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With Best Compliments From

Prof. Shahnaz
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CONTENTS

Children's Right to be Forgotten: A Comparative Legal Analysis under EU and Indian Data Protection Laws

M. Asad Malik*
Saif Ali**

Abstract

The digital era subjects children to unprecedented data collection from birth, often initiated by "sharenting" and pervasive online interactions, creating indelible digital footprints. This paper critically examines the "Right to Be Forgotten" (RTBF) as a crucial safeguard for children's privacy, autonomy, and future development within this landscape. It conducts a detailed comparative legal analysis of the RTBF frameworks under the European Union's General Data Protection Regulation (GDPR) and India's evolving data protection regime, notably the Digital Personal Data Protection Act (DPDPA), 2023. The analysis reveals significant divergences: while the GDPR explicitly incorporates a child-centric RTBF under Article 17, India's framework lacks explicit recognition, creating a substantial protection gap. The study explores the ethical dilemmas of digital permanence, the legal complexities of enforcement against global platforms, and the practical challenges of balancing RTBF with freedom of expression and the right to information. It argues that recognizing and implementing a robust, child-specific RTBF in India is not merely a legal necessity flowing from the fundamental right to privacy affirmed in *Puttaswamy*, but an ethical imperative to protect children's evolving identities and dignity. Recommendations include legislative amendments, enhanced institutional mechanisms, guidelines for parental consent ("sharenting"), and promoting digital literacy to empower children within the digital sphere.

Keywords: Right to be Forgotten, Children's privacy, GDPR, DPDPA, Digital footprints, Sharenting.

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*Professor, Faculty of Law, Jamia Millia Islamia, New Delhi.

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

I. Introduction

The contemporary child is a "digital native," inhabiting an online world where personal data is generated from the moment of birth announcements on social media, through educational tracking, health records, and recreational activities.[1] This phenomenon, amplified by parental "sharenting" (sharing children's information online), creates a vast, often immutable, digital footprint long before a child possesses the cognitive capacity to comprehend its implications.[2] The concept of the "Right to Be Forgotten" (RTBF), enshrined most prominently in the EU's GDPR, offers a potential remedy: the ability to have personal data erased, particularly when its continued processing infringes upon fundamental rights like privacy and dignity.[3] However, applying the RTBF to children demands a specialized lens, acknowledging their unique vulnerabilities, evolving capacity for consent, and the profound long-term impact of early digital exposure on identity formation and future opportunities.[4] This paper addresses critical research questions: How do the EU and Indian legal frameworks conceptualize and implement the RTBF, specifically concerning children? What are the comparative strengths, weaknesses, and gaps in protecting children's digital futures? What ethical, legal, and practical challenges hinder

[1]Sonia Livingstone, et.al., *Children's Rights in the Digital Age: A Download from Children Around the World* p. 5 (UNICEF Office of Research – Innocent, 2019), *available at:* https://www.unicef-irc.org/publications/pdf/Childrens-Rights-in-the-Digital-Age.pdf (last visited on July 8, 2025).

[2] Stacey B. Steinberg, "Sharenting: Children's Privacy in the Age of Social Media" 66 *Emory Law Journal* 839 (2017).

[3] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (*General Data Protection Regulation*) [2016] OJ L119/1, art. 17.

[4] Eva Lievens and Valerie Verdoodt, "Looking for needles in a haystack: Key issues affecting children's rights in the General Data Protection Regulation" 34(2) *Computer Law & Security Review* 271 (2018).

effective implementation? What reforms are necessary, particularly in India? Employing a doctrinal and comparative legal methodology, this analysis scrutinizes primary legal sources (statutes, case law, regulations) and secondary scholarship. A comparative approach between the EU, a pioneer in data protection, and India, a rapidly digitizing democracy crafting its framework, is indispensable. It reveals not only regulatory models but also the profound influence of cultural contexts and institutional capabilities on realizing children's digital rights.[5] Understanding this divergence is crucial for developing effective, context-sensitive child data protection globally.

II. Understanding the Right to be Forgotten

The modern RTBF crystallized in the landmark "*Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González*"[6]ruling by the Court of Justice of the European Union (CJEU) in 2014. The Court held that under existing EU data protection law, individuals could request search engines to delist links to personal information that was "inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes of the processing."[7] This judicial recognition was subsequently codified and expanded in Article 17 of the GDPR, formally titled "Right to erasure ('right to be forgotten')".[8] Article 17 grants data subjects the right to obtain the erasure of personal data concerning them without undue delay where grounds apply, such as the data no longer being necessary

[5] Graham Greenleaf, "Global Data Privacy Laws 2023: 157 Laws, but GDPR Dominance" *Privacy Laws & Business International Report* no. 181, p. 3 (2023).
[6] *Google Spain SL, Google Inc.* v. *Agencia Española de Protección de Datos (AEPD), Mario Costeja González* (Case C-131/12), ECLI:EU:C:2014:317, para. 94.
[7] *Ibid.*, para. 94.
[8] GDPR, Art. 17.

for its original purpose, withdrawal of consent (where processing was based on consent), or objection to processing based on legitimate interests.[9] Crucially, the GDPR explicitly acknowledges the vulnerability of children. Recital 38 states that "children merit specific protection... as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data."[10] This translates into Article 8's stringent conditions for child consent and informs the application of Article 17. Philosophically, the RTBF for children draws upon fundamental rights to privacy (*Puttaswamy* in India, Article 8 ECHR/CJEU jurisprudence in the EU) and human dignity.[11] It embodies the concept of a "digital clean slate," recognizing that mistakes or information shared during childhood should not perpetually define an individual's life trajectory.[12] For children, whose identities are in flux and whose capacity for informed decision-making evolves, the RTBF is intrinsically linked to autonomy – the ability to shape one's own narrative free from the unchangeable burdens of past digital traces.[13] Parental control, while necessary for younger children, must be exercised judiciously, avoiding the pre-emption of the child's future autonomy to control their own digital identity.[14]

[9] *Ibid.,* Art. 17(1).
[10] *Ibid.,* Recital 38.
[11] *Justice K.S. Puttaswamy (Retd.)* v. *Union of India*, (2017) 10 SCC 1; Paul De Hert and Serge Gutwirth, "Privacy, Data Protection and Law Enforcement. Opacity of the Individual and Transparency of Power", in Erik Claes, et.al. (eds.), *Privacy and the Criminal Law* p. 80 (Intersentia, 2006).
[12] Jeffrey Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* (Random House, 2000), 8.
[13] United Nations Convention on the Rights of the Child, adopted 20 November 1989, UNTS 1577 (entered into force 2 September 1990), Art. 5.
[14] Steinberg, "Sharenting," 870.

