, 'The Untouchables of India' (1st Edn., Introduction, pp.2, Berg Publishers 1999)

[7]Suvira Jaiswal, 'Some Recent Theories of The Origin of Untouchability: A Historiographical Assessment' (1978) 39 Proceedings of the Indian History Congress <http://www.jstor.org/stable/44139355> accessed 23 November 2024

gain admittance to Hindu society even though they may have personally abandoned such customs…..they look down upon the untouchable in the same manner as does any caste Hindu"[8].

The term "untouchability" describes the humiliations that a specific but sizable portion of the Indian population endures from generation to generation[9]. Untouchability is not defined in the Indian Constitution, nor is it evident what constitutes its practice in any way or what disabilities result from it[10]. In narrower sense it refers to those practice concerned with relegation of certain group (i.e. *Broken Men*[11]) "beyond the pale of caste system"[12]. But this does not include the invidious treatment due to dip in religion or caste except in so far caste was traditionally considered untouchable. In broader sense, it conveys idea of impurity and defilement. It implies certain socio-religious disability like they could not enter into temple, public place, public conveyances, eating place, etc. They have been asked to use roads at mid-day when the sun is vertically overhead and its shadow is caste over negligible distance[13]. They have been prescribed to maintain minimum distance while talking to upper caste people. It refers to scavengers and sweepers.

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[8] ibid

[9] Simon R. Charseley and G.K. Karanth (eds), *Challenging Untouchability: Dalit initiative and experience from Karnataka (Cultural Subordination and the Dalit Challenge)* (1st edn, Sage Publications 1998)

[10] *State of Karnataka v Appa Balu Ingale and Others* 1995 Supp (4) SCC 469, page 12, para 18

[11] Excerpted from B.R. Ambedkar's "*Untouchables: Who* Were They and Why They Became Untouchables?", "wherein Ambedkar proposes that the owing to continuous tribal warfare in primitive society, some of the defeated weaker tribes that were "completely annihilated, defeated and routed" came to be regarded as "Broken Men". He argues that in "primitive Hindu society" too, there must have been Settled Tribes and Broken Men—the latter forced to live outside the village".

[12] Dr. B.R. Ambedkar, *The Untouchables: Who Were They and Why They Became Untouchables?* (7th vol, Government of Maharashtra 1990), 'Untouchability, the Dead Cow and the Brahmin'

[13] D.N. Majumdar and T.N. Madan, *An Introduction to Social Anthropology* (Bombay 1st edn, Asia Publishing House, 1958) 234

Mahatma Gandhi stated that "untouchability means pollution by the touch of certain persons by reason of their birth in a particular state of family. It is a phenomenon peculiar to Hinduism and has got no warrant in reasons or *sastras*"[14].

According to Dr. B.R. Ambedkar, "the untouchability is the notion of defilement, pollutions, contamination and the ways and means of getting rid of that defilement. It is a permanent hereditary stain which can cleanse"[15].

As discussed above, there exists a *chatur-varna* system but eventually a fifth group was recognized which included the non-classified castes or the *avarnas* who were ("still" in some places) considered "untouchables". "These are similar to groups like the *burakumin* (hamlet people) in Japan, the *baekjeong* in Korea, *ragyppa* of Tibet (Passin 1955), and the *cagots* (pariah people) in France (Thomas 2008)"[16].

In the absence of clear definition, it is difficult to decide whether the acts committed constitute untouchability or not. Therefore, in modern times, understanding of the process of social exclusion is purely based on income and economic factors which as a consequence provides an incomplete picture.

It is to be noted here that among many Schedule Castes, only a few are untouchables but not the whole class as such. It may be said that whole of the depressed class are harijans. All the harijans are Schedule Castes. All the untouchables are depressed

[14] Mohandas Karamchand Gandhi, A.T. Hingorani (ed), *My Philosophy of Life* (Pearl Publications, 1961) 146

[15] *State of Karnataka* v. *Appa Balu Ingale and Others*, 1995 Supp (4) SCC 469, page 12, para 18.

[16] Amit Thorat and Omkar Joshi, 'The Continuing Practice of Untouchability in India Patterns and Mitigating Influences' (2020) 55(2) Economic and Political Weekly <https://socy.umd.edu/sites/socy.umd.edu/files/pubs/Thorat%20and%20Joshi%202019_The%20Continuning%20Practice%20of%20Untouchability%20in%20India.pdf> accessed 16 January 2025

classes, harijan or Schedule Castes. But not all depressed classes, harijan or Schedule Castes are untouchable.

III. Emergence of Untouchability in Indian Society

The traditional Hindu society system was a unique system of inequality sustained by religious and ritual conception of purity and pollution. The caste system which has given the idea of high and low of untouchability is said to be of divine origin and has backing of Hindu scriptures. The texts of "Purusha Sukta[17] and Bhagwad Gita" were usually relied upon for validating division of Hindu society into four Varna's i.e. Brahmins, Kshatriya, Vaishya and Shudhras. According to Manu, "the Shudhras were ordained by God to serve the three higher and twice born castes without envy." Manu further says, "*The dwelling of the Chandals shall be outside the village they must be made apparatus and their wealth shall be dogs and donkey"*[18]. The social role assigned to shudhras, however never defiled or stigmatized them at least in Vedic society in which untouchability as almost unknown. Though it is hard to trace the origin of untouchable but it is widely believed that offspring of the Shudhras father and Brahmin mother in different combination fell under the categories of unseeable, unspeakable and untouchables. The Manusmriti also laid down certain steps to remove untouchability.

Stretching the evidence to make out the existence of caste and untouchability as well in the Harappa Culture, Iravati Karve, a sociologist, first referred to the probability of 'something very like

[17] Purusha Shukta is the 72nd hymn of the 10th Mandala; and the Rig Veda sections i.96.2; i.80.16; i.114.2; ii.33.13; viii.52.1; ii.36; iv.37.1; and i) vi.14.2. file:///E:/Parliamentary%20Privileges/Untouchability/SA_LV_2_110120_Amit_Thorat.pdf

[18] Manu Smriti, Ch. V, X-51

castes' at Harappa and a street exclusively occupied by a 'caste-like group' which had specialized in pounding rice there[19].

Untouchability has been ingrained in the nation's social and religious life for almost two millennia. It is a very complicated social and cultural phenomenon. Social and religious reformers have occasionally attempted to alter the social structure to the untouchables' advantage. However, the impact of these efforts was fleeting[20].

During the Pre-Independence era, the Caste Disabilities Removal Act of 1850 became the first blow to the caste system during the British rule; however, the Indian society absorbed it as usual with no practical benefit. But in 1909, the issue of untouchability gained attention. The census officials purposefully avoided referring to the untouchables as Hindus and instead used the term "Untouchables". During 1917 meeting in Calcutta, which was presided over by Mrs. Annie Besant, the Indian National Congress issued a resolution calling on the Indian populace to eliminate all untouchability-based impairments[21]. Furthermore, Dr. B.R. Ambedkar placed a strong emphasis on the political rights of the untouchables during the First Round Table Conference in 1931. It was due to his efforts that the 'separate electorate' was granted to the untouchables. Encompassing this Dr. Ambedkar made an effort to internationalise untouchability, intending to alter the perspective en route to transforming the common understandings of untouchables' history through an international outlook and for this Dr. Ambedkar even attempted to organize a Dalit delegation to present their grievances to the UN. However, this plan to

[19] Iravati Karve, *Hindu Society-An Interpretation* (first published 1961, 2nd edn) ch 2 Caste – A Historical Survey 54-64

[20] Manju Kumar, *Social Equality - The Constitutional Experiment in India* (1st edn, S. Chand & Company Ltd., 2002) 182.

[21] Ramacharan Kshirasagara, *Untouchability in India: Implementation of the Law and Abolition* (Deep & Deep Publications 1986) 80

internationalise untouchability capitulated to nationalist plans for independence[22].

