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# Legal Framework for Protection of Rights of Women Prisoners

Hakim Yasir Abbas\*  
Hanyaa Jeelani Wani\*

## Abstract

While there is a consensus on the underlining detrimental effects of prisons on women, efforts to specifically address these concerns have rarely become part of any serious law and policy mandates on the same. The change in the composition of the prison population, which is showing an increase in women incarceration, has highlighted the shortcomings in prison systems across the globe in meeting the gender-specific needs of women prisoners. Any modern approach to provide a more acceptable criminal justice policy for women must pay greater attention to their problems. This article is an endeavour to look at the standards laid down under international instruments so as to use the same to scrutinise India's constitutional and statutory framework for protection of women prisoners.

**Keywords:** Female incarceration, Human rights, Prison reforms, Rehabilitation, Women prisoners

## I. Introduction

While women continue to make up a minor proportion of the global jail population, their numbers, nevertheless, are expanding.<sup>1</sup> Studies in several countries show an exponential increase in the number of female prisoners and in some countries female incarceration is happening at a quicker rate than male criminals.<sup>2</sup> The fact that male inmates have always outnumbered female inmates in the

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<sup>1</sup> R. Ahuja, *Female Offenders in India* (Meenakshi Prakshan, India 1969) ('Ahuja').

<sup>2</sup> *ibid.*

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prison system has resulted in a widespread gross negligence for women specific demands in such systems thereby leading to denial of numerous services and opportunities available to male inmates. In numerous countries, the inadequacy of prisons to address the underlying factors that lead to criminal behaviour in women has also become a reason for the rising rate of female re-offending.<sup>3</sup> The changing demographics of the prison population have brought to light the failures of practically all prison systems to satisfy the gender-specific needs of female inmates.<sup>4</sup> This paper intends provide the legal framework for protection of rights of women prisoner with the objective that same would effectively inform important law and policy decisions in relation to the same. There have also been thorough committee reports on this subject, including the Justice Mulla Committee Report on Prison Reforms (1982-83) and the Justice Krishna Ayer Committee on Women Prisoners (1986-87).<sup>5</sup> Women prisoners in Indian jails are less in number than the male prisoners. It may be a cause of overlooking the rights of women prisoners.<sup>6</sup>

Part B of the paper scrutinises the international law applicable to this issue and tries to chalk out the minimum standards that nations across the globe need to embrace when taking law and policy decision on women prisoners domestically. It looks at International Covenant on Civil and Political Rights, 1996 [B.1] [hereinafter ICCPR], the Convention on Elimination of All Forms of Discrimination against Women, 1979 [B.2] [hereinafter CEDAW], UN Declaration on the Elimination of Violence against Women, 1993

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<sup>3</sup>Suvarna Cherukuri, *Women in Prison: An Insight into Captivity and Crime* (Cambridge University Press 2008).

<sup>4</sup> *ibid.*

<sup>5</sup> S.K. Bawa, *Psycho-social Influence of Convicted Women in Northern India* (Authors Press, Delhi 2007).

<sup>6</sup> Bhumika Indolia, *Chained Women: Life Behind Bars* (Mighty Laws 2012) ('Indolia')

[B.3], the Kyiv Declaration on Women's Health in Prison, 2008 [B.4], and the Bangkok Rules on Women Offenders 2010 [B.5] [hereinafter Bangkok Rules]. Part C subsequently looks at the extent to which these standards have become part of the India's constitutional and statutory framework on the said issue. It first of all looks at how constitutional courts in India have evolved women prisoners jurisprudence as part of Part III and Part IV of the Indian Constitution [C.1]. It then goes on to look at relevant legislations [C.2] and finally at the Prison Manual [C.3].

## **II. Analysis of International Conventions for the Protection of Women Prisoners.**

International law has, for a long time now, played a crucial role in informing and facilitating India's domestic law and policy framework.<sup>7</sup> It, therefore, becomes pertinent to look at some important international instruments that have and will, hopefully, continue to inform the major law and policy decisions on issues related to women prisoners in India. These international instruments have been created for the protection of human rights of individuals, including incarcerated women.<sup>8</sup> These instruments can be used to chalk out the minimum requirements that nations are required to maintain for incarcerated women in terms of accommodation, personal cleanliness, clothing, bedding, food, exercise, access to

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<sup>7</sup> *Vishaka v. State of Rajasthan* AIR 1997 SC 3011 ('*Vishaka*'); *D.K. Basu v. State of West Bengal* AIR 1997 SC 610; Saptarishi Bandopadhyay, 'Because the Cart Situates the Horse: Unrecognised Movements Underlying the Indian Supreme Court's Internationalisation of International Environmental Law' (2010) 50 *Indian Journal of International Law* 204; Adam M. Smith, 'Making Itself at Home: Understanding Foreign Law in Domestic Jurisprudence: The Indian Case' (2006) 24 *Berkeley Journal of International Law* 218; Surya Deva, 'Human Rights Realisation in an Era of Globalisation: The Indian Experience' (2006) 12 *Buffalo Human Rights Law Review* 93.

<sup>8</sup> Joycelyn M. Pollock, *Women, Prison and Crime* (Northwestern University, Pritzker School of Law 2002).

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newspapers, books, and religious counsellors, communication with the outside world, medical care and so on.<sup>9</sup>

### **i. International Covenant on Civil and Political Rights, 1966.**

The State Parties to this Covenant undertake to ensure that men and women have equal access to all civil and political rights set forth in the Covenant. Article 10 of the same requires that any individual deprived of his/her liberty must be treated with respect and dignity. This includes separation of pre-trial detainees from those previously convicted of crimes, a special obligation to separate accused juvenile prisoners from adults and the obligation for ensuring speedy justice. There is also a requirement that the focus of prisons should be reform and rehabilitation, not punishment. These provisions apply to those who are detained in jails, hospitals (especially psychiatric hospitals), detention centers, correctional facilities, or any other place where they are deprived of their liberty. Article 10 compliments article 7 of the Covenant, which prohibits torture and other cruel, inhumane, or humiliating treatment, by ensuring that those deprived of their liberty are treated in the same way as free people are treated. Countries across the globe have used ICCPR to prohibit shackling pregnant inmates, facilitation proper ante and post natal care for them and for meeting their nutritional needs properly.<sup>10</sup>

### **ii. The Convention on the Elimination of All Forms of Discrimination against Women, 1979.**

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<sup>9</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) - Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>10</sup> Report of the Quaker Council for European Affairs, 'Women in Prison, A Review of the Conditions in Member States of the Council of Europe' (2007) [Available at <http://www.qcea.org/wp-content/uploads/2011/04/rprt-wip1-main-en-feb-2007.pdf> - Last accessed on 12.11.2021].

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The UN General Assembly enacted the Convention on the Elimination of All Forms of Discrimination against Women in 1979 and it has, since then, come to be known as the international bill of rights for women. It specifies what constitutes discrimination against women and establishes a national action agenda to remove such prejudice, with a preamble and 30 clauses. It defines discrimination and then imposes an obligation on the member states to condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- i. Incorporation of the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women.
- ii. To establish tribunals and other public institutions to ensure the effective protection of women against discrimination.
- iii. To ensure elimination of all acts of discrimination against women by persons, organisations or enterprises.

Other than this, the Convention requires the member states to do the following:

1. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.

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2. To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.
3. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulation, customs, and practices which constitute discrimination against women.
4. To repeal all national penal provisions which constitute discrimination against women.

While there may not be provisions specific to women prisoners, the above mentioned obligation has been used as the basis for ensuring that the state agencies do not discriminate between male and female prisoners on the basis of gender. The Convention provides the basis for realising equality between women and men through ensuring equal access to, and equal opportunities in, political and public life including the right to vote and to stand for election as well as education, health and employment to women. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.<sup>11</sup> Moreover, the Supreme Court of India has used CEDAW to address women specific issues.<sup>12</sup> For example, the court observed in *Valsamma Paul (Mrs) v. Cochin University and others*<sup>13</sup> as follows:

“The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economical. All forms of

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<sup>11</sup>R.D. Shankardass, *Punishment and the Prison: Indian and International Perspective* (Sage Publications, Thousand Oaks 2000).

<sup>12</sup> *Vishaka* (n 7).

<sup>13</sup> AIR 1996 SC 1011

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discrimination on grounds of gender are violative of fundamental freedoms and human rights. [.....] The Government of India [.....] acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.”

**iii. UN Declaration on the Elimination of Violence against Women 1993.**

Article 2 provides that “violence against women will be understood to include, but not be limited to, physical, sexual, and psychological violence inflicted or tolerated by the State, wherever it occurs.” This declaration obligates the member states to pursue a policy of eliminating violence against women by all appropriate means and without delay and, to this end, take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate, and punish violence against women receive training to sensitise them to the needs of women.<sup>14</sup>

**iv. Kyiv Declaration on Women’s Health in Prison, 2008.**

Among the many international instruments on rights of women, this declaration addresses the issue of women prisoners directly. The principles and recommendations of the Kyiv Declaration on Women’s Health in Prison are important towards improving health

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<sup>14</sup> General Assembly Resolution 48/104 of 20 December 1993.

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systems and addressing the health related issues of incarcerated women. The objectives of the declaration are as follows:

1. To raise awareness among the countries of the current situation regarding the health of and health care provided for women in prisons.

2. To call for marked improvements in the current situation by the implementation of WHO mandated policies for improvement of conditions of women in prisons.<sup>15</sup>

#### **v. Bangkok Rules on Women Offenders, 2010**

Bangkok Rules requires the member states to provide services and programmes that aid in the rehabilitation and reintegration of female inmates. This entails creating and implementing comprehensive pre- and post-release reintegration programmes that are tailored to unique requirements of each individual inmate. Former female prisoners, for example, should be provided with special protection and support, such as safe houses, if they are at risk of being injured by their families after their release or if they are at risk of being forced back into violent marriages or being forced to marry someone against their will.<sup>16</sup> The Bangkok Rules, as well as other international norms, require States to address the factors that lead to women being incarcerated and the effects of their incarceration. These include:

1. States have a duty to address the causes that contribute to women's incarceration. In the Vienna Declaration on Crime and Justice, the states agreed to the development of crime prevention strategies that address root causes and risk fac-

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<sup>15</sup> *ibid.*

<sup>16</sup> *United Nations Handbook on Women Imprisonment* (Criminal Justice Handbook Series, United Nations 2014) [Available at [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf) - Last assessed on 04.12.2021].

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tors related to crime and victimisation through social, health, educational and justice policies. For women offenders, these root causes may include poverty, caused by discrimination in education and employment, gender based violence and drug and alcohol addiction.

2. The Bangkok Rules note that the principle of non-discrimination requires States to address the unique challenges that women prisoners face and to take into account their gender-specific needs.
3. The principle of non-discrimination also requires States to take into account and address the disparate impact of criminal justice strategies on women and children.
4. States also have a duty to provide alternatives to incarceration available to women offenders on an equal basis with male offenders.
5. They must also take into consideration the gender specificities of, and the consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system. The Bangkok Rules require States to develop gender-specific diversionary measures and pre-trial and sentencing alternatives to incarceration that take into account the history of victimisation of many women and their care-taking responsibilities.
6. States are obligated to provide women prisoners with programs and services that enable them to effectively reintegrate in society on an equal basis with men. This means non-discriminatory access to education, vocational training, meaningful and remunerated work, and recreational activities, including activities which take account of gender-specific needs.

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The Office of United Nation High Commission of Human Rights, through its field presences, actively advocates States to implement the Bangkok Rules. Through the monitoring of detention facilities, OHCHR provides recommendations towards the improvement of prison conditions for women, prevention of torture and other cruel, inhuman or degrading treatment or punishment.<sup>17</sup> OHCHR also supports the implementation at the national level of recommendations emanating from the human rights mechanisms. The existence of international laws and standards regarding the appropriate treatment of women in prison are evidence that these problems are manifest in prison systems worldwide. We have largely ignored the international consensus on incorporating human-rights based standards and norms into our policies and practices, often through misunderstanding about the human rights framework and a lack of awareness about what it has to offer. Prisons remain hidden from society with no national standards, no national system of inspection, and no required national system of accreditation.<sup>18</sup>

### III. Constitutional and Other Legal Provision for Protection of Women Prisoners

#### i. Constitutional Safeguards

The Constitution of India obligates the State to protect women rights and to adhere to the standards of international conventions while doing the same. However, when it comes to women in prison, the reality is something different.<sup>19</sup> While it is true that incarcerated women are undergoing punishment for the crimes they have committed, that does not mean that they are not entitled to basic human rights. Women from lower socio-economic back-

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<sup>17</sup> J.Belknap, *The invisible Woman: Gender, Crime and Justice* (Belmont: CA,Wadsworth 2001).

<sup>18</sup> *ibid.*

<sup>19</sup> *Indolia* (n 6).

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grounds who are forced to engage in crimes such as prostitution, drug trafficking, or theft make up the majority of female convicts. Even their basic human rights are ignored despite a number of directions from the Supreme Court, High Courts and recommendations of different Committees.

There is a consensus, both in theory and in practice, that requirements of women prisoners are frequently distinct from those of men. While there are certain basic human rights guaranteed to both, women require gender-specific facilities for healthcare, childbirth assistance, child care while in prison, rape and sexual assault prevention counselling, and maintaining contact with their dependents outside of prison. This is also reflected in international norms for the treatment of prisoners and detainees. The Body of Principles for the Protection of All Persons Subjected to Any Form of Detention or Imprisonment emphasises the importance of taking specific measures to preserve women rights and distinctive position, particularly pregnant women and nursing mothers.<sup>20</sup> A constitutional courts in India have used Part III and Part IV of the Indian Constitution to develop a rights oriented jurisprudence specific to women prisoners and it is pertinent to briefly discuss the same here. These include article 14, 15, 16, 19, 21, 39(a), 39(b), 39(c), 42, and 51A(e).

In *Sheela Barse v. State of Maharashtra*<sup>21</sup> the Supreme Court directed setting up of 4 or 5 police lockups, in reasonably good localities, for detaining female suspects only. It also directed that such suspects should be guarded by female constables, and their interrogation should be carried out only in presence of female police officers. In *Christian Community Welfare Council of India v. Govt.*

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<sup>20</sup> K. Jaishankar & D.Halder, 'Rights of Women Prisoners in India: A Legal Analysis' (2007) 28 IJCC 12-20.

<sup>21</sup> JT 1988 (3) 15.

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of *Maharashtra*<sup>22</sup> the Bombay High court directed that “*women should not be arrested after sunset and before sunrise, and should be arrested only in the presence of lady constable*”.

In 2006, the Supreme Court of India through the landmark judgment of *R D. Upadhyay v. State of AP and Ors.*<sup>23</sup> ordered the Centre and states to take various steps to take care of pregnant inmates and dependent children lodged along with their mothers in jails across the country. The Supreme Court issued various guidelines and directions encompassing all kinds of issues concerning incarcerated mothers and their children. It was held that a child in jail with his mother shall be entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right. In pursuance to the judgment the jail manual and/or other relevant rules, regulations, instructions etc. were to be suitably amended within three months so as to comply with directions issued. Moreover, the Supreme Court stated in *State of Punjab v. Baldev Singh*<sup>24</sup> that right to live with dignity, as applied to a prisoner, would include his/her right to the bare necessities of life such as adequate nutrition, clothing, shelter over the head, facilities for reading, writing, interviews, with members of his family and friends, subject to, prison regulations.

### ii. - Statutory Framework - Evolution and Present Scheme

At the national level there are a number of legislations and policies touching, directly or indirectly, upon the administration of the prisons and reformation of prisoners. While these legislations and policies are created to ensure effective operation and management of prisons in India, they also ensure that the constitutional mandate related to protection of female prisoners is provided for, preserved

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<sup>22</sup> AIR 2004 SC 7.

<sup>23</sup> AIR 2006 SC 1946.

<sup>24</sup> AIR 1999 SC 2378.

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and carried out effectively. It is pertinent to look at how the idea of prisons has evolved in India and what the current scheme looks like.

### **The Prisons Act, 1894**

The Prisons Act, of 1894 is the first legislation for prison regulation in India. Commenting upon the Prisons Act, of 1894, Dr. Amarendra Mohanty in his book “Prison system in India” observed the following:

“This Act was primarily focused on deterrent principles, which mirrored British policy on the subject. Legislators made no effort to investigate the other side of the issue. They were more concerned with the operation of the prison than with the treatment of the inmates.”<sup>25</sup>

Except for minor changes, this Prisons Act has been identical for almost a century. The following facilities are related in some manner to the reformation of convicts under the Prisons Legislation of 1894, among the several other sections of the act.

1. Accommodation and sanitary conditions for prisoners.<sup>26</sup>
2. Provision for the shelter and safe custody of the excess number of prisoners who cannot be safely kept in any prison.<sup>27</sup>
3. Provisions relating mental and physical state of prisoners.<sup>28</sup>
4. Provisions relating to the examination of prisoners by qualified Medical Officer.<sup>29</sup>

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<sup>25</sup> Amarendra Mohanty & Narayan Hazary, *Indian Prison System* (South Asia Books 1990).

<sup>26</sup> The Prisoners Act of 1894, s. 4.

<sup>27</sup> *ibid*, s. 7.

<sup>28</sup> *ibid*, s. 14.

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5. Provisions relating to separation of prisoners, containing female and male prisoners, civil and criminal prisoners and convicted and under trial prisoners.<sup>30</sup>
6. Provisions relating to treatment of under trials, civil prisoners, parole and temporary release of prisoners.<sup>31</sup>

The process of review of prison problems in the country, continued even after the enactment of Prisons Act, 1894. The first ever comprehensive study was launched on this subject with the appointment of all India Jail Committee (1919-1920). It is indeed a major landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms in the country. For the first time, in the history of prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration.<sup>32</sup>

#### **The Transfer of Prisoners Act, 1950**

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training. This Act is also helpful for transfer of prisoners from over-populated jails to less congested jails within the state. In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals. In 1952, the eighth Conference of the Inspector General's of prisons also sup-

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<sup>29</sup> *ibid*, s. 24(2).

<sup>30</sup> *ibid*, s. 27.

<sup>31</sup> *ibid*, ss. 31 - 35.

<sup>32</sup> Dr. N.V. Paranjapee, *Criminology and Penology with Victimology* (Central Law publications, Allahabad 2018) ('Paranjapee').

ported the recommendations of Dr. Reckless regarding prison reform.<sup>33</sup>

In 1957 All India Jail Manual Committee was appointed by Government of India to prepare the Prison Manual. The report submitted for formulating a uniform policy of prison and adopted the latest method in jail administration, probation, remand homes, protective homes etc. The report suggested the amendments in the Prison Acts 1894 to provide a legal base for correctional work.

In 1980, the Government of India set up committee on Jail Reforms under the chairmanship of Justice A.N.Mulla. The main objectives of the committee to review the laws, rules and regulations and overall objectives of protecting society and rehabilitation for offenders. Important recommendations of the Mulla Jail Committee are:

1. The condition of prisons should be improved by making adequate arrangements for food, clothing, sanitation, ventilation etc.
2. The prison staff should be properly trained and organised into different cadres. It would be advisable to constitute an All India Service called the Indian Prisons & correctional service of recruitment of prison officials.
3. After care and rehabilitation, probation should constitute an integral part of prison service. Unfortunately, probation law is not being properly implemented in the country.
4. The media and public men should be allowed to visit prisons and allied correctional institutions periodically so that public may have the first hand information about conditions

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<sup>33</sup> *ibid* (76).

### Legal Framework for Protection of Rights of Women Prisoners

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inside prisons and be willing to co operate with prison officials in rehabilitation work

5. Lodging of under trials in jail should be reduced to bare minimum and they should be kept separate from the convicted prisoners. Since under trials constitute a sizeable portion of prison population, their number can be reduced by speedy trials and liberalization of bail provisions
6. The Government should make an endeavour to provide adequate resources and funds for prison reforms.<sup>34</sup>

In 1987, the Government of India appointed the Justice Krishna Iyer committee to undertake a study on the situation of women prisoners in India. This was the first committee established for to reformation of the women prisoners' condition. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders. The National Expert Committee on Women Prisoners headed by Justice V.R. Krishna Iyer submitted its report to the Government in February 1988. The committee among other things recommended the following suggestions particularly towards reformation and rehabilitation of women prisoners:

1. In women's rehabilitation, employment training has a pivotal role. Consequently, work in prison has to be given such potential economic worth and utility that all women in custody are willing to engage in work programmes.
2. Training of women prisoners in an area of great relevance to correctional work and to the process of restoration of dignity of the women offender.

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<sup>34</sup> *Paranjape* (n 37) (481).

3. Probation, Parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders.

### **The Prisoners Act, 1990**

For the purpose of prison reformation and prison justice under this Act, the following sections are relevant here to mention:

1. That all reference to prisons or the imprisonment or confinement shall be construed as referring also to reformatory schools to detention therein.<sup>35</sup>
2. That it is the duty of Government for the removal of any prisoner detained under any order or sentence of any court, which is of unsound mind to a lunatic asylum or any other place where he will be given proper treatment.<sup>36</sup>
3. That any court which is a High Court may in case in which it has recommended to Government the granting of a free pardon to any prisoner, permit him to be at liberty on his own cognisance.<sup>37</sup>

The Government of India requested the State Governments and different union territories to bring out change so as to make proper administration of changes. Various states from time to time had adopted such recommendation in their prison manuals. These recommendations can be summed up as follows:

1. To revise their prison manuals on the lines of the Model Prison Manual by the end of the year.

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<sup>35</sup> The Prisoners Act of 1990, s. 28.

<sup>36</sup> *ibid*, s. 30.

<sup>37</sup> *ibid*, s. 33.

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2. To appoint review committees for the under trial prisoners at the district and state levels
3. To provide legal aid to indigent prisoners and to appoint whole time or part time law officers in prisons.
4. To enforce existing provisions with respect to grant of bail and to liberalize bail system after considering all its aspects.
5. To strictly adhere to the provisions of the code of criminal procedure, 1973, with regard to the limitations on time for investigation and inquiry.
6. To ensure that no child in conflict with law be sent to the prison for want of specialized services under the central children act, 1960.
7. To have at least one borstal school set up under the borstal school act, 1929 for youthful offenders in each state.
8. To create separate facilities for the care, treatment and rehabilitation of women offenders.
9. To arrange for the treatment for lunatics in specialized institutions.
10. To provide special camp accommodation under conditions of minimum security to political agitators coming to prisons.
11. To prepare a time bound programme for improvement in the living conditions of prisoners with priority attention to sanitary facilities, water supply, and electrification and to send it to the ministry of home affairs for approval.
12. To develop systematically the programmes of education, training and work in prisons.

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13. To strengthen the machinery for inspection, supervision and monitoring of prison development programme and to ensure that the financial provision made for up gradation of prison administration by the seventh finance commission are properly utilized.
  14. To organize a systematic programme of prison personnel training on state and regional level.
  15. To abolish the system of convict officers in a phased manner.
  16. To mobilize additional resources for modernization of prisons and development of correctional services in prison.
  17. To set up a state board of visitors to visit prisons at regular periodicity and to report on conditions prevailing in the prisons for consideration of the state government.
  18. To examine and furnish views to government of India on proposal for setting up of the National board of visitors.<sup>38</sup>

Furthermore, on November 14, 1995, at a national meeting on the human rights of prisoners, a consensus was reached on the need to develop a draught law on prisons. A Core Group has drafted the Indian Prisons Act, 1995, which has been forwarded to state governments for consideration and comment, as well as the Ministry of Law. Unfortunately, the Bill is currently being considered by the Indian government.

The National Human Rights Commission (NHRC) of India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28th September 1993. It

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<sup>38</sup> National Policy on Prison Reforms and Correctional Administration, Bureau of Police Research & Development, Ministry of Home Affairs, Government of India, New Delhi, 2007 [Available at <https://bprd.nic.in/WriteReadData/userfiles/file/5261991522-Part%20I.pdf> - Last accessed on 25th February, 2021].

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was given a statutory basis by the Protection of Human Rights Act, 1993. The NHRC is the National Human Rights Commission of India, responsible for the protection and promotion of human rights, defined by the Act as rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution are embodied in the International Covenants.<sup>39</sup>

Further, the NHRC has also prepared certain guidelines pertaining to the reading material which have to be provided to prisoners and the guidelines/recommendations are as follows:-

1. Any restrictions imposed on a prisoner with respect to reading materials must be reasonable;
2. All prisoners should have access to such reading materials as are essential for their recreation or;
3. The nurturing of their skills and personality, including their capacity to pursue their education while in prison;
4. Every prison should have a library for use by all categories of prisoners;
5. The library should be adequately stocked with both recreational and instructional books and prisoners should be encouraged to make use of them;
6. The materials in the library should be commensurate with the size and nature of the prison population;
7. Diversified programmes should be organized by prison authorities for different group of inmates. The educational and cultural background should be kept in mind when developing such programmes;

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<sup>39</sup> Saurbh Kothari, 'Prisoners's Rights Taking Seriously' [Available at <http://www.legalserviceindia.com/articles/po.htm> - Last accessed on 26th February 2021].

8. Special attention should be paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate;
9. Prisoners should generally be permitted to receive reading material from outside. Such material should be reasonable in quantity and not prohibited for reasons of being obscene or tending to create a security risk;
10. Quotas should not be set arbitrarily for reading materials;
11. The quantity and nature of reading material provided to a prisoner should take into account his individual needs;
12. In assessing the content of reading material, the superintendent of the jail should be guided by law, and not exercise his discretion in an arbitrary manner.

### **Model prison Manual 2016**

The key provisions in the 2016 Manual, relevant to women inmates, include the following:-

#### **(i) Access to free legal services**

The Model Manual includes a new chapter on legal aid (Chapter XVI). This is done keeping in mind the mandate of article 39A of the Constitution which requires the state to provide free legal assistance to the impoverished and weaker members of society. In this regard the Model Manual includes the following:

- a) Appointment of jail visiting advocates;
- b) Setting up of a legal aid clinic in every prison;
- c) Legal literacy classes in prisons;

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- d) Constitution of under-trial review committee and provisions to ensure legal services for under-trial prisoners who have undergone half of the maximum sentence for that offence.

### **(ii) Additional provisions for women prisoners**

In prison management, the safety and reformation of female inmates are of paramount concern. Women's health in jail has also been identified as a priority area that requires special attention. With this in mind, the following have been provided in the 2016 Model Manual:

- a) Comprehensive health screening for women prisoners, including tests to determine presence of sexually transmitted or blood-borne diseases, mental health concerns, existence of drug dependency, etc. This is drawn from the United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders adopted by the UN General Assembly (UN Bangkok Rules).
- b) Sensitising the staff and imparting training relating to gender issues and sexual violence.
- c) Educating women about preventive health-care measures.
- d) Enabling proper counselling and treatment for those suffering from psychological disorders.
- e) Focused after-care and rehabilitation measures to ease reintegration into society.
- f) Restrictions on certain kinds of punishments being awarded to women, for instance, punishment by close confinement should not be awarded to pregnant women, women with infants, etc.
- g) Counselling programmes focused on women, especially those who have been victims of abuse and focus on remov-

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ing any further damage that imprisonment may have on a female inmate.

**(iv) Modernisation & Prison Computerisation.**

The Manual has been updated to encourage the use of technology/software systems whenever possible, including the creation of a Personal Information System (included in Chapter V – Custodial Management) for documenting inmate information. In addition, every registration requested by the jail authorities must be kept in an electronic form.

**(v) Focus on After-care Services.**

In Chapter XXII- After-Care and Rehabilitation, the Manual recognises that it is the obligation of the states to conceive and establish systems for the rehabilitation of released criminals. After-Care and Rehabilitation Committees are expected to organise and devise appropriate methods for prisoner rehabilitation and after-care assistance.

**(vi) Provision for Children of Women Prisoners.**

As has already point out above that the Supreme Court in *R.D. Upadhyaya v. State of A.P. and Others*<sup>40</sup> had issued guidelines in respect of children of women prisoners. The court, while acknowledging some positive steps taken in this regard, noted that a lot more is required to be done in the States and Union Territories for looking after the interest of the children. It went on to issue guidelines to ensure holistic development of children of women prisoners inside prisons and pregnant prisoners. While certain guidelines already found mention in the 2003 Model Manual, several States did not adopt the same. Several relevant provision in the 2016 Manual include the following:

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<sup>40</sup> AIR 2006 SC 1946.

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- a) Provisions for holistic development of children, including provision of food, medical care, clothing, education, and recreational facilities;
- b) Providing pre-natal and post-natal care to pregnant women offenders;
- c) Taking care of nutritional requirements of children and provision of clean drinking water;
- d) Ensuring a well-equipped crèche and a nursery school for children to be looked after.

The different types of human rights, constitutional rights and statutory rights of Women Prisoners can be summarised as under:

1. The search and examination of the female prisoners shall be carried out by the Matron under the general or special order of the Medical Officer.<sup>41</sup>
2. The female prisoners have the right to live separate from the male prisoners. Section 27 (1) of the Prison Act 1894 provides that in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings or separate parts of the same building, in such a manner as to prevent their seeing or conversing or holding any intercourse with the male prisoners; this right is also provided by Rule 8 (a) of Standard Minimum Rules for the Treatment of Prisoners.<sup>42</sup>
3. About the maintenance of certain prisoners from private sources, section 31 of the Prison Act 1894 provides that a

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<sup>41</sup> The Prison Act 1894, s. 24(3).

<sup>42</sup> V. Nivedha and N.Pandey, 'Protection of Women Prisoner Rights in India- An Overview' (2017) 1(2) SSHI (An International Multidisciplinary Journal) 14-19.

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civil prisoner or an un-convicted prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector General.<sup>43</sup>

4. About supply of clothing and bedding to civil and un-convicted prisoners section 33 (1) of the Prison Act, 1894 provides that every civil and un-convicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.
5. All the prisoners have the basic human rights such as hygienic food, shelter, medical facilities and facilities of reading and writing. They must be treated with dignity in the custody and cannot be isolated in a separate cell, except on medical grounds or if he/she has proven to be dangerous to other prisoners. It is the human right of a pregnant lady to have full facility (medical and personal) at the time of delivery. Women prisoners who are pregnant cannot be provided the full facilities during the pregnancy. Hence at the time of delivery they can be released on bail for the delivery.<sup>44</sup>

#### IV. Conclusion

Women prisoners are the women who commit crimes and are imprisoned for the aim of rehabilitation and reform. The prison administration is responsible for providing all facilities for female inmates in accordance with their needs and welfare, as well as creating an atmosphere in which their illegal behaviour can be turned

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<sup>43</sup> *ibid.*

<sup>44</sup> *ibid.*

### **Legal Framework for Protection of Rights of Women Prisoners**

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into social behaviour that is demanded by society's norms. "Women in prison are kept under the watchful eye of prison officials or under the supervision of prison personnel. In addition to male employees, women are employed in the prison to ensure the protection and security of female inmates."

The United Nations Guidelines for the Treatment of Women Prisoners and Non-Custodial Measures for Women Criminals (the Bangkok Rules) of 2010 are the first set of explicit UN rules related to women offenders and their children. Women and children who follow their moms into prison are covered by the regulations in terms of entry, healthcare, and treatment. The Bangkok Rules have yet to be ratified by India. In the lack of major international conventions and treaties that particularly address female inmates, they are granted the rights guaranteed under the aforementioned conventions. Under several special provisions for the care, protection, and development of women and children, the Indian Constitution gives equal rights to women prisoner and arrested person. These include fundamental rights available under Part III and Directive Principles available under Part IV. Efforts should therefore be made to bring the local laws and policies in tune with international standards.

# Merging Corruption Discussion into the Human Rights Discourse

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## Abstract

Since the dawn of human society, corruption has been a plague. The menace of corruption has long been a significant source of worry for policymakers, administrators, and the general public. Long held beliefs among some people include the notion that corruption is an incurable disease that cannot be stopped. It is a false metaphor, not just because it conveys a sense of dread, but also because it limits actions that may be taken to lessen it. Besides, for a very long time, the international community had given a little thought to the possibility of using international human rights laws to fight corruption but that is changing and now International human rights mechanisms have been paying an increasing attention to the negative impact of corruption on the enjoyment of human rights. Moreover, human rights and anti-corruption organizations function in completely different silos, is largely a myth that needs to be dispelled. In this paper, the authors would like to contribute in debunking this myth by trying to merge the corruption discussion into the human rights discourse.

**Keywords:** Corruption, Human Rights, Democracy, Governance, ICCPR, ICESCR

## 1. INTRODUCTION

Corruption may be characterized as an infectious virus that damages the basic aspects of social life.<sup>1</sup> Corruption distorts the fundamental ideals of human dignity, fairness, and liberation for everyone, but especially for those whose rights have already been unjustly infringed, such as those living in poverty and those who

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<sup>1</sup> INGE AMUNDSEN, 'Political Corruption: An Introduction to the Issues,' Chr. Michelsen Institute Development Studies and Human Rights, WP 1999: 7.

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are oppressed or otherwise disenfranchised.<sup>2</sup> “Corruption deepens poverty; it debases human rights, it degrades the environment; it derails development, including private sector development; it can drive conflict in and between nations; and it destroys confidence in democracy and the legitimacy of governments. It debases human dignity and is universally condemned by the world’s major faiths.”<sup>3</sup>

Corruption is present in all states, result of socio-economic or political system or degree of development, in both the public and private sectors. It is a global phenomenon that necessitates international collaboration, especially in the recovery of corrupt proceeds.<sup>4</sup> The prevalence of corrupt activities shatters the basic foundation of a democratic society, severely limiting and puncturing effective governance.<sup>5</sup> Money earned via corrupt methods is also a source of funding for a variety of criminal activities. The black money generated by corrupt practices is used to fund terrorism, human trafficking, drug smuggling, and other severe criminal enterprises.<sup>6</sup>

Corruption has been a scourge on human civilization from its inception. Whenever corruption becomes entrenched, it has the potential to ruin a country's whole economic, political, and social fabric. Corruption frequently impedes the growth of equality

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<sup>2</sup> DIVYA PRASAD and LÁZARIE EECKELOO, ‘Corruption and Human Rights,’ Geneva Academy, Centre for Civil and Political Rights, at p. 9.