III. Children and the Digital Sphere

Children generate and are subjects of vast quantities of personal data, often passively. Categories include: biometric data (school records, health apps), behavioural data (online browsing, app usage, location tracking), sensitive data (health information, religious practices potentially inferred), and crucially, data generated by parents ("sharenting" – photos, videos, anecdotes shared on social media).[15] This data aggregation begins prenatally and accelerates throughout childhood, creating a detailed digital profile often without the child's knowledge or meaningful consent.[16] Minors face unique vulnerabilities online: a developing prefrontal cortex impacts risk assessment and impulse control, making them susceptible to manipulation and less able to foresee long-term consequences of data sharing.[17] They are also frequent targets for profiling and behavioural advertising.[18] The psychological impact of "digital permanence" is profound. Content intended to be ephemeral can resurface years later, potentially causing significant reputational harm, cyberbullying, or hindering educational and employment prospects.[19] As Danah Boyd argues, the "persistence" of online data fundamentally alters the developmental experience of adolescence, where experimentation and identity exploration are normative but become permanently

[15]World Economic Forum, *Weapons of Mass Distraction: Sharenting and Children's Digital Privacy* p. 10 (2020), *available at* https://www3.weforum.org/docs/WEF_Weapons_of_Mass_Distraction_2020.pdf (last visited on July 8, 2025).

[16] Livingstone, *Children's Rights*, 12.

[17] Laurence Steinberg, "Adolescent Development and Juvenile Justice," *Annual Review of Clinical Psychology* 5 (2009): 55.

[18] Omer Tene and Jules Polonetsky, "Big Data for All: Privacy and User Control in the Age of Analytics," *Northwestern Journal of Technology and Intellectual Property* 11, no. 5 (2013): 256.

[19] danah boyd, *It's Complicated: The Social Lives of Networked Teens* (Yale University Press, 2014), 57.

searchable.[20] Ethically, "sharenting" presents a core dilemma: while often well-intentioned, parents may infringe upon a child's nascent privacy rights and create a digital legacy the child cannot escape.[21] Parental consent, while a legal mechanism under frameworks like the GDPR for younger children, is ethically fraught. Does it truly represent the child's best interests regarding their *future* autonomy over their digital identity?[22] Furthermore, the commercial exploitation of children's data amplifies these ethical concerns, turning childhood experiences into commodities.[23]

IV. RTBF in the EU: Legal and Institutional Framework

Article 17 GDPR provides the most robust legal articulation of the RTBF. For children, its application is significantly influenced by Recital 38 and Article 8 (Conditions applicable to child's consent in relation to information society services).[24] While Article 17 grounds apply universally, processing based on a child's consent (under Article 8(1)) becomes a specific trigger for erasure if the child withdraws that consent.[25] The GDPR does not mandate erasure solely because data relates to a child, but the child-specific provisions inform how controllers assess grounds like "necessity" and "legitimate interests."[26] Data Protection Authorities (DPAs) play a pivotal role. They issue guidance interpreting Article 17 for children (e.g., UK ICO's "Children and the GDPR guidance," French CNIL's guidelines) and handle complaints.[27] The European

[20] *Ibid.*, 11.
[21] Steinberg, "Sharenting," 841.
[22] Lievens and Verdoodt, "Looking for needles," 274.
[23] Tene and Polonetsky, "Big Data," 260.
[24] GDPR, Recital 38, Art. 8.
[25] *Ibid.*, Art. 17(1)(b).
[26] UK Information Commissioner's Office (ICO), *Children and the GDPR Guidance*, Version 1.0, p. 35 (2020), *available at* https://ico.org.uk/media/for-organisations/guide-to-data-protection/key-data-protection-themes/children-and-the-gdpr-guidance-1-0.pdf (last visited on July 8, 2025).
[27] *Ibid*.

Data Protection Board (EDPB) provides consistency through opinions and guidelines.[28] Case law involving minors is developing. While no landmark CJEU case solely on child RTBF exists yet, national courts frequently grapple with it. A notable example is the *Google* v. *CNIL* case (2019), where the CJEU clarified that the RTBF delisting obligation under the GDPR applies primarily within the EU domain extensions, not globally, impacting the reach of child erasure requests.[29] National cases often involve requests by minors or their parents to remove embarrassing content, bullying material, or outdated information from search engines or social media platforms.[30] Enforcement challenges are substantial. Balancing RTBF with freedom of expression (Article 11 EU Charter) and the public's right to information is complex, especially concerning newsworthy events or historical records.[31] The CJEU in *GC and Others v CNIL* (2019) emphasized this balance, requiring a case-by-case assessment considering factors like the data subject's role in public life, the nature of the information, and time elapsed.[32] Technical hurdles persist: ensuring complete erasure across platforms, backups, and third-party republishers ("mirroring") is difficult.[33] Global internet platforms pose jurisdictional enforcement problems.

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[28] European Data Protection Board (EDPB), *Guidelines 05/2020 on Consent under Regulation 2016/679* (May 2020).

[29] *Google LLC* v *Commission nationale de l'informatique et des libertés (CNIL)* (Case C-507/17), ECLI:EU:C:2019:772, para. 72.

[30] E.g., French Conseil d'État decisions on minor RTBF requests against Google/Facebook.

[31] Charter of Fundamental Rights of the European Union (2012/C 326/02), Art. 11.