After 1947 prejudices and differences which were dormant, became strident. Some of the problems that India faces till date are: the demand for re-organization of the States on linguistic bases, the problem of a common national language for India and the problem of Untouchability - a problem which is peculiar to India[23].

Throughout the Post-Independence era, public sentiments towards the elimination of untouchability – like beliefs and the advancement of scheduled castes began to blossom. The 'Minimum Wages Act', which was passed in 1948 even before the Constitution was adopted, served to protect the rights of the nation's scheduled castes and landless agriculture workers[24].

In his review of the book *Untouchability in Rural India,* Gopal Guru addresses the evolution of caste by stating that "...there are scholars who obliquely suggest that caste is a rumor and untouchability has become irrelevant in India" in response to the "untouchability question". Guru contends that people who reject the existence of caste and think that untouchability and similar practices only exist in "mild form" are either "guilty" or "embarrassed" of the fact that caste and untouchability even exist[25].

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[22] Jesús F. Cháirez-Garza, Rethinking untouchability: The political thought of B.R. Ambedkar (online edn, Manchester University Press 2024)

[23] Janki Nath Bhat, 'Untouchability in India' (2024) 4(4) Institute of Sociology of the University of Brussels < http://www.jstor.org/stable/41377660> accessed 23 November 2024

[24] Hoshiar Singh and Ajmer Singh Malik, *Socio-Economic Development of Scheduled Castes in India: A study of Haryana* (Aalekh Publishers 2001)

[25]Gopal Guru, 'Review of Confronting Untouchability, by Ghanshyam Shah' (2008) 43(28) Economic and Political Weekly <http://www.jstor.org/stable/40277714> accessed 25 November 2024

Therefore, the doctrine of purity and contamination and the institution of untouchability should be viewed as extensions of the *varna* system and its philosophy rather than as separate systems[26].

IV. Relevance of the existence of Untouchability

India has the largest democracy and is the most populated[27] nation in the world. It has the colossal population of Hindus around the globe. As per the Hindu scriptures, there are approximately 3000 kinds of castes and every person born will certainly have a particular caste or *jati*. These castes or *jatis* are hierarchical in nature and thus, every person possesses a status in the society according to the family they are born in. Castes are generally determined from a family's or a person's occupation. A study of occupational mobility[28] indicates that marginalized groups, such as Adivasis and Dalits, only engage in semi-skilled occupations which consequently lead to labour market discrimination[29].

However, with certain reform movements and awakening of people minds to understand with scrupulous attention resulted into eradication of untouchability with the help of introduction of certain effective legislations. However, according to the India Human Development Survey (IHDS-II) conducted by the National Council of Applied Economic Research (NCAER) and the University of Maryland in 2011-12 indicates that still untouchability is practiced in the Indian households, both in rural

[26]Suvira Jaiswal, 'Some Recent Theories of The Origin of Untouchability: A Historiographical Assessment' (1978) 39 Indian History Congress < https://www.jstor.org/stable/44139355> accessed 23 November 2024

[27] Source: United Nations, Department of Economic and Social Affairs (DESA), Population Division

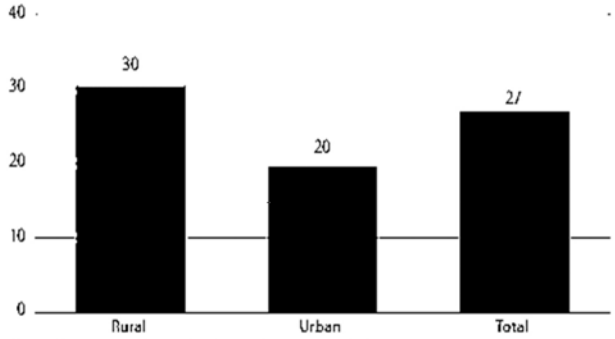
[28] S. Singh and Amit Thorat, 'Caste Restricted Occupational Mobility: Have Reforms Compelled Employers to Be Caste Blind?' (2014) 3(2) Himalayan Journal of Contemporary Research

[29] Amit Thorat, Sukhedeo and Katherine S Newman (eds), 'Economic Discrimination in India, New Delhi' *Oxford University Publications* (2010)

and urban areas, and this includes all kinds of social groups, such as, forward caste, Brahmins, SC/STs and OBCs.

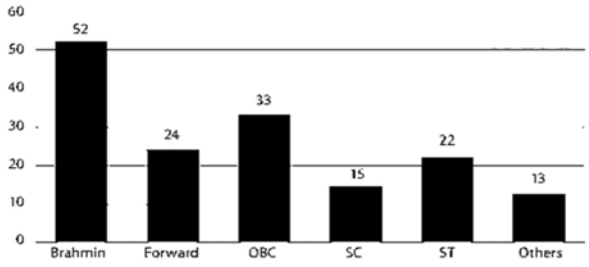
The above observations have been drawn from the following data taken from IHDS 2012 and from the calculations done by Amit Thorat and Omkar Joshi in their research article[30].

Figure 1: Percentage of Households Practising Untouchability, Rural/Urban



Y-axis: Percentage of households practising untouchability.
X-axis: Share of households in rural, urban and all India practising untouchability.
Source: Authors' calculations based on IHDS 2012 data.

Figure 2: Percentage of Households Practising Untouchability, Social Groups, All India

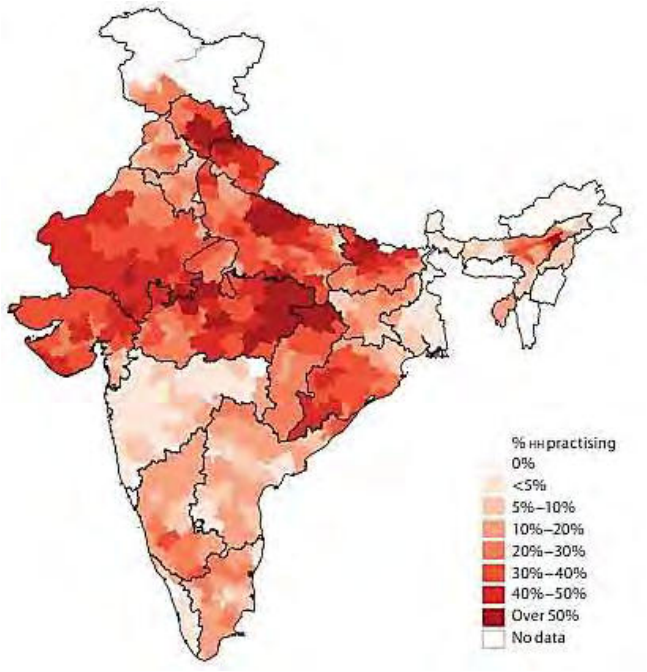


Y-axis: Percentage of households practising untouchability.
X-axis: Share of household by social groups practising untouchability.
Source: Authors' calculations based on IHDS 2012 data.

Futher, the following figure indicates the district-wise Map of the Share of Households Practicising Untouchability. The darkest

[30] ibid

colour indicates that over 50% of households practise untouchability[31].



V. Steps taken for eradication of untouchability from the society:

i. The reformist movement launched by Brahmo Samaj[32], Arya Samaj[33], Ram Krishana Mission[34] and Bhakti

[31] Based on the IHDS-II data set, generated by Reeve Vanneman, University of Maryland
[32] Raja Ram Mohan Roy was the founder of Brahmo Samaj. It was a monotheistic Hindu reform movement which sought to promote inter-caste and widow remarriage and opposed child marriage and polygamy.
[33] It is a Hindu organization founded by Dayananda Saraswati in the 1870s. It was the first to introduce proselytization in Hinduism.
[34] It was founded by Swami Vivekananda to spread the teachings of Ramakrishna Paramahamsa, a Hindu saint. It is a philanthropic, non-political, non-sectarian organization that indulges in various areas such as, education, health care and disaster relief.

movement[35] rebelled against Brahmanical supremacy and rejected all inferior status attached to untouchable/ shudhras by Hindu scripture. Their main aim was to bring back the untouchable to fold of Hinduism but unfortunately it was Varna not Jati was reference group for upward mobility[36].

ii. The British rule produced structural disturbance in the traditional hierarchy through western concept of equality, liberty and egalitarianism. They challenges the validity of distinction based on purity and pollution. The urge of upward mobility within the caste group was described by M.N Srinivas as sanskritization. But in legal arena, untouchability received limited and indirect support. In defending its claim to exclusivity and seniority, the caste group did have the court's backing. The Court ordered damages for purifying rites and issued an injunction to prevent members of a specific caste from accessing temples. In dealing with exclusionary rights the court tried to confine itself to claim involving civil or property rights as opposed to claim for standing or social acceptance[37].

iii. The law failed to protect untouchables from upper caste practice of self-help i.e. social boycotts, excommunication of their own castes and secondary boycotts i.e. depriving the offenders of the service of the village servants. The

[35] It was a medieval Hindu religious and social movement that emphasized devotion to God, equality and brotherhood.