<sup>3</sup> The Durban Commitment to Effective Action against Corruption. The Commitment was signed by 1600 delegates from 135 countries at the Anti-Corruption Conference sponsored by Transparency International in October 1999.

<sup>4</sup> United Nations Convention Against Corruption, United Nations Office on Drugs and Crime, United Nations, New York, 2004. Available at: [t.ly/SkRo](https://www.unodc.org/tandfonline/doi/abs/10.1080/15442039.2004.10555555) (Last visited 20 August, 2022).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

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before the law since it contradicts the principle of equal treatment.<sup>7</sup> Corruption is such a demonic creature that it has the tendency to paralyse administrations and devastate a state's financial stability.<sup>8</sup> Corruption is a major contributor to economic under-performance and a major impediment to eradicating poverty and progress. “From 2000 to 2009 developing countries lost US\$8.44 trillion to illicit financial flows, 10 times more than the foreign aid they received. The impact of corruption on development and on human rights is multifaceted; so too must be our response”<sup>9</sup> Each year, the money stolen via corruption is enough to feed the globe 80 times over.<sup>10</sup>

Kofi A. Annan, the then secretary-General of United Nations describes, “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism, and other threats to human security to flourish.”<sup>11</sup> Similarly, Philip B. Heymann also observes, “A corrupt, democratic government is likely to look as if it is for the wealthy and the well-connected, not a government by and for the people. If the choice to much of the population appears to be one between elected figures serving the interests of narrow but wealthy constituencies or authoritarian governments serving much broader interests, democracy is very

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<sup>7</sup> PROF. ANNE PETERS, Corruption and Human Rights, Basel Institute on Governance, September 2015, at p. 16. Available at: <https://bit.ly/3kCSH0i> (Last visited 20 August, 2022).

<sup>8</sup> IMF Staff Discussion Note, Corruption: Costs and Mitigating Strategies International Monetary Fund, Fiscal Affairs and the Legal Departments, at p. 8. Available at: <t.ly/Bidm> (Last visited 20 August, 2022).

<sup>9</sup> NAVI PILLAY, Office of the High Commissioner United Nations Human Rights. Available at: <https://bit.ly/2ZDHq6g> (Last visited 20 August, 2022).

<sup>10</sup> Corruption and Human Rights: The Linkages, the Challenges and Paths for Progress, Harvard Kennedy School, Carr Center for Human Rights Policy, Symposium Report, April 25, 2018. p. 8.

<sup>11</sup> KOFFI A. ANNAN, foreword to United Nations Convention against Corruption, General Assembly Resolution 58/4 of 31 October 2003.

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much at risk. ... High-level corruption is far more dangerous to democracy than low-level corruption. ... Systemic corruption is far more dangerous to democracy than occasional and sporadic corruption.”<sup>12</sup>

According to Wraith and Simpkins, it is the jungle of Nepotism and Temptation, which is obsessed with the Scarlet thread of bribery and corruption.<sup>13</sup> “Corruption flourishes as luxuriantly as the bush and weeds which it so much resembles, taking the goodness of the soil and suffocating the growth of plants which has been carefully and expensively bread and tended.”<sup>14</sup> Similarly, as pointed by Ralph Braibanti, Corruption of government or improbity has been found in all aspects of bureaucracy and source of political development.<sup>15</sup>

It was observed in a Preparatory Note for the United Nations Conference on Anti-Corruption Measures, Good Governance, and Human Rights held in Warsaw on November 8-9, 2006, published by the United Nations Office of the High Commissioner for Human Rights in 2006:

*“The corrupt management of public resources compromises the Government’s ability to deliver an array of services, including health, educational and welfare services, which are essential for the realization of economic, social and cultural rights. Also, the prevalence of corruption creates discrimination in access to public services in favour of those able to influence the authorities to act in their personal interest, including by*

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<sup>12</sup> PHILIP B. HEYMANN, ‘Corruption and Democracy,’ 20 Fordham International Law Journal. 323, 325 (1996).

<sup>13</sup> R WRAITH & E SIMPKINS, ‘Corruption in Developing Countries,’ London: Allen and Unwin, 1963 as cited by ROBIN THEOBALD, ‘So what really is the problem about corruption?’ Third World Quarterly, Vol 20, No 3, pp 491-502, 1999 at p. 491.

<sup>14</sup> *Ibid.*

<sup>15</sup> RALPH BRAIBANTI, Reflections on bureaucratic corruption, Public Administration, London, winter, edn. 1962, p. 357.

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*offering bribes...Importantly, corruption in the rule-of-law system weakens the very accountability structures which are responsible for protecting human rights and contributes to a culture of impunity, since illegal actions are not punished and laws are not consistently upheld.”<sup>16</sup>*

In this regard, Navi Pillay, former UN High Commissioner for Human Rights has aptly described “Corruption is an enormous obstacle to the realization of all human rights – civil, political, economic, social and cultural, as well as the right to development. Corruption violates the core human rights principles of transparency, accountability, non-discrimination and meaningful participation in every aspect of the life of the community. Conversely, these principles, when upheld and implemented are the most effective means to fight corruption.”<sup>17</sup>

For a long time, the threat of corruption has been a major concern for policymakers, administrators, and the public at large. It is one of the crimes that has plagued almost every country on the planet. It is a worldwide phenomenon capable of impeding a country's growth and diverting its valuable resources away from the public objectives of the whole nation.<sup>18</sup> It “erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.”<sup>19</sup>

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<sup>16</sup> U.N. Office of the High Commissioner for Human Rights (OHCHR), Background Note for UN Conference on Anti-Corruption Measures, Good Governance and Human Rights, 6, Doc. HR/POL/GG/SEM/2006/2 (Warsaw, Nov. 8-9, 2006).

<sup>17</sup> NAVI PILLAY, Office of the High Commissioner United Nations Human Rights. Available at: <https://bit.ly/2ZDHq6g> (Last visited 20 August, 2022).

<sup>18</sup> SYED UMARHATBUB, ‘Public Rating of Corruption,’ The Indian Police Journal, Vol. Liv.2, April-June, 2007.

<sup>19</sup> TRANSPARENCY INTERNATIONAL, ‘What is Corruption?’ Available at: [t.ly/817q](https://t.ly/817q) (Last visited 20 August, 2022).

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Corruption is a widespread problem in India's administrative structure<sup>20</sup> and is one of India's most vexing issues, obstructing its progress and development.<sup>21</sup> India has a culture of corruption. With only minor changes in the amount of corruption, every sector of the governing machinery is contaminated. It has grown to such frightening dimensions that its social, economic, and political ramifications are affecting India's governance system,<sup>22</sup> resulting in unequal distribution in state resources.<sup>23</sup> There are also significant obstacles in the investigation, prosecution, and conviction of corruption cases. The judicial system is riddled with so much ambiguity, incompetence, and corruption that the legal procedure for cases involving corruption that led to a conviction appears to be a faraway fantasy.

Justice V.R. Krishna Iyer, former judge of the Supreme Court of India observed:

*“The glory and greatness of Bharat notwithstanding, do we not, even after the braggartly semicentennial noises, behave as a lawless brood, tribal and casteist, meek and submissive when political goons and mafia gangs commit crimes in cold blood, and canny corruption and economic offences ubiquitous? The criminal culture among the higher rungs and creamy layers of society, even when nakedly exposed, does not produce the public outrage one should expect, with no burst of rage from those who must speak...In this darkling national milieu, the penal law and its merciless enforcement need strong emphasis.*

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<sup>20</sup> For a very interesting reading on the impact of corruption on the rule of law in India, see CHRISTOPHE JAFFRELOT, *Indian Democracy: The Rule of Law on Trial*, 1 *Indian Review* 17, 17-121 (2002).

<sup>21</sup> N. VITTAL, *Corruption in India: The Roadblock to National Prosperity*, Academic Foundation (2003).

<sup>22</sup> HONGYING WANG & JAMES N. ROSENAU, *Transparency International and Corruption as an Issue of Global Governance*, 7 *Global Governance*, 25-49 (2001).

<sup>23</sup> BHIKHU PAREKH, *A Political Audit of Independent India*, 362 *Round Table* 701, 701-09 (2001).

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*Alas the criminals are on the triumph, the police suffer from “dependencia syndrome” and integrity is on the decadence and the judges themselves are activists in acquittals of anti-social felons. Less than ten percent of crimes finally end in conviction and societal demoralization is inevitable”<sup>24</sup>*

Similarly, in the opinion of the former Chief Justice of India K.G. Balakrishnan, “The real costs of corruption are difficult to measure since they involve the loss of opportunities for business and investment as well as the diversion of man-power, when it may be usefully employed elsewhere. In some instances, corruption poses a threat to national security as well as law and order.”<sup>25</sup>

India is affected by corruption at all levels of decision-making and in the management and allocation of public funds.<sup>26</sup> According to Transparency International’s latest Global Corruption Report in 2021, India is ranked 85<sup>th</sup> out of 180 countries in the Corruption Perception Index 2021.<sup>27</sup> However, acquiring reliable statistics on corruption cases involving government officials is difficult since it necessitates receiving prior sanction before any prosecution of officials implicated in corrupt conduct can take place. As a result, the exact number of registered cases does not correctly represent real incidences of government corruption.

Rampant corruption from Indian context isn't only a law enforcement problem in which the state's existing laws are breached and can be rectified simply by enforcing them more strictly. Corruption is rather a far more basic issue that threatens a

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<sup>24</sup> Report of The Committee on Criminal Justice Reforms (2003) (referring to the article of Justice V.R. Krishna Iyer published in The Hindu, May 25, 1999).

<sup>25</sup> VINAY KUMAR, CJI favours Seizure of Assets of Corrupt Officials, The Hindu, 12 Sept. 2009. Available at: [t.ly/p9H-](https://t.ly/p9H-) (Last visited 20 August, 2022).

<sup>26</sup> MAHESH K. NALLA & KORNI SWAROOP KUMAR, ‘Conceptual, Legal, Ethical and Organizational Dimensions of Corruption in India: Policy Implications,’ in Policing Corruption: International Perspectives 51 (H.J. Albrecht ed., 2005).

<sup>27</sup> TRANSPARENCY INTERNATIONAL, Global Corruption Report 2021. Available at: [t.ly/Nyq4](https://t.ly/Nyq4) (Last visited 20 August, 2022)

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state's social fiber, political framework, and bureaucratic structure.<sup>28</sup> While it is vital to strengthen the law enforcement apparatus, the main issue with corruption is how it infringes human rights. Furthermore, corruption in India threatens in an accelerated manner the very foundation of India's democracy, rule of law and statehood.<sup>29</sup>

In the context of widespread corruption in India, the Asian Human Rights Commission in Hong Kong has observed:

*“Corruption and the concept of a socialist, secular and democratic republic cannot go together. Corruption undermines justice, liberty, equality and fraternity, the core values of India's constitutional framework. Freedom and sovereignty have no purpose or meaning should corruption remain the central cord with which the social fabric of a country is woven and if corruption determines the balance of power in interactions among the people and between the people and their government...”*<sup>30</sup>

Given the fact that corruption has enormous social, economic, and political ramifications in India, there is little political consensus on taking real steps to eradicate it. In fact, politicians are seen to be among the primary culprits of the problem.<sup>31</sup>

In the context of India, attempts have been made at many levels to address the problem. However, until recently, the majority of these initiatives concentrated on the criminal law aspect of the corruption

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<sup>28</sup> See generally, U MYINT, Corruption: Causes, Consequences and Cures, Asia-Pacific Development Journal, Vol. 7, No. 2, December 2000.

<sup>29</sup> CHRISTOPHE JAFFRELOT, Indian Democracy: The Rule of Law on Trial, 1 Indian Rev. 17, 17-121 (2002).

<sup>30</sup> A Responsible Government Will Listen to the People, Says AHRC, (excerpts from the statement issued by the Asian Human Rights Commission, Hong Kong, 11 April 2011). Available at: <http://leagueofindia.com/article/responsible-government-will-listen-people-says-ahrc> (Last visited 20 August, 2022).

<sup>31</sup> ANAND SINGH, An analytical study on political corruption in India in the last 10 years, Ipleaders. Available at: [t.ly/b63d](http://t.ly/b63d) (Last visited 20 August, 2022).

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problem. To punish wrongdoers, law enforcement authorities have targeted corruption at all levels of government—central, state, and municipal.<sup>32</sup> However, mere reforms in law enforcement is insufficient to address India's corruption problem.

## **II. Relation between Corruption and Human Rights: Existing Approach**

Some persons have long assumed that corruption is an incurable illness or an inescapable tragedy that cannot be reversed.<sup>33</sup> It is, however, an erroneous metaphor, not only because it transmits a feeling of dread, but rather because it restricts efforts to alleviate it.<sup>34</sup> Furthermore, for a great many years, even the international community has paid little attention to how international human rights procedures might be utilized to combat corruption.<sup>35</sup> Similarly, the idea that human rights and anti-corruption institutions operate in separate compartments is partially a myth that has been debunked and is losing traction.<sup>36</sup>

There is no denying that problems of corruption have been garnering criminal law consequences under domestic laws.<sup>37</sup> As a consequence, attempts to prevent corruption should primarily focus on criminal law reform, especially enforcement machinery,

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<sup>32</sup> NAGARAJAN VITTAL, 'Corruption and the State—India, Technology, and Transparency,' *Harvard International Law Review*, May 6, 2006, at p. 20, pp. 20-25, Available at <http://hir.harvard.edu/disease/corruption-and-the-state>. (Last visited 20 August, 2022)

<sup>33</sup> MANUHUIA BARCHAM, ET AL., *Corruption: Expanding the focus*, Australian National University, at p.12.

<sup>34</sup> BRATU, ROXANA AND KAŽOKA, IVETA, *Metaphors of corruption in the news media coverage of seven European countries*. *European Journal of Communication*, 33 (1). pp. 57-72. 2018, at p. 12.

<sup>35</sup> MATTHEW MURRAY AND ANDREW SPALDING, *Freedom from Official Corruption as a Human Right*, Governance Study at Brookings, January 2015, at p. 6. Available at: [t.ly/R87j](https://t.ly/R87j) (Last visited 20 August, 2022).

<sup>36</sup> *International Council on Human Rights Policy, Integrating Human Rights in the Anti-Corruption Agenda*, Transparency International. Available at: [t.ly/vP5j](https://t.ly/vP5j) (Last visited 20 August, 2022).

<sup>37</sup> C. RAJ KUMAR, *Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia*, *Michigan State Journal of International Law*, Vol. 16, Issue 3 (2008), pp. 475-572 at p. 518.

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and the criminal justice system's overall efficiency.<sup>38</sup> However, history of emerging economies has demonstrated that corruption has significant ramifications for governance, in addition, to being a crime that must be tried according to criminal law norms. Amongst the most significant consequences of corruption for government is its impact on the protection, promotion and preservation of human rights.<sup>39</sup>

The prevailing anti-corruption framework places perhaps too much reliance on the criminal justice system to combat corruption, a system that itself is in distress because of corruption and other issues.<sup>40</sup> As a result, combatting corruption is critical to rebuilding public confidence in the criminal justice system. Legal controls against corruption, on the other hand, should place a greater emphasis on promoting government transparency and accountability.<sup>41</sup>

The paradigm for conceiving corruption as a human rights problem differs from the prior approach in key ways. *First*, the current approach of enhancing criminal law enforcement procedures has failed to address the issue of *victimization* as a result of corruption.<sup>42</sup> On the other side, a human rights-based approach prioritizes the victims of corruption and puts their human rights at the center-stage of the anti-corruption initiatives.<sup>43</sup> It understands that corruption, in particular, in the states like India has far-reaching implications for the administration of justice across

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> DR. JUSTICE V.S. MALIMATH, Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs, March 2003. p. 75. Available at: [t.ly/JsV1](https://t.ly/JsV1) (Last visited 20 August, 2022).

<sup>41</sup> Legal Remedies for Grand Corruption, The role of Civil Society, Open Society Justice Initiative, 2019. Available at: [t.ly/3IdL](https://t.ly/3IdL) (20 August, 2022).

<sup>42</sup> C. RAJ KUMAR, Corruption and its impact on human rights in India: comparative perspectives on improving governance (Thesis). University of Hong Kong (2011), Pokfulam, Hong Kong SAR, at p. 5.

<sup>43</sup> *Ibid.*

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various government institutions, leading to public distrust of the judicial system and state machinery. *Second*, a human rights-based approach to anti-corruption initiatives seeks accountability for acts of corruption and emphasizes *people's empowerment* as the main victims of corruption.<sup>44</sup> The mechanism through which such accountability is sought differs between the criminal law enforcement approach to establishing 'criminal culpability' and the human rights approach to demanding 'accountability' for corruption.<sup>45</sup>

In the former, one has to rely exclusively on the state machinery to provide accountability, but in the latter, victims are themselves empowered to ensure transparency, which leads to governmental accountability as well as the potential to seek justice through legal remedies. Recognizing the significance of transparency and accountability in government is at the heart of the human rights-based approach to countering corruption. This differs from the present criminal justice system because it targets one of the most significant repercussions of corruption: the disempowerment of individuals, particularly, the poor and disadvantaged.<sup>46</sup> The underlying deficiencies of the criminal justice system are evidenced in the pursuit of criminal accountability for acts of corruption, which is why the human rights approach focuses on the victims of corruption, so that citizens are empowered to maintain transparency in governance rather than relying on the state apparatus to do so. As a result, the right to information becomes a critical instrument in the battle against corruption, as it helps citizens to become more watchful and refuse to accept corruption as an established fact, particularly, in the context of the states like India.

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<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

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*Thirdly*, the prevailing anti-corruption institutional apparatus has placed much too much emphasis on reactive policies—investigation, prosecution, and conviction of corrupt individuals. Although, this is important for maintaining the rule of law, access to justice also entails focusing on the individuals who are harmed by corruption and preventing new acts of corruption. Thus, in the human rights-based approach to combating corruption, the Central Information Commission (CIC) and the legal framework provided by the freedom of information act play a significant role in India. The right to information provided a fresh arena for the state to urge more integrity and assures increased public vigilance with the goal of decreasing corruption.<sup>47</sup>

### **III. Establishing Linkages between Corruption and Human Rights**

Establishing a link between corruption and human rights helps to find how corruption leads to the violation of fundamental human rights, by grouping human needs that must exist. The grouping is a productive way to exemplify and analyses how the basic needs of people are affected by corruption.<sup>48</sup> It is vital to determine when human rights are breached by acts of corruption and how acts of corruption and human rights violations are related in order to develop the concept that corruption contributes to human rights violations.<sup>49</sup>

The United Nations Convention Against Corruption (UNCAC) provides in its Preamble that, “Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of

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<sup>47</sup> *Ibid* at p. 7.

<sup>48</sup> ZOE PEARSON, ‘An International Human Rights Approach to Corruption’ Peter Larmour and Nick Wolanin Corruption and Anti-Corruption (ANU Press 2013) at p. 45.

<sup>49</sup> SHAHID AHMAD RONGA, ‘Linking Corruption in The Public Sector to the Human Rights Discourse,’ IJRAR, Volume 8, Issue 2, pp. 351-358 at p. 358.

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human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish”<sup>50</sup>Undoubtedly, in response to the truly horrific malignant corruption, states have misdirected nearly billions that could have been used for productive development, such as the establishment of adequate health care needs, education, professions, safeguards for better roads, and a few numerous different necessities. As a result, the battle against corruption is crucial to the fight for human rights.

Corruption has greased the gears of exploitation and injustice at all times. “There are various links between the discourses on corruption and human rights violation. Corruption, undoubtedly, has the power to jeopardize the enjoyment of human rights in all ways, including economic, social, legal, and political rights.”<sup>51</sup> Corruption dilutes human rights in a significant manner. Human rights abuses are a direct product of actions or manifestations of injustice of any degree, and corruption cannot exist without a violation of human rights. Institutionalized form of corruption results in the widespread victimization, weakens governance and institutions, erodes public trust, fuels impunity endangering the rule of law, inclusive government, and destabilizes the social structure of any state.<sup>52</sup> Corruption violates human rights as it discriminates against people; it violates the principle of equality

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<sup>50</sup> United Nations Convention Against Corruption (31 October 2003, entered into force 14 December 2005) at p. 5.

<sup>51</sup> SHAHID AHMAD RONGA, ‘Linking Corruption in The Public Sector to the Human Rights Discourse,’ at p. 358.

<sup>52</sup> Opening statement by NAVI PILLAY, High Commissioner for Human Rights, The 22nd session of the Human Rights Council in the Human Rights Case Against Corruption (2013) at p. 8. Available at: [t.ly/rLIV](http://t.ly/rLIV) (Last visited 20 August, 2022).

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and fairness as decisions are taken in an arbitrary manner favoring bribe-givers, as opposed to people who are legally entitled.<sup>53</sup>

A human rights approach to corruption emphasizes that corruption is more than mere misappropriation of funds or misuse of power; it also has negative consequences on citizens, and could result in human rights violations. It is asserted that the fight for human rights and the fight against corruption have a lot in common. Both are fighting for a human being that is organized and fair, based on equality and fairness. Human rights rhetoric provides effective resistance to numerous rights abuses, and the issue of corruption should be approached by presenting it as a violation of human rights.<sup>54</sup> “Utilizing existing human rights discourse and mechanisms may be highly useful in the efforts to combat corruption to ensure human rights protection, accountability and transparency on the part of governments.”<sup>55</sup>

Corruption has a huge influence on all institutions dedicated to the preservation and advancement of human rights. In fact, it might be claimed that eliminating corruption in a range of administrative spheres would considerably improve the implementation of human rights.<sup>56</sup> In Symposium Report published by Carr Center for Human Rights Policy it was held that States with the worst corruption have also the poorest human rights records. Somalia, Afghanistan, South Sudan, Yemen, Iraq, and Syria, are a few notable examples.<sup>57</sup>In the same report it was also held that

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<sup>53</sup> C. RAJ KUMAR, Corruption and Human Rights—Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India, *Columbia Journal of Asian Law*, 17 (2003), p. 31–72 at p. 31.

<sup>54</sup> SHAHID AHMAD RONGA, ‘Linking Corruption in The Public Sector to the Human Rights Discourse,’ at p. 358.

<sup>55</sup> *Ibid.*

<sup>56</sup> NAVED AHMAD & OSCAR T. BROOKINS, On Corruption and Countervailing Actions in Three South Asian Nations, *The Journal of Policy Reform* (2004), 7:1, 21-30

<sup>57</sup> Corruption and Human Rights: The Linkages, the Challenges and Paths for Progress, Harvard Kennedy School, Carr Center for Human Rights Policy, Symposium Report, April 25, 2018. p. 8.

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“World leaders--including Mary Robinson, Navi Pillay, David Cameron, and John Kerry--are increasingly concerned with the need to address corruption and human rights together through greater accountability under the law and synergy between efforts of UN bodies like the UN Conference on Trade and Development (UNCTAD) and international human rights conventions.”<sup>58</sup>

In order for a democracy founded on the rule of law to endure, human rights must be safeguarded. “A Human Rights-Based Approach (HRBA) to anti-corruption responds to the people’s resounding call for a social, political and economic order that delivers on the promises of freedom from fear and want.”<sup>59</sup> The corruption issue invariably abuses human rights because it allocates resources based on unequal preferences, resulting in prejudice that presents a significant challenge to the rule of law.<sup>60</sup>

Corruption may wreak havoc on the *availability*, *accessibility* and *quality* of goods and services relevant to human rights. Furthermore, it jeopardizes the efficiency and validity of institutions and procedures, as well as the rule of law and, eventually, the state.<sup>61</sup> It is essential to analyze what is special about the recognition of corruption as a human rights violation. It can be asked that many human rights abuses occur every day around the globe, and even if corruption is recognized as a human rights violation, how does this contribute in the greater battle against corruption? As a result, the key problem becomes: to what

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<sup>58</sup> *Ibid.*

<sup>59</sup> NAVI PILLAY, Office of the High Commissioner United Nations Human Rights. Available at: <https://bit.ly/2ZDHq6g> (Last visited 20 August, 2022).

<sup>60</sup> Opening statement by Navi Pillay, High Commissioner for Human Rights, The 22nd session of the Human Rights Council in the Human Rights Case Against Corruption (2013) at p. 8. Available at: [t.ly/rLIV](https://t.ly/rLIV) (Last visited 20 August, 2022).

<sup>61</sup> Office of the High Commissioner United Nations Human Rights, Corruption and Human rights, Available at: <https://bit.ly/35fjBnw> (Last visited 20 August, 2022).

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measure does recognizing corruption as a human rights violation benefit in the battle against corruption?<sup>62</sup>

It's crucial to remember that simply acknowledging corruption as a violation of human rights would not be enough to put a stop to it. Nevertheless, a human-rights-based approach will considerably aid and complement the present anti-corruption measures in tackling the menace of corruption. A human-rights-based strategic approach not only draws attention to human rights abuses, but it also encourages victims and others to speak out against future crimes and seek redress for previous violations. The concept of 'empowerment' is the most important part of the human rights approach to rooting out corruption.<sup>63</sup>

The Human-Rights-Based Approach (HRBA) to anti-corruption provides many improvements over the regular Criminal Law-Based Approach (CLBA). *First*, HRBA creates a distinct and powerful political, social, and moral response to corruption that, notwithstanding its gravity, is clearly missing in CLBA.<sup>64</sup> *Second*, people's human rights are usually protected by a state's Constitution or any domestic laws, which will necessitate a thorough judicial review by courts and other institutions.<sup>65</sup> *Thirdly*, the acknowledgement of corruption as a breach of human rights, besides calling for international attention, may also focus on violations of the international human rights treaties ratified by a state. *Finally*, the reaction to human rights abuses is focused on efforts to empower people and the institutions so that victims of violations have adequate relief and there is opposition to further

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<sup>62</sup> C. RAJ KUMAR, Corruption and its impact on human rights in India: comparative perspectives on improving governance (Thesis). University of Hong Kong (2011), Pokfulam, Hong Kong SAR, at p. 4.

<sup>63</sup> *Ibid.*

<sup>64</sup> C. RAJ KUMAR, Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia, Michigan State Journal of International Law, Vol. 16, Issue 3 (2008), pp. 475-572 at p. 520.

<sup>65</sup> *Ibid.*

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violations.<sup>66</sup> Therefore, in short, “the human rights approach emphasizes state accountability, which requires the state to refrain from any kind of corruption and to implement effective measures to safeguard persons from corruption-related human rights breaches. States must not just prosecute corruption, but also take steps to mitigate its detrimental consequences. The implementation of preventative measures will be significantly aided and enhanced by including a human rights perspective into anti-corruption initiatives.”<sup>67</sup>

#### **IV. Objections to the Link Between Corruption and Human Rights**

While there is a huge support in the scholarship for the method of linking corruption to human rights, there is also a lot of criticism directed at (i) anti-corruption initiatives in general, and (ii) the approach of associating corruption to human rights. To begin with, while David Kennedy wasn't really pro-corruption, but he still opposed the international anti-corruption movement and labelled his own perspective as ‘anti-anti-corruption.’<sup>68</sup> Kennedy questioned if an anti-corruption campaign was really necessary! His main point is that anti-corruption is a neo-colonialist agenda's ‘ideological tool.’<sup>69</sup> He also believes that the term ‘corruption’ is difficult to define and that it is not always harmful to development.<sup>70</sup> These arguments hide the reality in that, while certain behavior may fall into a grey zone, there is a widely accepted definition of corruption that many people can agree on, and that there is a significant body of data showing corruption does

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<sup>66</sup> *Ibid.*

<sup>67</sup> DIVYA PRASAD and LAZARIE ECKELOO, *Corruption and Human Rights*, Geneva Academy, Centre for Civil and Political Rights, at p. 10.

<sup>68</sup> DAVID KENNEDY, ‘The International Anti-Corruption Campaign’, *Connecticut Journal of International Law*, 14 (1999), p. 455–465 at p. 456.

<sup>69</sup> *Ibid.* at p. 459–460.

<sup>70</sup> *Ibid.* at p. 460–462.

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actually have negative consequences for development.<sup>71</sup> Furthermore, the claim that anti-corruptionism is a neo-colonial agenda and therefore should be summarily dismissed, is a bit too extreme position. Kennedy's viewpoint ignores substantial appeals to combat corruption from within developing economies. For example, during the not so long protests in the Middle East (dubbed as the "Arab Spring"), scathing charges against corrupt leadership were levelled, and continue to be voiced.<sup>72</sup>

Goodwin and Rose-Sender, like Kennedy, are hostile to the linking of corruption to the human rights, claiming that it is an undesirable addition to the discourse. First and foremost, they protest against anti-corruption efforts in development policies. Anti-corruptionism, they believe, is not impartial, but rather a weapon of neoliberal policy pursued by institutions like the World Bank, which emphasizes the free market and uses the law to restrict the role of the state.<sup>73</sup> This logic is similar to Kennedy's. Anti-corruptionism does, in fact, have its origins in the work of the World Bank. However, this does not imply that all anti-corruption initiatives are dubious or neoliberal. As Nelken put it so eloquently, 'we should not take it for granted that anti-corruption or human rights proposals can only reinforce an approach to economic development that seeks to extend the sway of the free market.'<sup>74</sup> We can agree with Goodwin and Rose-Sender that blaming merely corruption for a country's continued poverty is a

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<sup>71</sup> TOKE S. AIDT, 'Corruption, Institutions and Economic Development', *Oxford Review of Economic Policy*, 25 (2009), p. 271–291.

<sup>72</sup> STUART LEVEY, 'Fighting Corruption after the Arab Spring', *Foreign Affairs*, 16 June 2011.

<sup>73</sup> MORAG GOODWIN and KATE ROSE-SENDER, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse', in Martine Boersma and Hans Nelen (eds.), *Corruption & Human Rights: Interdisciplinary Perspectives* (Maastricht Series in Human Rights Antwerp: Intersentia, 2010), p. 221–240 at p. 223–227.

<sup>74</sup> DAVID NELKEN, 'Corruption and Human Rights: An Afterword', in Martine Boersma and Hans Nelen (eds.), *Corruption & Human Rights: Interdisciplinary Perspectives* (Maastricht Series in Human Rights: Antwerp: Intersentia 2010), p. 241–261 at p. 260.

fallacy, because there are many other factors to consider.<sup>75</sup> Furthermore, Goodwin and Rose-Sender are correct in pointing to Western governments' and institutions' role for corruption, such as during the Cold War, and for sustaining discriminatory global trade arrangements at the expense of developing countries.<sup>76</sup> Nonetheless, it seems difficult to agree with their assessment that 'this predominating focus on developing government failures in the face of our own complicity in them has of course an undeniable smack of cultural imperialism to it.'<sup>77</sup> As already noted, there is legitimate concern among citizens of developing world itself about corruption, which is not necessarily pushed by the West. Furthermore, in the developing world, international agencies use the language and tools of 'neo-colonial institutions': for example, the Kenya National Commission on Human Rights, that also issued reports on corruption and its relationship to human rights, has used the World Bank definition of corruption, which it considers to be the most extensive.<sup>78</sup> The idea that anti-corruptionism is an imperialist instrument enforced on developing countries is unsustainable in this view.

Second, Goodwin and Rose-Sender claimed that incorporating corruption into human rights is part of a larger trend of incorporating matters of international concern into human rights discourse, and they are quite skeptical of this.<sup>79</sup> Their main worry is that including development concerns, such as corruption, into

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<sup>75</sup> GOODWIN and ROSE-SENDER, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse', at p. 227–228. A similar argument is made by JOEL M. NGUGI, 'Making the Link Between Corruption and Human Rights: Promises and Perils, American Society of International Law Proceedings, 104 (2010) p. 246–250 at p. 249.

<sup>76</sup> *Ibid.* at p. 228–229.

<sup>77</sup> *Ibid.* at p. 229.

<sup>78</sup> WAMBUI KIMATHI, 'Corruption: A Complex Phenomenon That Undermines Government's Capability of Working for the Poor', *Nguzo za Haki*: a publication of the Kenya National Commission on Human Rights, issue 3 (February 2005), p. 3.

<sup>79</sup> GOODWIN and ROSE-SENDER, 'Linking Corruption and Human Rights: An Unwelcome Addition to the Development Discourse', at p. 229–230.

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human rights would result in the rule-based characteristic of human rights (i.e., human rights as defined by positive law) taking precedence over the political aspect of human rights (i.e., their emancipatory, symbolic value). It was stated that ‘in blunting the potential of human rights, anti- corruptionism is deeply harmful to the human rights discourse where one views the empowering potential as their greatest asset.’<sup>80</sup> However, it might be argued that utilizing human rights mechanisms to combat corruption is empowering since it expands avenues of action that would otherwise be unavailable if a human rights approach were not used. Goodwin and Rose-Sender refer to the employment of the criminal justice system to detect and penalize corruption, but more often than not, this system fails to do so in many countries with high levels of corruption. They questioned how filing a corruption complaint with a Geneva-based treaty body would assist tackle chronic corruption.<sup>81</sup> True, the views of a Committee on an individual complaint will not suddenly discourage States from engaging in corrupt activities as a whole, but they will send strong signals to States and the international community as a whole, and may provide relief in specific cases. The argument that ‘there are perhaps more effective mechanisms for tackling corruption’<sup>82</sup> misses the fact that the most effective anti-corruption strategy is a combination of all the anti-corruption techniques. Furthermore, the claim that ‘corruption does not lend itself well to human rights language’<sup>83</sup> will be contested in the subsequent present chapter. The ICCPR and ICESCR have established a human rights framework that is capable of capturing corruption.

In light of the preceding discussion of the allegedly neoliberal character of the anti-corruption discourse, and the opposition to

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<sup>80</sup> *Ibid.* at p. 231.