[32] *GC and Others* v. *Commission nationale de l'informatique et des libertés (CNIL)* (Case C-136/17), ECLI:EU:C:2019:773, para. 57.

[33] Peter P. Swire and Yianni Lagos, "Why the Right to Data Portability Likely Reduces Consumer Welfare: Antitrust and Privacy Critique," *Maryland Law Review* 72, no. 2 (2013): 368.

V. RTBF in India: Gaps and Possibilities

India's journey towards recognizing RTBF, particularly for children, is nascent and fragmented. The foundation was laid by the Supreme Court's landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017)[34], which unequivocally declared the right to privacy as a fundamental right under Article 21 of the Constitution. The Court explicitly referenced the RTBF as an aspect of privacy, stating that "the right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet."[35] However, translating this constitutional principle into a concrete statutory right for children has been inconsistent. The Draft Personal Data Protection Bill, 2019, contained provisions mirroring GDPR Article 17, explicitly mentioning the "right to be forgotten" (Section 20).[36] Crucially, it acknowledged children's vulnerability, proposing higher standards for processing children's data (Sections 16, 35) and implicitly linking this to erasure possibilities. However, this Bill lapsed. Its successor, the Digital Personal Data Protection Act (DPDPA), 2023, marks a significant regression concerning explicit RTBF. While it grants the "Right to Erasure" under Section 12(1), this right is triggered only *after* the primary purpose for data collection is fulfilled *and* if retention is no longer necessary for legal compliance.[37] Unlike the GDPR or the 2019 Bill, it contains *no* explicit grounds based on withdrawal of consent, objections to processing, or crucially, the specific vulnerabilities or

[34] *Justice K.S. Puttaswamy (Retd.)* v. *Union of India* (2017) 10 SCC 1, para. 262.
[35] Ibid., para. 263 (Chandrachud, J., concurring).
[36] The Personal Data Protection Bill, 2019 (India), Sec. 20.
[37] The Digital Personal Data Protection Act, 2023 (Act No. 22 of 2023) (India), Sec. 12(1).

needs of children.[38] The Act mandates stricter obligations for processing children's data ("Verifiable Parental Consent" - Section 9(1), prohibition on harmful tracking/advertising - Section 9(5)), but fails to explicitly connect these protections to an enhanced right to erasure.[39] Judicial recognition of RTBF exists but is limited and inconsistent. Lower courts, particularly High Courts, have occasionally invoked the concept, often relying on *Puttaswamy*, in cases involving removal of personal details from judgments or takedown of defamatory/private content online.[40] However, there is no binding precedent establishing a clear, child-specific RTBF doctrine. Academic commentary overwhelmingly criticizes the DPDPA's omission of a robust RTBF, particularly for children.[41] Pre-DPDPA, the primary legal tool for online content removal was Rule 3(1)(d) & (2) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.[42] These require intermediaries to remove content upon receiving a court or government order, or upon notification of certain unlawful content (defamation, privacy violation, impersonation). While sometimes used as a proxy for RTBF, this mechanism is reactive, focuses on illegality rather than irrelevance/inadequacy, and lacks specific procedures or considerations for children's data. Intermediary

[38]N.S. Ramanujam and V. Sridhar, "India's Digital Personal Data Protection Act 2023: A Missed Opportunity for Children?", *The Wire*, Aug. 14, 2023, *available at* https://thewire.in/tech/indias-digital-personal-data-protection-act-2023-a-missed-opportunity-for-children (last visited on July 8, 2025).

[39] The Digital Personal Data Protection Act, 2023, s. 9(1), (5).

[40] E.g., *Jorawer Singh Mundy* v. *Union of India*, W.P.(C) 3918/2021 (Del HC, 2021); *Vasunnathan v. The Registrar General*, Karnataka HC WP No. 62038/2016.

[41] Ramanujam and Sridhar, "Missed Opportunity"; Alok Prasanna Kumar Sarma, "The Digital Personal Data Protection Act, 2023: A Preliminary Analysis," *Vidhi Centre for Legal Policy*, August 11, 2023, accessed July 8, 2025, https://vidhilegalpolicy.in/research/the-digital-personal-data-protection-act-2023-a-preliminary-analysis/.

[42] The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India), Rule 3(1)(d), 3(2).

liability rules create a complex landscape for enforcing any erasure requests.[43] The absence of a dedicated, independent Data Protection Board of India (DPBI) with robust enforcement powers and clear guidelines on child data erasure further compounds the uncertainty.[44]

VI. Judicial Recognition of the Right to Be Forgotten in India: From Constitutional Principles to Contextual Application

The absence of explicit statutory recognition of the Right to Be Forgotten (RTBF) in India's data protection framework has not precluded its progressive evolution through judicial interpretation. Post the foundational recognition of privacy as a fundamental right in *Puttaswamy*, Indian courts have actively shaped RTBF jurisprudence, particularly in contexts involving dignity, rehabilitation, and juvenile justice. This judicial dynamism represents a critical bridge between constitutional principles and real-world applications, even as legislative gaps persist.

i. Foundational Recognition in Sensitive Cases

The Karnataka High Court pioneered explicit judicial acceptance of RTBF in *V. v. High Court of Karnataka* (2017), directing its registry to anonymize a woman's identity in online court records concerning a prior criminal case.[45] Justice Anand Byrareddy authoritatively declared:

"This is in line with the trend in Western countries of 'right to be forgotten' in sensitive cases involving women in general and highly sensitive cases involving rape or affecting the modesty and reputation of the person concerned."[46]

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[43] Centre for Internet and Society, *Analysis of the Digital Personal Data Protection Act, 2023* (September 2023), 15.
[44] Sarma, "Preliminary Analysis," 12.
[45] *V.* v. *High Court of Karnataka*, 2017 SCC OnLine Kar 424, para 5.
[46] *Ibid.*, para 9.

This landmark ruling established RTBF as a necessary tool for protecting dignity in gender-based violence cases, acknowledging its transnational jurisprudential roots while adapting it to Indian constitutional values.