[36] "The clue to the worship of the cow is to be found in the struggle between Buddhism and Brahmanism and the means adopted by Brahmanism to establish its supremacy over Buddhism. The strife between Buddhism and Brahmanism is a crucial fact in Indian history. Without the realization of this fact, it is impossible to explain some of the features of Hinduism. Unfortunately, students of Indian history have entirely missed the importance of this strife. They knew there was Brahmanism. But they seem to be entirely unaware of the struggle for supremacy in which these creeds were engaged and that their struggle, which extended for 400 years has left some indelible marks on religion, society and politics of India. - Untouchability, the Dead Cow and the Brahmin by B.R. Ambedkar."

[37] Vivekanand Jha, 'Social Stratification in Ancient India: Some Reflections' (1991) 19(3/4) Social Scientist <https://doi.org/10.2307/3517554> accessed 2 May 2025

legislation gave the lowest castes certain opportunities for progress and transformation, but it gave them no particular power to take advantage of these opportunities.

iv. After 1909, untouchability moved from the philanthropic to the political sphere owing to concerns about declining Hindu majorities and a proposal for special legislative representation for them[38].

v. In 1917, the Indian National Congress reversed its long-standing policy of excluding "social reform" from its program to pass a reluctant anti-disability resolution[39].

vi. Between 1932 and 1936, a number of temple entry and anti-disability legislations were passed[40].

VI. Constitutional Concerns for Eradication of Untouchability

The Article 11 of the Draft Constitution of India, 1948 was unanimously supported by the Assembly. Nonetheless, there was considerable misunderstanding regarding the definition of the term "untouchability". However, there was some confusion about the scope of the term "untouchability." Naziruddin Ahmad, elected to the Constituent Assembly on a Muslim League ticket from West Bengal, proposed an amendment to clarify the definition of the term, explicitly making it applicable to caste and religion-based untouchability. He argued that an undefined term could lead to misinterpretation of the provision and suggested a change to the

[38] The Indian Council Act of 1909 introduced the concept of separate electorate for Muslims. It 'legalized communalism'. "*Further, the Muslims have always been looking at the Depressed Classes with a sense of longing and much of the jealousy between Hindus and Muslims arises out of the fear of the latter that the former might become stronger by assimilating the Depressed Classes.*", Dr. Babasaheb Ambedkar Writings and Speeches, Vol. 8, edited by Vasant Moon.

[39] "From its birth in 1885 until 1917, the Indian National Congress delib-erately avoided social issues." Zelliot, E. 1988. 9 Congress and the Untouchables, 1917-1950. In: Sisson, R. and Wolpert, S. ed. *Congress and Indian Nationalism: The Pre-Independence Phase*. Berkeley: University of California Press, pp. 182-197. https://doi.org/10.1525/9780520377370-010

[40] B.S. Sinha, Untouchability and the Courts, 61 Crim. L.J. (1964)

term's definition that would make it specifically applicable to untouchability based on caste and religion. He maintained that a phrase without definition can cause the clause to be interpreted incorrectly.

"That for Article 11, the following Article be substituted:–

11. No one shall on account of his religion or caste be treated or regarded as an 'untouchable'; and its observance in any form may be made punishable by law."

Ahmad submitted that the Drat Article 11 is vague as it does not define the term "untouchability" and this may cause misunderstanding in being a legal expression. He further opined that the term "untouchable" can have numerous meanings in different scenarios. It may be assigned to a person suffering from an epidemic or a contagious disease, or to certain foods which are untouchable to Hindus and Muslims, or to women of other families. Further Ahmad highlights Pandit Thakurdas Bhargava's, member of INC, opinion on a person's wife who is only 15 years old as she will be "untouchable" to her loving husband *on the ground that it would be 'marital misbehavior'.* Therefore, he concluded his argument by stating that the term "untouchable" is a "loose" term and that he had tried to give it a better shape and accentuated that no one shall be held accountable of being untouchable on the ground of caste or religion.

Further, K.T. Shah, another member elected to the Constituent Assembly, supported the amendment, arguing that if the term "untouchability" was not defined correctly, the Draft Article would be read as forbidding the government from controlling the quarantine of people with contagious diseases.

"...What about those diseases, and people who suffer from, which are communicable, and so necessarily to be excluded and made untouchables while they suffer?..."

Even though Article 11 of the Draft Constitution was approved and was included in the present Constitution under Article 17, L.S. Bhatkar, one of the members of the Assembly pointed out that abolishment of untouchability in reality is only in papers and is not being followed anywhere. He opined that the caste of Hindus has existed for over thousand years and in order to really eradicate the practice of untouchability they must have a change of heart towards the *avarnas*[41].

Removal of untouchability is the main idea, according to Sardar Vallab Bhai Patel, who made this statement during the Constituent Assembly floor discussion. If abolition of untouchability is made a fundamental right and an offence, the legislature can then make the necessary changes to the law[42] and thus, such abolition will certainly act as an arch of the Constitution which as a consequence will make its preamble more meaningful and will integrate Dalits in the national mainstream[43].

Furthermore, the State and the three main branches of government have been authorized by the Constitution's Preamble to take all necessary actions to establish a sustainable social order in which all citizens can be guaranteed inclusive justice free from discrimination based on caste, creed, race, religion, sex, descent, place of birth, or residence.

In addition to stating that its citizens will be guaranteed justice, liberty, equality, and fraternity in the widest sense of the

[41] Constituent Assembly Debates Vol. 11.
[42] Constituent Assembly Debates Vol. 3, pages 434-35.
[43] *State of Karnataka v Appa Balu Ingale and Others* 1995 Supp (4) SCC 469, page 13, para 21.

word, the Indian Constitution is exceptional and unique in that it lays out provisions in numerous articles that benefit the weaker segments of society. For example, Article 17 not only prohibits the existence of untouchability but also states that enforcing a disability resulting from untouchability is a crime that will be punished by the law. Albeit, Article 17 of the Constitution somewhat directly deals with declaring "untouchability" an offence but Articles 15 and 16 portray discrimination done against any citizen on grounds only of religion, race, caste, etc., Article 16 further for equality of opportunities in matters of Public employment by eliminating such discrimination.

In furtherance of the above, Article 15(2) of the Constitution prohibit any restriction, disability or liability with regard to (a) *access to shop, public restaurants, hotels, place of public entertainment*; (b) *the use of wells, tanks, bathing ghats, roads maintained wholly or partly out of state funds or dedicated to the use of general public*. In addition to this, the State is also obliged under Article 46 to provide with special care to the interest of weaker section especially the Scheduled Caste and to protect them from social injustice and exploitation. It is therefore the responsibility of the State to take the required actions to prevent any private individual from violating Article 17 and to guarantee that the private individual who is the victim of the infringement complies with the fundamental right[44].

These provisions clearly show that Indian Government is constitutionally committed for removal of all practices of untouchability against any member of the Scheduled Caste who has been subjected to various atrocities due to rigid caste structures of Hindu society.