<sup>81</sup> *Ibid.* at p. 234.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.* at p. 222.

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bringing anti-corruption into the human rights sphere altogether, it should be added that, in order to avoid neoliberal ‘monopolization’ of the anti-corruption debate, the human rights discourse should be used to address corruption. The human rights narrative is required to ensure that anti-corruption is viewed in the context of human dignity, and that anti-corruption efforts may extend beyond the World Bank and other ‘Western’ organizations.

### **V. Legal Effects of Recognizing Corruption as a Human Rights Violation**

It should be acknowledged that it is the obligation of the state to provide human rights to its citizens by adopting definite processes or establishing mechanisms to implement international human rights norms. Human rights are infringed, when a state fails to *respect, protect* and *fulfil*, or *recognize* human rights under its jurisdiction.<sup>84</sup> However, such a conclusion must be subjected to scrutiny by assessing the violated state’s actions or behaviors in respect to each right. This will be accomplished by depending on the language of human rights laws, as well as their interpretation, implementation, and intent of these laws. Furthermore, the term ‘violation’ should only be used in this context where a legal obligation exists.<sup>85</sup>

In most democratic states, the judicial institutions are viewed with trust and admiration. Mostly, it is the constitutional framework that ensures these judiciaries are made independent and autonomous from the other branches of the state. The most important function of the judiciary is to interpret the constitution and the other laws of

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<sup>84</sup> DAVID RUTHERFORD, *States’ Obligations Under International Human Rights Conventions*, Commonwealth Secretariat 2018. Available at: [t.ly/fZRk](https://t.ly/fZRk) (Last visited: 20 August, 2022).

<sup>85</sup> JAMES THUO GATHII, ‘Defining the Relationship Between Human Rights and Corruption’ (2009) vol. 31/Iss.1 *University of Pennsylvania Journal*. p. 126. Available at: <https://bit.ly/3qbEZ5K> (last visited 20 August, 2022)

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the state and to adjudicate all the disputes.<sup>86</sup> In the South Asian context, the judiciaries of India, Sri Lanka, Bangladesh and Pakistan have made considerable advancement in interpreting the constitution and developing liberal human rights jurisprudence with a view to protect and promote the rights of the people.<sup>87</sup> Although the credibility, legitimacy and effectiveness of the judiciaries present in these states do vary within each state, as they are under varying socio-political challenges so far as their independence is concerned.

The bribery of judges directly violates the human right to a fair trial as enshrined under Article 14 of the ICCPR,<sup>88</sup> which guarantees, notably, the equality of all persons before the courts and tribunals and their entitlement ‘to a fair and public hearing by a competent, independent and impartial tribunal established by law’. However, it must be also acknowledged that they have made some serious commendable efforts at varying times to uphold rule of law and the human rights. For instance, the Constitutional Court of South Africa holds that “corruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms.”<sup>89</sup> Similarly, in a 2012 judgment, the Supreme Court of India held that “corruption [...] undermines

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<sup>86</sup> C. RAJ KUMAR, *Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia*, Michigan State Journal of International Law, Vol. 16, Issue 3 (2008), pp. 475-572 at p. 521.

<sup>87</sup> C. RAJ KUMAR, *Corruption and its impact on human rights in India: comparative perspectives on improving governance* (Thesis). University of Hong Kong (2011), Pokfulam, Hong Kong SAR, at p. 72.

<sup>88</sup> Article 14 of the ICCPR provides as follows: “(1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.....)”

<sup>89</sup> Constitutional Court of South Africa, *South African Association of Personal Injury Lawyers v Health and Others*, 28 November 2000, (CCT 27/00) [2000] ZACC 22, para. 4.

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human rights, indirectly violating them”, and that “systematic corruption is a human rights’ violation in itself”.<sup>90</sup> It is with this background, recognition of corruption as a human rights violation has a tendency to empower the judiciary to interpret and highlight the constitution and other state laws in alignment with the human rights norms. This could usher into a new era of the rights-based jurisprudence that can ensure a governance which is considerably free from the rampant instance of corruption.<sup>91</sup>

The most human rights are commonly recognized by the international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child etc. The preventive strategies against the menace of corruption can be effectively developed by utilization of the human rights frameworks as provided under ICCPR and the ICESCR. The human rights framework can provide a solid bedrock upon which emancipation from the vicious tentacles of corruption including ‘right to corruption-free service’ can be ensured in an efficient manner.<sup>92</sup> Moreover, recognition of the effects of corruption as the violation of human rights as provided for under ICCPR and the ICESCR, may also lead to further attention being given to corruption within states by the respective Covenant Committees, which may be

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<sup>90</sup> State of Maharashtra through CBI, Anti-Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar (Criminal Appeal No. 1648 of 2012), [2012] 9 S.C.R. 601 602, 15 October 2012, para. 14.

<sup>91</sup> C. RAJ KUMAR, Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia, Michigan State Journal of International Law, Vol. 16, Issue 3 (2008), pp. 475-572 at p. 521.

<sup>92</sup> C. RAJ KUMAR, Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia, Michigan State Journal of International Law, Vol. 16, Issue 3 (2008), pp. 475-572 at p. 521.

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useful to highlight more explicitly the effects of corruption on human rights.<sup>93</sup>

Corruption affects human rights in a variety of ways. For example, the rights to food, water, education, health, and the ability to seek justice can be violated if a bribe is required to gain access to these basic rights.<sup>94</sup> The UN covenants contain ancillary prohibitions against discrimination that apply only in connection with the exercise or enjoyment of a right under the covenants. Article 1 of the ICCPR emphatically observes, “[a]ll people have the right of self-determination” and to “freely pursue their economic, social and cultural development.”<sup>95</sup> Corruption clearly interferes in people’s efforts to *fulfil* their economic self-determination. It also stifles the pursuit of economic, social and cultural development. The fact that corruption obstructs people's freedom to exercise their rights under the ICCPR is a strong starting point for integrating the human rights framework into the implementation of anti-corruption policies. The ICCPR also contains the autonomous equal treatment guarantee set out in Article 26, which is relevant to discrimination in the area of social rights as well as to the economic rights. The design of public sector corruption is such that it obviously discriminates against individuals, favoring bribe-givers over non-bribe-givers. Bribe givers are given preferential treatment and have the ability to sue the state that they would not otherwise have access to.

As it contradicts the principle of equal treatment, corruption frequently thwarts the achievement of equality before the law.<sup>96</sup> A

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<sup>93</sup> ZOE PEARSON, ‘An International Human Rights Approach to Corruption,’ Peter Larmour and Nick Wolanin Corruption and Anti-Corruption (ANU Press 2013) at p. 59.

<sup>94</sup> JULIO BACIO TERRACINO, Corruption as a Violation of Human Rights (International Council on Human Rights Policy, Working Paper, 2008).

<sup>95</sup> International Covenant on Civil and Political Rights art. 26, Dec. 16, 1966, 999 U.N.T.S. 171. (ICCPR), Art. 1(1).

<sup>96</sup> PROF. DR. ANNE PETERS, Corruption and Human Rights, Basel Institute on Governance, September 2015, at 16. Available on: <https://bit.ly/3kCSH0i> (Last visited: 20 August, 2022).

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corruption-free governance framework ensures that the state's resources are distributed evenly and that government decision-making is based on fair, reasonable, and rational principles and as such does not discriminate against the people.

As mentioned above, corruption also affects human rights enshrined in the ICCPR. Under certain circumstances, corruption must notably be considered a violation of the ICESCR. The ICESCR, similar to the ICCPR, alludes to the principle of equality and non-discrimination in the exercise of economic, social and cultural rights. The Committee on Economic, Social and Cultural Rights (CESCR), in one of its General Comments,<sup>97</sup> 'has referred to the legal obligation undertaken by state parties to the ICESCR.' Article 2(1) of the ICESCR, which lays out the States Parties' basic commitments, comprised four elements that the treaty body, the CESCR, is responsible for monitoring. Each portion serves as a springboard for concrete State responsibilities, including anti-corruption efforts. Article 2 of the ICESCR's non-discrimination clause allows states a "undertake to guarantee that the applicable rights can be exercised without discrimination."<sup>98</sup> It may be suggested that states should act to ensure that people are not discriminated against while exercising their rights to work, food, health, education, and other rights covered by the ICESCR. Corruption in the performance of the rights listed above is a direct breach of this duty. It is clear that corruption has damaged a variety of states' development-oriented initiatives.<sup>99</sup>

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<sup>97</sup> Commission on Economic, Social and Cultural Rights, General Comment 3: The Nature of State Parties Obligations (Art.2, para. 1 of the Covenant), U.N. Doc. E/1991/23 (Dec. 14, 1990) (ICESCR General Comment 3).

<sup>98</sup> International Covenant on Economic, Social and Cultural Rights art. 2(2), Dec. 16, 1966, 993 U.N.T.S 3.

<sup>99</sup> C. RAJ KUMAR, Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia, Michigan State Journal of International Law, Vol. 16, Issue 3 (2008), pp. 475-572 at p. 523.

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The effects of corruption on development are enormous, as funds provided for development on a national and international level can be siphoned off due to corruption. Other countries and multilateral lending agencies provide loans to developing countries like India for various development-related activities. As a result, societal aspirations for development-related work have been raised within the countries. However, the pursuit of development work is continually interrupted when funds are misappropriated due to corruption, causing the development process to be delayed, and in some cases, halted.<sup>100</sup>

### VI. Conclusion

The concept of corruption as a human rights violation is relatively a novel one. Human rights conventions both at the international or regional levels include no specific reference to corruption, while anti-corruption treaties hardly ever address human rights. Nonetheless, recent development at international plane point out to the fact that there is an increasing interest amongst international community and legal scholars to explore and investigate the relationship between anti-corruption measures and human rights law. This article demonstrated despite criticism and objections, how a valid linkage can be carved out between these two concepts and what legal implications of such an exercise shall entail. It was also highlighted how a human rights-based approach can greatly benefit and complement the current anti-corruption initiatives in addressing the destructiveness of the corruption. Finally, it was also shown how the synergy between these two concepts can actually help in alleviating, mitigating and arresting the rigor of menacing corruption.

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<sup>100</sup> CHERYL W. GRAY & DANIEL KAUFMANN, Corruption and Development, 35 Financial & Development 7 (1998). Available at <http://www.imf.org/external/pubs/ft/fandd/1998/03/pdf/gray.pdf>. (Last visited 25 July, 2022).

# **Blockchain and Copyright Protection: A New Frontier in Digital Rights Management**

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## **Abstract**

Blockchain technology is reshaping the landscape of digital copyright protection by offering innovative solutions to longstanding challenges in the management and enforcement of intellectual property rights. In an era marked by rapid digital proliferation and pervasive piracy, traditional copyright frameworks struggle to keep pace with the complexities of content creation, distribution, and monetization. This article provides a comprehensive examination of blockchain's transformative potential in copyright law, highlighting its ability to establish immutable records, streamline registration processes, and verify authorship with unprecedented accuracy. Through the integration of decentralized ledgers and smart contracts, blockchain not only automates royalty distribution but also enhances licensing arrangements by reducing reliance on intermediaries and improving transparency in revenue flows. The discussion further explores the legal challenges posed by blockchain adoption, including jurisdictional conflicts, regulatory uncertainties, and the hurdles of enforcing blockchain records in traditional court systems. By analyzing real-world case studies and current technological implementations, the article demonstrates how blockchain can effectively combat piracy and unauthorized distribution while ensuring that creators receive fair compensation. Looking to the future, it evaluates the feasibility of widespread adoption of blockchain-based copyright protection, considering the need for technical scalability, standardization, and user accessibility. Anticipated legislative reforms and emerging trends suggest a gradual but significant shift toward harmonizing digital rights management with modern technology. Overall, the article offers critical insights into how blockchain could redefine copyright law, fostering a more transparent, efficient, and equitable digital content ecosystem in the global marketplace.

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**Keywords:** Blockchain, Copyright, Digital Rights, Smart Contracts, Intellectual Property

### I. Introduction

Digital technologies have transformed the way creative works are produced, disseminated, and consumed. The ease with which digital content can be reproduced and shared poses significant challenges to traditional copyright frameworks. One of the most pressing issues is the inherent nature of digital files, which can be copied ad infinitum without any degradation in quality. This has led to a dramatic increase in unauthorized reproductions and distributions, placing considerable pressure on copyright holders to protect their works effectively.<sup>1</sup> The digital environment blurs the boundaries of jurisdiction, making it difficult for copyright holders to enforce their rights internationally. Traditional copyright laws were developed in an era when the distribution of content was largely confined by geographical and physical limitations. Today, however, the global nature of the internet means that infringement can occur anywhere, complicating the enforcement process and often rendering national legal remedies insufficient.<sup>2</sup> Moreover, the anonymity afforded by digital platforms can obscure the identity of infringers, making it even harder to hold them accountable under existing legal frameworks. Another challenge is the issue of user-generated content. Social media platforms, online communities, and various digital forums empower users to create, modify, and share content. While this democratization of content creation fosters innovation and creativity, it simultaneously creates a grey area in copyright law, where the boundaries of fair use, derivative works, and original authorship are frequently contested.<sup>3</sup> Copyright laws must, therefore, strike a delicate balance between protecting

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<sup>1</sup> Lawrence Lessig, *Code and Other Laws of Cyberspace* (1999).

<sup>2</sup> Pamela Samuelson, "Copyright in the Digital Age: A Primer," 10 *Harv. J.L. & Tech.* 1, 3 (1997).

<sup>3</sup> Jessica Litman, *Digital Copyright* (2006).

the rights of creators and fostering an environment that encourages free expression and participation. Furthermore, the rise of streaming services and digital marketplaces has reshaped the economic models underlying copyright law. Traditional revenue models based on physical sales are rapidly being supplanted by models that rely on licensing, subscription fees, and microtransactions. This shift raises new questions about how royalties are calculated, distributed, and enforced, and challenges existing legal paradigms to adapt to a digital economy that is both fast-paced and constantly evolving.<sup>4</sup> Despite numerous legislative efforts and judicial interpretations, many critics argue that current copyright laws are ill-equipped to handle the complexities of the digital age. Legal scholars have long argued that the law must evolve in tandem with technological advances to remain effective in protecting creative works while promoting innovation.<sup>5</sup>

Blockchain technology, originally conceived as the underlying infrastructure for cryptocurrencies, offers a decentralized, immutable ledger that has the potential to revolutionize many aspects of IP law. At its core, blockchain enables secure, transparent, and tamper-proof recordkeeping. These features are particularly well-suited to address the deficiencies of traditional copyright management systems, which often suffer from issues related to centralization, inefficiency, and vulnerability to fraud. One of the most promising applications of blockchain in the realm of copyright law is in the registration and verification of creative works. By timestamping and recording the details of a work on a distributed ledger, creators can establish an indisputable record of authorship and the date of creation. This can serve as a powerful tool in disputes over ownership, offering a level of security and

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<sup>4</sup> Mark A. Lemley, "Copyright's Digital Frontier," 88 *Yale L.J.* 45, 52 (1998).

<sup>5</sup> Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (2008). See also Pamela Samuelson, "The Trouble With Copyright: How Digital Technology is Shaking Up the Foundations of IP Law," 18 *Stanford L. Rev.* 105 (1998).

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transparency that traditional registration systems cannot match.<sup>6</sup> Due to blockchain's unchangeable nature, once a work is entered into the system, its information remains permanently fixed, greatly reducing the possibility of fraudulent modifications or later alterations that might compromise the registration's reliability. Moreover, blockchain technology streamlines licensing processes by employing smart contracts. These self-operating contracts, embedded within the blockchain, automatically manage the distribution of royalties and oversee rights management. By incorporating the terms of a licensing agreement directly into a smart contract, payments are automatically issued to the relevant parties each time the work is accessed or utilized, thereby minimizing administrative efforts and ensuring creators are compensated promptly.<sup>7</sup> This automation simplifies licensing while also enhancing transparency because every transaction is permanently recorded on the blockchain, making them accessible for review by anyone. Additionally, the decentralized structure of blockchain addresses the challenges of jurisdictional fragmentation seen in traditional copyright enforcement. With the ledger distributed across a global network of nodes, there is no central authority vulnerable to compromise by infringers. This spread-out system makes it much harder for any single party to manipulate the records, thereby improving the overall security and dependability of blockchain-based copyright management systems.<sup>8</sup> Blockchain-based technologies are opening up innovative business models in the digital content space. For instance, non-fungible tokens (NFTs) have recently emerged as a groundbreaking tool for monetizing digital art and other creative works. By leveraging blockchain,

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<sup>6</sup> Primavera De Filippi & Aaron Wright, *Blockchain and the Law: The Rule of Code* (2018).

<sup>7</sup> Melanie Swan, *Blockchain: Blueprint for a New Economy* (2015).

<sup>8</sup> Don Tapscott & Alex Tapscott, *Blockchain Revolution: How the Technology Behind Bitcoin Is Changing Money, Business, and the World* (2016).

NFTs confirm the uniqueness and ownership of a digital asset, effectively serving as a digital certificate of authenticity that can be transparently bought, sold, or traded. Although NFT applications in copyright protection are still in the early stages, early advocates contend that this technology may offer creators a practical way to retain control over their work in a digital landscape where unauthorized copying and distribution are common.<sup>9</sup>

Blockchain's impact on copyright law has sparked significant interest among legal scholars and practitioners. For example, Mark Lemley has noted that blockchain could resolve persistent rights management challenges by offering a secure and efficient method for recording and transferring copyright interests.<sup>10</sup> Similarly, Pamela Samuelson has examined how digital innovations, blockchain included, can be used to develop more flexible and adaptive legal frameworks that better address the nuances of the digital era.<sup>11</sup> These academic perspectives point to a growing consensus that, if effectively utilized, blockchain technology could revolutionize many persistent issues in the copyright system. Nonetheless, despite its promising benefits, integrating blockchain into copyright law comes with its own set of challenges. Given the technology's relative infancy, many legal and regulatory systems have not yet adapted to its rapid progress. There remain unresolved questions about the enforceability of smart contracts in legal proceedings, the formal legal standing of blockchain-based registration systems, and the compatibility between various blockchain platforms. Furthermore, the decentralized and frequently pseudonymous nature of blockchain networks raises issues regarding accountability and transparency, especially when

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<sup>9</sup> William Entriken et al., "Non-Fungible Tokens (NFTs) and Intellectual Property," 1 *Columbia Sci. & Tech. L. Rev.* 123, 130 (2021).

<sup>10</sup> Mark A. Lemley, *Intellectual Property in the New Technological Age* (2013).

<sup>11</sup> Pamela Samuelson, "The Role of Digital Technologies in IP Reform," 35 *U. Chi. L. Rev.* 501, 505 (2008).

disputes over the authenticity or ownership of recorded works occur.<sup>12</sup> Addressing these issues requires a collaborative dialogue among policymakers, technology experts, and legal scholars to determine the best way to integrate blockchain into current legal systems. Establishing strong standards and protocols to guarantee the reliability, security, and legal legitimacy of blockchain-based intellectual property management systems will be essential to harnessing the technology's full capabilities. Moreover, coordinated efforts between the public and private sectors, along with interdisciplinary research, are vital to bridging the divide between cutting-edge technological advancements and traditional legal frameworks.<sup>13</sup>

## **II. Blockchain Technology and Its Copyright Applications**

Blockchain technology has rapidly emerged as one of the most promising innovations for transforming digital recordkeeping and rights management. Its foundational characteristics—decentralization, immutability, and the capacity for smart contracts—are widely recognized for their potential to overhaul traditional copyright systems.

### ***How Blockchain Works: Decentralization, Immutability, and Smart Contracts***

At its essence, blockchain is a decentralized digital ledger that records transactions across a network of computers rather than relying on a single centralized authority. This decentralized model is critical because it distributes trust among multiple participants, minimizing the risk of fraud or unilateral control.<sup>14</sup> Rather than relying on a centralized database controlled by a government or

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<sup>12</sup> Aaron Wright & Primavera De Filippi, "Decentralized Blockchain Technology and the Rise of Lex Cryptographia," 20 *J. Comp. L. & Pol'y* 701, 710 (2010).

<sup>13</sup> Josephine Wolff, "Blockchain and the Future of Copyright Law: A Paradigm Shift?"

<sup>14</sup> *Int'l J. Tech. L.* 78, 82 (2019).

<sup>14</sup> Filippi & Wright, *Supra* note 6.

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corporation, blockchain operates through a network of nodes, each holding its own copy of the ledger. Transactions are confirmed using consensus mechanisms like Proof-of-Work (PoW) or Proof-of-Stake (PoS), which ensure that each transaction is independently verified by several parties.<sup>15</sup> Decentralization is one of blockchain's most revolutionary features. In such systems, there is no single failure point, and the lack of a central authority significantly decreases the risks associated with hacking, censorship, and data tampering. Instead, all nodes in the network share the responsibility of verifying and recording transactions. This distributed model creates an environment where data integrity is upheld not by a central overseer but through the collective consensus of all participants.<sup>16</sup> In copyright law, decentralization allows for the management of creative work records in a public and tamper-proof way, minimizing reliance on centralized registries that can be vulnerable to mistakes or manipulation. Moreover, a fundamental aspect of blockchain is its immutability. Once information is recorded on the blockchain, it is exceptionally challenging to alter or remove. Every block is secured with a unique cryptographic signature that links it to the previous block, forming a continuous and nearly unchangeable historical record. Altering one block would necessitate changing all subsequent blocks—a task that is computationally prohibitive.<sup>17</sup> Because of immutability, once a creative work is entered into the blockchain, the details regarding its creation, ownership, and licensing become permanently stored and easily verifiable. This feature is especially advantageous for resolving copyright disputes, as it offers a clear, indisputable chain of custody for digital works.<sup>18</sup>

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<sup>15</sup> Tapscott & Tapscott, *Supra* note 8.

<sup>16</sup> Swan, *Supra* note 7.

<sup>17</sup> Vitalik Buterin, "A Next-Generation Smart Contract and Decentralized Application Platform," (2013), available at <https://ethereum.org>.

<sup>18</sup> Wright & Filippi, *Supra* note 12.

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Smart contracts extend the functionality of blockchain by allowing self-executing agreements that are automatically enforced when predefined conditions are met. These contracts are written as computer code and are stored on the blockchain, making their execution transparent and tamper-proof. For instance, a smart contract can be programmed to release a payment to a copyright holder automatically whenever their work is purchased or accessed online.<sup>19</sup> By automating these processes, the risk of human error is significantly reduced and administrative burdens are lessened, all while ensuring strict adherence to the contract's terms. Additionally, smart contracts can be customized to incorporate specific conditions—such as usage restrictions or royalty distributions—that reflect the complex requirements of modern copyright licensing agreements.<sup>20</sup> Smart contracts not only simplify transactions but also build a robust foundation of trust and openness. Since each execution is permanently recorded on the blockchain, all parties can review and verify contract performance in real time. This transparency is especially critical in today's digital landscape, where tracking the use of copyrighted material across various platforms has traditionally been a complex and delayed process.<sup>21</sup> The integration of decentralization and immutability enables blockchain to generate verifiable digital certificates. When a creative work is registered on the blockchain, it receives a timestamp and a unique identifier that verifies its existence at a specific moment. This timestamping is critical for confirming the work's authenticity and establishing its priority, thereby providing a strong basis for any legal claims related to copyright infringement.<sup>22</sup> Cryptographic signatures accompanying these entries further ensure that the records are genuine and have

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<sup>19</sup> Ibid.

<sup>20</sup> Lemley, *Supra* note 10.

<sup>21</sup> Samuelson, *Supra* note 2.

<sup>22</sup> Lessig, *Supra* note 1.

not been tampered with, thereby reinforcing the integrity of the copyright registration process.

***Potential Benefits of Blockchain for Copyright Protection***

Integrating blockchain into copyright protection is more than just a theoretical idea; it brings tangible benefits that could revolutionize the way creative works are managed and monetized. These advantages cover various aspects, from secure registration and automated royalty distribution to more effective rights enforcement. A major advantage is the ability to establish a secure and unchangeable record of creative works. Traditional copyright registration systems are typically centralized, making them susceptible to errors, delays, or even corruption. In contrast, blockchain's decentralized structure mitigates these risks. By logging a work's creation on a distributed ledger, creators gain an indisputable record of both authorship and the creation date. This record essentially serves as a digital certificate, providing strong evidence in any legal disputes over ownership or originality. For instance, when multiple parties claim the same work, the blockchain record—with its cryptographic timestamps—can clearly establish which claim was made first. Moreover, smart contracts offer a groundbreaking approach to managing royalty payments. Traditional systems often rely on intricate tracking methods that can lead to delays, errors, and a lack of transparency. In contrast, smart contracts automatically trigger payments whenever a copyrighted work is accessed, downloaded, or used, ensuring that royalties are distributed accurately and without delay to the rightful parties.<sup>23</sup> In this approach, contractual details—like payment thresholds and revenue splits—are directly encoded on the blockchain, which eliminates intermediaries and reduces administrative burdens. This not only simplifies the process but also helps prevent disputes related to payment errors or delays.

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<sup>23</sup> Litman, *Supra* note 3.

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Moreover, blockchain technology can greatly streamline digital licensing. Traditional methods of negotiating and managing licenses often involve multiple intermediaries and extensive paperwork, making the process cumbersome. By contrast, blockchain-based systems enable real-time, peer-to-peer licensing agreements that are transparently recorded on the ledger. This empowers rights holders to offer licenses directly to users, cutting out middlemen, lowering costs, and speeding up transactions.<sup>24</sup> Moreover, because all licensing agreements are recorded on an immutable ledger, the risk of unauthorized or duplicate licensing is substantially reduced.

Copyright infringement remains a significant challenge in today's digital landscape, especially as the ease of online file sharing intensifies unauthorized copying and distribution. Blockchain technology addresses these issues by maintaining a transparent, traceable ledger of every transaction. With every access or transfer recorded, it becomes much simpler to monitor the journey of a digital asset and pinpoint instances of unauthorized distribution.<sup>25</sup> This level of transparency discourages potential infringers, who might be deterred from engaging in unauthorized activities if every action is permanently logged and easily auditable. Additionally, blockchain's decentralized framework opens the door to innovative digital marketplaces that function without central intermediaries. In these platforms, creative works can be directly bought, sold, or licensed between parties, with the blockchain serving as both a registry and an enforcement tool to secure transactions and uphold rights. Such systems have the potential to democratize the distribution of creative content by reducing the influence of traditional content aggregators and fostering a more direct

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<sup>24</sup> Ibid.

<sup>25</sup> Lemley, *Supra* note 4.

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relationship between creators and consumers.<sup>26</sup> This approach can lead to more equitable revenue sharing, heightened competition, and increased innovation in how content is created and distributed. Additionally, blockchain offers the significant advantage of digital identity verification. In copyright matters, confirming the identities of content creators and rights holders is essential to prevent fraudulent claims. Blockchain-based systems can connect a creator's digital identity with their portfolio, ensuring that only verified parties have the authority to register or license creative works. This not only helps to deter fraud but also strengthens the foundation for collaborative and co-authored projects, where accurate attribution is vital.<sup>27</sup> By establishing verifiable digital identities, blockchain helps to foster a more trustworthy and accountable copyright ecosystem.

The introduction of blockchain into copyright protection also holds promise for fostering innovation within the creative industries. Reducing obstacles for emerging artists and content creators is critical in today's competitive digital landscape. Blockchain's clear and user-friendly registration and licensing systems empower new talent by offering a secure and straightforward way to safeguard and monetize their work. In addition, blockchain-based platforms foster collaborative creativity by enabling multiple contributors to collaborate on a project while automatically maintaining detailed records of each individual's contributions and corresponding rights.<sup>28</sup> This setting fosters innovation and teamwork, ultimately enriching our cultural fabric. The explosive growth of the digital economy has revealed the shortcomings of traditional copyright systems—originally designed for a physical media era. With digital content becoming widespread and increasingly multifaceted across

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<sup>26</sup> Wolff, *Supra* note 13.

<sup>27</sup> Lessig, *Supra* note 5.

<sup>28</sup> Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (Penguin Press 2004).

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various formats and platforms, there is a pressing need for a more adaptable copyright framework. Blockchain technology, capable of processing vast numbers of transactions in a decentralized way, emerges as a promising solution. It can serve as a unified platform that supports a wide range of digital content while ensuring that copyright protection evolves in step with technological advances.<sup>29</sup> Legal scholars are increasingly highlighting blockchain's ability to tackle many of the deep-rooted issues found in traditional copyright systems. For instance, Mark Lemley has noted that blockchain's inherent transparency and security can streamline the management of copyright portfolios and offer a more effective way to resolve ownership disputes.<sup>30</sup> Similarly, Primavera De Filippi and Aaron Wright have pointed out that blockchain can underpin a reimagined copyright framework, one that aligns more closely with the decentralized model characteristic of digital content creation and distribution.<sup>31</sup> These academic perspectives are reinforced by real-world pilot projects and experimental platforms that showcase the viability of blockchain-based copyright solutions. While many of these initiatives remain in early stages, their promising initial results indicate that blockchain could soon become a key component in digital rights management.

While blockchain offers significant promise, several hurdles need to be overcome before it can be broadly implemented in copyright protection. One major challenge is scalability: as digital transactions grow in volume, blockchain networks must be capable of handling this increased throughput without sacrificing either security or efficiency.<sup>32</sup> Moreover, regulatory uncertainties persist, particularly regarding the legal enforceability of smart contracts

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<sup>29</sup> Tapscott & Tapscott, *Supra* note 8.

<sup>30</sup> Mark A. Lemley, "Intellectual Property's Emerging Frontier," 88 *Yale L.J.* 801, 805 (1999).

<sup>31</sup> Filippi & Wright, *Supra* note 6.

<sup>32</sup> *Ibid.*

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and the recognition of blockchain records in formal legal proceedings. These issues necessitate continued collaboration among technologists, legal scholars, and policymakers to develop robust standards and regulatory frameworks that accommodate blockchain's unique features while ensuring compliance with existing copyright laws.<sup>33</sup> Ultimately, the future of copyright in the digital era depends on our capacity to evolve and innovate. With its promise of improved security, transparency, and efficiency, blockchain presents an exciting new frontier in this transformation. As more stakeholders begin to leverage blockchain's potential, we can expect a redefined copyright landscape that effectively tackles traditional challenges and ushers in a new era of digital rights protection that is as groundbreaking as the technology itself.<sup>34</sup>

### **III. Copyright Registration and Ownership Verification via Blockchain**

One of the primary challenges in copyright law is the unequivocal establishment of authorship and the precise timing of a work's creation. In an age where digital content can be effortlessly duplicated and disseminated, ensuring that creators are properly credited—and at the correct time—has become increasingly complex. Blockchain technology addresses this challenge by providing a tamper-proof, decentralized ledger that allows for the immutable recording of a work's metadata, including its creation date and the identity of its creator. When a creative work is registered on a blockchain, it is linked to a unique digital signature—typically produced through cryptographic hashing—and stamped with the registration time. This data is then distributed across a network of nodes, making it tamper-resistant and decentralized. As a result, the recorded information serves as an enduring and publicly accessible certificate of creation, which is

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<sup>33</sup> Wright & Filippi, *Supra* note 12.

<sup>34</sup> Swan, *Supra* note 7.

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invaluable in copyright infringement disputes where establishing an unalterable record of origin is crucial.<sup>35</sup> Additionally, blockchain's built-in transparency allows anyone to verify a registration record. By providing immediate, verifiable evidence of authorship and the time of creation, blockchain helps lessen the burden of proof that is often necessary in legal disputes. For example, when two parties claim ownership of the same digital work, the blockchain record—complete with cryptographic signatures and time-stamped entries—serves as a clear and impartial basis for identifying the original creator. Scholars like Primavera De Filippi and Aaron Wright have praised this mechanism, noting that blockchain not only enhances the reliability of copyright registration but also democratizes the process, making it accessible to creators who might not have the resources to navigate traditional legal systems.<sup>36</sup>

Blockchain-based registration also offers a significant efficiency advantage over traditional copyright systems. Conventional registration processes often involve long waiting periods and substantial administrative work. In contrast, blockchain registration can be completed almost instantly, enabling creators to secure their rights in real time. This rapid registration process is particularly valuable in the digital era, where content can go viral within hours, making delays a potential risk. By providing immediate verification, blockchain fosters a more agile and responsive copyright framework that aligns with the fast-paced nature of digital content creation and distribution.<sup>37</sup> Blockchain technology significantly boosts the security of copyright registration. Traditional systems rely on centralized databases that are vulnerable to hacking, data loss, and corruption—a single breach

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<sup>35</sup> Filippi & Wright, *Supra* note 6.

<sup>36</sup> *Ibid.*

<sup>37</sup> Tapscott & Tapscott, *Supra* note 8.

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can undermine the entire system's integrity. In contrast, blockchain spreads data across a network of nodes, substantially reducing the risk of a catastrophic failure. Since every node holds a complete copy of the ledger, even if some nodes are compromised, the overall registration record remains secure. This distributed security model is especially crucial in today's digital landscape, where cyber threats are both pervasive and increasingly sophisticated.<sup>38</sup> Beyond its technical advantages, blockchain's role in verifying authorship has the potential to significantly enhance trust within the digital content ecosystem. When both creators and consumers are assured that a work's origin and ownership have been independently confirmed by a decentralized network, confidence in the authenticity of digital assets is strengthened. This trust is crucial not only for safeguarding intellectual property rights but also for fostering an environment that nurtures creative innovation and ensures fair compensation. By providing an immutable record of creation, blockchain can serve as a cornerstone in developing a more just and balanced digital rights framework.<sup>39</sup> Pilot projects and experimental platforms are already demonstrating blockchain's potential to simplify and secure copyright registration. For instance, several digital art marketplaces now use blockchain-based systems to record both the creation and subsequent transactions of artworks, ensuring that artists receive proper recognition and compensation. These initiatives show that blockchain's precise timestamping and secure recordkeeping capabilities can effectively tackle long-standing challenges in copyright law.<sup>40</sup>

Blockchain offers innovative copyright registration solutions that differ significantly from traditional methods. In many jurisdictions, traditional registration is managed by centralized authorities like

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<sup>38</sup> Swan, *Supra* note 7.