The Delhi High Court further expanded this right's scope in *Zulfiqar Ahman Khan v. Quintillion Business Media* (2019), recognizing both the "right to be forgotten" and the "right to be left alone" as inherent to personal liberty under Article 21.[47] The court emphasized that uncontrolled digital dissemination of personal information could inflict irreversible harm on an individual's social existence, necessitating judicial intervention to delist irrelevant or anachronistic content.

ii. Extending to Acquittals and Reputational Rehabilitation

In *Jorawer Singh Mundy v. Union of India* (2021), the Delhi High Court confronted the paradox of judicial transparency perpetuating stigma despite acquittal.[48] Directing legal databases to block access to the petitioner's acquittal records in an NDPS case, Justice Pratibha Singh observed:

"Owing to the irreparable prejudice to social life and career prospects... the Petitioner is entitled to protection while legal issues are pending adjudication."[49]

This interim relief acknowledged the *Puttaswamy* principle that digital permanence transforms even exonerating judicial records into lifelong liabilities, underscoring the internet's

[47] *Zulfiqar Ahman Khan* v. *Quintillion Business Media (P) Ltd.*, 2019 (175) DRJ 660, para 22.
[48] *Jorawer Singh Mundy* v. *Union of India*, W.P.(C) 3918/2021 (Del HC), order dated 05.03.2021
[49] *Ibid.*, para 6 (interim order).

unforgiving nature where "preservation is the norm and forgetting a struggle."[50]

iii. Absolute Protection for Juvenile Rehabilitation

The most significant jurisprudential advances emerged in juvenile justice, where courts have interpreted statutory protections as mandating an absolute RTBF. In *Suresh Kumar v. Union of India* (2025), the Rajasthan High Court reinstated a constable terminated for non-disclosure of a juvenile offense, declaring RTBF "absolute" under juvenile protection statutes.[51] Justice Anoop Kumar Dhand held:

"Creation of delinquency records perpetuates embarrassment... adversely impacting future prospects contrary to legislative intent. The State is restrained from seeking such information where Section 24 JJ Act benefits apply."[52]

The court linked Section 24 of the Juvenile Justice Act, 2015 (prohibiting disqualification from convictions) with Rule 14 of the Model Rules, 2016 (mandating record destruction) to establish a comprehensive erasure framework.[53]

The Supreme Court constitutionalized this approach in *Lokesh Kumar v. State of Chhattisgarh* (2025), quashing a police character certificate that disclosed a juvenile conviction.[54] Justices Vikram Nath and Sandeep Mehta affirmed:

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[50] *Justice K.S. Puttaswamy (Retd.)* v. *Union of India* (2017) 10 SCC 1, para 631 (Chandrachud, J.).
[51] *Suresh Kumar* v. *Union of India*, 2025 LiveLaw (Raj) 67, para 11.
[52] *Ibid.*, para 14.
[53] Juvenile Justice (Care and Protection of Children) Act, 2015, Sec. 24; Juvenile Justice Model Rules, 2016, r. 14.
[54] *Lokesh Kumar* v. *State of Chhattisgarh*, 2025 LiveLaw (SC) 245, para 10

"Section 24 carves immunity from stigma to rehabilitate juveniles... Disclosure undermines legislative safeguards irrespective of conviction validity."[55]

The Court issued binding directions prohibiting all authorities from disclosing juvenile records during verifications, recognizing that such disclosures "frustrate the Act's humanitarian object" of reintegration.[56]

iv. Critical Analysis of Judicial Innovation

This jurisprudence reveals three key developments:

i. **Contextual Prioritization**: Courts consistently privilege rehabilitation and dignity over informational transparency in sensitive categories (gender violence victims, acquitted persons, juveniles).[57]

ii. **Statutory Integration**: Juvenile justice provisions (Sections 19/24 JJ Acts + Rule 14 Model Rules) have been interpreted as legislative recognition of RTBF.[58]

iii. **Procedural Gap**: Remedies remain court-centric rather than establishing administrative mechanisms for erasure requests.[59]

Yet, as scholar Arghya Sengupta notes: *"These decisions create islands of protection without bridging to a continental*

[55] *Ibid.*, para 14.
[56] *Ibid.*, para 18.
[57] Aparna Chandra, "Dignity and Data: The Judicial Construction of RTBF," *Indian Law Review* 8, no. 2 (2025): 145.
[58] Vandana Singh, "Juvenile Justice as Stealth Data Protection," *Journal of Indian Law Institute* 65 (2025): 89.
[59] S. Prasanna, "Remedial Gaps in India's RTBF Jurisprudence," *NUJS Law Review* 18, no. 1 (2025): 112.

framework—RTBF remains a judicial remedy rather than a data subject's right."[60]

VII. Comparative Analysis: EU vs India

The divergence between the EU and Indian approaches to children's RTBF is stark:

The GDPR provides an *explicit*, codified, and broadly defined RTBF (Article 17) with specific recognition of children's vulnerability (Recital 38, Article 8) informing its application. India lacks explicit statutory recognition of a general RTBF. The DPDPA's "Right to Erasure" (Section 12) is narrow, triggered primarily by fulfillment of purpose and lacks child-specific triggers or considerations. Reliance rests on the constitutional principle from *Puttaswamy* and intermediary rules, offering fragmented and weaker protection.[61]

The EU boasts a well-established network of independent DPAs with investigative and corrective powers, including imposing fines. GDPR mandates specific procedures for handling erasure requests.[62] India's DPBI is nascent, its powers under the DPDPA remain largely untested concerning erasure requests, especially for children. Enforcement mechanisms under the IT Rules are primarily reactive and tied to illegal content, not the broader RTBF rationale.[63]

GDPR tightly regulates child consent (Article 8), linking withdrawal of consent directly to the RTBF trigger. It empowers older children regarding their data in information society