[44] Indian Constitutional Law, M.P. Jain, 4th Edn., *State of Karnataka v Appa Balu Ingale and Others* 1995 Supp (4) SCC 469, page 16, para 30.

VII. Key Features of the Protection of Civil Rights Act, 1955

Apart from the efforts been put into eliminating untouchability by the framers of the Constitution, the legislature has also equally invested itself in achieving the same and this done by enacted the Untouchability (Offence) Act, 1955 subsequently, it was amended in 1976 and was renamed as the Protection of Civil Rights Act, 1955 (hereinafter referred as " Act of 1955") in pursuance of Article 17 of the Constitution. This Act was enacted to establish equality for Dalits and remove disabilities, restrictions and prohibitions based on caste or religion, and this has been provided under the definition of "civil rights" under Section 2(a) of the Act of 1955 wherein it means that any right occurring to a person by reason of abolition of untouchability by Article 17 of the Constitution.

Other clauses of Section 2 defines hotel, place, place of public entertainment and place of public worship and further, provides that any restriction on entry of the member of Schedule Caste will amount to untouchability and offence under this Act of 1955.

According to Section 2(a) of the Act of 1955, "civil rights" are any rights that a person may acquire as a result of Article 17 of the Constitution's prohibition on untouchability. In addition to defining hotels, places of public entertainment, and places of public worship, another clause in Section 2 states that any restriction on a SC member's access will be considered untouchability and a violation of this Act.

Enforcing religious incapacity on the grounds of untouchability and barring anybody from attending places of worship, prayers, bathing ghats, etc. are punishable under Section 3. The penalty included a fine of Rs. 100–500 and/or

imprisonment of one month to six months. Any social disability that is enforced in the workplace, during cultural, religious, or social procession participation, or in hotels, residences, etc., is punishable under Section 4.

The direct or indirect preaching of untouchability and its justification on philosophical, historical or religious grounds has been made an offence. Further, compelling any person to do scavenging or sweeping or removal of carcasses, flying of animals or removal of umbilical cord has been made an offence.

Section 5 of the PCRA provides for punishment for refusing to admit person to hospital, dispensary, educational institutions and any hostels. Section 6 provides punishment for refusing to sell goods or render service on account of untouchability. Section 7 provides for punishment for other offence arising out of act of untouchability. Section 7A states unlawful compulsory service/labor shall be deemed to be the practice of untouchability. Section 8 provides for cancellation or suspension of license in certain cases. Section 9 provides for the revocation/ suspension of grants made by the Government. Section 10 provides that the public servant who willfully shows negligence in the investigation of any offence made under this Act shall be deemed to have abetted an offence. Section 10A empower the State Government and impose collective fine on the inhabitant for committing or abetting the offence.

Scheduled Castes are only mentioned in two PCRA provisions, Sections 7 and 12. It is illegal to disrespect or attempt to insult a member of a Scheduled Caste on the grounds of untouchability, according to Section 7. Furthermore, if an offence under the Act is committed against a member of a Scheduled Caste, Section 12 establishes a legal presumption that the court will assume that the offence was committed on the basis of

untouchability. Therefore, although if the Act does not only apply to members of the Schedule Caste, courts have determined that Section 7 of the PCRA would only be applicable if the practice of untouchability was directed against Dalits or those who support the Dalit cause, and not otherwise[45].

Moreover, all the untouchability offences are non-cognizable and non-compoundable. In cases where the punishment does not exceed three months there shall be provision for summary trial. The punishment for the offence has been enhanced and now fine and imprisonment shall be provided. Further, the Protection of Civil Rights Act also contemplates survey and studies for determining disability areas, the setting up the committee for implementation of the provision of the Act and grants of adequate facility for the person subjected to disability arising out of untouchability.

As a result, it is illegal to deny someone the exercise of any rights that result from the removal of untouchability. In the exercise of that right, it is also illegal to harass, injure, annoy, obstruct, or do similar acts; or to incite or encourage any individual, group of individuals, or the general public to practice untouchability in any way through spoken or written words, signs, or visual signs. The act of attempting to block someone is illegal. The aforementioned actions fall under the criminal provisions if they are carried out subsequent to the exercise of the rights granted by the abolition of untouchability. Any member of the schedule caste who is insulted or attempted to be insulted on the basis of untouchability faces legal consequences. Therefore, it is illegal to

[45] *V.G. Mahalingam v State of Tamil Nadu* Crl. OP No. 18093 of 2018 delivered on 20 July 2018 (Madras High Court).

do anything that would preclude the exercise of any rights that might result from the removal of untouchability[46].

VIII. Judicial response: A missed opportunity

Judiciary plays a crucial role in upholding the legislature's intent while enacting the laws pertaining to untouchability. The judiciary has a huge responsibility to establish a precedent that will prevent many people from engaging in untouchability in the future. The Supreme Court and the lower courts have upheld the constitutional pride in abolishing untouchability thus far. Since many incidents are recorded and people are using the legal system to stop untouchability rather than resolving the issue internally or through Panchayats, it is evident that the public believes that the Indian judiciary can solve their concerns[47].

The Act has not fared well in several High Courts due to the necessity that the prohibited Act be committed on the grounds of untouchability, ambiguity about the inclusion of private property, and a limiting of rights to those enjoyed by members of the same religion.

In ***Kandre Sethi* v. *Motra Sahu***[48], when a dhobi protested about being excluded from the village *kirtan*, the court ruled that it was a private event and that only those he chose could be invited, meaning that the others had no right to attend. Most importantly, however, the necessity of untouchability in the same functions was deemed to be defeated by the admission of a single untouchable from the same caste.

[46] *Bharatinath Namdeo Gavand v Lakshman Mali and others*, page 10, para 30.
[47] Ankit Nande, Vikash Jha and Anurag Aryan, 'Untouchability: A Socio Legal Study' (2021) 3(1) Indian Journal of Law and Legal Research 1
[48] 6 XXIX Cuttack LT 364 (1963)

In ***Benudhar Sahu* v. *State of Cuttack***[49], where most of the villagers utilize a privately owned well, but two Pano boys were forbidden from using it to get water. The lads had no right to use the well, the court said. Therefore, the court asked that it be demonstrated that they had the right to use the well and refused to gauge their access to it by the access of other villages.

But in ***Ramchandaran Pillai* v. *State of Kerala***[50], the issues surrounding untouchability were given further consideration by the Kerala High Court. When a girl school's headmaster created a separate section just for Harijan pupils, the fact that these students were also Harijan in other courses could not negate the illegality of the segregation because every student had an equal right to be free from discrimination.

In ***Surya Narayan Choudhary* v. *State of Rajasthan***[51], the Rajasthan High Court's judges ruled that it is discriminatory to purify only Harijans before granting them entry to the shrine. Generally speaking, harijans were only permitted to enter the temple if they were wearing 'kanthimala' and had 'gangajal' sparkling over them. The High Court ordered that they be granted access in a regular manner, ruling that this approach was discriminatory.

IX. Contemporary Outlook of Judiciary on Untouchability

In ***Shajan Skaria* v. *State of Kerala and Another***[52], according to the complainant, the accused posted a video on YouTube making accusations against PV Sreenijin, a member of the Kerala Legislative Assembly who represents the Kunnathunad constituency, a seat designated for members of the Scheduled

[49] ILR 1962 Cuttack, p 256
[50] LL.R. 1965 Ker. 97
[51] AIR 1989 Raj 99
[52] 2024 SCC OnLine SC 2249

Castes. The video was uploaded with the goal of degrading and mocking him in public, knowing that the complainant belongs to the Scheduled Caste Pulaya community. After being arrested, Shajan Skaria petitioned the Court of Special Judge for anticipatory bail under Section 438 of the 1973 Criminal Procedure Code, but his request was ultimately denied. According to the Court, the phrase "with intent to humiliate," as it appears in Section 3(1)(r) of the Act, 1989, is inseparable from the caste identification of the individual being intentionally insulted or intimidated. Caste-based humiliation is not always the outcome of deliberate taunts or threats directed at members of the SC/ST group. Moreover, it was decided that Section 3(1)(r) of the Act of 1989 cannot be invoked just because it is known that the victim belongs to a Scheduled Caste or Scheduled Tribe[53].