<sup>39</sup> Lessig, *Supra* note 1.

<sup>40</sup> Litman, *Supra* note 3.

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the United States Copyright Office, which operate within long-established legal frameworks. These conventional systems typically require submitting physical or digital copies of the work along with detailed forms and fees—a bureaucratic process that can take weeks or even months. During this period, a creator’s rights may be in a state of legal uncertainty, leaving them exposed to potential unauthorized use or infringement. In contrast, blockchain registration enables almost instantaneous recording of a work’s details, providing immediate proof of creation and authorship. This rapid processing is especially beneficial in today’s fast-paced digital environment, where delays can lead to significant financial and reputational harm.<sup>41</sup> Another notable distinction is in the realm of trust and verification. Traditional copyright systems depend on government agencies or designated bodies to authenticate and maintain records. Although these centralized systems are generally dependable, they are not immune to errors, corruption, or even political interference. For instance, a centralized registry might be vulnerable to data breaches or manipulation, which could compromise the credibility of the registration process. In contrast, blockchain minimizes these risks by distributing data across a network of nodes and utilizing consensus mechanisms to validate each entry. Consequently, the integrity of blockchain records is upheld through collective verification rather than reliance on a single centralized authority.<sup>42</sup> Moreover, the transparency inherent in blockchain systems provides a level of accountability that is often lacking in traditional copyright registration. In traditional systems, accessing registration records often requires formal procedures, which limits public oversight. In contrast, blockchain-based records are usually accessible to anyone with an internet connection. This level of

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<sup>41</sup> Samuelson, *Supra* note 2.

<sup>42</sup> Lemley, *Supra* note 10.

transparency not only bolsters the credibility of the records but also discourages fraudulent activities, since any unauthorized modifications would be immediately noticeable to all network participants.<sup>43</sup>

Traditional copyright systems also face challenges related to scalability and interoperability. As the amount of digital content grows, traditional centralized registries can become overloaded with submissions, resulting in delays and higher administrative costs. In contrast, blockchain's decentralized design inherently supports greater scalability. Because blockchain operates through a distributed network, it can expand to handle more transactions without sacrificing speed or security—a crucial feature in a digital ecosystem where millions of new works might be produced daily. However, blockchain registration is not without challenges. Despite its clear benefits, the technology is still in the early stages of adoption within copyright law. Key issues such as achieving interoperability between different blockchain platforms, obtaining legal recognition for blockchain-based records, and ensuring that smart contracts are enforceable remain under active discussion among legal scholars and policymakers.<sup>44</sup> Furthermore, while blockchain creates an unchangeable record, it does not automatically confirm the originality of the content. It merely indicates that a specific digital fingerprint was recorded at a certain moment, without assessing whether the work is entirely original or derived from an earlier creation. This shortcoming means that additional measures are required to verify that the registered work is truly unique and does not infringe upon existing copyrights.<sup>45</sup> Traditional copyright systems often feature a comprehensive review process designed to carefully evaluate originality and

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<sup>43</sup> Ibid.

<sup>44</sup> Wright & Filippi, *Supra* note 12.

<sup>45</sup> Ibid.

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authorship. While this detailed scrutiny can provide a high level of confidence in a work's originality, it also comes with drawbacks—it tends to be slow, resource-intensive, and vulnerable to human error. In contrast, blockchain streamlines the registration process by using cryptographic techniques to shift the verification responsibilities from a centralized authority to a decentralized network. This not only improves efficiency but also reduces the risk of bias or mistakes.<sup>46</sup>

Despite these challenges, many experts remain optimistic about the potential of blockchain to complement and, in some cases, even supplant traditional copyright registration systems. Scholars such as Mark A. Lemley have noted that blockchain's transparency and security can significantly reduce disputes over ownership and streamline the enforcement of copyright claims.<sup>47</sup> Similarly, Pamela Samuelson has argued that blockchain represents a natural evolution in digital rights management, offering solutions that are better aligned with the realities of an interconnected, digital world.<sup>48</sup> A comparative review of blockchain registration versus traditional copyright systems highlights that each has unique strengths and limitations. Traditional methods benefit from long-standing legal frameworks, thorough review procedures, and a strong history of judicial acceptance. However, they often suffer from bureaucratic delays, centralization risks, and issues with scalability. On the other hand, blockchain registration offers quick, secure, and transparent recordkeeping for copyright data, although it still faces hurdles regarding legal recognition and verifying originality. As the digital landscape continues to develop, a hybrid approach that combines the best aspects of both systems might

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<sup>46</sup> Lessig, *Supra* note 5.

<sup>47</sup> Lemley, *Supra* note 31.

<sup>48</sup> Samuelson, *Supra* note 5.

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emerge as the most effective solution for copyright registration and ownership verification.<sup>49</sup>

#### **IV. Smart Contracts and Blockchain-Based Licensing**

Smart contracts are essentially computer programs that automatically execute the terms of a contract when predetermined conditions are met. In the realm of digital rights management, smart contracts eliminate the need for intermediaries by codifying licensing agreements directly onto a blockchain. This mechanism automatically initiates royalty payments based on a digital asset's usage, ensuring that funds flow transparently and efficiently to rights holders. One significant advantage of smart contracts is their ability to minimize administrative burdens. In traditional royalty distribution, intermediaries like collection societies, banks, and legal advisors can cause delays and incur extra costs. In contrast, smart contracts process transactions in real time. For example, when a digital song is streamed, the contract can instantly allocate a predetermined share of revenue to the composer, lyricist, and performing artist.<sup>50</sup> This rapid execution not only boosts overall efficiency but also significantly reduces the chance of payment errors or delays that frequently occur in traditional systems. Moreover, transparency is a key advantage of smart contract-enabled royalty distribution. Because every blockchain transaction is permanently time-stamped and immutable, all parties—whether they are creators, distributors, or end users—can independently verify that the licensing terms have been met, without having to rely on a centralized authority.<sup>51</sup> This openness fosters confidence among stakeholders and minimizes potential conflicts over revenue distribution. Legal experts like Primavera De Filippi and Aaron Wright have noted that the inherent transparency of blockchain

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<sup>49</sup> Wolff, *Supra* note 13.

<sup>50</sup> Filippi & Wright, *Supra* note 6.

<sup>51</sup> Tapscott & Tapscott, *Supra* note 8.

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transactions can substantially curtail opportunities for fraud and mismanagement within the creative industries.<sup>52</sup> Moreover, smart contracts provide a high degree of customization and adaptability. They can be designed to support diverse licensing arrangements—such as implementing tiered royalty rates based on usage, imposing geographic restrictions, or triggering conditional payments only once specific thresholds are achieved. This level of detail allows creators to tailor agreements precisely to their requirements, a critical advantage in an era where digital content is consumed across a variety of platforms and formats.<sup>53</sup> The dynamic nature of smart contracts is especially useful in complex revenue-sharing models where traditional contracts might struggle to account for every possible contingency.

From a technological perspective, the reliability of smart contracts hinges on the underlying blockchain's consensus mechanism. Most blockchain networks employ consensus mechanisms like Proof-of-Work (PoW) or Proof-of-Stake (PoS) to have a distributed set of nodes validate transactions. This consensus framework not only safeguards smart contracts from unauthorized modifications but also guarantees that contract terms are uniformly executed throughout the entire network.<sup>54</sup> In royalty distribution, every execution of a contract—say, transferring funds from a streaming service directly to an artist's digital wallet—is recorded in a way that all parties can verify. However, despite these benefits, smart contracts face challenges before they can become a universal tool for royalty distribution. One major challenge is the "oracle problem," which involves reliably integrating real-world data into the blockchain. Because smart contracts operate deterministically based solely on the data available on the blockchain, they depend

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<sup>52</sup> Ibid.

<sup>53</sup> Swan, *Supra* note 7.

<sup>54</sup> Lessig, *Supra* note 1.

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on trusted oracles to supply essential external information, such as streaming counts, sales figures, or user engagement metrics.<sup>55</sup> Without robust and reliable oracles, there is a risk that the data triggering a smart contract may be inaccurate or manipulated, undermining the contract's integrity. Furthermore, questions regarding the legal enforceability of smart contracts continue to spark debate. Although many regions are starting to recognize the legitimacy of digitally executed contracts, uncertainty still surrounds how courts will resolve disputes related to smart contract execution. Legal experts like Mark A. Lemley have emphasized that integrating blockchain-based agreements into traditional legal systems necessitates a careful balance between technological innovations and regulatory standards, ensuring that the rights and obligations defined within smart contracts are upheld in legal proceedings.<sup>56</sup>

Numerous pioneering initiatives are already harnessing the potential of smart contracts to streamline licensing and royalty distribution. One of the earliest and most cited examples in the music industry is the platform Ujo Music. Ujo Music leverages blockchain technology to allow artists to manage their own copyrights and directly monetize their work through smart contracts. When a track is streamed or purchased, a smart contract automatically distributes royalties among all rights holders according to pre-set terms.<sup>57</sup> This model has not only simplified the revenue distribution process but has also provided a level of transparency that is often absent in conventional music licensing agreements. Another noteworthy example is Mycelia, a blockchain initiative launched by musician Imogen Heap. Mycelia is designed to empower artists by creating a decentralized digital ecosystem for

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<sup>55</sup> Wright & Filippi, *Supra* note 12.

<sup>56</sup> Lemley, *Supra* note 10.

<sup>57</sup> Ujo Music, see generally "How Ujo Music Uses Blockchain to Empower Artists," available at <https://www.ujomusic.com>

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music licensing and royalty management. By using smart contracts, Mycelia enables real-time tracking of music usage and the automatic distribution of royalties directly to the artists, bypassing traditional intermediaries such as record labels or collection societies.<sup>58</sup> Heap has argued that such a system can democratize the music industry by ensuring that creators retain greater control over their intellectual property and receive fair compensation for their work. In the visual arts sector, blockchain-based licensing is being used to address issues of provenance and authenticity. Digital art marketplaces such as SuperRare and Nifty Gateway use smart contracts to certify the originality and ownership of digital artworks. When a piece of art is sold, the smart contract not only facilitates the transfer of ownership but also ensures that any future sales include an automatic royalty payment to the original artist. This model, often referred to as "programmable royalties," provides ongoing income to artists each time their work is resold, a feature that traditional art sales have long lacked.<sup>59</sup> Moreover, blockchain initiatives in publishing have also begun to emerge. Projects such as Publica use smart contracts to manage licensing and revenue sharing for digital content. In these systems, smart contracts can be programmed to distribute advertising revenue or subscription fees among content creators based on predetermined criteria, such as the number of views or clicks. By automating these processes, blockchain-based platforms reduce the administrative burden on publishers while ensuring that creators are compensated fairly and promptly.

The scalability and adaptability of smart contracts are further demonstrated by platforms that integrate multiple types of content

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<sup>58</sup> Imogen Heap, "Mycelia: A New Era in Music Licensing," in *Innovations in Digital Music*, (2017).

<sup>59</sup> SuperRare, see generally "The Rise of Programmable Royalties in Digital Art Markets," available at <https://www.superrare.com>; also see Nifty Gateway, "Blockchain and Art Licensing," available at <https://niftygateway.com>

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and licensing models. For example, the digital media platform Mediachain, which later became part of the IBM Watson Media suite, sought to provide a decentralized framework for tracking the origins and rights of various types of digital media. By leveraging smart contracts, Mediachain was able to create a transparent record of licensing transactions that could be accessed and verified by rights holders and users alike.<sup>60</sup> Although some early initiatives have faced challenges related to regulatory acceptance and technical interoperability, the lessons learned from these projects have informed ongoing efforts to refine and optimize blockchain-based licensing solutions. A particularly promising aspect of blockchain-based licensing is its potential to foster cross-industry collaboration. As digital content increasingly spans multiple formats—such as music, film, visual art, and written works—a unified licensing system based on smart contracts can streamline revenue distribution across different sectors. This interoperability is crucial in an era where multimedia projects are commonplace, and intellectual property rights may be shared by several creators from diverse industries. Legal scholars and technologists alike have noted that blockchain’s capacity to integrate disparate data sources and enforce complex contractual terms can lead to a more holistic approach to digital rights management.<sup>61</sup> Despite these promising case studies, widespread adoption of smart contract licensing is still in its early stages. Regulatory hurdles, technological limitations, and the need for industry-wide standards continue to pose significant challenges. However, as blockchain platforms mature and legal frameworks evolve to recognize digitally executed agreements, the adoption of smart contracts in licensing is expected to grow. Industry leaders such as Don Tapscott and Alex Tapscott have argued that the next phase of the

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<sup>60</sup> IBM Watson Media, “Mediachain: Decentralizing Digital Rights Management,” available at <https://www.ibm.com/watson-media>

<sup>61</sup> Wolff, *Supra* note 13.

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digital revolution will be characterized by the seamless integration of blockchain-based systems into everyday business practices, including the management of intellectual property rights.<sup>62</sup> Furthermore, the success of blockchain-based licensing solutions will depend on the collaboration between technology developers, legal experts, and creative industries. Initiatives aimed at standardizing the technical protocols and legal frameworks for smart contracts are already underway in various international forums. The goal is to establish a set of best practices that can ensure the legal enforceability of blockchain-based agreements while maintaining the technological advantages that make them so appealing for royalty distribution and licensing. As noted by scholars such as Pamela Samuelson, the convergence of legal innovation and technological advancement is essential for creating a robust and fair digital ecosystem for content creators.

### **V. Legal Challenges in Blockchain Copyright Protection**

The rapid integration of blockchain technology into the realm of copyright protection has ignited both excitement and concern among legal scholars, practitioners, and policymakers. Although blockchain holds significant promise for generating transparent, unchangeable, and decentralized records of creative works, its integration into intellectual property protection is accompanied by notable legal challenges. Two primary concerns are the jurisdictional and regulatory complexities inherent in blockchain systems, as well as the enforceability of blockchain records in court. Unlike conventional IP registration systems, which are typically managed by a single national authority, blockchain functions as a decentralized ledger spread across a global network of nodes. This global distribution, while offering technological advantages, introduces complex jurisdictional issues that current legal frameworks struggle to address. In particular, because

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<sup>62</sup> Tapscott & Tapscott, *Supra* note 8.

blockchain nodes can exist in multiple countries, determining which jurisdiction's laws should govern a specific transaction or registration becomes a challenging task.<sup>63</sup> For instance, if a digital work is registered on a blockchain that spans several jurisdictions, disputes over ownership or infringement may invoke conflicting legal regimes. This lack of a clear jurisdictional anchor complicates the enforcement of copyright and raises questions about which court should adjudicate disputes.<sup>64</sup> Adding to the jurisdictional challenges is the fact that many national IP laws were established long before blockchain technology emerged. Traditional copyright frameworks are based on territorial concepts and rely on centralized systems for registration and enforcement. In contrast, blockchain systems operate without a central authority, which dilutes or even eliminates the traditional links between a creative work and a specific jurisdiction. Legal experts like Primavera De Filippi and Aaron Wright have pointed out that this inherently "borderless" nature of blockchain calls for a reevaluation of jurisdictional principles in copyright law.<sup>65</sup>

From a regulatory perspective, the rapid evolution of blockchain technology has outpaced the ability of legislators and regulators to create comprehensive guidelines that address its unique features. In many regions, the legal recognition of blockchain records is still unclear. While some countries have fostered blockchain innovation through regulatory sandboxes, others are more hesitant, citing issues like money laundering, data privacy, and fraud. This varied regulatory landscape creates uncertainty for rights holders aiming to use blockchain for registering and safeguarding their creative works. Without standardized and harmonized rules, there's a risk that a blockchain record accepted in one jurisdiction might not be

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<sup>63</sup> Filippi & Wright, *Supra* note 6.

<sup>64</sup> Tapscott & Tapscott, *Supra* note 8.

<sup>65</sup> *Ibid.*

## **Blockchain and Copyright Protection:.....**

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recognized in another, thereby weakening the global enforceability of digital copyright claims.<sup>66</sup> The integration of blockchain with existing regulatory frameworks also introduces challenges regarding consumer protection and transparency. Because many participants operate anonymously or under pseudonyms, identifying the parties involved in copyright disputes becomes complicated. As a result, when conflicts arise, it can be difficult to determine which entity is responsible—particularly if a node or smart contract operator is located in another jurisdiction.<sup>67</sup> Furthermore, regulators are concerned that blockchain could be exploited for illicit purposes, such as the unauthorized sharing of copyrighted content. As a result, many governments are hesitant to fully support blockchain-based systems until they can implement strong oversight and accountability measures.<sup>68</sup> The ongoing evolution of data protection regulations, such as the European Union’s GDPR, adds another layer of complexity. Blockchain’s defining feature of immutability—where recorded data cannot be changed or removed—can be at odds with privacy laws that grant individuals the right to have their personal data erased under certain conditions. This conflict between blockchain’s permanent recordkeeping and the flexible requirements of data protection laws further complicates its application in IP protection, especially across international borders.<sup>69</sup>

In light of these challenges, many legal scholars argue for a collaborative approach that involves international harmonization of blockchain regulations. Proponents contend that multilateral treaties or international standards could help bridge the jurisdictional gaps and establish common rules for the recognition

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<sup>66</sup> Lemley, *Supra* note 10.

<sup>67</sup> Samuelson, *Supra* note 2.

<sup>68</sup> Lessig, *Supra* note 1.

<sup>69</sup> *Ibid.*

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and enforcement of blockchain-based IP rights.<sup>70</sup> However, achieving such consensus is no small task, given the divergent interests and legal traditions of different nations. Until harmonized regulations are established, rights holders and legal professionals must contend with a fragmented regulatory landscape that is often unpredictable and inconsistently enforced. In response, various international forums and regulatory agencies are working to address these jurisdictional and regulatory challenges. For instance, the World Intellectual Property Organization (WIPO) has launched discussions on how emerging technologies like blockchain impact IP law, with the goal of crafting guidelines that promote innovation while protecting rights. Likewise, many national governments are experimenting with regulatory sandboxes to pilot blockchain applications in controlled settings, striving to balance the drive for innovation with the need for consumer protection.<sup>71</sup> These efforts represent important steps toward reconciling the decentralized nature of blockchain with the traditional territorial framework of copyright law, yet significant challenges remain before a coherent global regulatory framework can be established.

Even as blockchain offers promising solutions for recording and managing copyright ownership, questions remain about the legal enforceability of these records in traditional court systems. The issue of enforceability can be viewed from two angles. First, it's uncertain whether blockchain records will be considered credible evidence in court, and second, whether courts can reliably enforce the self-executing nature of smart contracts. Traditionally, courts have relied on well-established methods for verifying evidence, such as notarized documents and centralized registration certificates. In contrast, blockchain operates on a decentralized

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<sup>70</sup> Wolff, *Supra* note 13.

<sup>71</sup> World Intellectual Property Organization, "Emerging Technologies and IP: The Role of Blockchain," available at <https://www.wipo.int>

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model, with records distributed across multiple nodes. Although its cryptographic techniques offer strong guarantees of data integrity, it's still unclear if blockchain records meet the evidentiary standards expected in legal proceedings. Legal experts note that the relative newness of blockchain means many judicial systems lack the necessary precedent or statutory guidance to fully incorporate such evidence.<sup>72</sup> One of the key challenges is establishing the authenticity of a blockchain record. Although the immutable nature of blockchain is one of its strongest features, proving that a specific blockchain entry was created in accordance with legal requirements can be complicated by the absence of a centralized verifying authority. Courts may be hesitant to rely solely on decentralized records without corroborative evidence from recognized institutions or experts in digital forensics.<sup>73</sup> For example, if a copyright dispute arises over a work registered on a blockchain, the defendant might challenge the record's authenticity or claim that the underlying technology is too novel and untested to be considered reliable evidence. These challenges may result in lengthy litigation and ongoing uncertainty regarding dispute resolution. Furthermore, the enforceability of smart contracts is still a developing area of law. Although they are programmed to execute automatically once specific conditions are met, integrating smart contracts into the traditional legal framework raises questions about legal remedies and interpretation. Courts now face the task of determining whether smart contracts should be treated as binding agreements under the same contractual principles that govern traditional contracts. Legal scholars like Mark A. Lemley have pointed out that, despite their efficiency and transparency, smart contracts may lack the nuance and flexibility found in

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<sup>72</sup> Lemley, *Supra* note 31.

<sup>73</sup> Samuelson, *Supra* note 5.

conventional contracts, which allow for interpretation and equitable considerations.<sup>74</sup>

One particular area of concern is the so-called “oracle problem.” Smart contracts depend on external data sources, known as oracles, to trigger actions like royalty payments. If the data provided is inaccurate or tampered with, the contract may execute in a way that contradicts the original intentions of the parties involved. In such instances, the affected party might seek legal intervention to correct the error. However, because smart contracts function autonomously and execute on an immutable ledger, courts face significant challenges in attempting to reverse or modify transactions that have already been completed.<sup>75</sup> Another issue is the potential lack of legal clarity regarding the liability of parties involved in a blockchain transaction. In conventional contracts, the parties involved are clearly identified, with their rights and responsibilities explicitly stated. By contrast, blockchain transactions often feature pseudonymous users or decentralized autonomous organizations (DAOs), which complicates pinpointing who is responsible in the event of a breach or infringement. This ambiguity can hinder a court's ability to assign liability and offer effective remedies when disputes arise over the execution of smart contracts.<sup>76</sup>

Despite these challenges, there are promising signs that courts are beginning to adapt to the realities of blockchain technology. In several jurisdictions, courts have started to accept digital evidence from blockchain systems, recognizing the technology’s potential to provide reliable and tamper-proof records. For instance, in certain commercial disputes, judges have ruled in favor of accepting blockchain records as evidence, provided that the authenticity of

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<sup>74</sup> Lemley, *Supra* note 10.

<sup>75</sup> Wright & Filippi, *Supra* note 12.

<sup>76</sup> *Ibid.*

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the data can be independently verified by expert testimony.<sup>77</sup> Nonetheless, these rulings remain isolated, and a consistent legal framework for enforcing blockchain records is still in its early stages. The development of case law in this field is expected to be crucial in determining the future of blockchain-based copyright protection. As more disputes involving blockchain records make their way to court, judicial opinions will gradually clarify the standards and procedures for admitting and enforcing digital evidence. This growing body of legal precedent should build confidence among rights holders and innovators regarding the reliability of blockchain records in litigation. However, until a comprehensive body of case law is established, uncertainty will persist as a significant barrier to the widespread adoption of blockchain for IP protection.<sup>78</sup> Another promising development is the growing collaboration among technologists, legal professionals, and policymakers to standardize blockchain practices. Efforts like creating digital notary protocols and establishing technical frameworks for authenticating blockchain data are crucial steps in reconciling decentralized technology with centralized legal requirements. Initiatives led by organizations such as the World Intellectual Property Organization (WIPO) and various national regulatory bodies are vital for creating a legal environment where blockchain records are accorded the same evidentiary weight as traditional documents in court.<sup>79</sup>

### **VI. Blockchain's Role in Combating Copyright Infringement**

In the digital age, copyright infringement has become a pervasive problem that undermines the creative industries. The effortless replication and dissemination of digital works without permission

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<sup>77</sup> Tapscott & Tapscott, *Supra* note 8.

<sup>78</sup> Lessig, *Supra* note 5.

<sup>79</sup> World Intellectual Property Organization, "Guidelines for Blockchain Evidence in IP Cases," available at <https://www.wipo.int>

have fueled widespread piracy and unauthorized content sharing. Traditional legal and technological countermeasures have struggled to keep pace with these fast-evolving challenges. In response, blockchain technology presents promising new methods to tackle copyright infringement by offering immutable, decentralized records and transparent tracking systems that could fundamentally reshape how content is monitored, protected, and monetized. One of the most pressing issues for copyright holders today is rampant piracy and the unauthorized distribution of creative works. Due to the inherent nature of digital content—which allows it to be replicated infinitely with perfect accuracy—controlling its distribution has become exceedingly difficult. Conventional techniques, such as Digital Rights Management (DRM) systems, watermarking, and legal takedown notices, have only met with partial success, as infringers continually discover new ways to bypass these protections.

Blockchain technology, with its decentralized and immutable ledger, presents an innovative alternative for addressing these challenges. By recording every transaction related to a digital work on a distributed ledger, blockchain creates a verifiable chain-of-custody that is resistant to tampering and fraud. For instance, when a digital file is first registered on a blockchain, it receives a unique cryptographic fingerprint and timestamp that serves as an indelible record of its origin.<sup>80</sup> This record can then be used to assert ownership and track the subsequent distribution of the work. Such an approach offers several advantages in the fight against piracy. First, by providing a transparent and immutable record of ownership, blockchain can deter unauthorized distribution. If a work is known to be registered on a public ledger, potential infringers may be dissuaded from copying or sharing the work illegally because any unauthorized distribution can be traced back

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<sup>80</sup> Filippi & Wright, *Supra* note 6.

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to its source.<sup>81</sup> This openness heightens the likelihood of detection and legal repercussions, thereby deterring piracy. Moreover, blockchain supports automated monitoring of digital content. Smart contracts allow copyright owners to set up the system so that it triggers alerts—or even initiates takedown procedures—when unauthorized copies of a work are detected online. For instance, if a digital music file registered on a blockchain is later discovered on an unlicensed streaming site, the smart contract could automatically log the infringement, notify the rights holder, or even kick off a process to adjust royalty payments.<sup>82</sup> Implementing such monitoring remains technically challenging, particularly since it depends on dependable external data sources—often called oracles. However, the prospect of automated enforcement marks a considerable improvement over traditional methods that depend largely on manual intervention. Additionally, the decentralized nature of blockchain ensures that no single party can independently modify or erase a work's registration record. This immutability is especially vital in cases of piracy and unauthorized distribution, where indisputable proof of original registration is crucial for establishing legal ownership. Recognizing these benefits, courts and arbitration panels are increasingly considering blockchain records as credible evidence in copyright disputes.<sup>83</sup> While widespread judicial acceptance is still evolving, early indications suggest that the immutable nature of blockchain records may provide a more reliable basis for legal enforcement than traditional registration systems.

However, it is important to recognize that blockchain alone is not a panacea for piracy. The effectiveness of blockchain-based systems depends on their integration with robust legal frameworks and

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<sup>81</sup> Tapscott & Tapscott, *Supra* note 8.

<sup>82</sup> *Ibid.*

<sup>83</sup> Lemley, *Supra* note 10.

international cooperation. As scholars such as Primavera De Filippi and Aaron Wright have noted, the “borderless” nature of blockchain creates jurisdictional challenges that must be addressed through harmonized legal standards.<sup>84</sup> Without coordinated efforts, the effectiveness of blockchain in combating piracy could be diminished by regulatory gaps and uneven enforcement across regions. Nevertheless, several pilot projects and experimental platforms have shown that blockchain can help reduce piracy. For instance, some digital content services are exploring blockchain-based distribution systems that require users to confirm a work's authenticity before gaining access. These systems not only validate the legitimacy of the content but also log every access event on the blockchain, creating an auditable record to monitor and analyze distribution trends. As technological and legal challenges are gradually addressed, such innovations are expected to become more widely adopted.

Beyond curbing unauthorized distribution, blockchain technology offers major benefits for tracking and monetizing digital content transparently. In conventional distribution systems, monitoring a work's usage and revenue streams is challenging due to opaque payment flows and delays in royalty disbursements, often sparking disputes among creators, distributors, and intermediaries, and ultimately disadvantaging content owners. Blockchain addresses these issues by enabling real-time tracking of every transaction related to a digital work. Once a piece of content is registered on the blockchain, every subsequent transaction—whether a sale, licensing, or access event—is permanently recorded on a distributed ledger. This process creates a complete audit trail that not only documents how the content moves through the market but also ensures that every financial transaction is verifiable and

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<sup>84</sup> Filippi & Wright, *Supra* note 6.

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tamper-proof.<sup>85</sup> One of the most impactful uses of blockchain technology lies in the automation of royalty distribution. Traditional systems for managing royalties often suffer from a lack of transparency, sluggish payment processing, and a propensity for errors. By contrast, blockchain-based platforms can leverage smart contracts to automatically execute payment terms as soon as the conditions are met. For instance, every time a digital song is streamed, the smart contract can immediately distribute a predetermined share of the revenue to the appropriate rights holders. This approach not only accelerates the payment process but also helps prevent disputes over how revenue is allocated.<sup>86</sup> Blockchain's inherent transparency plays a vital role in ensuring that creators are fairly compensated. In traditional models, intermediaries—such as record labels, streaming services, and collection societies—often claim a significant portion of the revenue, which results in creators receiving less income. Conversely, blockchain-based platforms facilitate direct peer-to-peer transactions, effectively bypassing many of these middlemen. This democratization of revenue streams can empower independent creators by enabling them to earn a larger share of the proceeds from their work.<sup>87</sup> Moreover, the transparent nature of blockchain allows all stakeholders—including creators, distributors, and consumers—to verify the legitimacy of transactions. Every access or sale is recorded on the blockchain, and these records are accessible to anyone with permission to view them. This level of openness fosters trust within the digital ecosystem, as users can independently verify that the content they are accessing is genuine and that the corresponding revenue flows are being handled appropriately.<sup>88</sup>

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<sup>85</sup> Swan, *Supra* note 7.

<sup>86</sup> *Ibid.*

<sup>87</sup> Lessig, *Supra* note 1.

<sup>88</sup> Samuelson, *Supra* note 2.

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Blockchain's role in transparent tracking also extends to the management of non-fungible tokens (NFTs), which have emerged as a novel way to monetize digital art and collectibles. NFTs harness blockchain technology to verify the uniqueness and ownership of digital assets, enabling creators to generate income through one-time sales as well as recurring royalties from secondary transactions. For example, an artist might sell a digital piece as an NFT, and every time it is resold on the secondary market, a smart contract automatically allocates a royalty to the artist. This framework not only secures a continuous revenue stream for creators but also offers collectors verifiable proof of authenticity and provenance.<sup>89</sup> The adoption of blockchain for tracking and monetizing content is already gaining momentum in various sectors. In the music industry, platforms like Ujo Music and Mycelia are pioneering blockchain-based approaches to manage copyright, monitor usage, and deliver royalties directly to artists. By taking advantage of blockchain's transparency and automation, these platforms streamline revenue distribution while cutting down on the administrative burdens of traditional systems. Similarly, in the visual arts and publishing sectors, blockchain initiatives are being developed to ensure that digital works are monetized in a transparent and equitable way, addressing long-standing problems such as unauthorized copying and revenue leakage.<sup>90</sup> Despite the clear benefits of blockchain for transparent tracking and monetization, several challenges still need to be addressed. One significant hurdle is the lack of standardization and interoperability among various blockchain platforms. Presently, many blockchain systems operate under different protocols, which complicates the smooth transfer and monitoring of digital assets across platforms. For a cohesive ecosystem—where digital content

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<sup>89</sup> Entriken et al., *Supra* note 9.

<sup>90</sup> Wolff, *Supra* note 13.

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can move seamlessly while maintaining a verifiable record of its origin and transactions—achieving interoperability is crucial. Additionally, implementing blockchain-based tracking systems must carefully consider privacy and data protection issues. Although blockchain inherently provides transparency, it is essential to ensure that sensitive personal data related to transactions is securely protected. Regulatory frameworks like the European Union’s General Data Protection Regulation (GDPR) impose stringent rules on the handling of personal data, and blockchain solutions must be designed to meet these standards without undermining their transparency and security features.<sup>91</sup>

Despite these challenges, the potential of blockchain to transform content monetization remains compelling. As technological advancements continue and regulatory frameworks evolve to accommodate blockchain innovations, the benefits of transparent tracking and automated royalty distribution are expected to become increasingly mainstream. Industry experts predict that the next few years will see significant growth in blockchain-based platforms, as creators and distributors alike recognize the advantages of a decentralized, transparent system that can streamline revenue flows and protect intellectual property rights.

### **VII. Future Prospects of Blockchain in Copyright Law**

Blockchain technology is drawing significant attention as a potential game-changer in copyright law, with its future in this arena looking both promising and complex. As industry stakeholders, legal experts, and tech innovators evaluate its potential, it becomes clear that its widespread adoption hinges on a blend of technological readiness, market acceptance, and supportive legal frameworks. This shift toward blockchain-based

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<sup>91</sup> European Union, General Data Protection Regulation (GDPR), Regulation (EU) 2016/679.

copyright protection raises crucial questions about how well the technology will mesh with traditional legal systems, address longstanding issues in rights management, and evolve alongside the digital economy. A major benefit of blockchain is its decentralized architecture, which offers an immutable record-keeping system that can serve as conclusive evidence of a work's creation and ownership. This feature could revolutionize copyright registration by providing a transparent, tamper-proof, and easily accessible method of documenting intellectual property rights. However, despite these advantages, several challenges must be overcome for blockchain to gain broad acceptance. One key hurdle is integrating blockchain records into existing legal frameworks. Traditional copyright systems, built on principles of territorial jurisdiction and centralized recordkeeping, were not designed with decentralized ledgers in mind. Adapting these systems to recognize and validate blockchain records will require significant legal reforms. Another challenge is interoperability. With numerous blockchain platforms operating under different protocols and standards, ensuring that these systems can work seamlessly with one another—and with broader digital systems—is critical. Developing standardized protocols and interfaces to enable cross-platform compatibility is essential for broader adoption. Moreover, the technical scalability of blockchain systems is a critical factor. As the volume of digital content continues to grow, the underlying blockchain infrastructure must be able to manage an increasing number of transactions without compromising speed or security. Addressing these challenges will demand ongoing innovation, research and development, and close collaboration among technology companies, academic institutions, and regulatory bodies.