[60] Arghya Sengupta, "The Judicial Construction of RTBF: Progress Without Architecture," Vidhi Working Paper 2025-07, 12, accessed July 8, 2025 , https://vidhilegalpolicy.in/research/judicial-rtbf-2025/.
[61] Greenleaf, "Global Data Privacy Laws," 7.
[62] GDPR, Arts. 57, 58, 83.
[63] Centre for Internet and Society, *Analysis*, p. 22.

services.[64] The DPDPA mandates Verifiable Parental Consent (VPC) for processing children's data but does *not* explicitly link withdrawal of VPC or the child's later objection to a right to erasure. Control remains largely with parents until 18, with limited mechanisms for the child to assert autonomy over existing data as they mature.[65]

While challenges exist, the GDPR provides a clear legal pathway for children/parents to request erasure from controllers/processors. DPA oversight and the threat of significant fines drive compliance.[66] In India, the lack of a clear RTBF statute, an untested enforcement Board, and reliance on intermediary rules or constitutional writs make practical redressal for children seeking erasure of non-illegal but harmful/irrelevant data complex, costly, and uncertain.[67]

The EU approach reflects a strong historical emphasis on fundamental rights (privacy, data protection) and a precautionary principle.[68] India's digital governance has historically prioritized security, national interest, and economic growth, with privacy rights gaining constitutional traction more recently (*Puttaswamy*). The vast digital divide, diverse socio-economic realities, and the sheer scale of India's population present unique implementation hurdles absent in the more homogenous EU context.[69]

VIII. Challenges and Critiques

Implementing an effective children's RTBF faces significant hurdles globally:

[64] GDPR, Art. 8(1).
[65] The Digital Personal Data Protection Act, 2023, s. 2(5), s. 9.
[66] Jef Ausloos, *The Right to Erasure in EU Data Protection Law* (Oxford University Press, 2020), 210.
[67] Binu Mathew, "Right to be Forgotten in India: A Critical Analysis of Judicial Response," *NUJS Law Review* 13, no. 1 (2020): 68.
[68] De Hert and Gutwirth, "Privacy," 79.
[69] Greenleaf, "Global Data Privacy Laws," 4.

The borderless nature of the internet clashes with territorially bound laws. Securing erasure from multinational platforms, especially concerning data mirrored or cached outside the jurisdiction (e.g., *Google* v. *CNIL* limitation), remains difficult.[70] Determining applicable law and competent authority for cross-border child data erasure is complex.

RTBF inherently conflicts with freedom of expression and the right to information (Article 19(1)(a) in India, Article 11 EU Charter). Where is the line between protecting a child's privacy and erasing matters of legitimate public interest or historical record? Courts in both jurisdictions struggle with this balance, requiring nuanced, context-specific assessments.[71]

True "erasure" is technologically challenging. Data can be replicated ("mirrored"), stored in backups, or exist in decentralized systems like blockchain. Search engine delisting doesn't remove the source content.[72] Ensuring comprehensive deletion across all potential repositories is often practically impossible.[73]

Is forgetting always beneficial? While protecting from harm is paramount, some argue that overcoming past mistakes is part of growth, and complete erasure might hinder accountability or distort personal history.[74] For children, the ethical tension between parental responsibility (including sharing) and the child's future autonomy over their digital identity is profound.[75]

Compliance places significant burdens on data controllers, especially smaller entities. Many children and parents lack

[70] *Google* v *CNIL* (C-507/17), para. 72.
[71] *GC and Others* v *CNIL* (C-136/17), para. 57.
[72] Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (Stanford Law Books, 2010), 105.
[73] Swire and Lagos, "Data Portability," 368.
[74] James C. Wong, "The Right to Be Forgotten: A Canadian Perspective on the Global De-Indexing Debate" 56(4) *Alberta Law Review* 930 (2019).
[75] Steinberg, "Sharenting," 870.

awareness of the RTBF or the procedures to exercise it.[76] Effective RTBF exercise requires understanding digital footprints and rights. Comprehensive digital literacy programs for children, parents, and educators are essential complements to legal rights, empowering proactive management of online identities.[77]

IX. Way Forward and Recommendations

To bridge the protection gap for children in India and strengthen global standards, concrete steps are necessary:

Legislative Reform in India: Amend the DPDPA, 2023 to incorporate an *explicit* "Right to Be Forgotten/Erasure" for children, modelled broadly on GDPR Article 17 but contextualized. Grounds should include withdrawal of parental consent (for younger children), objection by the child (especially as they approach maturity), and data being irrelevant/inadequate/excessive for its original purpose, with a presumption favouring the child's best interests.[78] Define clear procedures for exercising this right.

Child-Specific RTBF Framework: Develop supplementary rules or guidelines under the DPDPA specifically addressing children's RTBF. This should clarify: heightened standards for assessing erasure requests concerning child data; procedures for children to exercise rights directly as they mature (e.g., a mechanism to

[76] European Union Agency for Fundamental Rights (FRA), *Children's Rights in the Digital Environment* p. 45 (Publications Office, 2020), *available at* https://fra.europa.eu/en/publication/2020/childrens-rights-digital-environment (last visited on July 8, 2024).

[77] UN Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, CRC/C/GC/25, para. 63, *available at* https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation (last visited on July 8, 2024).

[78] Lievens and Verdoodt, "Looking for needles," 276.

override prior parental consent); and specific obligations for platforms popular with minors.[79]

"Sharenting" Guidelines: The DPBI, in consultation with child rights bodies, should issue clear guidelines for parents on responsible "sharenting." Emphasize minimizing sharing, using privacy settings, considering the child's future autonomy, and seeking the child's views as they mature. Promote awareness campaigns.

Strengthen Institutional Mechanisms: Ensure the Data Protection Board of India (DPBI) is adequately resourced, independent, and possesses strong enforcement powers, including the ability to impose significant fines for non-compliance with children's data rights, including RTBF.[80]Establish specialized units or expertise within the DPBI focused on child data protection.

Redressal Frameworks: Develop accessible, child-friendly mechanisms for filing RTBF complaints, potentially including simplified online portals and support from designated officers or child rights NGOs. Ensure timely resolution.