The 2024 case of ***Sukanya Shantha* v. *Union of India*** reignited the ongoing failure to eliminate the persistence of untouchability. This is one of the landmark case based on caste discrimination in prisons. Sukanya, a journalist and activist, pointed to the failure of existing laws and it's weak enforcement making it in effective in bridging the real change that the society requires. She filed a PIL by highlighting the issue of Dalit prisoners being forced into menial labour. The case promoted the court to examine the true scope of Article 17 which explicitly bans untouchability. The judges questioned the government's role in tackling discrimination and ensuring accountability of those who perpetuate it. The discussion highlighted the need of real change through stricter enforcement and not just legal measures. More

[53] Apoorva, 'Supreme Court grants anticipatory bail to journalist Shajan Skaria in SC/ST Act case for making derogatory remarks against MLA PV Sreenijin' *SCC Online Times* (New Delhi, 28 August 2024) <https://www.scconline.com/blog/post/2024/08/28/supreme-court-grants-anticipatory-bail-journalist-shajan-skaria-in-sc-st-act-case-making-derogatory-remarks-against-mla-pv-sreenijin/> accessed 25 March 2025

specifically, the judgement stressed that the constitutional protections must extend to prisoners and directed the authorities to ensure equal treatment of them.

Caste discrimination in Rajasthan's Jalore district of school going Dalit boy in Surana village

A shocking case of caste discrimination has been witnessed in Rajasthan's Jalore district when a school going Dalit boy in Surana village was brutally a salted by his teacher, Chail Singh. A simple act of drinking water from a pot reserved for upper class members lead to the brutal tragedy. Cast based discrimination is still harsh reality and deeply rooted in many parts of India. This seemingly simple act of drinking water from a pot was something unforgivable from the eyes of his teacher. This incident happened inside a school, ironically a place meant to break barriers. After the brutal attack, father of this innocent child did everything in his power to save his life, he rusts from one hospital to another for seeking treatment but he lost his son after 23 days of this incident. Indra's tragic death struck a nerve across the country by fueling protests and demands for reform. This incident was not just a senseless act of violence but it also exposed the deep-rooted discrimination that still plaguing in our society. Legal protections do exist but stricter enforcement is something that is needed. Change must go beyond legal enactments and judicial reinforcements; it requires shift in social attitude by educating minds otherwise such incidences will keep repeating itself.

X. Impact of Westernization on ideological change

Westernization may be a "cultural" force of change, but it directly impinges on the ideology of untouchability. It should be noted that Westernization gave rise to new elites in India who, although initially dominated by the Brahmins, have exhibited a

tendency to cut across the boundaries of caste. All prominent leaders, such as Tagore, Vivekananda, Ranade, Gokhale, Tilak, Patel, Gandhi, Jawaharlal Nehru and Radhakrishnan, preached against untouchability and thought of the abolition of untouchability through legislation and preferential treatment (or "the positive discrimination" as it is sometimes called) of untouchables. The Westernized intellectual elites of India, initially anchored in high-castes, have become critical of the caste system; they have become "self-critical", and have created, in their intellectual production, an "antithesis". Though these new elites are qualitatively different, and though untouchable elites have also started to emerge in modern India, their achievements cannot be compared with the achievements of upper caste intellectuals. Probably the most permanent revolutionary change in the practice of untouchability will come through the process of secularization. The process of secularization brought about by new non-sacred education, secular or contractual law, secular state, and new economic relations based on changes in the mode of production should generate secular beliefs and ideas replacing the archaic and the traditional[54].

XI. Conclusion - Agenda for Change

Despite the noble provisions in the Act there is still wide gap in the law in the books and the law in operation. The Act has only limited effect in eliminating the disability. In fact, one would be foolish indeed to believe that the legal measures alone could secure the elimination of untouchability from society, but for upgrading of anti-disability laws following steps may be taken:

[54] Raj S. Gandhi, 'The Practice of Untouchability: Persistence and Change' (1982) 10(1) Department of Sociology, Humboldt State University <http://www.jstor.org/stable/23261867> accessed 16 April 2025

i) There is a need of closing the loopholes and eliminating the ambiguities that plague the Protection of Civil Rights Act, 1955.

ii) The various forbidden Act could be transferred from the common law offences with a required showing of *mens rea* to offences of strict liability.

iii) The coverage of the Act could be redrafted to ensure that the Act applies to any property by whosoever owned which is used by the public not only to property that the public has legal right to use.

iv) The expression "like same religion and same religious denomination or section thereof by expression" –open to Hindus in general or any section thereof.

v) Special courts and officer to be appointed to oversee the implementation of the Act and mandatory fine to be imposed for its direct/ indirect practice in any form.

vi) Education, awareness of public in general through mass media and reservation in legislature and employment could help in social upliftment of these untouchables.

vii) Change in mindset and exposing the halo-effect of traditional rituals which has no rationality and scientific authority.

viii) Role of civil society

ix) Urbanization, industrialization, favorable treatment by Government and Development.

To conclude, in order to bring effective change in the society Dr. Ambedkar believed that if you want to destroy any society just give all luxurious facilities but don't give education. On the other hand, if you want to develop any society don't give anything but give the education. He believed that education is the surest warranty of social change. Development and empowerment of socially deprived communities is a commitment enshrined in the

Constitution and education is the most effective instrument of social empowerment.

Domestic Violence against Men: Need for Gender Neutral Laws

Sanjana Moses*

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he (or she) receives an injury."

— Chief Justice John Marshall[1]

Abstract

Domestic violence in India continues to be addressed predominantly through a gender-specific framework that assumes men as perpetrators and women as victims. While this approach historically reflected socio-cultural realities of women's subordination, it has now created a systemic blind spot that denies recognition and protection to male and third-gender victims of abuse. The Protection of Women from Domestic Violence Act, 2005, by restricting its scope to women alone, stands in tension with the constitutional mandate of equality under Article 14 and the evolving principle of substantive justice. Empirical studies, judicial pronouncements, and comparative international practices demonstrate that domestic violence is not gender-exclusive, yet the Indian legal system remains resistant to reform. Social stigma, underreporting, and the misuse of pro-women provisions further complicate the issue, undermining both justice delivery and social harmony. This paper argues for the introduction of gender-neutral legislation to safeguard all victims, irrespective of gender, and to ensure that the criminal justice system aligns with constitutional morality, equality, and fairness.

Keywords: Domestic Violence, Gender Neutrality, Constitutional Morality, Male Victims, Legal Reform, Equality.

* Research Scholar, USL&LS, GGS, Indraprastha University, New Delhi

[1]Chief Justice John Marshall, "Gender Equality in Language Too, Please", available at: https://nationalinterest.in/gender-equality-in-language-too-please-426b38accbcd (last visited June 9, 2025).

I. Introduction

The word "MAN" in our patriarchal society generally suggests that it is the gender of the oppressor or the ones who do not need protection, instead of the ones from whom protection is sought. Society and the state fail to see men as the "victim," hence, it is no exception in domestic violence cases. Due to the preconceived notion of men being predominant in every aspect, we often look past the thought of a male being vulnerable to domestic violence. Domestic violence (also known as Domestic abuse) can be defined *as "a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse is physical, sexual, emotional, economic, or psychological actions or threats that influence another person. This includes any behaviour that frightens, intimidates, terrorizes, manipulates, hurts, humiliates, blames, injures, or wounds someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender."*[2] Any human being can become the victim or the perpetrator of the crime. However, in the present legal system in the country, only one facet of it is viewed - it is presupposed that men can only be abusers of domestic violence and never the victims of domestic violence. Such a narrow approach has led the legislators and policymakers to make no provision for the protection of men against domestic violence.