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User experience and ease of use are vital for the broad adoption of blockchain-based copyright protection. It is essential that creators, rights holders, and legal professionals can easily navigate these systems. If the technology is perceived as overly complex or inaccessible, it is unlikely to replace traditional methods of copyright registration and enforcement. Therefore, developers must prioritize intuitive interfaces and streamlined processes that simplify blockchain for non-technical users. This user-focused design is key to making blockchain's benefits accessible to everyone—from independent artists and small businesses to large multinational corporations.

Economic incentives also play a crucial role in determining blockchain's viability in copyright law. The promise of more efficient and transparent royalty distribution is a significant draw for creators and rights holders. By reducing the need for intermediaries, blockchain systems can lower transaction costs and ensure that a larger share of revenue directly reaches the original creators. However, transitioning to such systems entails initial expenses, such as investments in new technology, staff training, and the potential restructuring of current workflows. The economic success of this shift will depend on whether the benefits outweigh these startup costs. As more successful examples emerge that demonstrate improved revenue streams and reduced administrative burdens, confidence in blockchain for copyright protection is likely to grow, encouraging broader adoption. Clear regulatory guidelines are another essential factor for the future of blockchain in copyright law. Currently, the legal recognition of blockchain records differs widely across jurisdictions. Some countries have already started integrating blockchain into their legal frameworks through initiatives like regulatory sandboxes, while others remain cautious, waiting for more comprehensive guidelines before

embracing its widespread use. This regulatory uncertainty can deter adoption. For blockchain to be implemented on a large scale, lawmakers and regulatory agencies must establish clear and consistent rules that address blockchain's unique challenges. These rules should cover issues from the admissibility of blockchain records in court to the enforcement of smart contracts and the protection of consumer data. Given blockchain's global, borderless nature, international cooperation will be crucial, as coordinated global standards will likely be more effective than isolated national policies.

Looking ahead, emerging trends and legal reforms are expected to significantly influence how blockchain is integrated into copyright law. One notable trend is the growing intersection between digital technology and legal practice. As blockchain technology evolves, an increasing number of legal precedents are likely to address copyright disputes involving blockchain, thereby refining the standards used to evaluate these digital records and bolstering confidence in the technology among judges and litigants. As courts become more familiar with blockchain's technical details, their decisions could shape both the design of blockchain systems and the development of copyright law itself. Another important trend is blockchain's potential to enable innovative business models in the creative industries. The rise of non-fungible tokens (NFTs) has already illustrated how blockchain can authenticate digital art and collectibles while ensuring artists receive ongoing royalty payments. In the future, this model could expand to include a wider variety of creative works such as music, literature, film, and software. As licensing and distribution platforms based on blockchain become more common, they may disrupt traditional revenue-sharing structures by allowing creators to claim a larger share of the value generated by their work. This change could also

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foster greater innovation in content creation, giving artists and rights holders the freedom to experiment with new formats and distribution channels that traditional copyright systems have limited. Legislative developments will play a crucial role in realizing these trends. Lawmakers are increasingly recognizing the need to update intellectual property laws to meet the challenges of the digital era. Many jurisdictions are exploring reforms to modernize copyright law, including provisions specifically addressing digital rights management and blockchain technology. These initiatives might involve overhauling copyright registration procedures, establishing legal frameworks for smart contracts, and creating mechanisms to efficiently resolve cross-border disputes. As these reforms are implemented, they are expected to create a more stable and predictable legal environment for blockchain-based copyright protection, ultimately reducing the risks associated with adopting new technologies.

As the technology evolves and the legal framework adapts, we can expect a phase of trial and gradual adoption. Early innovators in the creative sector will continue to investigate blockchain's advantages, generating important insights that can help shape future regulatory changes. These trailblazing initiatives will be essential for proving blockchain's practical effectiveness in copyright protection and for pinpointing the necessary technical and legal modifications for broader adoption. As these initial experiments demonstrate success and standard practices emerge, support for blockchain in copyright law is likely to increase. Effective collaboration among industry players, tech developers, and regulators will be crucial during this transition. Initiatives that unite legal professionals, technologists, content creators, and policymakers can drive the creation of common standards and protocols, ensuring blockchain systems are interoperable and

scalable. This cooperative effort will not only ensure the technology is robust from a technical standpoint, but also legally and commercially sustainable. By addressing issues like jurisdictional challenges, regulatory ambiguities, and user accessibility, these groups can pave the way for a new era in digital rights management. Furthermore, the potential impact of blockchain on copyright law reaches far beyond digital rights management—it has significant social and economic implications. For example, by cutting out intermediaries and simplifying royalty distribution, blockchain can democratize access to creative markets. This empowers independent artists and small creators, who have often been sidelined by centralized systems, leading to a richer and more diverse cultural landscape. Simultaneously, greater transparency and accountability in content distribution can build stronger trust among creators, distributors, and consumers, ultimately fortifying the overall ecosystem for creative works.

Looking forward, further advancements in blockchain technology might pave the way for entirely new methods of managing intellectual property. By merging breakthroughs in artificial intelligence and machine learning with blockchain, we could develop dynamic, self-regulating networks that not only log transactions but also analyze usage patterns, identify potential infringements, and forecast market trends. These smart systems would provide real-time performance insights for creative works, enabling rights holders to make informed decisions regarding licensing, distribution, and revenue optimization. This would be a marked departure from the static recordkeeping systems of the past, making copyright law more responsive and adaptable. However, it is important to note that the shift toward a blockchain-based system will be gradual and iterative. The technology is still in its developmental phase, and many of its prospective

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applications in copyright protection remain experimental. Like any transformative technology, blockchain will encounter setbacks, challenges, and periods of uncertainty. Nonetheless, the significant potential benefits—increased transparency, efficiency, and fairness—are motivating innovators, creators, and legislators to address these obstacles. In the coming years, we can expect a series of incremental improvements and regulatory refinements that will collectively facilitate the widespread adoption of blockchain in copyright law.

# **Disability Rights: An Analysis of Legislative Framework in India with Special Reference to Jammu and Kashmir.**

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**Ashfaq Hamid Dar\*\*\***

## **Abstract**

Discrimination against disabled individuals has historically manifested in various forms, impacting areas such as education, health, and employment. This discrimination often intersects with social, cultural, gender, and caste-based biases, exacerbating its effects. However, there has been a gradual shift in societal and legal perspectives towards protecting the rights of the disabled, recognising it as a fundamental entitlement rather than a mere welfare measure. Indian legislation and policies aim to provide equal opportunities and empowerment for persons with disabilities, aligning with constitutional guarantees of equal rights for all citizens. India's commitment to the UN Convention on the Rights of Persons with Disabilities reflects efforts to change societal attitudes and approaches towards disability. This research paper emphasises legal provisions about disability rights in India in general and Jammu and Kashmir in particular, and accordingly analyses their contribution to the legal status of disabled persons. Additionally, it examines the role of the judiciary in shaping disability laws, highlighting the ongoing efforts to bridge the gap between abled and differently abled individuals and promote dignity and equality in society.

**Keywords:** Disability, Gender, United Nations, Discrimination

## **I. Introduction**

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (PWD) Act, 1995, lays out seven distinct categories of disabilities, each with its defining characteristics. "Blindness" encompasses the total absence of sight

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or significant visual impairments. "Persons with Low Vision" are those with impaired visual functioning despite treatment, who can potentially use vision with assistive devices. "Hearing impairment" refers to significant hearing loss. "Mental retardation" is characterised by sub-normal intelligence, typically with an IQ below 70. "Locomotor disability" restricts movement due to bone, joint, or muscle issues. "Mental illness" denotes various mental disorders. "Leprosy cured person" includes individuals cured of leprosy but with residual sensory or mobility impairments. Despite these defined categories, other disabilities like learning disabilities, cerebral palsy, and multiple disabilities require educational services. Globally, an estimated 10% of the population, roughly 600 million people, have disabilities, with a significant portion being children.<sup>1</sup> In the UK alone, there are 770,000 disabled children under 16, facing unique challenges including financial strain, educational barriers, and social exclusion.<sup>2</sup>

### **II. The UN Declaration on the Rights of Mentally Retarded Persons.**

In the grand tapestry of human civilisation, the General Assembly, mindful of its solemn commitment, stands united under the noble banner of the United Nations Charter. With an unwavering resolve, it pledges joint and individual efforts in collaboration with the Organisation to foster elevated standards of living, to cultivate full employment, and to nurture conditions conducive to economic and social advancement. Amidst the tumult of our times, the Assembly reaffirms its unwavering faith in the sanctity of human rights and

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<sup>1</sup> Disability World. 2003. A bimonthly web-zone of international disability news and views, Issue no.19, June-August.

<sup>2</sup> Mitchell, W., and Patricia, S. 2002. Quality services for disabled children, Research Findings From The Social Policy Research Unit, The University of York, Heslington, United Kingdom, York Y0105DD, no.2002-02.

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fundamental freedoms, and in the eternal principles of peace, human dignity, and social justice enshrined in the Charter. It echoes the timeless wisdom of the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the Declarations and standards articulated by esteemed organisations such as the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organisation, and the World Health Organisation. With a compassionate heart, the Assembly underscores the imperative laid forth in the Declaration on Social Progress and Development, acknowledging the inherent dignity and rights of every individual, including those who are physically and mentally disadvantaged. It recognises the pressing need to nurture and safeguard the rights and welfare of the mentally retarded persons, ensuring their rightful place in the tapestry of society. In this spirit, the Assembly proclaims the Declaration on the Rights of Mentally Retarded Persons, a clarion call for both national and international action to uphold these sacred rights. It declares unequivocally that every mentally retarded person, to the fullest extent feasible, shall enjoy the same rights as their fellow human beings. They shall have access to proper medical care, education, training, and economic security, enabling them to blossom to their fullest potential. Moreover, the Assembly champions the importance of familial and community integration, advocating for support structures that embrace and uplift mentally retarded persons in environments mirroring the warmth and normalcy of family life. It emphasises the necessity of protection from exploitation and abuse, ensuring due process and legal safeguards to uphold their dignity and well-being.

As the sun sets on this historic proclamation, the Assembly stands as a beacon of hope and progress, affirming its steadfast commitment to the rights and dignity of all individuals, including

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those whose voices may be softer, but whose rights are no less resounding.

### **III. Disability Related Legislation in India**

In our country, several laws are in place to safeguard the rights of disabled persons. Firstly, the Mental Health Act of 1987 consolidates and amends laws related to the treatment and care of mentally ill individuals, as well as provisions for their property and affairs. Secondly, the Rehabilitation Council Act of India (RCI) was established in 1992 to regulate the training of rehabilitation professionals and maintain a Central Rehabilitation Registrar.<sup>3</sup> Thirdly, the Persons with Disabilities (Equal Opportunities, Full Participation and Protection of Rights) Act of 1995 is guided by the philosophy of empowering individuals with disabilities and ensuring their full participation in society while eliminating discrimination. Lastly, the National Trust (For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities) Act of 1999 aims to provide comprehensive care for individuals with mental retardation and cerebral palsy, manage properties bequeathed to the trust, support programs promoting independence, and address the concerns of those without family support. These laws collectively work to uphold the rights and well-being of disabled individuals in our society.

### **IV. Diverse Government Initiatives**

The repeal of the British Lunacy Act in 1987 marked a significant turning point in the treatment of individuals with intellectual disabilities. Before its repeal, the Act had long excluded persons with intellectual disability, perpetuating a medical model that often

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<sup>3</sup> Lone Mudasir Ahamad and Sudesh Kuamr, "An evolution of policies and rehabilitation Programmes for disabled, the Indian case," *Acme International Journal of Multidisciplinary Research* Volume,1 Issue IX, September 2013, pp 52-53.

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neglected their educational needs. However, with its removal, there was a notable shift towards an educational model, emphasising the importance of providing appropriate services and support for individuals with intellectual disabilities.<sup>4</sup> This change in approach was further reinforced by the implementation of the Mental Health Act, which aimed to ensure that individuals with intellectual disabilities were no longer overlooked in terms of access to essential services. Additionally, the Rehabilitation Council of India Act of 1992 played a crucial role in standardising the training of professionals tasked with supporting individuals with disabilities. By requiring professionals to undergo training in accredited institutions following a standardised curriculum, the Act helped to ensure a higher level of expertise and competence in the field.<sup>5</sup> Moreover, the Persons with Disability Act of 1995 played a pivotal role in defining and addressing the diverse needs of individuals with disabilities. By mandating the provision of services in barrier-free environments and emphasising the importance of prevention, the Act sought to promote greater inclusivity and accessibility for persons with disabilities across various aspects of life. Together, these legislative measures have played a vital role in shaping a more inclusive and supportive environment for individuals with disabilities, marking significant progress towards equality and empowerment.

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<sup>4</sup> Lone Arshad Ahmad "Disability cause, consequences and rehabilitative measures (A sociological study up to the people age group of 10-60 years, "Singhamia University, Rajasthan, India, Academic Arena 2013,5(7) pp. 18-19.

<sup>5</sup> Lone Mudasir Ahamad and Sudesh Kuamr, "An evolution of policies and rehabilitation Programmes for disabled, the Indian case, "Acme International Journal of Multidisciplinary Research Volume,1 Issue IX, September 2013, pp 52-53.

**V. Jammu and Kashmir.**

The Social Welfare Department of Jammu and Kashmir State has taken significant steps to empower disabled children in their pursuit of education. Through both pre-matric and post-matric scholarship schemes, the government aims to provide essential financial support to these students. Since 1976, the pre-matric scheme has been instrumental in offering monthly scholarships to disabled students, facilitating their educational journey. In 2005-06, an allocated amount of Rs 21.90 lakhs was utilised to benefit 4390 students, showcasing a commitment to inclusive education. Similarly, the post-matric scholarship scheme extends support to students at the post-matric level, aligning with the provisions for OBC students. With an income ceiling of Rs 44,500 per annum for parents or guardians, this initiative ensures access to higher education for economically disadvantaged families. In 2005-06, Rs 11.00 lakhs were allocated to support 128 students, reflecting the program's impact. The government's proposal for 2006-07 to allocate Rs 11.00 lakhs for 300 beneficiaries underscores its dedication to enhancing educational opportunities for disabled children in Jammu and Kashmir.

In the Union Territory of Jammu & Kashmir, a multitude of Non-Governmental Organisations (NGOs) are actively engaged in fostering social development and welfare across rural and urban communities. Operating at the grassroots level, these NGOs are dedicated to enhancing educational opportunities and living standards, particularly for disabled individuals, and addressing various societal needs. They play a crucial role in advocating for the value of education in remote areas, striving for the advancement of marginalised and underprivileged segments of society. Since independence, these organisations have tirelessly contributed to fortifying India's education system, ensuring increased access and retention of children in schools. Presently,

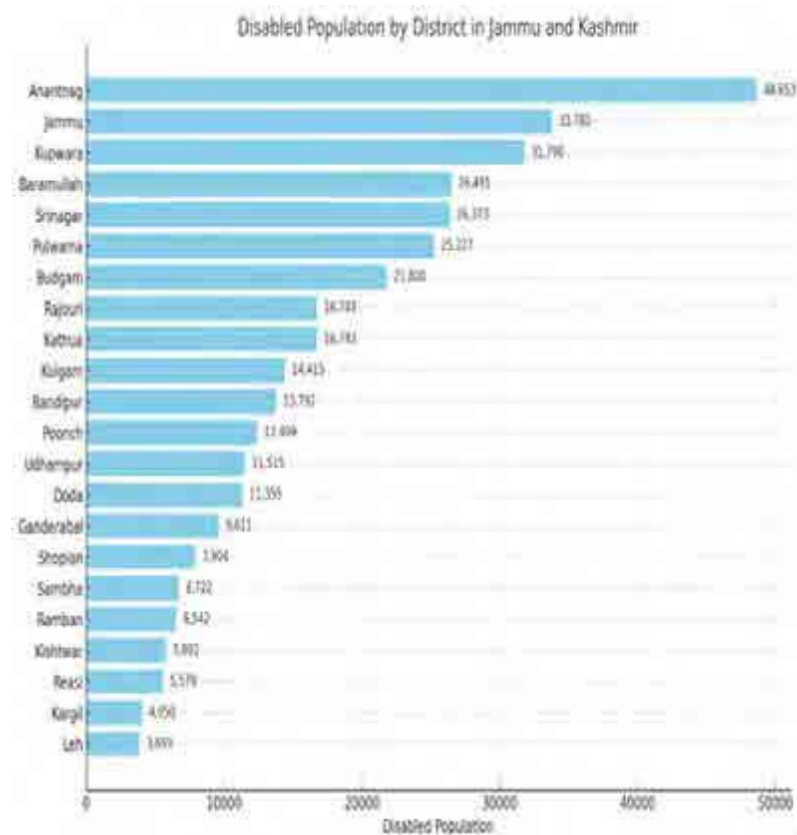
there are 1566 registered NGOs operating in Jammu and Kashmir, as per data from DARPAN, NITI Aayog, Government of India.<sup>6</sup> Covering diverse domains such as child welfare, women's development, education, empowerment, social awareness, disability rights, and community upliftment, these NGOs collectively work towards a more inclusive and equitable society.

As per the census report of 2001, the total number of disabled people was 3000000. But this number has increased to 30161000 in 2011 total increase of 190%. The following table shows the district-wise population of disabled people.

S. No	District	Disabled Population
01	Kupwara	31,798
02	Budgam	21,800
03	Leh	3,859
04	Kargil	4,050
05	Poonch	12,409
06	Kathua	16,743
07	Rajouri	16,743
08	Baramullah	26,491
09	Bandipur	13,792
10	Srinagar	26,373
11	Ganderabal	9,611
12	Pulwama	25,227
13	Shopian	7,904
14	Anantnag	48,653
15	Kulgam	14,415
16	Doda	11,355
17	Ramban	6,542
18	Kishtwar	5,802
19	Udhampur	11,515
20	Reasi	5,579
21	Jammu	33,785
22	Sambha	6,722

<sup>6</sup> Alvi, Z. A.(1977). Voluntary Social Work Organisations: A Study of Kashmir Valley. Aligarh Muslim University, UP.

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## VI. Legislative Framework of Disability Law in India

The array of legislative frameworks in India aimed at addressing disability rights and welfare reflects a concerted effort towards inclusivity and equality for persons with disabilities. The Rights of Persons with Disabilities Act, 2016 (RPWD Act),<sup>7</sup> represents a

<sup>7</sup> Jan. M. 2007. "Women and Disability: Significance of Legal Protection for their Empowerment", Indian Journal of Human Rights and Justice, International Journal, 3 (1-2), New Delhi, Serial Publications.

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significant milestone by replacing the previous legislation and expanding the scope of protections and opportunities for individuals with disabilities. By broadening the definition of disabilities, increasing job reservations, and advocating for inclusive education and accessible infrastructure, the RPWD Act lays a solid foundation for promoting the rights and dignity of persons with disabilities. Notably, the introduction of guardianship provisions addresses specific needs, ensuring appropriate support and care where necessary.

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999,<sup>8</sup> complements the RPWD Act by establishing bodies at both national and state levels dedicated to supporting the welfare of these groups. By providing institutional support and resources, this legislation plays a crucial role in ensuring holistic care and assistance for individuals with specific disabilities. Similarly, the Rehabilitation Council of India Act, 1992, contributes to the empowerment of persons with disabilities by regulating the training and certification of rehabilitation professionals. Through the maintenance of a Central Rehabilitation Register, this Act ensures quality services and promotes a standard of excellence in the field of rehabilitation and special education. Although the Mental Health Care Act, 2017, primarily focuses on mental health services, its provisions for protecting the rights of individuals with mental illness and promoting access to healthcare services are integral to addressing the needs of persons with disabilities.

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<sup>8</sup> Lone Mudasir Ahamad and Sudesh Kuamr, "An evolution of policies and rehabilitation Programmes for disabled, the Indian case," *Acme International Journal of Multidisciplinary Research* Volume,1 Issue IX, September 2013, pp 52-53.

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Furthermore, various education laws, including the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), and the Sarva Shiksha Abhiyan (SSA), emphasise inclusive education and the rights of children with disabilities to access education. These legislative measures reflect a commitment to providing equal opportunities for all children, regardless of their abilities.

Moreover, while not a legislative framework per se, the Accessible India Campaign (Sugamya Bharat Abhiyan) launched by the Government of India underscores the importance of accessibility in public spaces, transportation, and information and communication technologies for persons with disabilities. By promoting accessibility and removing barriers to participation, this campaign aligns with the broader objectives of disability legislation in India. In conclusion, the legislative frameworks outlined collectively aim to promote the rights, dignity, and inclusion of persons with disabilities across various aspects of life, including education, employment, healthcare, and accessibility. Through these measures, India demonstrates its commitment to building a more inclusive society where every individual can realise their full potential, irrespective of their abilities.

### **VII. Disability Rights and Constitutional Protections.**

The Constitution of India ensures that all citizens, regardless of their physical or mental condition, enjoy its protections. It mandates equality before the law and prohibits discrimination on various grounds, including religion, gender, race, caste, or place of birth. While the Constitution doesn't specifically define "disability," it safeguards against any form of disability based on the aforementioned grounds concerning access to public spaces and facilities. Special provisions are made for certain groups, such as

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women, children, and socially and educationally backwards classes, allowing for tailored legislation to address their needs. However, the Constitution does not explicitly identify other groups, like the elderly or disabled, for separate legislation. Fundamental rights guaranteed to the disabled under the Constitution include equality before the law (Article 14), non-discrimination (Article 15), access to public spaces (Article 15), prohibition of untouchability (Article 17), right to life and liberty (Article 21), free and compulsory education (Article 21A), prohibition of human trafficking and forced labour (Article 23), and prohibition of child labour (Article 24). They also have the right to freedom of religion (Article 25) and property rights (Article 32). Additionally, directive principles of state policy guide the government in promoting the welfare of all citizens, including the disabled, by striving to minimise inequalities, ensuring equal opportunities, providing adequate means of livelihood, and offering public assistance in cases of unemployment, sickness, or disablement. The state also aims to provide free and compulsory education, promote the interests of weaker sections, and ensure just and humane working conditions for all. These principles serve as guidelines for the government to enact legislation and implement schemes to fulfil the rights and welfare of the disabled and other citizens, fostering a more inclusive and equitable society.

### **VIII. Disability and Health Laws.**

Article 47 of the Indian Constitution underscores the government's primary obligation to uplift the nation's nutrition standards, enhance living conditions, and bolster public health. It particularly emphasises the imperative to prohibit the consumption of harmful

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intoxicants except for medicinal purposes.<sup>9</sup> This constitutional mandate empowers state legislatures to enact laws concerning public health, sanitation, and healthcare facilities, which in turn, have led to the formulation of various municipal, labour welfare, and industrial laws aimed at ensuring public health and safety. Similarly, Article 41 obliges the state to, within its economic means, secure citizens' rights to work, education, and public assistance, especially in cases of unemployment, old age, sickness, and disability. The legal framework governing health in India is crucial, especially concerning the disabled population. Key legislation includes the Mental Health Act of 1987, which focuses on the treatment and care of mentally ill individuals, safeguarding their property and rights, and providing legal aid and human rights protection. Additionally, the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act of 1995 was enacted to ensure the integration and empowerment of disabled individuals, encompassing prevention, medical care, education, employment, and rehabilitation. This law mandates the creation of barrier-free environments, counters discrimination, prevents abuse, and promotes comprehensive development programs for disabled persons' welfare. Furthermore, the Rehabilitation Council of India Act of 1992 establishes the Rehabilitation Council of India to regulate the training of rehabilitation professionals and maintain a central register, thereby facilitating effective rehabilitation services for persons with disabilities. These legislative measures reflect India's commitment to promoting health equity, social inclusion, and comprehensive rehabilitation services for all its citizens, particularly the disabled.

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<sup>9</sup> Lamb, A. (1991). Kashmir: A disputed legacy, 1846-1990. London, UK: Roxford Books.

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### Conclusion & Suggestion

The examination of disability rights within the legislative framework of India, with a specific focus on Jammu and Kashmir, reveals both progress and challenges. India has made significant strides in enacting laws and policies aimed at promoting the rights and inclusion of persons with disabilities, such as the Rights of Persons with Disabilities Act, 2016. However, the effective implementation of these laws remains a persistent issue, particularly in regions like Jammu and Kashmir, where political unrest and administrative complexities can impede progress. While legislative measures provide a foundation for advancing disability rights, there is a pressing need for comprehensive strategies that address the socio-economic barriers faced by persons with disabilities in accessing education, employment, healthcare, and other essential services. Moreover, ensuring the active participation and meaningful involvement of persons with disabilities and their representative organisations in the policymaking process is essential for the development of inclusive policies. In the context of Jammu and Kashmir,<sup>10</sup> the unique political situation calls for tailored approaches that take into account the specific needs and challenges of persons with disabilities in the region. This necessitates collaborative efforts between government agencies, civil society organisations, and relevant stakeholders to overcome barriers and ensure the full realisation of disability rights. In moving forward, sustained advocacy, awareness-raising initiatives, and capacity-building programs are crucial for fostering a culture of inclusivity and breaking down attitudinal and structural barriers.

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<sup>10</sup> Jan. M. 2007. “ Women and Disability: Significance of Legal Protection for their Empowerment”, Indian

Journal of Human Rights and Justice, International Journal, 3 (1-2), New Delhi, Serial Publications.

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By prioritising the rights and well-being of persons with disabilities, India, including regions like Jammu and Kashmir, can harness the full potential of its diverse population and build a more equitable and inclusive society for all.

# **Safeguarding Personal Liberty: An Evaluation of Role of Police in Criminal Justice Administration**

**Avnish Kumar Singh\***

**Jasdeep Kaur\*\***

## **Abstract**

Personal liberty is most revered and protected right under the Indian Constitution. Framers of the Constitution were aware of the fact of policemen misusing the powers in pre independence India. That is the reason why they formulated Constitutional provisions in such a way as to have the least possible interference of police. However, irrespective of clear Constitution provisions, there are glaring examples wherein on one side ‘right of personal liberty’ of an individual has been lousily affected, whereas on the other side irresponsible behavior, arbitrary and capricious exercise of power by the police official effected the criminal justice system. The present research evaluates the effectiveness of criminal justice system in police authorities, in particular. A close perusal of cases decided by Apex Court is undertaken to address the issue underlined in the present research. Efforts have been made to bring out various legal provisions which seriously impact on liberty of an individual. A detailed discussion on recently enacted three criminal laws have also been taken into consideration. The research also highlights the role of Apex Court in protecting the most celebrated right to life and liberty in the Constitution along with emphasizing the issues raised in Law Commission and Police Commission reports. The present research emphasize on police accountability to protect the liberty of the people.

## **I. Introduction**

Article 21 is considered as the most cherished right under the Constitution of India. The Article entrusts that “no person shall be deprived of his life or personal liberty except according to

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procedure established by law.” Thus, as per the Constitution of India, personal liberty has an important role to play in the life of every person including foreign nationals<sup>1</sup> and refugees<sup>2</sup>, residing in the country. Although, it is important to note that life and personal liberty is inalienable it can be alienated through “procedure established by law.” Thus, where a person complains of the deprivation of his life or personal liberty, the court has to see whether there is a law authorizing such deprivation and whether, in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful.<sup>3</sup>

Article[s] 14, 20, 22 and 39A read with Article 21 implicitly includes the essence of personal protection against the arbitrary actions of police. Furthermore, framers of the Constitution of India while stating the object behind inclusion of Article 21 state that they were aware about the atrocities committed at the hands of police during British rule and hence, not interested to make India a police state. Through the present study, an effort is made to highlight the role of police in a welfare state and to analyze whether actually police is performing that required role or not?

A political state is engulfed with two prime functions i.e. administration of justice and war. Administration of justice implies the maintenance of rights within a political community by various means such as social sanctions, habit and convenience of being obedient to law in a civilized society and physical force as a last resort. State is considered as the protector (*Parens Patriae*) of the

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<sup>1</sup>See, *Chairman, Railway Board v. Chandrima Dass*, AIR 2000 SC 988; *Louis De Raedt v. Union of India and others*, (1991) 3 SCC 554; *State of Arunachal Pradesh v. Khudiram Chakma*, 1994 Supp. (1) SCC 615; *National Human Rights Commission v. State of Arunachal Pradesh & another*, (1996) 1 SCC 742.

<sup>2</sup>*Nandita Haksar vs. State of Manipur and Ors.* MANU/MN/0113/2021.

<sup>3</sup>*Francis Coralie Mullin v. UT Delhi Administrator*, AIR 1981 SC 746.

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rights of the citizens. State through its various agencies exercises its power to maintain 'public order'.

It is the administration of criminal justice system of a country which actually works to maintain social order and civil law within a State. Key components of administration of criminal justice system includes police, prison, court and prosecution, and defense lawyer. Out of all, it is the police which is the first point of contact for anyone in danger or difficulty. Thus, it is the 'Police' which is responsible to maintain civil order in the society and policemen happen to be the most visible representative of the government.

In India, there are 17,932 police stations with actual police strength of 21,41,305 against the sanction 27,22,669 positions to safeguard a population of 13,82,898,000. After minutely scrutinizing the ubiquitous data, it would be found that there is 1.21 policeman in one square kilometer against 479 people.<sup>4</sup>'Police' has to perform various responsibilities i.e. from protecting and preserving the life, liberty, property and human rights, responding to situations of emergency or making arrangements for VVIPs or maintaining law and order in the society, handling of student unrest or coping up with the political turmoil, terrorist and underworld activities. Police is always on toes to perform aforementioned multifarious and multidimensional duties. Many a time while performing official duty some of the police officers sacrifice their life, while protecting the lives and liberties of others. The police officials protect the families and lives of the fellow citizens without paying heed to their family

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<sup>4</sup>"Population density (people per sq. km. of land area)- India", available at: <https://data.worldbank.org/indicator/EN.POP.DNST?end=2022&locations=IN&start=1961&view=chart> (last visited on 10<sup>th</sup> July, 2025). See also, Data on Police Organisations, Bureau of Police Research and Development, available at: [https://bprd.ni.in/uploads/pdf/1716639795\\_d6fce11ed56a985b635c.pdf](https://bprd.ni.in/uploads/pdf/1716639795_d6fce11ed56a985b635c.pdf), (last visited on 19<sup>th</sup> July, 2025).

responsibilities.<sup>5</sup> Irrespective of family responsibilities and health issues police perform their arduous and strenuous duty assigned to them. Such a supreme sacrifice by on duty police officers brings faith, confidence and great respect in administration of criminal justice system generally and police organization in particular. However, even the slightest misconduct or abuse by an individual police officer if goes unchecked, undermines and jeopardize the credibility of the entire police organization.

Perhaps most recent custodial death of Mr. Ajith Kumar, a 27 years old temple guard<sup>6</sup> focused the national attention on two important facets *one* relationship between the public and the police; and *second* curtailing the rights and protection guaranteed under the Constitution of India.

Considering the importance of the issue and academic necessity, the present research is an attempt to explore whether police officials are able to maintain a balance between exercising their powers to prevent crime and maintain order and ensure the protection of personal liberties of the individuals.<sup>7</sup>

## **II National And International Perspectives Of Personal Liberty And Police Power**

Article 5 of Universal Declaration of Human Rights (UDHR) sets a bench mark that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or

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<sup>5</sup> “In the past 60 years the blood of 34,842 Police heroes has mingled with the soil in every corner of India- not just in Himalayan heights but in metropolitan areas, remote hamlets, in hot, dry deserts, tropical jungles and riverine terrain”. *The Indian Police Journal, Special Issue on Police Martyrdom*, 34 Nov-Dec 2018; “Total 424 Police Officials were killed while performing duty”, at pg. 996, Government of India, “Crime in India- Statistics-III”, National Crime Record Bureau, Ministry of Home Affairs (2019).

<sup>6</sup> Sivaganga custodial death: CBI registers FIR against police, *available at: <https://www.thehindu.com/news/national/tamil-nadu/sivaganga-custodial-death-cbi-registers-fir-against-police/article69804352.ece>* (last visited on 21 July 2025).

<sup>7</sup> *Preeti Gupta v. State of Jharkhand*, (2010) 7SC 667.

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punishment". This provision embodies the belief that even in the enforcement of criminal law, the state must act within the bounds of humanity and respect for individual dignity. Based on this global measuring gauge SDGs<sup>8</sup> indicator 16 and target 16.1, it seeks to reduce all forms of violence and related death rates everywhere. Further, it reflects the preventive aspect of criminal justice philosophy not merely punishing wrongdoers but actively fostering a safe and just society. In Indian context these ideals find constitutional expression under Article 14, 20, 21, 22, 38, 39 and 39A, interpreted by the judiciary to include freedom from torture and inhumane treatment. Thus, from the universal mandate of the UDHR to the development vision of the SDGs, and finally to the constitutional safeguards in India one can see a shared philosophical thread. Further it is utmost required that criminal justice system must operate not as a tool of oppression but as an instrument to protect dignity, reduce violence, and uphold the rule of law. Still many a time police personnels in order to extract crime related information from the arrested person, use extra judicial methods which proves to be fatal many a times.<sup>9</sup>

Provisions under the *BhartiyaNagrikSurakshaSanhita (BNSS)*(formerly Code of Criminal Procedure, 1973) are according to the constitutional philosophy viz. the protection of human

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<sup>8</sup>Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, available at: [https://sdgs.un.org/goals/goal16#targets\\_and\\_indicators](https://sdgs.un.org/goals/goal16#targets_and_indicators) (last visited on 17<sup>th</sup> July 2025).