Policy Alignment: Ensure India's child RTBF framework aligns with international standards, particularly the UN Convention on the Rights of the Child (UNCRC) principles of the child's best interests (Article 3), evolving capacities (Article 5), and right to privacy (Article 16).

Multi-Stakeholder Approach: Mandate proactive roles for:

Implement robust, accessible mechanisms for child RTBF requests; design privacy-protective defaults for minors; conduct child rights impact assessments. Integrate digital literacy, privacy rights, and online safety, including understanding RTBF, into

[79] UN CRC, *GC 25*, para. 59.
[80] GDPR, Art. 58; Sarma, "Preliminary Analysis," 12.

curricula. Exercise digital responsibility; educate children about online risks and rights; respect their evolving digital autonomy and government should Fund digital literacy initiatives; support research on children's digital experiences; foster international cooperation on cross-border enforcement.

X. Conclusion

This comparative analysis underscores a critical divergence: while the EU GDPR establishes a relatively robust, child-aware RTBF framework, India's DPDPA, 2023, despite recognizing children's vulnerability in processing, fails to explicitly codify or adequately operationalize the RTBF for minors. This leaves Indian children reliant on a patchwork of constitutional principles, intermediary rules, and judicial discretion, creating significant uncertainty and inadequate protection against the long-term harms of digital permanence. The challenges – jurisdictional, technical, and ethical – are substantial in both jurisdictions, demanding ongoing legal evolution, technological innovation, and societal dialogue. However, these challenges cannot justify inaction. The RTBF for children is not merely a legal technicality; it is intrinsically linked to fundamental rights to privacy, dignity, and the development of autonomy. It offers a crucial mechanism for mitigating the unique vulnerabilities children face in the digital ecosystem, allowing them space to grow, make mistakes, and shape their identities without the perpetual burden of unchangeable digital footprints. India must urgently heed the constitutional mandate of *Puttaswamy* and the ethical imperative of the UNCRC by legislating a clear, enforceable, child-specific RTBF. This requires amending the DPDPA, empowering the DPBI, issuing targeted guidelines, and fostering digital literacy. Protecting children's right to a digital future unshackled by their past is not just a legal necessity but a cornerstone of their fundamental well-being in the 21st century. The EU model, while imperfect, provides

valuable lessons; India must now forge its own path, ensuring its vast child population is not left behind in the global effort to safeguard digital childhoods.

Cybercrimes against Women on Social Media: Emerging Threats and Challenges

Muskan Sharma*
Manjula Batra**

Abstract

Social media now plays a significant role in people's daily lives. Furthermore, the United Nations Human Rights Council recognised in 2016 that the right to use the internet has become a human right.[1]. As of the end of March 2023, the Telecom Regulatory Authority of India (TRAI) reported that India had 881.25 million Internet users, an increase from 865.90 million in December 2022, reflecting a quarterly growth rate of 1.77 percent[2]. In recent times, there has been a spurt in the instances of cybercrimes against women through social media platforms, such as, Instagram, Facebook and dating applications, etc. Women's dignity has frequently been threatened by the widespread misuse of social media to spread distorted images of women and content about revenge porn. Cybercriminals threaten and blackmail women with malicious intent for sexual exploitation, defamation, and other purposes by using technology or fake identification (fake ID) on social media. The article examines the diverse forms of cybercrimes perpetrated against women through social media platforms. It also discusses relevant international conventions addressing

* Teaching Research Fellow, School of Law, NorthCap University, Mail Id: muskan22lsd007@ncuindia.edu

**Former Dean & Head, Faculty of Law, Jamia Millia Islamia, New Delhi, Former Director, School of Law, Vivekananda School of Professional Studies (VIPS), affiliated to GGSIPU, Currently, Senior Professor, School of Law, NorthCap University, Mail Id: manjulabatra@ncuindia.edu

[1] 'UN Human Rights Council Resolution on Protection of Human Rights on the Internet a Milestone for Free Speech, Says OSCE Representative' (*Osce.org*2016) <https://www.osce.org/fom/250656> accessed 9 December 2024

[2] Bureau O, 'India's Internet Subscribers Increased to 881.25 million as of March-End: TRAI Report' (*BusinessLine*21 August 2023) <https://www.thehindubusinessline.com/info-tech/indias-internet-subscribers-increased-to-88125-million-as-of-march-end-trai-report/article67219636.ece> accessed 9 December 2024

cybercrime and underscores existing legal loopholes that require attention to effectively prevent such crimes against women.

Keywords: Cybercrimes, Women; Social Media Platforms; Dating applications; Fake ID; Non-consensual Pornography

I. Introduction

The rapid advancement of technology and the widespread adoption of the internet have transformed the world into a global village**,** making communication easier than ever before. Social networking sites, make it possible for people all over the world to be in touch immediately, eradicating geographical boundaries. In line with this technological revolution, India is gradually moving towards a technology-oriented society by exploiting the potential of the internet. Nowadays, the internet is an integral component of contemporary life, deeply rooted in daily activities. With a mere click, users can communicate with individuals across the globe, gain access to information, and interact with the world through various social networking sites. The internet and computers are very beneficial to society as they facilitate connectivity, but they are also subject to be misused as they create opportunities for anti-social elements[3] to exploit the vulnerable individuals, especially women. Moreover, the accessibility of the internet has significantly increased, with numerous free internet zones and public Wi-Fi services available in places, such as, railway stations and parks, primarily initiated by the government.