The Indian Penal Code[3] was drafted by Lord Macaulay way back in 1860; it was a period when society was inherently patriarchal, and the protective laws were ordinarily drafted in support of women since they were perceived as the weaker sex of

[2] United Nations, *"What is Domestic Abuse"*, available at: https://www.un.org/en/coronavirus/what-is-domestic-abuse (last visited on June 27, 2025).
[3] The Indian Penal Code, 1860 (Act 45 of 1860).

society.[4] But with the passage of time and equal opportunities, and access to resources, the societal framework has drastically changed. The Justice Verma committee, headed by Justice Jagdish Sharan Verma himself, was formed in December 2012 to bring about such reforms within the criminal justice system in India. Retired Justice Leila Seth and Ex Solicitor General Sri. Gopal Subramaniam was the two other members of the committee. The committee released its report a month after it was constituted with several suggestions. In consequence of the report, the 172nd Law Commission report further culminated its recommendations. The report of the commission stated that *"Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality, the provisions have to be cognizant of the same."*[5] Crime should be made punishable regardless of sex. There are numerous provisions of the Indian criminal justice system that are gender-biased in nature.[6]These provisions strictly violate Article 14[7] of the Constitution of India, which fundamentally talks about the Right to Equality and prohibits Discrimination on the grounds of sex alone. Furthermore, the possible and constant misuse of these laws by women and false accusations against men disrupt the stability and harmony of society. It destroys matrimonial homes and significantly increases the legal system's load to cope with inconsequential and non-existent matters. [8]This begs a fundamental question: Are the same

[4] Martha C. Nussbaum, "India: Implementing Sex Equality Through Law" 2 *University of Pennsylvania Law review* 40 (2001).
[5] Justice J.S. Verma, Justice Leila Seth and Gopal Subramaniam, "Report of the Committee on Amendments to Criminal Law" 416 (2013).
[6] L. Nishant and D. Devanshi, "Critical Commentary on the Gender-Bias Route of Sexual Harassment Laws in India: Examining the Pro Female Tilt and its Consequences" *International Journal of Legal Profession* 372-374 (2015).
[7] The Constitution of India, art. 14.
[8]Peter Rumney, "In Defence of Gender Neutrality Within Rape" 6 *Seattle Journal for Social Justice*. 481 (2017)

laws that exist to shield women now being misused to harass men?[9]Are we now heading towards a society indifferent to the consequences of filing frivolous complaints against men? While we are pursuing protecting women? A balance must be achieved so that the citizens of the country do not lose faith in the country's justice system.

II. Domestic Violence Beyond Gendered Boundaries

Being violent is one of the natural emotions of human beings, and Females are no exception. Studies in the field of domestic violence (discussed below) have shown those men and women act vehemently in domestic relationships at the same rate, and the pattern that exists is the same. Surprisingly, men and women are different but likely to perpetrate violence against each other. The myths are many, but the truth is an eye-opener: About two-thirds of all domestic crimes, especially violence, occur with spouses abusing each other.[10] It is important to note that gender parallelism concerning violence has an illuminating connotation. Murray Straus[11] reports that "*25% occurs with only men assaulting women, and the other 25% occurs with only women assaulting men. The bibliographic study has examined 209 studies that show that women are physically aggressive, in fact, more violent than men in their relationships with their spouses or male partners*. "

Power relations, gender roles, norms, values, and sociocultural environment are not stagnant and keep evolving. For

[9] Nivedita Menon, *Seeing Like a Feminist* 21 (Zubaan & Penguin Books India Pvt. Ltd., New Delhi, 2013).
[10] C.E. Corry, M.S. Fiebert & E. Pizzey, *"Controlling Domestic Violence Against Men"* (2002), available at: http://www.familytx.org/research/Control_DV_against_men.pdf (last visited on July 6, 2025).
[11] Murray A. Straus, "Why the Overwhelming Evidence on Partner Physical Violence by Women Has Not Been Perceived and Is Often Denied" 18 *Journal of Aggression Maltreat and Trauma* 552 (2009).

many years, it has been cited in different cultures and mythologies, literature, and expressions that females are the counter-thesis of superiority and are considered delicate, while men are superior, hard, and carry a macho image. So, men possess heroism, violence, and condense the emotions, and women are on the other end as oppressed and silent sufferers of different forms of violence. These things are guided mainly by gender stereotypes and gender roles, where females cannot be violent, aggressive, and "oppressive" because of their societal status. Females' acknowledgment of violence against men is, for the most part, thought to be a danger to menfolk, prevalence, and manliness. The word man is sex one-sided, signifying power, installed with manly conduct, appearance, and control of feeling (by and large, accepted men have fewer feelings than females, albeit no logical proof is accessible). It's anything but a typical conviction and insight that isolates guys and females from communicating their sentiments. The NCADV[12] found that "1 out of 14 men have been assaulted physically by their current partner, spouse, or former partner in their lifetime. In addition, it was found that 835,000 men are abused by their wives, spouses, or partners every year". In a study of 1000 married men among the various age groups from 21-49 years of age in the rural villages of Haryana, 52.4% of males experienced gender-based violence in India. In addition, 51.5% of males have experienced some torture or violence at the hands of their wives or their intimate partners in their lifetime. 10.5% of males have experienced gender-based violence at the hands of their wives or intimate partners in the last 12 months. The most common spousal or domestic violence against men is emotional and physical, the

[12]National Coalition Against Domestic Violence, "Intimate Partner Violence" (2018), available at: https://ncadv.org/ (last visited June 23, 2025).

second most common domestic violence against men[13]. Even globally, it is recognized that men can be victims of domestic violence. There has been various research conducted that concludes the same. One such research carried out I the United States of America states: "1 in 9 men in the United States of America experiences domestic violence from their Intimate partner or their wives. In addition, 1 in 7 men has been the victim of some sort of physical violence by their wives or by their intimate partner"[14]. Similarly, in the United Kingdom, two out of five casualties of domestic violence are men. Further, according to the British Crime Survey between 2014-2055 and 20018-20019, 40% of domestic violence cases had men as their victims.[15] In Australia, 1 in every 16 men has been exposed to domestic violence at home since the age of 15 from a family member. [16]

III. Stigma Woven in Tradition: The Socio-Cultural Dilemma

The sociocultural dimension looks at the significant contributions that society provides to an individual. Where a person is socially and culturally placed significantly impacts their behaviors. According to a study conducted on domestic violence against men, it was observed that the couples where the spouse is earning and educated up to graduation could commit physical violence against each other."[17]In a patriarchal society, men feel

[13]Jagbir Singh Malik and Anuradha Nadda, "A Cross-Sectional Study of Gender Based Violence against men in Rural areas of Haryana, India",1 *The Indian Journal of community Medicine* 15 (2019).
[14] Domestic Shelter Organization, *"Men can be abused too"*, available at: https://www.domesticshelters.org/articles/statistics/men-can-be-abused-too (last visited on July 16, 2025).
[15] *Independent*, *"Male victims of domestic abuse are being failed by the system"*, available at: https://www.independent.co.uk/voices/domestic-violence-male-victims-shelters-government-funding-stigma-a7626741.html (last visited on June 12, 2025).
[16] *Supra* note 13 at 3.
[17] *Ibid.*

embarrassed to report such instances, and they don't report the brutality. Additionally, it keeps them from making any legitimate move, and they are also scared of getting implicated in false cases. The reasons for underreporting include belief and hope that things would get better, fear of losing social respect and position, protection, love toward their children and family, and fear of getting blamed. Reporting of violence by men also can be perceived as "feminine behavior" in the male-dominated Indian society. While developing countries have recognized that domestic violence is a gender-neutral crime, men in India are not as fortunate[18]. In a workshop by Men Engage[19], it was found that 51% of men confessed to being victims of abuse, 38% answered that to were victims of physical violence, 35% confessed to being sincerely disregarded, while 17% announced emotional violence. Save Indian Family Foundation, an association that works on men's rights, discusses how when a man tries to discuss his problems, torment, battle21, and provocation of marriage and family, nobody is ready to pay attention to the man. Instead, they mock him. Numerous men feel embarrassed to even talk about the issue. They feel that they have failed on their part as a protector and provider for the family. The patriarchal notion that "Mard ko Dard Nahi Hota" stems from this same patriarchal mindset that makes these victims (men) remain silent despite facing violence at home. Male survivors of violence at home are looked down on and shunned away and thought about unmanly. Such thinking is obstinate, and it is risky.