<sup>9</sup>NHRC, India takes *suo-motu* cognizance of the reported death of a man in police custody in Deoghar district, Jharkhand, <https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=2132022> (last visited on 30<sup>th</sup> June, 2025). Six policemen placed under suspension over the death of a temple security guard in Sivaganga, <https://www.thehindu.com/news/national/tamil-nadu/six-policemen-placed-under-suspension-over-the-death-of-a-temple-security-guard-in-sivaganga/article69752260.ece> (last visited on 30<sup>th</sup> June, 2025) See also, India's police must get out of dirty Harry's shadow, The Hindu, Editorial, 31<sup>st</sup> July, 2025.

dignity and the maintenance of peace within the society. This connection becomes clear when one look at key international and national framework. Sections 35-62 of the BNSS provide the power, procedure and duties of police officer while arresting a person accused of crime. Section 37(b) of BNSS mandates that there will be one designated police officer in every district and at every police station, not below the rank of Assistant Sub-Inspector of Police responsible for maintaining and displaying information to the general public about details of persons arrested, etc.

Section 82(2) of BNSS provides that in case of arrest under a warrant executed outside the district, the police officer making the arrest shall forthwith give information regarding such arrest and the place where the arrested person is being held, to the designated police officer and to such police officer of another district where the arrested person normally resides.

Section 105 of BNSS provides that search and seizure shall be audio-video recorded and the police officer shall send such audio-video recording to the District Magistrate, Sub-divisional Magistrate or Judicial Magistrate first class without delay. Section 185 of BNSS also provides that search shall be recorded through audio-video electronic means and copies of any such record shall be sent within 48 hours to the Magistrate empowered to take cognizance of the offence.

Section 176(2) of BNSS requires the police officer to forward the daily diary report fortnightly to the Magistrate.

Section 176(3) of BNSS mandates the video-recording of the crime scene in case of offences made punishable with seven years or more.

Section 193 of BNSS mandates 'a police report must also include details of the sequence of custody in case of electronic device. The Section also mandates that the police officer must

inform the progress of investigation to the informant or victim within 90 days of the investigation. This section further provides that after filing of charge sheet, if further investigation is required, it shall be completed within 90 days and any extension of time period beyond 90 days shall only be with the permission of the Court.

Section 218 of BNSS requires that before prosecuting a judge or a magistrate or a public servant prior government sanction is required. Section further fixed a deadline of a period of one hundred and twenty days for the government to grant or deny the sanctions. In case government fails to do so, the sanction shall be deemed to have been accorded by such government.

To serve the society better and for the protection of civil liberties and against inhumane treatment certain other significant changes have been made under the three criminal laws viz. introduction to Zero FIR; Community service programme for first time offenders or for offences where punishment is three years or less; also fixed time limit for various stages ranging from various steps in investigation, completion of preliminary enquiry, trial and delivery of the judgment.<sup>10</sup> Further significant changes that have been introduced are under section 193 (3) wherein police has to provide information to the victim regarding progress of investigation, within 90 days.

### **III Magnitude of the Problem**

BNSS permits the use of necessary force while arresting a person however, such force must be utilized in a judicious manner and capriciously. Many a times police in order to interrogate a suspect, uses extra judicial methods resulting serious injuries resulting death of a person in custody. Long back Apex Court showed its anguish and declared that such actions flouts the basic

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<sup>10</sup> See section[s] 173(3), 230, 232, 258, 392(1) respectively, of BNSS.

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rights of the citizens and is an affront to human dignity.<sup>11</sup> Moreover, court also granted compensation to the victims of custodial torture or custodial death.<sup>12</sup> Yet matters related to the death of suspect either in police or judicial custody has been reported in various parts of the country.<sup>13</sup> There is uncertainty over number of deaths in custody as some times official figures conceal more than they reveal. Many custodial deaths are quietly labeled as suicides, accidents or sudden illness. Torture in police custody occurs off the record-beyond lock-ups and CCTV surveillance.<sup>14</sup>

Despite, clear legal provisions as to arrest<sup>15</sup> and judicial custody<sup>16</sup>, matters related to deaths of accused persons either in police or judicial custody, have been reported in different parts of the country. National Human Rights Commission (NHRC) in its Annual Report 2023-2024 reported that during the stated period it had received 2346 and 160 intimations relating to deaths in judicial

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<sup>11</sup>*State of Madhya Pradesh v. Shyam Sunder Trivedi*, (1995) 4 SCC 262; *Munshi Singh Gautam v. State of Madhya Pradesh*, AIR 2003 SC 402; *Rajkumari v. SHO Noida*, AIR 2003 SC 4693; *Bhagwan Singh v. State of Punjab*, 1952 AIR 214; *Gauri Shankar Sharma v. State of UP*, 1990 AIR 709; *Pratul Kumar Sinha v. State of Bihar*, 1994 Supp. (3) SCC 100.

<sup>12</sup>*Shiv Dev Singh v Senior Superintendent of Police, Batala*, (2000) 9 SCC 426; *Sube Singh v. State of Haryana*, AIR 2006 SC 1117.

<sup>13</sup> Crimes in India 2022, National Crimes Record Bureau, Ministry of Home Affairs, Volume III, available at: <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/ciiyearwise2022/1701608543CrimeinIndia2022Book3.pdf> (last visited on 02<sup>nd</sup> July, 2025). See also, Annual Report 2021-2022, Annual Report 2022-2023 National Human Rights Commission of India, Available at: <https://nhrc.nic.in/publications/annual-reports> (last visited on 2<sup>nd</sup> July, 2025).

<sup>14</sup>“India’s police must get out of dirty Harry’s shadow” (Editorial), *The Hindu*, 31<sup>st</sup> July, 2025.

<sup>15</sup>*D.K. Basu v. State of West Bengal*, AIR 1997 SC 610; See also, *People's Union for Civil Liberties vs. State of Maharashtra*, MANU/SC/0882/2014, in this case Apex Court issued detailed guidelines in relation to police encounters.

<sup>16</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); See also, *Re: Inhuman Conditions in 1382 Prisons*; MANU/SC/1183/2017; Model Prison Manual, 2016 available at: [https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016\\_20122024\\_2.pdf](https://www.mha.gov.in/sites/default/files/2025-04/PrisonManualA2016_20122024_2.pdf) (last visited on 03<sup>rd</sup> July, 2025).

custody and police custody, respectively<sup>17</sup>. The below given data gives detailed account of custodial deaths during last five years:

S. No.	Year	Deaths in Custody (Judicial)	Deaths in Custody (Police)
1	2016-17	1616	145
2	2017-18	1636	146
3	2018-19	1797	136
4	2019-20	1584	112
5	2020-21	1840	100

*Source:* Table 3.2, Page 12, National Human Rights Commission Report 2021-22.

Furthermore, World Health Organization also indicates the mortality rates of 3.6 per 1,00,000 population is due to homicide in India. This covers extrajudicial killings or killings caused by excessive force by law enforcement agencies or state officials<sup>18</sup>. In *People's Union for Civil Liberties v. State of Maharashtra*<sup>19</sup>, Apex Court correctly pointed that “police in India has to perform a difficult and delicate task, particularly, when many hardcore criminals, like, extremists, terrorists, drug peddlers, smugglers who have organized gangs, have taken strong roots in the society but then such criminals must be dealt with by the police in an efficient and effective manner so as to bring them to justice by following rule of law.” But it wouldn’t mean that the performance of their duty would cover act of extra judicial killings.

In the realm of above stated information, it can be asserted that instances of brutality at the hands of police are still occurring in the present 21<sup>st</sup> century. Corruption or promotion or to get

<sup>17</sup> Annual Report 2023-2024, National Human Rights Commission of India, Available at: [https://nhrc.nic.in/sites/default/files/AR\\_2023-2024\\_EN.pdf](https://nhrc.nic.in/sites/default/files/AR_2023-2024_EN.pdf) (last visited on 30th June, 2025).

<sup>18</sup> World Health Organization Data, available at: <https://data.who.int/indicators/i/60A0E76/361734E> (last visited on 17<sup>th</sup> July, 2025)

<sup>19</sup> Para 25, MANU/SC/0882/2014. See also, *Manik&ors. v. The State of Maharashtra*, MNAU/SC/1061/2024.

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posting of one's own choices, *etc.* are some of the reasons where police officer surrenders themselves to extraneous influences (*viz.* political and bureaucratic influences)<sup>20</sup>. Moreover, fear of transfer is the most potent weapon in the hands of the politicians to bend the police down to their will. According to the National Police Commission and reports of various committees, the manner in which political control has been exercised over the police in India has led to gross abuses, resulting in erosion of the rule of law and thus loss of credibility of the police<sup>21</sup>.

In *Reference Suo Motu Custodial Violence and other matters relating to prison conditions v. State of Meghalaya and Ors*<sup>22</sup>, Meghalaya high court observed that “A death in custody is slur on a civilized state and completely unacceptable. Court expressed its distress at the number of deaths of under-trial prisoners as the investigating agency uses third degree methods to get information from the arrested persons rather than go out in the field and investigate the matter. Oftentimes the excesses indulged in by the State through its police personnel results in admissions, which may be inaccurate, but which are made to stave off or delay the further torture.”

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<sup>20</sup>*Prakash Singh v. Union of India*, MANU/SC/8516/2006, (2006) 8 SCC 1, *See also*, Editorial “Stop taking subordinates along to new place of posting: DGP to Officers” *Hindustan Times*, 25 May 2021. *See also*, in a letter to C.M., State of Maharashtra, Mr. Param Bir Singh (I.P.S.) alleged involvement of Home Minister of State in an extortion racket. Even it is also alleged in the letter that some subordinate police officials under the patronage of political *aka clearly* bypassing their immediate seniors in the police organization (letter is wide circulated on social media and news channels. Further a soft copy of the same is withheld with the author). Moreover, after serious allegations Mr. Anil Deshmukh has to resign from his political position. And corrupt cop like Sachin Vaze landed in jail.

<sup>21</sup> Government of India, “National Police Commission” (Ministry of Home Affairs, 1979); *See also*, Ribero Committee (1998); Padmanabhaia Committee (2000); Malimath Committee (2002-2003). *See also*, *Prakash Singh v. Union of India*, MANU/SC/8516/2006/ (2006) 8 SCC 1.

<sup>22</sup>MANU/MG/0345/2023.

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#### **IV Abuse Of Police Power: A Threat To Personal Life And Liberty**

Police being a nodal agency of the sovereign state is empowered to exercise sovereign powers in order to maintain peace, morals, public tranquility and good order to the people. However, this power is not absolute and subject to constitutional limitations. State being *parens patriae* is under obligation to maintain public order and peace within the society. Police is under the responsibility to assist state in achieving the stated objectives. While performing duty police is empowered to use protective measures in order to attain constitutional objectives. Arrest and detention are the exemplary powers of the police and such powers can be exercised through the state governments to restrain an individual in the interest of the public, maintain security, peace, law and order, and for public needs in a welfare state.<sup>23</sup> Therefore, power to arrest has to be exercised very cautiously and is subject to the limitations prescribed under the *Bhartiya Nagrik Suraksha Sanhita*, 2023 and the Constitution of India.<sup>24</sup> BNSS prescribes the detailed procedure as to arrest and detention of a suspect or accused person. Section 35 which is reproduction of two sections namely, Ss 41 and 41A authorized a police officer to arrest any person without a warrant and without an order from a magistrate. Section also states the ground on which a person may be arrested. Provision of arrest is based on simple principle that prevention is better than cure, thus it is better to arrest a suspect rather to wait for him/her to commit an offence. This simple presumption has clothed the police with the extraordinary power which can easily be abused.

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<sup>23</sup> T.K. Tope's Constitutional Law of India, revised by Justice Sujata V. Manohar (Judge Supreme Court), Pg. 134 Eastern Book Company, Lucknow (Third Edition 2010).

<sup>24</sup> Article 19 (2) & (6) removes all vagueness and brings certainty in the field of restrictions on individual freedoms.

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Perhaps power to arrest doesn't mean that a police officer is always bound to arrest a person. In *Joginder Kumar v. State of U.P.*<sup>25</sup>, Supreme Court observed that "No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so".

Despite the categorical judgment it seems that the police is not at all implementing it. What invariably happens is that whenever an FIR in a cognizable offence is lodged, the police immediately goes to arrest the accused person. Numerous matters reported in National Human Rights Commission (NHRC)<sup>26</sup> and

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<sup>25</sup> AIR 1994 SC 1349.

<sup>26</sup>**Case No. 169.20.34.2023:** "The Commission received a complaint from a father named Narain Meena, who claimed that his 17-year-old son Bhagwati Lal was detained by police for questioning in an elopement case. The complainant further stated that his son was subjected to illegal detention and torture for three days (25 – 27th November, 2022). The Superintendent of Police in Pratapgarh, Rajasthan, stated that the matter was investigated by the In-charge of PS ChhotaSadli. The investigation revealed that the complainant's son's mobile number appeared in the call details of someone accused of the elopement of a girl for whom Bhagwati Lal was summoned for questioning, but he was not detained and was released after questioning while his parents were present. The report also stated that CCTV footage was unavailable due to the 6-month retention policy, the missing girl was found, and a case was filed against another juvenile.

The Commission's findings revealed that there were inconsistencies in the police report, raising suspicion of illegal detention. The findings also revealed that the provisions of the Juvenile Justice Act and Model Rules were likely violated, and that an investigation by the Special Juvenile Police Unit or a designated officer was not conducted. Furthermore, the juvenile was not released on an undertaking from his parents, and the statements signed by the juvenile violated the Model Rules. The right to liberty and dignity guaranteed by Article 21 of the Constitution, as well as international child rights conventions were also found to have been violated. According to the NHRC's direction, a show cause notice was issued to the Government of Rajasthan, and a recommendation for compensation of Rs. 50,000 to Bhagwati Lal was confirmed. Further compliance reports, along with proof of payment were awaited", *Supra* note 19 at 76, *see also*, Compensation issued in the case involving the death of the victim due to Police brutality, **Case No. 1095.1.2.2020 at 77**; Victim abducted and tortured by the police; compensation awarded **Case No. 4406.18.5.2022 at 78**; Commission action providing relief to mother whose newborn died in prison, **Case No. 1088.34.14.2019-DH at 75**;

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National Crime Record Bureau (NCRB)<sup>27</sup> reflect that inspite of clear interpretation and direction by the Apex Court, power of arrest is blatantly misused. Illegal arrest or detention of a detainee remains unacknowledged for many days, on many occasions the record of the suspect in detention are mostly unavailable or not kept or in some cases blatant violation of applicable laws can be easily seen<sup>28</sup>. This fact is authenticated by National Police Commission in its third report which refers to the quality of arrests by the police in India. The report mentioned that power of arrest is used as the chief sources of corruption in the police<sup>29</sup>.

Power of arrest is wrongly and illegally exercised in large number of cases all over the country. Often power of arrest is utilized unprofessionally, either to extort money and other valuable property at the instance of an enemy, from the person arrested, or to favour political or bureaucratic bosses or for better service record or for awards or for promotion or to hush-up the criminal matter or once in a while due to ill will or some to pacify the public sentiments<sup>30</sup>. Besides criminal matter, power of arrest is very commonly exercised in the disputes which are of civil in nature or some times to settle political score. In certain matters police

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Commission's action into Abuse of Power by Patna Police, **Case No. 1121.4.26.2023** at 75.

<sup>27</sup> *Supra* note 18.

<sup>28</sup> Law Commission of India, "177<sup>th</sup> report on Law Relating to Arrest" (December 2001).

<sup>29</sup> *Supra* note 18.

<sup>30</sup> *Nambi Narayanan v. Siby Mathews & Ors.*, (2018) 10 SCC 804; *Prempal & ors. v. The Commissioner of Police & ors.*, (2010) ILR 4 Delhi 416; *Neema Goyal v. Union of India*, 2011 (125) DRJ 273; *Kamla Devi v. Govt. of NCT of Delhi*, 114 (2004) DLT 57; *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746; *Satyavir Singh Rathi v. State through CBI*, 2011 (5) SCALE 339; *Gangadhar alias Gangaram v. State of Madhya Pradesh*, AIR 2020 SC 3656. *See also*, 1991 Pilibhit fake encounter case: 47 policemen sentenced to life imprisonment. Available at: <https://updates.manupatra.com/roundup/contentsummary.aspx?iid=3932> (last visited on 17<sup>th</sup> July 2025). *See also*, Vikas Dubey encounter (2019); Hathras Gang rape (2019); Kolkata Rape and Murder Case (2024); *Col. Pushpinder Singh Bath v. State of U.T., Chandigarh and ors.*, CRM-M-36362-2025, Dated: 16 July, 2025.

followed casual approach and instead of bringing the actual culprit to the court of law, either they are gun down in an alleged encounter or corpse/ body of victim is burnt so hurriedly during the midnight in the absence of the victim family members or by imploding the wrong person in the case<sup>31</sup>.

In the matter of *Babloo Chauhan @Dabloo v State Government of NCT of Delhi*<sup>32</sup>, Hon'ble Delhi High Court expressed its grave concern about the wrongful prosecution and incarceration of innocent persons. In plethora of cases Hon'ble Apex Court and High courts of various states have taken serious note of the sorry state of affairs and expressed anguish over the plight of the accused persons who languished in prisons and lost their liberty for unjustifiable extended periods of time<sup>33</sup>.

Even four decades ago in the case of *Sebastian M. Hongray v. Union of India*<sup>34</sup>, Apex Court states that it is the judicial duty to intimate the relatives; to inquire about torture in the police custody; to communicate grounds of arrest and to acknowledge the nearest legal aid society so that appropriate legal help can be provided to the arrested person. Even torture in police custody was held violative of Article 21 even more than five decades ago in the year 1978<sup>35</sup>.

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<sup>31</sup>*Ibid.*

<sup>32</sup> (2018) DLT 31.

<sup>33</sup>*Thana Singh v. Central Bureau of Narcotics*, (2013) 2 SCC 590; *Adam bhai Suleman bhai Ajmeri & ors. v. State of Gujarat*, (2014) 7 SCC 716; *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, (2000) 5 SCC 712; *Khatri & ors. v. State of Bihar*, AIR 1985 SC 928; *D. K. Basu v. State of West Bengal*, AIR 1997 SC 610; *Common Cause, A Regd. Society v. Union of India*, AIR 1999 SC 2979.

<sup>34</sup> (1984) 1 SCC 339, *See also*, In *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260 Apex Court observed that an arrested person has a right to have his friend or relative informed about his arrest; *Vineet Narain v. Union of India*, (1998) 1 SCC 226; *Sunil Batra II. v. Delhi Administration*, (1980) 3 SCC 488.

<sup>35</sup>*Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

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In *Neema Goyal v. Union of India*<sup>36</sup>, Apex Court while citing *D.K. Basu's case* observed that 'protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society'. Even in the case of *Gangadhar alias Gangaram v. State of Madhya Pradesh*, Honorable Supreme Court while setting aside the conviction of the appellant observed that:<sup>37</sup>

“...The police investigation was very extremely casual, perfunctory and shoddy in nature. The appellant has been denied the right of fair investigation, which is nothing but a facet of fair trial guaranteed to every accused person under Article 21 of the Constitution..... poor investigation by the police, has resulted in the appellant having to suffer incarceration for an offence he had never committed...”

In *Munshi Singh Gautam v. State of Madhya Pradesh*<sup>38</sup>, the court raises its serious concern over the dehumanizing torture, assault and death in custody. It further states that such actions pose a serious question upon the credibility of the rule of law and administrator of criminal justice system. Court also laid stress that the vulnerability of human rights assumes a traumatic torture when functionaries of the state, whose paramount duty is to protect the citizens and not to commit gruesome offences against them.

A study further revealed that torturing a person in custody makes him disoriented, incoherent and cognitively impaired and in such circumstances, he will say anything, even lie, just to end the

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<sup>36</sup> 2011 (125) DRJ 273.

<sup>37</sup> AIR 2020 SC 3656.

<sup>38</sup> AIR 2005 SC 402.

sufferings<sup>39</sup>. To cover up the shortcoming's rhetoric changes have been brought into the BNSS. Sub-section 7 is added to Section 35 which stipulates that the arrest shall not be made without prior permission of an officer not below the rank of DSP in an offence which is punishable for imprisonment of less than 3 years and such person is infirm or is above 60 years of age.

#### **V Police-Political Nexus: A Threat To Personal Liberty**

Rule of law plays a predominant role in the Constitution of India. It is the cardinal principle of good governance. However, the rule of law is gradually being replaced by the rule of politics, which is a matter of serious concern. In *Prakash Singh v. Union of India*<sup>40</sup>, Apex Court has to this effect observed that the subordination of police including investigation agencies to politicians and bureaucrats that has threatened the very foundations of democratic functioning. The court was of the view that by letting the people in power or those having clout get away even with blatant violations of laws, results in direct violations of the rights of citizens in the form of unauthorized detentions, torture, harassment, fabrication of evidence, malicious prosecutions, etc.

Approximately three decades earlier in *Vineet Narain &ors. v. Union of India*<sup>41</sup> Hon'ble Apex Court had expressed its shock over the political affiliation in the departmental inquires and punishment proceedings. The Court further observed that apart from demoralising the police force, it also had adverse effect on the politicizing of the personnel and therefore, it is essential imperative for the Central Government to take prompt measures.

A study has reflected that around 72% of Indian police officers have felt political pressure while investigating cases. In a

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<sup>39</sup> Why Torture Doesn't Work: The Neuroscience of Interrogation (2015), Shane O' Mara, The Hindu, 31<sup>st</sup> July, 2025.

<sup>40</sup> (2006) 8 SCC 1.

<sup>41</sup>(1997) 4 SCC 778.

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system of representative democracy, it would be perhaps an extreme proposition to suggest that government should have no say in these matters. But at the same time, it is a matter to be regulated as to what extent the government should have its say<sup>42</sup>.

In *Chhotteylal v. State of Uttar Pradesh*<sup>43</sup>, Supreme Court clearly pointed out that criminal justice system is not working in our country as it should and on many occasions impartial investigation suffers because of political interference. This could result in meddling with decision making, case prioritization and the distortion of results. Such political interference not only weakens the principle of fair law enforcement but it also erodes the notion of independent police forces that again results in compromising with the rule of law<sup>44</sup>.

From the above study it can be asserted that laws relating to arrest, investigation, trial, *etc.* needs to be addressed properly. Thus in the year 2023 major substantive law, procedural law and adjective law were replaced by newly enacted *Bhartiya Nyaya Sanhita, 2023 (BNS)*, *Bhartiya Nagrik Suraksha Sanhita (BNSS)* and *Bhartiya Sakshya Adhinyam (BSA)*. The objective behind enacting these three new criminal laws is to ensure justice. Major idea behind enacting BNS, BNSS and BSA is to protect the rights of the citizens as given under the Constitution of India. It is therefore important to highlight important provisions which have

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<sup>42</sup> “New study finds 72% of India’s Police Officers have felt political pressure during probes” *The Print*, 27 August 2019 available at: <https://theprint.in/india/new-study-finds-72-of-indias-police-officers-have-felt-political-pressure-during-probes/283050/> (last visited on 25 March 2021). “Political interference is the biggest issue, say police personnel” *The Hindu*, Available at: <https://www.thehindu.com/news/national/karnataka/Political-interference-is-the-biggest-issue-say-police-personnel/article14383531.ece> (last visited on 25 March 2021). “Status of Policing in India Report 2019” available at: <https://www.commoncause.in> (last visited on 25 March 2021).

<sup>43</sup> AIR 2011 SC 697.

<sup>44</sup> “Challenges Affecting Indian Police”, Md. Imran Wahab (IPS), *The Indian Police Journal*, BPRD, Ministry of Home Affairs, Government of India, (Pg. 91) Vol. 71 No. 3&4 July-Dec. (2023).

been given special place under three criminal laws to deal with the problems relating to abuse of power of arrest, delay in investigation and finality of trial in the spirit of constitutional provisions.<sup>45</sup>

## **VI Conclusion**

From time to time number of directions and recommendations has been given by the Honorable Apex Court and Law Commission of India, respectively, but the police as an agent of administration of criminal justice system, has invariably turned a blind eye. Violation of individual liberty and arbitrary actions at their hands shake the faith of the general public in the Constitutional principles of 'rule of law'. Arbitrary and illegal arrest and long incarceration without any justified reasons have a serious impact on the individual liberty. Above all political and bureaucratic interventions, even in petty issues, hamper the courage and tend to empower the police officials.

Legislatures have brought robust transformation in the newly enacted three criminal laws *firstly*, priority has been given to crimes against women and children; *secondly*, covered offences relating to mob lynching as these crimes in rise for past one decade<sup>46</sup>; *third*, adoption of technology for the generation of e-records and registration of e-FIR, Zero-FIR; Charge sheet, etc. as 99.9% of the police stations across the country are computerized, *fourthly*, made forensic investigation mandatory in offences punishable by 7 years or more<sup>47</sup>.

Perhaps one important aspect that required urgent attention is to fix the question relating to the burden of proof in custodial

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<sup>45</sup> New Criminal Laws Accountability of Police, *available at* <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2042126> (last visited on 07<sup>th</sup> July, 2025).

<sup>46</sup> *Tehseen S. Poonawalla vs. Union of India (UOI) and Ors.*, MANU/SC/0738/2018.

<sup>47</sup> *Supra* note 63.

deaths. Despite robust transformation in criminal laws in 21<sup>st</sup> century, such incidents still occurred in the *sanctum sanctorum* of police station<sup>48</sup>. Custodial deaths not only erode faith and confidence in criminal justice system but against the spirit of the constitution of India. Although, this issue has already been addressed and decided twice a time by the honorable Supreme Court in the matter *State of U.P. v. Ram Sagar Yadav & others*<sup>49</sup>, wherein court observed that:

“Police officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that, persons on whom atrocities are perpetuated by the police in the *sanctum sanctorum* of the police station, are left without any evidence to prove who the offenders are”.

Further in case of *Bhagwan Singh and another vs. State of Punjab*<sup>50</sup>, wherein court observed that:

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<sup>48</sup> Sivaganga custodial death: autopsy of victim reveals 44 external injuries <https://www.thehindu.com/news/national/tamil-nadu/sivaganga-custodial-death-autopsy-of-victim-reveals-44-external-injuries/article69769986.ece>; see also, NHRC, India takes *suo motu* cognizance of the reported death of a man in police custody in Deoghar district, Jharkhand <https://www.pib.gov.in/PressReleaseDetail.aspx?PRID=2132022>; see also, Eight Patiala cops accused of kidnapper's 'fake' encounter <https://www.tribuneindia.com/news/punjab/eight-patiala-cops-under-lens-for-fake-encounter/>; see also, Punjab: Custodial death: Court to hear case against 5 Bathinda cops on July 31 <https://www.hindustantimes.com/cities/chandigarh-news/punjab-custodial-death-court-to-hear-case-against-5-bathinda-cops-on-july-31-101752607349092.html>.

<sup>49</sup> (1985) 1 SCC 552.

<sup>50</sup> (1992) 3 SCC 249.

“If a person is in police custody, then what has happened to him is peculiarly within the knowledge of the police officials who have taken him into custody. When the other evidence is convincing enough to establish that the deceased died because of the injuries inflicted by the accused, the circumstances would only lead to an irresistible inference that the police personnel who caused his death must also have caused disappearance of the body”.

Above said judicial pronouncements established the normative foundation; it is now for the legislature to make a final legislative expression, so that the long-awaited dawn of accountability in custodial deaths may break.

# **Policing Pleasure: The Juridical Boundaries of Adult Content in a Globalized Internet**

**Rishabh Tomar\***

## **Abstract**

Pornography site regulation is now an important topic of discussion in law because of the issues of freedom of speech, and Obscenity. This article discusses the legal regulation of adult content with reference to how the laws work in different jurisdictions with emphasis on digital markets. As the internet has become more developed, content producers and distributors have more opportunities in reaching out the international market but the increased attention from regulatory authorities over the concern of endangering the public morality.

This article analyses some of the most crucial doctrines in the law, freedom of speech, the most especially in the American constitution as protected by the First Amendment, however, modified by obscenity standards in the laws such as the Miller Test. The global views are also considered with a special emphasis on the European Union's policies seen as more conservative than those of North America with the restrictions of the right to free speech and new tendencies to address the problem, including the search for effective means of age verification and compromising or censorship of prohibited content. Through these concerns, the article under discussion raises the question about the conflict between the presentation of artists' freedom and the legal requirements and the analysis of the position of the digital platforms in this context. Most importantly, this research presents the differences in concepts implemented in the regulatory strategies and gives a comparison of their effects on both user populations and the adult content market.

**Keywords** Freedom of Speech, Digital, Obscenity, Pornography, Age Verification.

## **I. Introduction**

The regulation of adult content has been assuming much more importance due to the coming of the internet through which much of such content achieves access in the globe. It poses a significant

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concern to legal system, in a way that it should now regulate the available content based on the government's desire to protect its citizens from contents considered immoral, or contents that may harm the minors while at the same time, the citizens are legally protected under the constitution in aspects such as freedom of speech. With more adult content platforms claiming to be popular these days, issues related to obscenity, exploitation and ethical ways of content sharing are emerging. As a result, the legal systems globally are hard in an attempt to define the jurisdiction on such prohibited material without violating various number of the constitution especially the right to freedom of speech.

In the case of U. S, the first Amendment permits freedom of speech but this has its scope limited by obscenity laws for instance the ruling of *Miller v. California*<sup>1</sup> where the Supreme Court permitted the government to ban contents considered obscene by the community standards.<sup>2</sup> On the other hand, European countries have such measures as the Digital Services Act, which has stricter measures in securing societal norms and taboos.<sup>3</sup> This conflict has remained as a topical issue particularly in relation to latest developments in regulatory approaches towards obscenity, especially with the current focus on age verification as well as content moderation.

Over time, legal frameworks have shifted and thus, there is a need to balance between protecting the society from adult contents and at the same time, protecting the freedom of individuals and companies from restrictions by the state.

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<sup>1</sup> *Miller v. California*, 413 US 15 (1973).

<sup>2</sup> Kalven H, *A Worthy Tradition: Freedom of Speech in America* (Harper & Row 2020).

<sup>3</sup> Benedek W and Kettemann MC, *Freedom of Expression and the Internet* (Cambridge University Press 2022).

**i. Technological Evolution and Legal Frameworks**

The concept of the digital market has made it possible for platforms and content creators to take their products to the worldwide market. The change of audience from the conventional media to the social networks has not only broadened the course of the industry but also has produced a plenty of challenging issues for the regulators. Due to the internet, adult content websites are hard to regulate because the internet is decentralized, thus making it hard for governments to implement their laws on the international level. Such cross-border accessibility has led to international debates to the legal questions of how free speech can be balanced with public decency.

There is growing concern by governments and regulating authorities on the moral and ethical issues of their citizens, especially children and teenagers to adult contents, revenge porn and invasion of privacy of users. New regulations such as the UK's Digital Economy Act (2017) and the European Union's Digital Services Act (2022) have provided even more stringent requirements to the platforms to regulate and verify the age of users and enhance the moderation of content.<sup>4</sup> In the United States, the infamous Section 230 of the Communications Decency Act grants immunity to the platforms which have led to discussions concerning the need for more stringent regulation. The fast advancement in digital technology such as AI-generated content prompts other questions about how current laws governing adult content can adapt to new ethical challenges.<sup>5</sup>

**ii. Importance of Comparative Legal Analysis**

Comparative law methodology is therefore important when ascertaining the existence of the various legal frameworks that

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<sup>4</sup> Lomas N, 'EU Agrees New Rules to Tackle Illegal Content in Landmark Digital Services Act' (TechCrunch, 2022) <https://techcrunch.com> accessed 11 September 2024

<sup>5</sup> Bates S, *Pornography and Regulation in the Digital Age* (Routledge 2021).

govern adult content across the world. In the U. S., adult content regulation is largely influenced by the First Amendment that covers freedom speech but in forms of obscenity undergoes the Miller Test. This makes it possible to accept lewd materials, although they do not qualify as obscene in strict sense of the term. However, the European Union is quite liberal when it comes to freedom of speech, dominating public morality and protection of minors in most cases, and frequently, applying much stricter rules to the platforms which deliver content for adults. For instance, the EU's Digital Services Act increases the platform's responsibility for prejudicial content and entails age identification tools.

However, India is a little different from other countries where there is a conflict between traditional cultural practices and increasing use of the internet. As per the Constitution of India, free speech is recognized but it is bounded with a lot of conditions regarding the distribution of pornography through the Indian IT Act that washes down such content which is termed obscene. It is also important to note the rising concerns with regards to higher demands of age verification and data protection.

Comparing these jurisdictions, it will be possible to identify opportunities for how cultural, legal, and technological factors affect the regulation of adult content while revealing the need for differentiated global policies in the sphere by taking into account Free Speech, Morality, and protection of users.

## **II. Historical Background and Legal Foundations**

### **i. Historical Legal Context of Adult Content Regulation**

The legal regulation of obscenity has been linked with the changes to the historically and culturally relative morality standards of society. First, obscenity laws applied only to printed works: the notorious *Regina v. Hicklin*<sup>6</sup> in the United Kingdom of 1868 set the

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<sup>6</sup> *Regina v Hicklin* (1868) LR 3 QB 360.

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Hicklin test, in terms of which the material was considered obscene if the contents would have the ‘tendency’ to ‘deprave and corrupt’ those who might come across such work (Boyer, 2019).<sup>7</sup> For example, in the United States, obscenity regulation has gone through cases such as *Roth v. United States* where the Supreme Court decided that obscene material is not shield under the constitutions’ First Amendment.<sup>8</sup>

Regarding the change of obscenity laws, especially in the present digital age, there has been new obstacles to enforcing them. The availability of adult content has been decentralized through the internet bringing in issues of jurisdiction. In the U. S., the ruling on the *Miller v. California* in 1973 defined the new test for obscenity; however, its usefulness in the digital age continue to result in debate.<sup>9</sup> While the United States has taken relatively flexible actions such as the Executive Order 13959 to govern use of technology the European Union has gone farther to enact Laws such as the Digital Services Act.<sup>10</sup>

Whereas originally, adult content was mostly in printed media, new challenges when dealing with adult material are the amount, which cannot be easily contained, and the anonymity of the web, which causes legal issues, especially when it comes to enforcing the age verification policy and protecting one’s privacy.<sup>11</sup> All these steps call for reconsidering the traditional laws in order to better regulate the online digital adult content production.