Today, social media platforms like Instagram, WhatsApp, and dating applications are predominantly utilized, particularly among the younger generation, who have become adept at navigating these digital spaces. According to April 2024 data from

[3] Yadav A, '*Cyber Crime Risk in Free Public WiFi*' India Today, 10 August 2019, available at <https://www.indiatoday.in/mail-today/story/cyber-crime-risk-in-free-public-wifi-1579617-2019-08-11> (last visited 9 December 2024)

Statista[4], women make up 49.2% of Instagram's global audience, the largest share of female users across all social media platforms. Similarly, Snapchat follows closely behind, with 49.1 percent of its user base identifying as female. In contrast, X (formerly Twitter) has a markedly different demographic, with 60.3 percent of its global audience being male. This disparity in user demographics highlights the distinct experiences of women on social media platforms, where they often face increased risks of cybercrime. The crimes that are committed through computer and internet are referred as 'Cybercrime'. In India, the term "cybercrime" is not defined anywhere in any statute. However, according to the Cambridge Dictionary, it can be described as "crime or illegal activity that is done using internet[5]". The advancement of technology has contributed to an increase in cybercrimes, particularly the victimization and objectification of women, posing serious risks to individual security and mental health[6].

As per the "Crime in India" report, there were 65,893 incidents of cybercrime reported in 2022, which is a 24.4% rise from the 52,974 cases in 2021. Crime rate (per lakh population) under this category has increased from 3.9 in 2021 to 4.8 in 2022[7] (Fig. 1.1).

[4] 'Social Platforms: Active User Gender Distribution 2024 | Statista' (*Statista*2024) available at <https://www.statista.com/statistics/274828/gender-distribution-of-active-social-media-users-worldwide-by-platform/#:~:text=As%20of%20April%202024%2C%2049.2,of%20users%20identifying%20as%20women.> (last visited 9 December 2024)

[5] Cambridge Dictionary, 'Cybercrime' (*@CambridgeWords*4 December 2024) available at <https://dictionary.cambridge.org/dictionary/english/cybercrime> (last visited 9 December 2024)

[6] Sharma A and Singh A, '*Cyber Crimes against Women: A Gloomy Outlook of Technological Advancement*' 1 International Journal of Law Management & Humanities (2019)

[7]Mahender Singh Manral and Sinha J, '*24% Rise in Cybercrime in 2022, 11% Surge in Economic Offences: NCRB Report*' The Indian Express (4 December

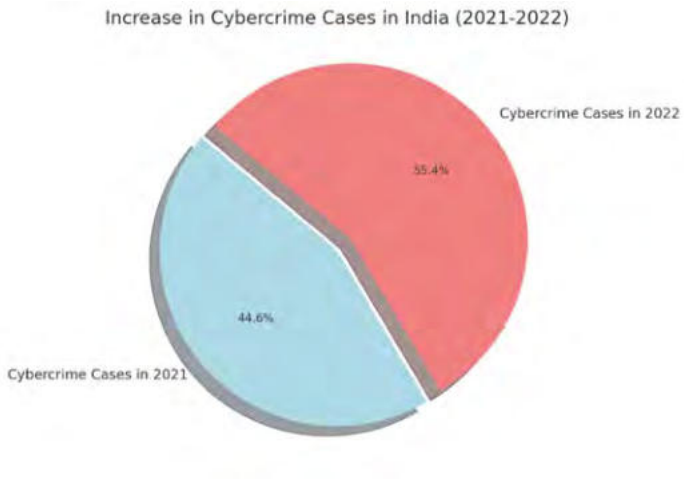

Fig. 1.1 Source: Crime in India Report[8]

According to the NCRB report, a total of 24,420 cybercrime cases were registered, marking a 42.7% increase from 17,115 cases in 2021. The cybercrime rate rise from 15.0 in 2021 to 21.4 in 2022. A crime head-wise analysis revealed that Computer-Related Offenses under Section 66 of the IT Act accounted for the highest number of cybercrimes in 2022, with 12,213 cases, representing 50.0% of the total.[9] (Fig. 1.2).

2023) available at <https://indianexpress.com/article/india/rise-cybercrime-2022-economic-offences-ncrb-report-9053882/#:~:text=India%20saw%20a%20rise%20of,National%20Crime%20Records%20Bureau%20(NCRB)> (last visited 9 December 2024)

[8] Ibid

[9] National Crime Record Bureau, "Report on Crime In India 2022" available at; https://images.assettype.com/barandbench/2023-12/dc0ba053-a1f0-4e6a-a5f8-e7668ddd2249/NCRB_STATS.pdf (last visited 9 December 2024)

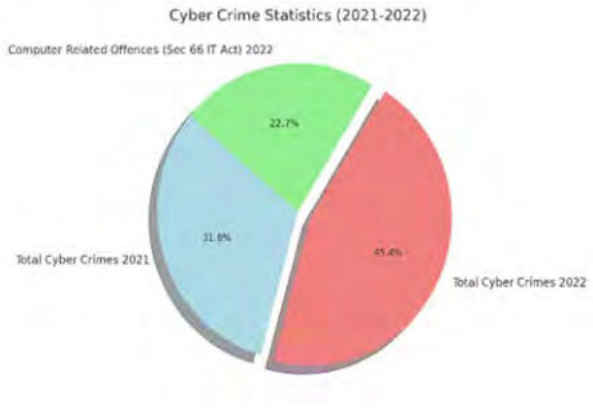

Fig. 1.2, Source: Crime in India Report of 2022[10]

This increased online connectivity has contributed to a rise in technological or digital crimes, including cyberbullying, identity theft through fake profiles, and image morphing. The right to access the internet has been recognized as a fundamental right in *Faheema Shririn' s case wherein* the SC held that "*the right to freedom of speech and expression under Article 19(1)(a) and the right to carry on any trade or business under Article 19(1)(g) using the medium of the internet is constitutionally protected.*[11]". Similarly, in *Anuradha Bhasin v. Union of India*, the Supreme Court (SC) held that, "*the right to freedom of speech and expression and right to practice any profession, or to carry on any occupation, trade, or business over the medium of internet is constitutionally protected under Articles 19(1)(a) and 19(1)(g) of Constitution of India*".[12] These judgments collectively underscore the notion that there are no boundaries to the use of the internet, making it vital for safeguarding individual privacy, particularly of women. Therefore, it becomes crucial that the access to internet is

[10] *Ibid*
[11] Faheema Shirin v. State of Kerala AIR 2020 Ker 35
[12] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

utilized for the betterment of the society rather than be used for activities that jeopardize the safety and security of women. Thus, the internet should serve as a tool for empowering women rather than be a medium for harming them.