Gender is not a fixed category but a socially constructed concept that is shaped by multiple intersecting factors, including

[18] Men Engage Alliance, *"Domestic Violence Training Manual to Raise Awareness"*, available at: http://menengage.org/resources/domestic-violence-training-manual-raise-awareness/ (last visited on Mar. 9, 2025).
[19] *Supra* Note 13 at 3.

race, caste, nationality, class, culture, sexuality, ability, and customary practices. Within South Asian societies, particularly in India, gender roles are often delineated in rigid and hierarchical ways. This rigidity gives rise to gender biases and stereotypical notions. Violence has many forms ranging from anything like actual maltreatment including slapping, pushing, hitting by the partner, her people or family members, mental violence brutality, subverting self-destruction to compromise and control the husband, boisterous attack if husband keeps in touch with his folks or gets back late from work, throwing objects at the husband, sexual maltreatment if husband denies sex to mental maltreatment by steady threats of including the husband and his family under a false case of dowry and domestic violence.[20]

Male victims of domestic violence are underestimated by society, and even loved ones walk out on them. Thirty-three-year-old Santosh Raj[21]was found with a similar problem. His reality came smashing down when three months into his marriage, his wife employed attackers, who assaulted him, as well as beat up his parents, siblings, and sister. "My wife blamed me for my impotence and demanded cash. She requested one crore for a separation. My father, by one means or another, brought this sum down to 35 lakhs. According to the course of action, 15 lakh was paid, and the rest was paid after the separation. Be that as it may, they soon began requesting the rest of the sum. I realized that they wouldn't quit harassing me if I gave them 20 lakhs, so I went underground for quite a while," says Santosh. The founder of the World's Rights Initiative for Shared Parenting (CRISP)[22], Kumar

[20]Save Indian Family Foundation, *"Husbands are Victims of Domestic Violence"*, available at: https://www.saveindianfamily.org/husbands-are-victims-of-domestic-violence/ (last visited on Mar. 13, 2025).
[21] *Ibid.*
[22] *Greater Kashmir*, *"Need a Commission for Men, they are more vulnerable than women"*, available at: https://www.greaterkashmir.com/india/need-a-

Jaghirdar, shared the statistics from NCRB to stress that the need for a national body to protect men's rights is the need of the hour.

In 2015, 1,33,623 suicides in India were reported, of which 91,528 (68 %) were by men, 42,088 were by women, according to data from the National Crime Records Bureau (NCRB).

Of the 86,808 married people who committed suicide in 2015, 64,534 (74 %) were men", the NCRB data shows. [23]

National Crime Records Bureau figures show that "for every married woman committing suicide, two married men are committing suicide due to domestic violence and are tortured mainly by the wife.

IV. Silent Victims in a Noisy World: Barriers to Reporting

There are many reasons men often do not reveal the violence they face from their spouses or intimate partners.

- General Stereotypes against males– Men feel embarrassed about opening up about the domestic violence they face because of fear of being reduced and looked down upon. Male victims of domestic violence feel ashamed of being judged by society. In a patriarchal society like India, men are expected to be the protectors of the family. This notion stops men from showing the world that they need protection. They fear that if they come out in the open about their plight, they would be labeled as sissies. Further, if a victim decides to come forward complaining about domestic violence, their voices would not be heard due to gender-specific domestic violence laws prevalent in the country.

commission-for-men-they-are-more-vulnerable-than-women-says-ngo (last visited on June 7, 2025).

[23] *Ibid.*

- Fear of false cases– many male victims of domestic violence fear that if they report such incidents, they would be the target of fake cases against them by their spouses. This would cause unnecessary nuisance, and silent suffering is the better option, according to such victims. They are hesitant to face any legal consequences due to gender-specific criminal laws in the country. Further, there is a fear that after complaining against their wives, they would be denied custody and access to their children. All these factors lead to men choosing to suffer silently.
- Societal and family pressure– In a patriarchal society, there is constant societal pressure on men in India to act as the protectors of the family and not as the victims. Also, since most Indians continue to live with their families after marriage, there is pressure from other members to "adjust" and not break the marriage.

  Society and family together contribute to strengthening the prevalent patriarchy. This makes it difficult for men to report cases of domestic violence.
- Denial– most of the male victims of domestic violence are not aware and are in denial. They do not realize that they are victims of domestic violence. This is due to the reason that there is a preconceived notion in society that domestic violence happens only to females. Since the victims themselves are in denial, they do not open up the topic.

V. False Cases as Legal Terrorism: A New Dimension of Domestic Violence

In the landmark case of ***Preeti Gupta v. State of Jharkhand,***[24] the Supreme Court rightly observed that "it is

[24] *Preeti Gupta v. State of Jharkhand*, AIR 2010 SC 3363.

time to revisit Section 498A of the India Penal Code. It also remarked that all the recommendations by the Law Commission align with it and have repeatedly pointed out the rigidity in this provision. The blatant reality cannot be overlooked; the alarming trend of false allegations to harass and intimidate an innocent partner or his relatives is rapidly evolving. Therefore, a stringent law needs to be introduced by the Parliament, aimed at saving the sacred institution of marriage and for punishing those women who try to misguide the police and the courts by instituting false complaints just to cause misery and pain to their husbands and after all, we must never forget that *"justice should not only be done but manifestly and undoubtedly be seen to be done*[25]*."*

Commenting upon the situation in our country, the Hon'ble Apex Court in ***Sushil Kumar Sharma v. Union of India***[26] has observed that "*by misuse of the provision, a New Legal Terrorism may be unleashed. So, the question is – does a provision of Law have become synonymous to an extremely negative thought such as terrorism?*". In that case, it is undoubtedly the time to have a re-look at its roots and reassess the principal objects for its application . Additionally, the Protection of Women from Domestic Violence Act, 2005, has added another fatal weapon to the armory of deceitful litigants. The observation made by the Hon'ble Apex Court that *"Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony, and happiness of the society evidently exhibits that these provisions are disturbing the balance in the society and at the same time causing intense fear, therefore, is used as synonymous to* ***New- Legal Terrorism****,*

[25] *R v. Sussex Justices, ex parte McCarthy* [1924] 1 KB 256.
[26] Sushil Kumar Sharma v. Union of India, AIR 2005 SC 3100 25.

Also, just like terrorism, it is countrywide, widespread in all religions and every social stratum.[27]*"*

The primary objects with which these laws were enacted in society were noble ones. But over the years, these provisions have been abused and exploited by spiteful litigants to serve their oblique motives. It is discriminatory to establish beforehand that domestic violence occurs only against women. In any ordinary situation, a wife could act unpleasantly with her husband either physically or mentally, or even showcase anti-social behavior, which would cause distress and may amount to 'cruelty.'

The chief object of most protective laws is to give legal protection to all women, especially married women, against oppression in their families—the Hon'ble Apex Court in ***Sushil Kumar v. union of India***[28] has also upheld "the constitutional validity of Section 498A, observing that the possibility of exploitation or abuse of a statutory provision, which is otherwise lawful and valid, cannot make it invalid". The Delhi High Court in ***Anu Gill v. State & Anr.***[29] Has observed that: *"... It has become a practice that whenever a police report is lodged consequent upon a matrimonial discord, there is always a tendency on the part of the complainant to involve practically all the relations of her in-law's family either out of vengeance or to work out an appropriate settlement. Such a tendency ought to be deprecated."*

A false complaint has a far-reaching effect on the social and financial outlook of the defendant. Occasionally, the complainant herself becomes the sufferer due to this, since in

[27] *Supra* Note 24 at 6.
[28] *Supra* Note 26 at 6.
[29] *Anu Gill v. State & Anr* ,2001 (2) JCC (Delhi) 86.

many of these cases, the wife has no separate source of income or livelihood. So further, the arrest of the husband or his relatives often culminates in the divorce between the couple, and eventually, the wife becomes dépendant on her natural parents. The children become the innocent victims, who, even though they do not become a party to the legal action, still face numerous social and psychological problems like single parenting and a hostile atmosphere.