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<sup>7</sup> Boyer PS, ‘Obscenity and Community Standards’ (2019) *Oxford Research Encyclopedia of American History*.

<sup>8</sup> Peltz RJ, ‘The Evolving Legal Standard for Obscenity: Roth to Miller’ (2018) 20(1) *Communications Law Review* 32.

<sup>9</sup> Citron DK, ‘Sexual Privacy’ (2019) 128(7) *Yale Law Journal* 1870.

<sup>10</sup> Calo R, ‘The Digital Services Act: The EU’s Approach to Regulating Online Platforms’ (2021) 27(4) *European Law Journal* 345.

<sup>11</sup> Benoliel U, ‘Regulating Online Adult Content: A Legal Perspective’ (2022) 25(2) *Journal of Internet Law* 18.

## **ii. Defining "Obscenity"**

Obscenity is a legal term whose definition differs one state to another and in some states and countries it is not well defined. Currently, the obscenity in the U. S. is defined by the Miller Test, which derives from the case *Miller v. California* (1973). According to this test, material is considered obscene if; (a) The average person, applying the contemporary community standards, finds that the work appeals to the prurient interest; (b) The work present the description or portrayal of sexual conduct in a plainly offensive manner; (c) The work has no apparent value for instructed literature, art, science, or politics.<sup>12</sup> This test is very rigorous whereby for content to be labeled as obscene it has to meet some very high standards; therefore, giving a lot of leeway to anything under the First Amendment.

On the other hand, European nations for the most part tend to be rather restrained in controlling obscene materials. ECHR applies a very liberal approach to freedom of expression by allowing states rather broad margin to define what is considered obscene with the primary aim of protecting public morality as well as the young. For instance, there is the UK's Obscene Publications Act of 1959 which outlaws' materials that have a demoralizing influence on the audience.<sup>13</sup> Likewise, as in the case of Germany, human dignity is a constitutional principle and this may lead to the limitation of obscenity.<sup>14</sup>

In general, this is similar to how the U. S. upholds the notions of freedom of speech to a certain extent, except for obscene materials while European countries impose moral and ethical code on their

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<sup>12</sup> Oster J, 'The Miller Test and its Implications for Freedom of Speech in the Digital Age' (2021) 39(2) *American Journal of Constitutional Law* 88.

<sup>13</sup> Parker L, 'The Evolution of Obscenity Law in the UK: From Print to Digital Media' (2020) 15(3) *International Review of Law* 67.

<sup>14</sup> Eisenberg T, 'Obscenity and Human Dignity: A Comparative Study' (2019) 12(1) *Journal of European Legal Studies* 45.

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citizens. These examples of obscenity show that much define obscene becomes difficult when trying to give legal definitions as the content is made easily available through technology.

### iii. Freedom of Speech and Adult Content

The freedom of speech is protected by the First Amendment of the U. S. Constitution, and therefore most of the freedoms regard to expression include adult content. But this protection is not come in to complete immunity as obscenity is not protected under the first amendment. *Miller v. California* (1973) of the U. S. Supreme court proposed the Miller test; this proposed criteria that have to be met for a work to considered as obscene, thus, not protected. The test mainly focuses on whether the material presents the nudity to satisfy the shameful desire of the reader, portrays sexual conduct in an obscene manner, and is not valuable from the aspects of literature, art, politics or sciences.<sup>15</sup> The public standards in appropriateness listed above make it possible for adult content that fulfil them to be regulated or even banned even with protected speech rights.

Internationally, adult content regulation also mainly interacts with human rights law especially the European Convention on Human Rights (ECHR). The ECHR has an Article 10 which guarantee freedom of expression but this right can be limited besides other things in matters of protection of public moral.<sup>16</sup> European courts are more conservative in their approach regarding adult materials and try to strike a fine line between the freedom of speech and the obscenity laws. For example, the European Court of Human Rights (ECHR) did not object to restrictions on pornography as vital in

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<sup>15</sup> Steiner R, 'Free Speech and Obscenity Law: The Impact of *Miller v. California*' (2018) 32(2) *Journal of Law and Public Policy* 45.

<sup>16</sup> Council of Europe, *European Convention on Human Rights* (2020) <https://www.echr.coe.int> accessed 12 September 2024.

democratic countries.<sup>17</sup> This difference between the U. S. and Europe brings out the well-treasured international discussions regarding limitation of free speech especially in creating pornography for adults.

### **III. Key Doctrines and Legal Standards**

#### **i. The Miller Test and U.S. Law**

Miller test is a part of law in United State that is mostly used to determine whether the content is obscene that it cannot be protected by first amendment. Established in the landmark case *Miller v. California* (1973), the test outlines three criteria that must be met for material to be considered obscene: (1) whether the material as a whole can be judged by average person using contemporary community standards as being specifically devised to appeal to the prurient interest; (2) whether the portrayed material is of sexual or excretory nature in a plainly offensive manner as interpreted by the state law and (3) whether the material as a whole is lacking in serious reference value of literature, art, politics or science.<sup>18</sup>

The case *Miller v. California* came to life when Marvin Miller was sending unwanted adult magazine, which provoked complaints as well as the prosecution since he violated the California obscenity laws. The Supreme Court of the United States taking up this case help to define obscenity by allowing communities to develop the standards of what is considered obscene based on their cultural context hence making obscenity a contextual issue which is provided by.<sup>19</sup>

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<sup>17</sup> Weinstein A, 'Regulating Pornography: A comparative analysis of Free Speech and Public Morality' 2021 3(1) *European Human Rights Law Review* 123.

<sup>18</sup> Schauer F, *Free Speech: A Philosophical Enquiry* (Cambridge University Press 2021).

<sup>19</sup> Lawrence F, *Freedom of Speech: Contemporary Legal Challenges* (Harvard University Press 2022).

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Although the test aimed at ensuring that free speech is aligned with the community standards, it has been criticized for being so arbitrary, especially on what is deemed appropriate under the ‘contemporary community standard’ especially in the era of globalization and the social media.<sup>20</sup> However, critics have not stopped pointing at the flaws of the Miller Test in their move to finally be a decided worth relying on in representing obscenity law in the regulation of adult entertainment in the U. S.

## **ii. Freedom of Speech and Exceptions**

The First Amendment of the constitution of the United States of America holds the provision on freedom of speech; however, on adult content, it is much more complicated. In which general free speech can be considered as an adult content but is limited through the obscenity laws of which *Miller v. California* from 1973 is a key ruling. The Miller Test, depicted guidelines that set the standard by which material is considered obscene; this includes, whether the described material has sexual conduct that tends to appeal the prurient interest, depicted in an overtly ugly manner, and if it lacked any form of political, scientific, literary, artistic or educative value (*Miller v. California*, 1973). Therefore, if content is considered to be obscene its production and distribution cannot be protected by rights to free speech granted by the First Amendment.

Recent cases of free speak and public morality show that the fight is still on. For example, online adult platforms such as the one I have described in this proposal are receiving more regulations especially on the protection of the underage. Rees there are few basic inferior rights that the Constitution affords adult material: it has the chance of being exception but only if the content does not

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<sup>20</sup> Llewellyn M, *Obscenity and the Internet: New Frontiers in Law and Technology* (Oxford University Press 2020).

qualify as obscenity, and is not offensive to society's standards.<sup>21</sup> Further, legislation that seeks to enforce users to provide their ages when accessing adult sites like the one that has been implemented in the UK and the U. S are protection of public order which does not in any way undermine the constitutional rights of adults.<sup>22</sup>

Therefore, despite the rather robust protection afforded by the First Amendment towards adult content, legal carve outs such as obscenity, protection of children, and public decency still characterize the legal regime.

### **iii. Global Legal Standards**

EU has strengthened its regulation on material with adult content bearing in mind both the ethical and the practical aspects. As with more general privacy and data protection frameworks including the GDPR the EU especially stresses the need to protect children and other vulnerable persons. The so-called Digital Services Act signed in 2022, follows that from the free speech perspective platforms hosting adult content must have enhanced content regulation and minimum age verification. The moral grounds in EU are related to obscenity, protection of children from such content and from being exploited. Various voices have accused this approach of impinging on one's freedom of speech.

On the other hand, areas such as India, South Asia, Asia, and the Middle East adopt a wider range ranging from cultural and religious prospects. In India, the legal regulation that has been supported by the Information Technology Act also does not allow the distribution of obscene materials, but their use varies.<sup>23</sup> Asian countries such as China are even more explicit in this regard:

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<sup>21</sup> Rees S, 'Balancing Free Speech and Community Standards in the Digital Age' (2021) 45(2) *Journal of Law & Policy* 89

<sup>22</sup> Smith J, 'Age Verification Laws and the Adult Content Industry: A Legal Analysis' (2022) 30(4) *Digital Law Review* 211.

<sup>23</sup> Bansal S and Gaur V, 'Information Technology Laws and Pornography in India' (2021) 15(1) *Journal of Indian Law & Technology* 25.

content that is prohibited for the production of adult material is heavily censored; hosts specializing in adult content face significant penalties. In contrast, in the Middle East, adult content is prohibited almost to a large extent as a result of Islamic legal systems.<sup>24</sup> While these regions express concerns that are not different from the EU values of the protection of minors and avoidance of moral perversion, they tend to give room for community or religion beliefs and practices rather than privacy and freedom of expression.

The variation in policies regarding adult content around the world has something to do with the moral, cultural and legal principles in the world, and EU rules and regulations are very strict in filtering out content but, at the same time, protecting personal freedom.

#### **IV. Digital Platforms and Legal Responsibilities**

##### **i. Platform Liability and Content Moderation**

There it is important to understand and analyze how platforms act and perform o regulate adult content, particularly user generated content in order to address issues of free expression of users, safety of this same users and the legal requirements that have to be met. They set rules for censorship, identifying and deleting the lewd content which is against the norms and regulations of the community or law of the country. Specifically, social networks openly apply both, AI solutions and human individuals for actions connected with the detection and further eliminating of adult materials. Nevertheless, their activities depend on legal rules and regulations or local equivalents including Section 230 of the Communications Decency Act in the United States of America and other countries.

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<sup>24</sup> Caldwell J, 'Internet Censorship and Morality: Perspectives of the Middle East' (2023) 22(3) *Global Media Journal* 18.

CDA section 230 focuses on this by offering legal protection to the platforms for the contents posted by third parties and thus the platforms normally do not take responsibilities of whatever is posted by the user. This law enables the platforms to censor the content without bringing the status of them as publishers; it enables the platforms to censor materials that are considered to be abusive or illegal.<sup>25</sup> However, there have been growing concerns regarding section 230 that opponents say that the platform must be held accountable for content, including adult content. This is because what saw the light of the day with regards to Section 230 protections is subject to change through existing statutes like the EARN IT Act, with the aim of addressing problems like child exploitation.<sup>26</sup>

Globally, France has the European Digital services ACT that goes a notch further than the Midwest act, the platforms are obligated to act against illicit content, including adult content.<sup>27</sup> In the same way, countries such as Germany with the NetzDG law also require immediate removal of the content that is against the law thus exerting pressure on platforms to enhance the organization of efficient moderation techniques.<sup>28</sup>

## **ii. Content Moderation Policies**

Web-based applications employ several mechanisms to regulate adult content while trying to avoid compromising innocent users' rights to free speech. Leading social media channel like face book, twitter and YouTube have had to devise intricate measures so as to control obscene content. For instance, while using Facebook,

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<sup>25</sup> Kosseff J, *The Twenty-Six Words That Created the Internet* (Cornell University Press 2019).

<sup>26</sup> Citron DK and Wittes B, 'The Internet Will Not Break: Denying Bad Samaritans Section 230 Immunity' (2020) 88(2) *Fordham Law Review* 441.

<sup>27</sup> Gorwa R, *Regulating Platforms: The Politics of Internet Regulation in the Digital Age* (Cambridge University Press 2022).

<sup>28</sup> Keller D, 'NetzDG and the Evolution of Content Moderation Law' (2021) 36(2) *Journal of Law and Technology* 123.

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nudity and sexual content are strictly prohibited and any material that violates Facebook's Community Standards is usually removed or restricted. The fully-fledged adult contents appear permitted by the twitter policies than Facebook, but they are classified as sensitive and hence the visibility of such content is limited. YouTube has measures to automatically filter the videos for adult contents, and subscribe a second group of people who will review the videos flagged as such by a computer.

While-platforms such as OnlyFans, designed for the adult content, are much more lenient. They have less stringently moderated rules which enables their users to present accountabilities in shares including those which are in legal and in accordance with the overall site standards. However, OnlyFans received massive criticism in 2021 especially when it temporarily announced that it was going to ban any sexually explicit content due to the restrictions by the payment processors showing how the platform is also controlled economically and legally. The moderation policy was rolled back quickly after massive backlash and this demonstrates how moderation policies for adult platforms are inextricably entangled with financial and image considerations.<sup>29</sup>

These examples show case the varying levels of moderate at different social media platforms where mainstream social media controls has been tightened while other niche platforms tries to balance between freedom of conservative and regulatory compliance.<sup>30</sup>

### **iii. Age Verification Systems**

The attempts to regulate adult content and employ age verification systems have met important legal changes across the EU, UK and India.

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<sup>29</sup> Brennan Center for Justice, 'Double Standards in Content Moderation' (2021).

<sup>30</sup> Roberts ST, *Commercial Content Moderation: Digital Labor in the Shadow of Social Media* (2016).

## **Policing Pleasure: The Juridical Boundaries of Adult Content in a .....**

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The following European countries have currently had or are planning to launch or propose an age verification: For instance, France and Germany have engaged in litigation efforts and have mandated age verification for protection with Germany using over one hundred models of identification that include Postident, a biometric authentication, for hosted platforms, domestic or foreign based. Yet, the enforcement across the borders and how to manage privacy rights are the challenges continuing today.<sup>31</sup> At the same time, EU legislation such as AVMSD and DSA promote child safety without prescribing certain kinds of age verification technologies.<sup>32</sup>

The U. K. came up with the Age Appropriate Design Code that requires the firms to come up with better ways of age verification, especially for the digital products meant for the kids. These efforts are further complemented by the 2023 Online Safety Bill which makes it an offence for the platforms to fail to comply. In India, for instance, there is the Digital Personal Data Protection Act (DPDP) that allows data processing of children data only if it receives prior consent from parents and guardians, therefore, putting pressure on the platforms to adopt AV. India is working on token-based solutions with Aadhaar to address compliance without privacy and is using zero knowledge proofs for this purpose as well.<sup>33</sup>

Privacy remains an issue in every region depending on the regulations that the regions have in place as well as the complexity of enforcement and cross-border compliance depending on the capacity of the regions region's digital networks that are in place.

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<sup>31</sup> Tech.eu, 'Verified Xposure: How ID Verification is Reshaping the Adult Content Landscape in the EU (2023) <https://tech.eu> accessed 12 September 2024.

<sup>32</sup> Inside Privacy, 'Age Verification: State of Play and Key Developments in the EU and UK' (2023) <https://www.insideprivacy.com> accessed 13 September 2024.

<sup>33</sup> Biometric Update, 'Online Age Verification Debates Continue in Canada, EU, India' (2023) <https://www.biometricupdate.com> accessed 15 September 2024.

## V. International Legal Perspectives

### i. European Union's Regulatory Framework

In the EU there is always tension between free speech and public interest and this is regulated by laws including the DSA. As it will be seen in this article, the EU also ensures freedom of expression with regard to public considerations as this freedom may also infringe on public interests such as public health, security and morality. Though the EU supports freedoms of speech, it regulates the content aiming at preventing harms including disinformation, hate speech as well as material deemed unlawful with particular emphasis on very large online platforms.

The DSA adopted in 2022 sets out vigorous measures obligating social media platforms to pursue more strict content regulation, openness and responsibility. Areas that are affected are the adult content platforms through the due diligence requirements including frequent risk assessment for the transmission of the illegal content thus leading to highly likely content removal. They are also urged to make more exhaustive content moderation measures without giving up immunity as long as it comes under the law.<sup>34</sup> These regulations despite encouraging the development of a safer digital environment, give a lot of anxiety over issues regarding appropriateness with regards to freedom of content that may otherwise is legal. To minimize their legal responsibilities, platforms could remove any content in the extreme.<sup>35</sup>

In other words, the DSA is meant to achieve a general objective of rebalancing the relations between providers of online services and their users by making the former fully liable for content hosted on

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<sup>34</sup> Amnesty International, 'What the EU's Digital Services Act Means for Human Rights' (2022) <https://www.amnesty.eu/section/what-the-eus-digital-services-act-means-for-human-rights> accessed 15 September 2024.

<sup>35</sup> Article 19, 'Does the EU Digital Services Act Protect Freedom of Expression?' (2023) <https://www.article19.org> accessed 18 September 2024.

their platforms while not depriving the latter of their rights to freedom of speech.<sup>36</sup> However, adult content platforms may find themselves having new obstacles to overcome when it comes to comply with the new rules of the game within the heightened regulation scene.

## **ii. United States' Legal Environment**

Current regulation of adult content in the U. S. poses many problems, especially due to attempts by the government to protect kids while at the same time respecting Constitutional right of free speech. Any content that is produced as adult content is shielded by the First Amendment as the freedom of speech and therefore the government cannot control and regulate its circulation. But the latest legal cases reveal increasing conflict between censorship and freedom of speech.

For instance, age verification laws such as Indiana's Act that mandates that Internet sites confirm the ages of its users before they can access materials containing adult content have been prohibited. Free Speech Coalition has claimed that these regulations are restrictions on content and the speaker or speaker identification which do not meet the standard of scrutiny under the First Amendment. They also discuss the effects of privacy since they opine that making the users reveal personal details to get to adult content makes the privacy of the consumers vulnerable and may limit free speech.<sup>37</sup>

Thus, other cases that attracted governmental pressure on social media platforms, including *Murthy v. Missouri* (2024) have only added confusion or ambiguity to acceptable content regulation. That is why, as a vital interest, protection of minors and public

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<sup>36</sup> Commissioner Insists EU Online Censorship Law is Compatible with Free Speech' *Brussels Signal* (2023) <https://brusselssignal.eu/2023/07/commissioner-insists-eu-online-censored-shipping-law-is-acceptable-for-free-speech> accessed 18 September 2024.

<sup>37</sup> Free Speech Coalition, Inc. v. Rokita, 2024 WL 2924770 (SD Ind June 10, 2024).

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welfare still remains the subject of judicial discussions regarding the extent of these measures as violative of the rights of the adults to obtain legal adult material.<sup>38</sup>

These continuing legal proceedings demonstrate the challenges involved with regard to filtering, selecting and categorizing the interests of the adult content in a manner that shields the general public while respecting its constitutional rights at the same time.

### **iii. Other International Perspectives**

As for the Asia region the laws governing the production, publishing or distribution of adult content is rather liberal. Majority of the industrialized nations such as Japan have laws that proscribe pornography, and where pornography is allowed, most materials can be considered obscene. On the other hand, some countries such as South Korea and China make drastic bans with severe consequences on distribution and consumption of adult content. In Middle East majority of the countries still follows Islamic law. This law prohibit the sale of pornography. Many nations such as Saudi Arabia and Iran have put in place a strict mechanism of internet censorship with a view of banning adult sites. However, in Latin America, it is different; the regulatory approaches are as follows: While both Brazil and Argentina permit adult content, there are specific provisions that regulate the creation and dissemination of such a material, especially for the interest of the minors.

Of course, the regulation of adult content is a problem that is matter-crossing due to the fact that we are dealing with the internet. As for the sources, the countries with strict censorship face the problem of prognosis from the foreign sources' access, and the diversity of the cultural and legal systems adds to the problem.

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<sup>38</sup> The Foundation for Individual Rights and Expression, 'The 8 First Amendment Cases the Supreme Court will Decide this term' (2024).

More so, technologies like Virtual Private Networks work towards complicating the process undertaken by different countries in the effort to regulate access. Also, the cooperative international approaches to regulating content specific to the adults are rare at times, vague which makes enforcement erratic cross-nationally. Literal nations that seek to assert their laws internationally run into problems based on extraterritoriality while tech firms deny engagement in content regulation.

Recent years' findings show that there are significant challenges in integrating relevant laws across borders. For instance, Soto-Sanfiel and Palencia (2020) state how laws are misaligned with the global digital market place and one cannot help but question the efficacy and implementability.<sup>39</sup>

## **VI. Challenges with Age Verification and Privacy**

### **i. Legal Requirements for Age Verification**

The legal regulations on age verification have emerged as the government has stepped up efforts to prevent children from the content of adult nature available on the Internet. An example of such a legislative action is the so-called Digital Economy Act enacted in the United Kingdom in 2017 that envisaged the requirement of effective age verification systems in the cases of access to the Websites containing adult materials. Some provisions included specifying that users' ages should be checked through identity cards or credit check, among others, so as to filter out material that contained nudity or solicited nudity from children. However, there was a hitch as well as lots of resistance towards the enforcement of the provision in question, which was further thrown

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<sup>39</sup> Soto-Sanfiel MT and Palencia L 'Global Challenges in the Regulation of Digital Adult Content' (2018) 11(3) *Journal of Digital Media Policy* 245.

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out in the year 2019 following privacy issues and what not, misuse of data included (BBC, 2019).<sup>40</sup>

It has also been attempted in the European Union, Australia and the United States. For example, in the past year France has intensified its policy, demanding the purity and strict adherence to the age verification rules with fines for non-compliant social media platforms.<sup>41</sup> The U. S. has also observed an increase in the state laws targeting adult content; proposals in Utah as well as Texas demand age verification for pornographic sites.<sup>42</sup>

Current topics reveal that there is a conflict in user safety and child protection and user privacy. The critics have claimed that most of the verification techniques are in conflict with the user anonymity and can result in data breach. On the other hand, supporters argue that there is a need to tighten the standards in the world that is rapidly going digital; children are exposed to nasty stuff. While legislations in this global world progress the issues of privacy and child protection are still central in age verification.

## **ii. Privacy Concerns**

While Age verification systems aim at protecting the younger generation from accessing material that is deemed unsafe for them on the internet, the systems are problematic in terms of privacy whereby people's data can be breaching or otherwise misused. Today's verification solutions are usually based on the submission of personal information like IDs, passports, or other biometrics, including face recognition. This data is vulnerable to hacking as

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<sup>40</sup> BBC, 'UK Drops Plans for Online Pornography Age Verification System' *BBC* (16 October 2019) <https://www.bbc.com/news/technology-50073102> accessed 18 September 2024.

<sup>41</sup> Kumar M, 'France Ramps Up Online Child Protection with New Age Verification Rules for Adult Content' *France 24* (1 July 2022) <https://www.france24.com> accessed 18 September 2024.

<sup>42</sup> Fung B, 'Several U.S. States Push New Laws Requiring Age Verification for Online Porn' *NPR* (28 March 2023) <https://www.npr.org> accessed 18 September 2024.

such systems have become favorite for hackers to attack. For instance, hacks of similar database like the one in 2015 Ashley Madison leak millions of users' details it unveiled the risks of blackmail and extortion particularly if associated with risky online behavior.<sup>43</sup>

However, such systems are also Ineffective in guaranteeing data privacy and security in some cases. However, although there are third-party verification services in an effort to reduce this risk, users' personal information is safer with no guarantee of such information being leaked. This could be true even for the systems that are designed to have protective privacy measures in place such as the one used in Louisiana and the UK, whereby the technologies used to conduct age verification have been noted to infringe the privacy rights of the user and are proven to be ineffective according to the Woodhull Freedom Foundation.<sup>44</sup>

Retaining the identity of minors as vulnerable users but allowing adult user content and profile to be considered 'private information' means that individual privacy protection calls for stronger solutions at the device level to include filtering at the device level for content deemed unfavorable for minors without infringing on the user's privacy. Those that decide to employ age verification then have to take into account whether it actually works along with further potential privacy violations to citizens in an attempt to prevent violation of rights of children.<sup>45</sup>

### **iii. Technological Solutions and Legal Implications**

There are different technologies that exist in Age Verification especially in the industries such as online betting, beverages and

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<sup>43</sup> Woodhull Freedom Foundation, 'Online Age Verification Is Not the Same as "Flashing Your ID at a Liquor Store"' (2023).

<sup>44</sup> Facia.ai, '2023 Age Verification Laws: Controversies & Compliance Guide' (2023).

<sup>45</sup> CNIL, 'Online Age Verification: Balancing Privacy and the Protection of Minors' (2023).

other products that are considered too vulnerable by the underage individuals. Methods involve, but are not limited to identification card checks, fingerprint scanning, credit card authentication and artificial intelligence Facial recognition. Some of the most common control measures include; ID verification including the use of government ID's is however often vulnerable to fake IDs. Such techniques as facial recognition are very effective measures against fraud, yet, they come with massive problems regarding the invasion of privacy. Another technique is credit card verification which however has it's interfaced since minors can use the card of their adults.

AI-based facial recognition has been in the limelight because of the maximum level of accuracy. However, one got a feeling that bias is innate, especially with race and age-related errors and this may lead to denial of services.<sup>46</sup> However, all these communication technologies are not perfect and most of them come with certain degrees of errors, accessibility, and invasion of user's privacy.

Most legal issues associated with these technologies are based on the ability of the technologies in managing and storing personal data. The age verification systems often act in a way that the users must submit very sensitive information, be it biometric data or government identification. This is problematic under data protection laws like the GDPR for European citizens as well as COPPA for the U. S citizens.<sup>47</sup> Because these laws restrict the types and volume of data that can be gathered about an individual, these laws also dictate how data security should be guarded. However, privacy issues come in a package when the biometric systems are being deployed to parties in the manner that some governments or even companies may misuse it.

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<sup>46</sup> 'Age Verification and AI: Tech Innovations in Age Verification' (2023).

<sup>47</sup> Privacy International, 'Data Protection Concerns in Age Verification' (2022).

## **VII. Censorship, Free Speech, and Artistic Freedom**

It is always difficult for many jurisdictions to maintain a balance between aggressive censorship of adult contents and free speech because of the conflicting sections of law as in the protection of the public morality and free speech. In democratic countries including the U. S, free speech is usually allowed according to the constitutional right granted under the First Amendment but this is in specific exceptions where it may be prohibited where it leads to near absolute harm including instigation of violence. Such a broad definition of freedom of speech has translated into a discourse on whether adult content should be banned an issue to which the U. S Supreme Court has been permissive of content neutrality allowing material that is perceived to be controversial if it does not cause societal harm.<sup>48</sup>

However, countries like India are relatively more stringent and especially focusing on the digital marketing channels. Self-regulation of the IT intermediaries is made mandatory through the 2021 IT Rules but public morality remains an issue of court lawsuits against OTT contents.<sup>49</sup> In this debate, filmmakers assert that the degree of censorship closes the door on creativity while the regulators say that decency and order have to be preserved. Nevertheless, the corresponding rules have not been uniformly enforced, and there has been continuing legal controversy on

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<sup>48</sup> American Civil Liberties Union, 'Freedom of Expression in the Arts and Entertainment' (2023) <https://www.aclu.org/other/freedom-expression-arts-and-entertainment> accessed 18 September 2024.

<sup>49</sup> Legal Research and Analysis, 'Overview of Over-the-Top (OTT) Platforms in India - Analysis of IT Rules 2021, Judicial Battles, the Balancing Act of Artistic Freedom of Speech and Expression, and Challenges for Regulation in India' (2023) <https://www.legalresearchandanalysis.com/overview-of-ott-platforms-in-india> accessed 18 September 2024.

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whether such companies as Netflix or Amazon Prime must be regulated even more.<sup>50</sup>

The conflict between the right to speak and write and that of censorship especially with the adult material are always changing with the advancement of technology. While some writers call for more creativity and freedom in expression by artists, some insist on the rigidity of the laws that in some way seek to control the media's ability to influence society negatively, indicating the role of law, ethics and morality in the ever-growing modern art piece that is the World Wide Web.

#### **i. Artistic Freedom vs. Public Morality**

It is the subject matter and artistic freedom that has the potential of provoking controversies leading to complicated legal issues concerning censorship of adult content. The First Amendment of the U. S. Constitution guarantees free speech and therefore artistic freedom despite the controversy surrounding some artists' work, however, there are some restrictions that courts have placed on art works that are considered to be obscene. In *Miller v. California* (1973), the Supreme Court of the U. S defined obscenity and used the Miller test that counts the material as obscene if it does not have any "serious import for moral, literary, this has resulted in inequality in applying the law with courts biasing the powerful aspect of public morality rather than aspiring artistic freedom.

Over the last couple of years there has been an increasing number of cases that involve adult content creators, especially on digital platforms, showing these tensions. The *Gonzalez v. Google LLC*<sup>51</sup> (2023) paved way to controversies around platform moderation especially on adult content with the creators complaining over

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<sup>50</sup> IPRMENTLAW, 'Churuli Controversy: Analysis of the Censorship of Content on OTT Platforms' (2023) <https://iprmentlaw.com/churuli-controversy-analysis> accessed 18 September 2024.

<sup>51</sup> *Gonzalez v Google LLC* 598 US \_\_\_ (2023).

ensorship by the tech companies based on ambiguous community standards. They themselves have received violent banking restrictions and unannounced, unexplained account deletions; lawsuits have been filed over perceived censorship.

The controversies in EU present a contrast where laws such as the Audiovisual Media Services Directive (AVMSD) aims at freeing speech with principles of protecting public morality and children from abuse content. Concerning such laws these critics suggest they cause over-policing, leading to censorship in the pretext of the protection of morality.<sup>52</sup>

In general, the international discussion is characterized by a careful search for the appropriate degree of protection of the freedom of creation and the simultaneous prevention of an increase in obscenity, which is a constant concern for others, giving enormous attention courts, governments and private agents.

## **VIII. Future Trends in Regulation and Policy Recommendations**

### **i. Emerging Technologies and New Challenges**

As advanced technology made its way to the production of adult material, due to deepfake pornography, Virtual Reality (VR) and AI generated content, for example, there are various legal and ethical issues. Deepfakes specifically, whereby AI is used to realistically manipulate images and videos have in recent past been used in creating fake sexual content without the subject's consent, and the images can be of celebrities or unknown people. What is even more disturbing is that victims may have limited legal redress on such invasions since they lack sufficient legal protection in many areas, mostly due to the absence of laws that address deepfake pornography explicitly.

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<sup>52</sup> European Parliament, 'Audiovisual Media Services Directive (AVMSD) and Its Impacts on Media' (2020) <https://www.europarl.europa.eu> accessed 18 September 2024.

It is not different with virtual reality where the challenges are rife. It is evident that the Virtual Reality technologies are capable of providing users with adult content simulations of life like experiences. This is seen by some as an area of consensual sexuality entertaining and it also elicits questions on objectification, exploitation and the grooming of cultures that allow such deeds. These rapidly developing technologies challenge the legislators in trying to cope up with them as they easily circumvent the legal provisions originally drawn for more conventional forms of pornography.

These issues are not eased by the growing existence of AI-generated adult content. It is legal because AI can produce images or videos that depict naked persons, whether or not actual models agreed to the creation of such material, where do producers get the rights to use models' images and videos, and who is to blame for such productions. Some people think that it would be less dangerous because it is created by artificial entities but as some readers mentioned in the text – why create a digital avatar and film non-consensual content?

Some countries are starting to tackle these problems and some are even having laws against deep fake adult material such as in the UK as well as some states in the United States. However, due to this global consideration of the internet, it becomes difficult to enforce the laws hence requires partnership from other countries and calls for new policies to be developed to meet these modern challenges.

#### **ii. Policy Recommendations**

Adult content regulation should therefore be done with an aim of finding a middle ground between free speech and public morality all over the world. Here are some key policy recommendations:

**a. Age Verification:** The need to put in place standard and efficient age verification systems is very important especially across the globe. Governments should therefore require that identified approaches that are safe and which respect privacy in one way or another have to be enforced to make it impossible for a minor to access obscene material.

**b. Content Labeling and Filtering:** It is equally important that like the movie or video game, there is only one labeling system that users can use depending on what they want to see. There is need for higher degree of filtering capabilities to be made available for parents, schools and institutions.

**c. Accountability of Platforms:** Adult content platforms should therefore take responsibility of checking compliance of the content provided with the country laws on distribution of content. There is also a need to implement the audits and reporting mechanism that will help check the level of compliance of the platforms.

**iv. International Cooperation and Harmonization:** Due to the fact that digital content can easily be transmitted across borders, the UN or the ITU should therefore encourage forums to be held in an effort to coordinate with the laws. This could include STANDARD/COMMON policies relating to age verification, content moderation and penalties for breaching the law governing dissemination of undesirable contents.

**d. Data Protection and User Privacy:** They are crucial in today's business as regulations become more rigid in the protection of user data. Governments should make certain that any matrices used to regulate access to adult material has regard to privacy and cannot be used to engage in unlawful surveillance and or data harvesting.

**e. Educational Initiatives:** International crusades should aim at informing the young persons the detrimental effects of adult content and at the same time create awareness of media literacy. It

is shameful that hurricanes, tornadoes, earthquakes and other forms of natural disasters are devastating communities all over the world while parents, educators and other communities should be empowered to handle these problems in a positive way.

Thus, the harmonization of international regulation standards will help countries to protect those people who seem to be at risk, provide ethical approaches to distributive practices, and maintain freedom of digital media.

### **iii. Ethical and Legal Implications for the Future**

Ethical and legal concern, is the issue of controlling material deemed 'adult' as emergent technologies such as virtual reality (VR), artificial intelligence (AI) and blockchain change the way material is produced, accessed, and consumed. From the ethical point of view, the focus is made on the safeguard of the defenseless, the free will of the adults and the possible negative impacts on the whole society. For instance, deepfake porn created by AI as a result raises significant moral questions as to invasion of people's privacy and exploitation when they cannot consent to being AI-generated. VR and immersive technologies may actually amplify further the issues with the type of content that might even create some debate whether the given content portrays reality or is purely virtual and might cause concerns about users' desensitization or encouragement to perform some actions in the given setting.