In 2015, the Chennai high court stressed that the Domestic Violence Act 2005 is prejudiced and recommended gender neutral. While deciding a petition dealing with the act's provisions, Honourable Justice Vaidyanathan called for a *"neutral and non-prejudicial law to protect genuine victims of domestic violence, irrespective of gender, noting that the existing Law contains a flaw that lends itself to easy misuse by women. The notable flaw in this Law is that it lends itself to such easy misuse that women will find it hard to resist the temptation to teach a lesson to their male relatives and will file frivolous and false cases."*

Similarly, the Madras High Court recently dealt with a false domestic violence case, and Section 498A of the Indian Penal Code 1860 stressed a gender-neutral domestic violence act. It held, "Unfortunately, there is no provision like the Domestic Violence Act to proceed against the wife by the husband."[30]

Statistics and data gathered by SIFF, The Save Indian Family Foundation, corroborate the above contentions; According to their reports, 6,03,070 arrests were made under section 498A; Out of the 2,84,875 people who were able to

[30]*Bar and Bench*, *"Unfortunately, no law like Domestic Violence Act for husband to proceed against wife: Madras HC"*, available at: https://www.msn.com/en-in/news/newsindia/unfortunately-no-law-like-domestic-violence-act-for-husband-to-proceed-against-wife-madras-hc/ar-AAKAYNw (last visited on June 2, 2025).

complete trial, only 48,741 people were finally convicted. The rate of conviction is even less than 20% which only projects how alarming the situation is.[31] No psychological or physiological data or evidence says women cannot inflict violence upon men. Women are equally outraged and can often go on to create circumstances that directly amount to cruelty. Under such circumstances, men are left with no choice but to bear the consequences and remain inside the house's four walls. The laws are so immensely biased in favor of women that the fear of false allegations is enough to prevent men from seeking any kind of help. In all the cases, it is evident how the false cases are filed against men by their spouse to contend ill demands maliciously and how the law court has found out that Domestic violence against men must be subsequently recognized. It is also evident how men suffered damages from long-pending legal cases and destroyed the family and extended family relationships. This is a textbook example of how a law made for the betterment of one section of society subsequently misuses it and reverses the Law's purpose.

VI. Conclusion and Suggestions

Law is inherently a multidimensional concept. Beyond its legal element, it also incorporates socio-economic and historical dimensions. At times, law is perceived as an irrational obligation imposed upon individuals. This is because what may have appeared necessary and rational a century ago may no longer retain relevance today. It is therefore essential to understand law as a dynamic concept that requires change from time to time. Every law requires periodic reconsideration from a fresh perspective and

[31] Statistics and Reports, SIFF, available at: http://www.saveindiafamilyfoundation.org/reportanddata/2019/pdf (last visited on Mar. 23, 2025).

must be shaped in accordance with the emerging needs of society. The evolution of legal norms does not always follow a linear or appropriate path; at times, it develops inconsistently and unpredictably. Such inconsistencies must be identified and critically addressed by scholars and lawmakers. Laws that were originally intended—whether consciously or otherwise—to safeguard women's equal status are now resulting in instances of gender bias. The primary purpose of such pro-women legislation was to grant legitimate protection to women against victimization and harassment by the so-called "stronger sex." Such protective provisions were considered reasonable in light of the social status of women in earlier times. However, the nation has progressed considerably, and women today hold a far stronger and more influential position in society. Yet, this transformation has not been adequately reflected in the legal system. The persistent misuse of protective legal provisions has given rise to fears of a new form of "legal terrorism."

Nevertheless, the ultimate objective of every law remains to secure justice, punish the guilty, and protect the innocent. There must be no scope for preconceived beliefs or biases. While statutory presumptions are sometimes followed, these remain rebuttable to a certain extent. The investigating authorities and the judiciary must function as watchdogs, not as bloodhounds. Their foremost duty is to ensure that no innocent person suffers based on unsubstantiated or malicious allegations. In many cases, direct and conclusive evidence is unavailable, compelling courts to rely upon circumstantial evidence. In such situations, judicial scrutiny and caution are of utmost importance. India has long grappled with violence against women, with some of the most heinous crimes recorded in recent decades. As a result, strict laws have rightly been enacted to punish offenders and to safeguard women. Yet, men's rights activists and organizations have increasingly

highlighted the plight of men who become innocent victims of such pro-women legislation. This calls for the development of gender-neutral laws. It is unfortunate enough to be a victim of crime, but even more so to be a victim of a crime that is not recognized by society or the legal system. Men, like women, must have equal access to justice and should not be subjected to questions about their masculinity when reporting crimes committed against them. True equality will exist only when the law punishes perpetrators strictly based on the gravity of the offence, irrespective of the sex or gender of the victim. The strongest opposition to gender neutrality in domestic violence laws arises from a misunderstanding of its intent. It is incorrectly presumed that such reform implies denying women's victimhood. This assumption is deeply flawed. The objective of gender neutrality is not to narrow the scope of the law but to broaden it beyond the simplistic male-on-female paradigm. Gender equality in law requires institutional and societal reform; it will not be achieved merely through protective legislation. Violence against men can no longer be dismissed or trivialized, and urgent reforms are needed to correct these shortcomings. For instance, a clause titled "Punishment for Misuse of the Act by the Applicant" should be inserted into the Protection of Women from Domestic Violence Act (PWDVA) to deter false complaints.

Domestic violence is a grave issue that requires impartial and gender-neutral legislation to protect all genuine victims, regardless of gender. False allegations themselves constitute cruelty, and their misuse has inflicted suffering on men across the country. Yet, no effective mechanism currently exists to curb such abuse. If laws are persistently misused, it becomes the responsibility of the legislature to amend, modify, or repeal them. While the welfare of women must remain a priority, it is equally necessary to address the misuse of protective laws by vindictive

complainants or complicit officials. Rather than rejecting these laws altogether, the focus should be on creating mechanisms for peaceful resolution of disputes, while modifying provisions prone to abuse.

Introducing gender-neutral legislation would encourage society to recognize the victimization of men without questioning their masculinity. The emphasis must shift from the gender of the victim to the criminality of the perpetrator. If gender-neutral laws are carefully framed and implemented, they will not prejudice the interests of either gender. Reforming archaic legal provisions and replacing terms such as "man/woman" with "any person" and "husband/wife" with "spouse" is essential to ensure equal access to justice for all. The constitutional promise of equality demands that all offences be adjudicated without gender bias and that all offenders be penalized uniformly. If the law itself fails to deliver justice, the very purpose of its existence stands undermined.

At the same time, benefits specifically designed for women should not be withdrawn. Instead, a balance must be struck between the competing concerns of aggrieved men and women. One practical step would be the establishment of a National Commission for Men, on the lines of the National Commission for Women. Such a body should be empowered to investigate complaints filed by men, address domestic violence cases involving the third gender, and provide necessary relief. A 24/7 helpline for distressed men should also be instituted in every state and union territory. Significantly, two parliamentarians from Uttar Pradesh—Hari Narayan Rajbhar and Anshul Verma—have already proposed the creation of such a "Purush Aayog" to address men's rights. Policy measures should also aim to remove the stigma attached to seeking psychiatric or psychological counselling. It is high time we recognize that men, too, can be victims of a patriarchal society. The Indian legal system must finally

acknowledge all genders equally and provide legal remedies to anyone who faces violence, irrespective of gender. Only by enacting truly gender-neutral laws can we achieve equality in its fullest sense.

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Any paper that does not comply with the above instructions will not be sent to the referee for review.

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