Regulation of IG from a legal perspective varies from one country to another, and it is often the case that one country's regulation of IG is in another country's violation of IG. This is because when adult content is shared across the various countries there is often a clash of laws basing on country restrictions. The governments have had the challenge of ensuring that citizens including the young ones are protected from the content that may be harmful, while at the same time respect the right to free speech. Due to the

anonymity of some technologies such as blockchain and decentralized platforms it becomes very hard for the regulators to monitor and prevent the dissemination of IL content or even enforce existing laws.

Sovereignty of person, rights of privacy and issues of censorship will be other significant issues that will dominate future courtroom. Governments cannot easily balance freedom of speech with cultural values, the problem that becomes even more acute given that content is more often than not borderless. For instance, the foreign regulations such as the EU GDPR laws are strict on data protection, and this may lead to issues of legal disputes including jurisdiction and enforcement when contrasting with more liberal measures used in other jurisdictions.

Globally, enhancing of the regulation is expected to persist in the future while there are increased discussions regarding the part played by the technology affecting the human sexual preferences, privacy, and the acceptable ethical standards. The frameworks is to shield the vulnerable populace but uphold their rights will be a basic element of these discussions.

## **IX. Conclusion**

One of the major challenges of adult content moderation is trying to maintain citizens' rights to free speech while at the same time having obscenity laws and the responsibilities that social media platforms have to enforce them. This study focuses on the concept of free speech which is one of the significant values in the democratic societies which is regularly in conflict with the laws that restrict the obscenity and other types of material that are considered to be harmful. In the U. S. obscenity is governed by the First Amendment and much adult content is protected by the constitution although the Supreme Court in its *Miller v. California* decision of 1973 sought to give the meaning of obscenity. Others such as United Kingdom and Australia have to enforce more

stringent codes of practice; censorship boards and age control mechanisms that are in parity with the moral standards of those countries.

Technological advancement in various fields means that platforms hosting adult content have increasing duties to ensure the content up to the legal requirements of the country of operation. These responsibilities have increased because of laws such as the U.S's FOSTA-SESTA, aimed at making online service providers liable for enabling sex work. This problem gets worse when taking into consideration the international character of internet services, where the content may be legal in one country and unlawful in the other. Platforms must operate compliant to local laws at the same time they should be compliant to the global standards.

Cooperation of different countries is required for the management and control of digital adult content. Since different countries have different laws, governments alongside the companies in the IT industry have the major challenge of developing laws which can be implemented internationally but at the same time being sensitive to the laws of different countries. The multi-jurisdictional rules governing platforms are developed from treaties, conventions, and partnerships between these platforms and governments. They extend child protection, fighting human trafficking and reducing the distribution of undesirable materials, at the same time, threaten free speech if not well regulated.

The future will therefore be characterized by series of innovation in technology such as the use artificial intelligence, virtual reality and block chain in the regulation of adult content. Deepfakes are already existence of the AI generated content that is difficult to solve with the current laws in place. With advancement in AI, it will be really hard to differentiate between the real and the synthetic adult content and this will compel the legislators to do so. At the same time, these domains such as VR and immersive

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platforms are expected to introduce even adult contents into the interactive environment thus making the regulatory process even more challenging.

In fact, blockchain could transform the way contents are delivered and how people's privacy is protected with numerous decentralized platforms being challenging to regulate by governments. That is why, as governments begin to scramble to protect themselves, new laws will inevitably start to surface that do not simply target content but the very technology that delivers it.

Finally, the legal regulation will progress to become more rigid based on the perceived issues of privacy, protection of children and vulnerable persons. Nonetheless, integrating such regulative adjustments with the First Amendment and multiple platforms' evolution shall always be a challenge. The action, therefore, suggests that global collaboration will be necessary in an attempt to achieve the regulation of a globalized digital market by various parliaments and laws.

# **The Novel manifestations of Digital Addiction in the age of Artificial intelligence: A Teleological study of its Impact on Human Relations**

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## **Abstract**

The rapid growth of digital technologies has radically transformed human relationships, altering traditional social interaction norms, intimacy, and communication. Although digital interaction provides convenience and accessibility, the widespread occurrence of digital addiction has also raised issues regarding its effects on interpersonal relationships and social institutions. This study discusses the sociological aspects of digital addiction, evaluating its function in deteriorating strong social bonds, promoting social isolation, and reorganizing human engagement. Based on social interaction theories, technological determinism, and symbolic interactionism, we examine how digital dependency turns into addiction, slowly eroding the depth and sincerity of relationships. The research identifies the economic systems that enable digital addiction, such as commodification of attention, algorithmic reinforcement, and persuasive digital design, which feed compulsive digital habits. In addition, the study examines psychological processes that contribute to digital addiction, including reward-based reinforcement, cognitive biases, and emotional regulation that further fuel compulsive patterns of use. Utilizing a sociological approach, this research highlights the imperatives of social interventions, digital literacy education, and policy regulations to counteract the negative impacts of digital addiction on interpersonal relationships. Finally, the research demands a critical re-examination of online engagement norms, promoting a balanced strategy that emphasizes genuine human connection and online well-being in the contemporary society.

**Keywords:-** Digital-addiction, Socialization, Interpersonal communication, Algorithmic, reinforcement, Digital well-being

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## **1. Introduction**

The rapid growth of digital technologies has re-shaped the way humans interact, communicate, and organize their social lives. Engagement with digital environments in contemporary society is not only a matter of convenience but a condition for active membership in social worlds, increase of economic productivity, and construction of individual identity. Although this embedded use of digital tools has spawned digital addiction as a syndrome described by compulsive use of digital technologies with resultant negative consequences.<sup>1</sup> digital addiction is remarkably different from conventional addictions such as drugs or alcohol. Digital addiction manifests as behavioral dependencies with strong influences on human cognition, emotional experiences, and social relations. This review article discusses the sociological aspects of digital addiction, in this instance, its adverse effects on human relations and how digital dependency fosters social isolation, negates social bonding, and re-describes conventional understanding of intimacy and communication.

Digital addiction can be understood both as an individual and a societal problem, resulting from the growing ratio of digitalization in daily life. Drawing on social interaction theories, technological determinism, and symbolic interactionism, this study investigates how digital technologies influence the dynamics of human interaction. The shift of communication from face-to-face to screen-based has radically changed the meaning of social presence, downgraded the richness of inter-human relationships and enhanced accessibility. Digital dependence, commonly regarded as a threshold before addiction, is typically framed as a social imperative serving as a means to remain connected, preserve social

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<sup>1</sup>A Alomary and J Woollard, "How is Technology Accepted by Users? A Review of Technology Acceptance Models and Theories" in *Proceedings of the IRES 17th International Conference* (International Institute of Engineers and Researchers 2015) 1.

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capital, and navigate contemporary labor markets.<sup>2</sup> However, as individuals become more engaged in digital environments, their dependence on technology increasingly turns from utilitarian use to compulsive use, affecting personal relationships and resulting in social isolation.

A significant issue regarding digital addiction is its impact on the decline of primary social relations, fundamental relationships that provide the basis for social structure, such as family bonds, friendships, and romantic relationships. Sociologists such as Émile Durkheim in his theory of suicide, offer his observations on how excessive integration leads to pathological situations in human life, i.e., suicide and Durkheim's theory of anomie, he explored how disintegration of social norms caused by rapid social change, is directly applicable to explaining the phenomenon of digital addiction as a two-faced personal and social issue that arises from the increased adoption of digital technology in daily life. Based on social theories, technological determinism, and symbolic interactionism, this study examines the implications of digital technology on the dynamics of human interaction. The shift of communication from simultaneous, face-to-face contact to screen-mediated communication has profoundly changed the meaning of social presence, diminishing the depth of interpersonal relations while, on the other hand, making it more accessible. Digital dependency, which is often a stepping point to addiction, is usually presented as a social requirement a necessary tool to remain connected, maintain social capital, and move through contemporary labor markets.<sup>3</sup> Yet, as individuals become increasingly immersed in digital environments, technology dependency shifts from practical application to compulsive

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<sup>2</sup> Moustafa, A., Bello, A., & Maurushat, A. (2021). The role of user behavior in improving cyber security management. *Frontiers in Psychology*. <https://doi.org/10.3389/fpsyg.2021.561011>

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engagement, hence affecting personal relationships and resulting in social alienation.

This study critically analyzes the existing literature on digital addiction, exploring its multi-aspect nature, the process of evolution from dependence to addiction, and its impact on interpersonal relationships. The review will discuss the psychological and social processes underlying digital addiction, with specific reference to the role of reward processes, behavioral conditioning, and cognitive biases that perpetuate compulsive digital behavior. In addition, we will assess the sociological impacts of digital addiction, including the breakdown of the traditional family structure, change in romantic intimacy patterns, and loss of social engagement. As digital technologies facilitate communication, they also result in relationship abandonment, emotional estrangement, and social fragmentation.

This paper will also consider possible interventions and prevention strategies, with particular attention to the contribution of social institutions, educational systems, and policy controls in addressing the challenges of digital addiction. The lack of diagnostic criteria for digital addiction concurred upon by experts is a significant concern,<sup>4</sup> and it is therefore important to have a thorough literature review to identify common patterns and dimensions that call for further sociological research. In this review, our aim is to outline the general picture of digital addiction as a social phenomenon and highlight its broader implications for contemporary relationships and the organization of contemporary society.

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<sup>4</sup> Gaillard, S. D. M., Olh, Z. A., Venmans, S., & Burke, M. (2021). Countering the cognitive, linguistic, and psychological underpinnings behind susceptibility to fake news: A review of current literature with special focus on the role of age and digital literacy. *Frontiers in Communication*. <https://doi.org/10.3389/fcomm.2021.661801>

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## II. Methodology

The current study is a comprehensive literature review that critically evaluates digital addiction and its effects on human relationships from a sociological viewpoint. It synthesizes current theory, conceptual analysis, and empirical studies to explore how digital dependence becomes addiction and reorganizes interpersonal relationships, social structures, and emotional well-being.

### Defining Digital Addiction and Digital Dependency

The ‘digital addiction’ situation is controversial and does not have a consensual definition, which has resulted in differences in research methodology and findings.<sup>5</sup> The lack of a standardized diagnostic model has resulted in differences in the perspective of the issue of digital addiction across disciplines, thereby making it difficult to develop effective intervention strategies. However, despite these definitional challenges, something that cuts across various conceptualizations of digital addiction is compulsive use of digital technologies despite negative consequences.<sup>6</sup> Unlike traditional substance-related addictions, digital addiction is founded on behavioral compulsions that involve excessive and uncontrollable use of digital spaces, often leading to interference with daily functioning, social responsibilities, and interpersonal relationships. The compulsive behavior is typically marked by failure to control screen time, followed by abandonment of social roles, work responsibilities, and emotional relationships, leading to social isolation and relationship tension.

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<sup>5</sup> Gaillard, S. D. M., Olh, Z. A., Venmans, S., & Burke, M. (2021). Countering the cognitive, linguistic, and psychological underpinnings behind susceptibility to fake news: A review of current literature with special focus on the role of age and digital literacy. *Frontiers in Communication*. <https://doi.org/10.3389/fcomm.2021.661801>

<sup>6</sup> Alomary, A. (2015). Technology acceptance model: Understanding user adoption of digital technologies. *Journal of Digital Culture Studies*, 12(3), 45-62.

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Digital addiction needs not be considered an individual disorder but as a social construct phenomenon, deeply rooted in contemporary social structures, cultural practices, and economic systems. The present digital landscape is intentionally designed to maximize user engagement, thus producing patterns of dependency and compulsive behavior through the application of persuasive technologies, algorithmic design, and reward-based reinforcement system.<sup>7</sup> Digital dependency, a key antecedent to addiction, occurs when individuals establish a foundational dependency on digital technologies for daily activities, including work, learning, social interaction, and emotional regulation. This dependency is more than a matter of individual choice; it is an indicator of larger social forces that build digital engagement as necessary for social inclusion. Overall toleration of digital dependency in technologically mediated societies raises significant questions about the erosion of traditional social connections, as human relationships become increasingly dependent on digital communication instead of face-to-face conversation.

Sociologists have always studied the effects of social structures on individual behavior, and the problem of digital addiction can be analyzed from the perspectives of different sociological theories. For example, Durkheim's theory of anomie, which explains the disintegration of social norms in fast-changing societies, is applicable to how digital dependence destroys conventional forms of social interaction. As individuals more and more use digital media for social validation, entertainment, and identity formation, they may feel disconnected from conventional social structures and experience alienation and isolation despite the illusion of hyper-

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<sup>7</sup> Moustafa, A., Bello, A., & Maurushat, A. (2021). The role of user behavior in improving cyber security management. *Frontiers in Psychology*. <https://doi.org/10.3389/fpsyg.2021.561011>

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connectivity.<sup>8</sup> in his theory of liquid modernity, stated that digital technologies amplify the fluidity and instability of human relationships. In this context, people prefer to engage in superficial interactions that may not exist in reality, and digital spaces allow that kind of interaction where they can easily discard their identities, create new identities, and carry multiple identities simultaneously.

The transition from dependency to addiction is a gradual one from functional use to compulsive and maladaptive behavior, where individuals are unable to cease digital interaction even when they know its negative consequences.<sup>9</sup> This process is enabled by the capitalist logic of digital platforms designed to keep users hooked through dopamine-based reward systems, notifications, and infinite scrolling. The attention commodification of digital capitalism amplifies addiction-like practices, where individuals are passive consumers of algorithmically curated content, promoting escapism and social disengagement patterns. Thus, digital addiction is not just a psychological phenomenon but an expression of structural forces influencing human behavior in late modernity.

The Technology Acceptance Model (TAM), researched by Alomary and Woollard,<sup>10</sup> provides a useful explanatory theory of the cognitive underpinnings of digital dependency and addiction. Based on TAM, individuals are more likely to adopt and integrate digital technologies into daily life if they see these technologies as useful and easy to use. In sociological research, however, the model must be understood alongside the impact of digital culture, societal pressures, and economic interests, which together make a considerable contribution to the normalisation of excessive digital

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<sup>8</sup> Bauman, Z. (2000). *Liquid Modernity*. Polity Press.

<sup>9</sup> Alomary, A. (2015). Technology acceptance model: Understanding user adoption of digital technologies. *Journal of Digital Culture Studies*, 12(3), 45-62.

<sup>10</sup> Alomary, A., & Woollard, J. (2015). How is technology accepted by users? A review of technology acceptance models and theories.

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use. The blurring of boundaries between professional and recreational uses of digital media, fueled by the gig economy and working-at-home arrangements, also makes it increasingly difficult to establish productive digital use and compulsive over-engagement. As societies become more digital, the dangers of social isolation, emotional loneliness, and reduced interpersonal relations grow more serious, which highlights the need for a rounded analysis of the structural drivers of digital addiction.

To understand digital addiction, it is necessary to go beyond individual pathology to investigate its larger social, economic, and cultural determinants. Institutionalization of digital interaction—where schools, workplaces, and even love relationships are mediated by screens—implies that digital addiction is not a standalone phenomenon but a mirror of systemic changes in social life. Consequently, there is a need to intervene on a societal level to address digital addiction, including the introduction of digital social policies, fostering digital literacy, and introducing new modes of socialization that make people aware of the social self and the consequences of digital interactions

### **III. The Subtle and insidious psyche-manipulative measures to further the Digital Addiction**

Blanchette examined how online platforms successfully activate the brain's reward system, which is mediated by the release of dopamine.<sup>11</sup> Social media, online games, and streaming services are engaging compulsively in online platforms that use this neurochemical process to their advantage by providing intermittent and unpredictable rewards in the form of likes, comments, achievements, or notifications, thus encouragement. This process

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<sup>11</sup> Gaillard, S. D. M., Olh, Z. A., Venmans, S., & Burke, M. (2021). Countering the cognitive, linguistic, and psychological underpinnings behind susceptibility to fake news: A review of current literature with special focus on the role of age and digital literacy. *Frontiers in Communication*. <https://doi.org/10.3389/fcomm.2021.661801>

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largely replicates reward mechanisms underlying addiction to substances because people are so caught up with digital consumption in ways that resonate deeply with a reward process gone awry in substance use disorder. Additionally, cognitive biases strengthen digital addiction even more by falsifying a person's perception about the risks and implications of hyper-use of digits. Confirmation bias directs people's attention to the information that supports their current actions and makes them likely to ignore the negative effects of excessive screen usage while magnifying its benefits.<sup>11</sup> On the same note, the availability heuristic makes people overestimate normality and acceptability of excess digital use through memories of instances when digital engagement was enjoyable, and thus creating an impression that prolonged use is innocuous or even positive. The final psychological consideration is the influence of emotional control, as people frequently use digital media as an escape from negative emotions like stress, anxiety, or boredom. Studies on the impact of affect on higher-order cognition demonstrate how feelings influence higher-order cognitive processes associated with digital dependency, providing a typical reaction to psychological distress,<sup>12</sup> Loneliness or social anxiety could propel overuse of social media in a quest for approval, while boredom might cause individuals to mindlessly scroll, game, or binge-watch as an escape. The behavior becomes reinforced over time, resulting in a compulsive and habitual use of digital technology that is hard to relinquish, perpetuating the addictive cycle. The interaction between reward-based reinforcement, cognitive distortion, and emotion regulation underscores the complexity of digital addiction as a psychosocial phenomenon in its own right, necessitating the need for an

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<sup>12</sup> I., & Richards, ABlanchette, . (2010). The influence of affect on higher-level cognition: A review of research on interpretation, judgment, decision-making, and reasoning. *None*. <https://doi.org/10.1080/02699930903132496>

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integrated understanding of its psychological processes towards designing adequate interventions and prevention programs.

#### **IV. The Impact of Digital Addiction on Human Relationships: A Teleological Assessment**

Digital addiction has become a deep social phenomenon that seriously detracts from human relationships in different interpersonal settings, undermining the old patterns of communication and interaction. The ubiquitous access and use of digital technology, particularly smartphones and social media, have altered the way individuals connect. Consequently, people start to find virtual alternatives to all types of connections. The shift has contributed to a sense of disconnection and alienation, weakening the physical social relationships and emotional intimacy in all aspects of life because in the virtual interactions, people are not having enough time to invest their energy and time to same people in these platforms people are easy replaceable.

Overuse of digital communication in romantic relationships leads to erosion of meaningful communication over time, replacing face-to-face conversation with technology-enabled, isolated communication. Partners feel emotionally isolated because one or both of them engage in digital content, decreasing opportunities for meaningful dialogue and shared activities. In the long term, this leads to resentment and feelings because one partner reads the other's digital immersion as an indicator of a lack of interest or emotional disengagement. The compulsion to continually check notifications, scroll social media, or partake in digital leisure can also penetrate moments of closeness, degrading the foundation of trust and emotional proximity on which a relationship is established. Also, the ubiquity of digital networks makes it possible for outside influences like internet flirting, access to idealized depictions of relationships, and virtual infidelity potentially to heighten tensions and insecurity within romantic relationships.

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Likewise, addiction to digital life transforms family relationships, bringing with it new dynamics that complicate classical family dynamics and interactions.<sup>13</sup> In families, individuals are inclined to spend more time in virtual interactions rather than face-to-face interactions with their family members, which decreases genuine family interactions. Children are especially prone to being neglected by parents, who are absorbed in their digital media and thus less sensitive to their emotional and development needs<sup>1</sup> (Khan, 2014). This disengagement can encourage isolation among children, impacting their self-esteem, emotional control, and social skills. Adults can find it difficult to sustain close familial relationships, since the preoccupation with digital media diminishes the quantity and quality of family conversations, meals, and activities that traditionally supported family bonding. The domestic digitalization, where members of a household are in the same physical location but are psychically disconnected from each other because of their digital activities, has contributed to what the sociologists have referred to as "networked individualism" a process through which people are more like isolated individuals within a networked digital world as opposed to cohesive family members.

Friendships are also not spared from the ravages of digital addiction, as the character of social interaction increasingly moves towards virtual realms at the cost of face-to-face interactions.<sup>14</sup> Although social networking sites supposedly create connection by facilitating individuals to stay in touch despite geographical distances, they tend to promote "performative sociality" where interactions are stage-managed and virtual as opposed to authentic and affectively enhancing. The propensity to invest in ephemeral,

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<sup>13</sup> Khan, S. (2014). Qualitative research method: Grounded theory. *Canadian Center of Science and Education*. <https://doi.org/10.5539/ijbm.v9n11p224>

<sup>14</sup> Khan, S. (2014). Qualitative research method: Grounded theory. *Canadian Center of Science and Education*. <https://doi.org/10.5539/ijbm.v9n11p224>

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transactional virtual interactions instead of deep, face-to-face relationships reduces the emotional richness of friendships, promoting a passive culture of user engagement instead of active social involvement.<sup>15</sup> In addition, the pervasive character of social comparison in online environments magnifies psychological pain, as people base their self-esteem upon the idealized virtual presentations of other people. This increased self-surveillance may translate into inadequacy, social anxiety, and low self-esteem, further arresting genuine social contacts and perpetuating a cycle of digital dependence.

Khan (2014) and his grounded theory of qualitative research methods offers a priceless window through which the lived experiences of those struggling with digital addiction and its far-reaching consequences on their social relationships may be understood.<sup>16</sup> Grounded theory permits researchers to delve into the subjective aspects of digital dependency and observe the fine ways in which individuals manage the contradiction between digital engagement and belonging. By giving precedence to first-hand accounts, qualitative research using grounded theory can shed light on how digital addiction reconfigures interactional dynamics to enable a richer sociological understanding of life in the digital age.

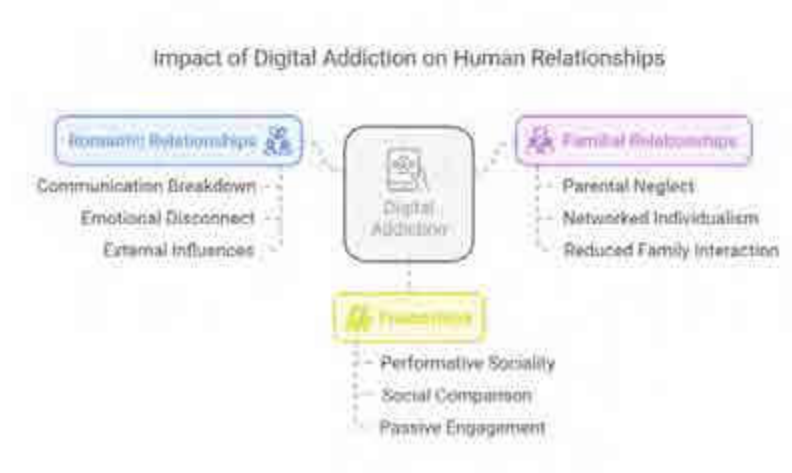
As digital technologies keep evolving and become woven into daily life, their function in determining human relationships will be an ever-essential subject of sociological analysis. Tackling digital addiction not just needs individual self-management but also interventions at a wider societal level to foster "digital well-being" or the interplay between the use of technology and worthwhile

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<sup>15</sup> Khan, S. (2014). Qualitative research method: Grounded theory. *Canadian Center of Science and Education*. <https://doi.org/10.5539/ijbm.v9n11p224>

<sup>16</sup> Khan, S. (2014). Qualitative research method: Grounded theory. *Canadian Center of Science and Education*. <https://doi.org/10.5539/ijbm.v9n11p224>

human interaction. The task is how to regain precedence for real social relationships when digital distractions suffuse all spheres of daily life.



## V. From Digital Dependency to Digital Addiction: A Gradual Transition

Digital addiction is a subtle and multifaceted social process characterized by growing reliance on digital technology for the regulation of emotions, social connection, and fantasy, supported by manipulative digital design.<sup>17</sup> At first, people use digital media because it is perceived as useful and user-friendly, as described by the Technology Acceptance Model,<sup>18</sup> Yet, with increasing engagement, feedback loops, algorithmic rewards, and instant gratification systems trigger compulsive behaviour that is similar to conventional addictions. Modern digital capitalism's economic frameworks also compound the addiction by commodifying users'

<sup>17</sup> Alomary, A. (2015). Technology acceptance model: Understanding user adoption of digital technologies. *Journal of Digital Culture Studies*, 12(3), 45-62.

<sup>18</sup> Alomary, A. (2015). Technology acceptance model: Understanding user adoption of digital technologies. *Journal of Digital Culture Studies*, 12(3), 45-62.

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attention and rewarding extended use,<sup>19</sup> Sociologically, online addiction captures larger trends of "networked individualism" in which virtual interactions replace embodied social relationships, resulting in social fragmentation, affective disconnection, and the loss of true human connections<sup>20</sup> (Castells, 2009). The compulsive desire for online validation gives rise to social comparison, stress, and diminishing mental health, leading to alienation from oneself and an identity crisis (Turkle, 2015). In addition, the normalization of ubiquitous connectivity has dissolved the distinction between being online and offline, so disengagement becomes more challenging (Hassan, 2020). A sociological intervention aimed at critically analysing technological design ethics, economic incentives, and evolving social norms is needed to facilitate wise technology use and shared digital flourishing. Without such efforts, the cycle of digital dependency and social isolation will continue to undermine both interpersonal relationships and broader societal cohesion.

### **VI. Findings and Discussions**

This research indicates that dependency and addiction on digital are intertwined in such a deep way that it becomes sociologically problematic to differentiate between the compulsive addition to digital spaces or the process of conforming to an age where digital presence is the norm for social, economic, and political inclusion. The growing presence of artificial intelligence (AI), social networking, and online labour markets forces people to stay active on digital platforms, leaving one with the question: Are people necessarily addicted, or is digital dependency an inevitable factor in contemporary times?

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<sup>19</sup> Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power*. PublicAffairs.

<sup>20</sup> Castells, M. (2009). *The rise of the network society*. Wiley-Blackwell.

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Sociologically, digital addiction is commonly presented as a destructive influence, causing social isolation, emotional withdrawal, and impoverished interpersonal relationships. Yet this research indicates that all digital addiction may not be destructive to sociability. Those who are highly competent in the digital sphere whether in content creation, digital activism, or e-business—can be seen as addicted but their activity is at the heart of new socialization. The online world has provided a parallel social space in which people create identities, relationships, and professional networks that, although different from the conventional physical interactions, still serve social purposes. Simmel's social distance theory applies here, since online spaces enable constant connection but at the expense of profound, meaningful connections in the real world.

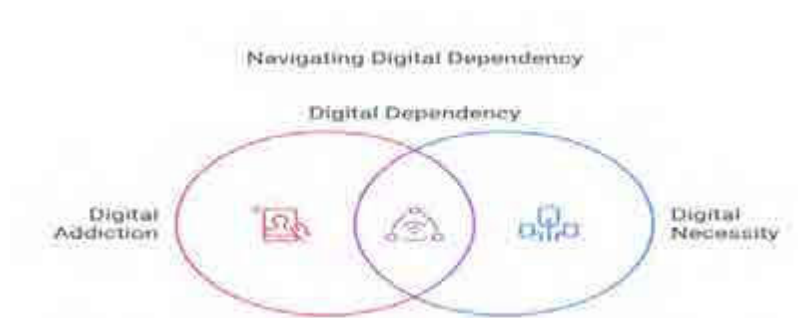
In addition, this study points to a generational transformation in social consciousness and self-definition. The Z generation is steeped in virtual culture, sometimes valuing their virtual social identity more than their actual social position. While prior generations might focus on bodily presence and in-person interactions, young people increasingly get their sense of identity, worth, and community from virtual exchanges. This is consistent with Bauman's theory of liquid modernity, in which relationships are fluid, flexible, and frequently transactional, defined more by online performances than by enduring, stable social obligations.

Even as social structures evolved, physical interpersonal relationships continue to be the foundation of real-life socialization. The growing preponderance for digital socialization has raised apprehensions about individuals losing critical people skills, depth of emotions, and a feel of belonging to the real world. As relationships become more utilitarian engaging in digitally based relations where benefits are to be derived versus creating inherent relationship bonds the cohesion of society is likely to

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drastically change. Durkheim's theory of anomie, a condition of normlessness in changing societies, is important in this context. With digital relationships on the ascendance, there is a possibility of losing the old norms and expectations that define human relationships, and hence social alienation in the real world.

The central sociological question persists: *Is digital dependency simply an adaptive response to a digital age, or does it undermine genuine face-to-face human relationships?* Digital media offer unprecedented opportunities for communication and social advancement, but also potentially undermine the depth and intensity of human bonds. The future of socialization in virtual society versus actual society is uncertain, yet one thing is certain as humans make their online presence a top priority, they risk forgetting about the basic human requirement for in-person interaction, which is not replaceable when it comes to creating deep, meaningful relationships.



### VII. Interventions and Preventative Strategies

Tackling digital addiction involves both individual-level psychological interventions and large-scale sociological strategies for reforming digital culture. While the former targets individual behaviors and coping mechanisms, the latter targets creating awareness, regulating digital spaces, and developing digital

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consciousness the capability to critically engage with digital places and comprehend their wider implications.

At the individual level, motivational interviewing, cognitive behavioral therapy (CBT), and mindfulness-based interventions can enable individuals to become aware of and change maladaptive digital habits.<sup>21</sup> These therapeutic interventions increase awareness, promote responsible technology use, and build resilience to avoid compulsive digital activities. Family therapy is also crucial, as it promotes improved communication and support networks, reducing relational tension due to excessive digital activity. But whereas these bodily interventions enable people to reassert control over their use of technology, they do not confront the wider societal structures that foster digital dependency.

From a sociological viewpoint, the actual problem is not digital dependency itself but digital dependency without consciousness when people use digital places without an awareness of the social, psychological, and ethical implications of their behavior. Digital consciousness entails being aware of the consequence of every digital action, ranging from too much screen time to joining algorithm-driven activity, seeking validation online, and vulnerability to disinformation. The study of cognitive, linguistic, and psychological biases in the dissemination of false news.<sup>22</sup> provides key information on how digital addiction is supported by cognitive distortions and makes people susceptible to manipulative digital settings.

Therefore, one of the most important preventative approaches is to develop digital awareness through education, digital literacy initiatives, and moral technology policy. Increasing awareness of

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<sup>21</sup> Gaillard, S. D. M., Olh, Z. A., Venmans, S., & Burke, M. (2021). Countering the cognitive, linguistic, and psychological underpinnings behind susceptibility to fake news: A review of current literature with special focus on the role of age and digital literacy. *Frontiers in Communication*. <https://doi.org/10.3389/fcomm.2021.661801>

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the dangers of digital addiction, the engineering of persuasive technologies, and the effects of digital capitalism can enable individuals to make educated decisions regarding digital consumption. In addition, governing online platforms to minimize addictive aspects, including infinite scrolling, algorithmic engagement, and overwhelming notifications, is necessary to a healthier digital environment.

Ultimately, the focus is not eradicating digital dependency but ensuring individuals use digital technologies critically and consciously. At the point when people achieve digital consciousness, they become more alert to the fact that their digital behaviors impact their mental health, relationships, and real-life conversations. This adjustment can differentiate useful digital usage and compulsive dependency, leading to more balanced and meaningful use of technology in contemporary society.

### **VIII. Conclusion**

The rise in Digital addiction and Digital dependency is indeed a knotty sociological conundrum. As the thin line of distinction between “*The Necessity of Digital engagement*” and “*Digital addiction*” stands smudged to the extent of eroding the traditional human relationships by furthering emotional detachment, social isolation, commodification of attention.

The study undertaken through the teleological lens also goes to indicate that “*Not all digital dependency be negative and the issue essentially lies in unconscious digital dependency, which furthers the digital engagements with no cognizance of its consequences.*” It is this unconscious engagement, driven by algorithmic reinforcement, persuasive digital design and social validation-seeking which possesses the strength to undermine face-to-face interactions altering the norms of socialization in ways that demand novel comprehension. As, the Socialization process that currently exists is a product of years of trial and error and an outcome of wealth of

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experience. Such being the case, two options spring forth “*To develop a novel set of norms of digital engagement to regulate addiction or To integrate the traditional socialization norms so as to accommodate the digital engagement within existing normative structure to regulate the digital addiction*”. It may be noted that both the above-stated options require the development of a Composite Digital Consciousness which ought to be equivalent to that of Emile Durkheim’s Social Consciousness from which the norms and regulations of any society indeed stems from.

Psychological interventions, such as CBT and mindfulness-based techniques, can help individuals regulate their digital habits, while broader policy measures, digital literacy programs, and ethical technology regulations can create an environment where digital engagement is intentional rather than compulsive. The Z generation, in particular, demonstrates a growing disconnect between real-world social awareness and digital identity management, emphasizing the urgent need to balance virtual socialization with real-world social responsibility.

Ultimately, the goal should not be to reject digital technology but to integrate it meaningfully into human life without compromising authentic social bonds. As society continues to evolve within a digital ecosystem, the challenge remains: How can we embrace digital progress while preserving the fundamental human need for deep, meaningful, and conscious connections in the real world?

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The manuscript must be single-spaced with 1 inch (or 2.54 cm) margins on all four sides in A4 (21.0\*29.7cm) format. The entire paper must be in Calibri font in 11 points having 1.15 line spacing with the exception of the main title, which must be in 14 points and bold. The paper should begin with title followed by the "abstract" (Calibri 10 point font) each of which must be centered.

There should be six key words at the end of the abstract. The abstract should introduce the problem which the researcher undertakes to analyze and discuss in the paper followed by an introduction expounding the research problem and how the paper is structured.

The sub-headings should be numbered in capital Roman numbers and sub-sub-headings should be numbered in small Roman numbers clearly indicating that it is sub part of a sub-heading. The references should be in footnotes. At the end of the paper should be well drawn conclusion based on the discussion in the paper.

Any paper that does not comply with the above instructions will not be sent to the referee for review.

**Acknowledgement:**

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