In India, while the Information Technology Act of 2000 (IT Act) provides the primary legal framework for addressing digital offenses and regulating electronic transactions, it falls short when it comes to gender-specific provisions. The Act lacks tailored measures to address the distinct forms of cybercrimes that disproportionately target women, such as online harassment, cyberstalking, and the distribution of non-consensual pornography. This legislative gap leaves women particularly vulnerable in the digital space, where offenders can easily exploit anonymity to perpetuate harm without ever having direct contact with their victims. The absence of a robust legal mechanism to protect women in cyberspace has become a critical issue, especially as social media platforms increasingly serve as conduits for privacy violations and malicious activity. The impersonal nature of cybercrime, where physical proximity between the victim and offender is often irrelevant, exacerbates the challenge of ensuring safety in the digital realm. As a result, there is a pressing need for more comprehensive and gender-sensitive laws that not only safeguard women's privacy but also deter potential offenders from exploiting the loopholes in existing legislation. In a digital age where personal data can be weaponized, addressing this gap is essential to creating a safer online environment for women in India and around the world.

II. International Framework For Combatting Cybercrimes

The international framework for combatting cybercrimes committed against women through social media is still evolving, with various countries and conventions working towards addressing the issue. Although there is no express international

legal framework that specifically regulates cybercrimes, recommendation 35 of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, defines that the term *violence against women extends beyond the physical space to include "technology-mediated environments," thereby addressing online and ICT-facilitated digital violence against women*[13]". In recent times, there are some international conventions, such as, the Istanbul Convention 2011 and the Budapest Convention 2004, that control cybercrimes against women by defining the term as violence against women in digital or online space. Both these conventions are discussed below:

i. Istanbul Convention

The Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence, established by the Council of Europe[14] is a legally binding document in Europe to provide a comprehensive framework for addressing digital violence against women and domestic violence. According to Article 3(a) of the Istanbul Convention, "*violence against women"* is defined as *"any gender-based act that causes or is likely to cause physical, sexual, psychological, or economic harm or suffering, including threats, coercion, or arbitrary deprivation of liberty, whether in public or private life*[15]". This definition

[13] Reyhanne N and others, '*Protecting Women and Girls from Cyber Harassment: A Global Assessment of Existing Laws Global Indicators Briefs No. 18 Public Disclosure Authorized Public Disclosure Authorized Public Disclosure Authorized Public Disclosure Authorized*' (2023) <https://documents1.worldbank.org/curated/en/099456506262310384/pdf/IDU0c7c3a5a70b56a04b250a31b0b32b8f5cd856.pdf> (last visited 9 December 2024)

[14] 'PROTECTING WOMEN and GIRLS from VIOLENCE in the DIGITAL AGE' https://rm.coe.int/the-relevance-of-the-ic-and-the-budapest-convention-on-cybercrime-in-a/1680a5eba3 (last visited 9 December 2024)

[15] The Library of Congress, 'European Union: Istanbul Convention Enters into Force' (2015) available at <https://www.loc.gov/item/global-legal-

underscores the Convention's recognition of violence against women as a form of discrimination and a violation of human rights.

To ensure the implementation of the convention, Article 1, Paragraph 2 of the convention creates a dedicated mechanism *Group of Experts on Action against Violence against Women and Domestic Violence* (GREVIO) ensuring the implementation of the convention's provisions[16]. In the same context, Article 69 of Istanbul Convention authorizes the GREVIO to provide general recommendations for the implementation of the Convention. During its 21st Plenary Meeting, GREVIO decided to focus its first general recommendation on the digital dimension of violence against women[17]. On October 20, 2021, GREVIO introduced General Recommendation No. 1, that highlights the digital facets of violence against women. This broader interpretation includes coercion, non-consensual sharing of images or videos, threats of rape, sexualized bullying, online sexual harassment, impersonation, online stalking (including via the Internet of Things), as well as psychological and financial abuse enabled by digital tools[18].

The Convention's provisions, while not explicitly addressing digital violence, are designed to adapt to emerging forms of abuse. Article 2, in particular, reflects the drafters' intention to address violence against women within a broad and evolving framework, as reinforced by GREVIO's recommendations[19]. The recommendation advocates for measures to prevent perpetrators

monitor/2023-10-10/european-union-istanbul-convention-enters-into-force/?loclr=ealln> (last visited 9 December 2024)

[16] *Ibid*

[17] COE, *'GREVIO - Istanbul Convention Action against Violence against Women and Domestic Violence (*2014) available at <https://www.coe.int/en/web/istanbul-convention/grevio> (last visited 9 December 2024)

[18] *Ibid*

[19] Supra Note 10

from interfering with a woman's ability to access, use, and maintain economic resources without her consent, including controlling bank accounts and financial activities through online banking[20]. Additionally, GREVIO emphasizes the importance of the integration of digital literacy and online safety for women into formal education curricula at all levels and emphasizes training for relevant stakeholders, such as, law enforcement agencies, judicial members, and healthcare providers.

Notably, several provisions of the Istanbul Convention regulate the digital space. For instance, Article 40[21] of the convention protects a person from sexual harassment. The relevant article clearly prohibits "*any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment*[22]". Similarly, Article 34 addresses stalking, explicitly extending its scope to digital context[23]. The explanatory report[24] to

[20] COE, '*Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)*' available at https://rm.coe.int/grevio-rec-no-on-digital-violence-against-women/1680a49147 (last visited 9 December 2024)

[21] Article 40 of Istanbul Convention, define "Sexual Harassment" as "Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction."

[22] Meyersfeld BC, '*The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*' 51 International Legal Materials (2012) available at <https://www.jstor.org/stable/10.5305/intelegamate.51.1.0106> (last visited 9 December 2024)

[23] Article 34 of Istanbul Convention, "Stalking" defined as "Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised"

[24] Supra Note 22

the Convention clarifies that "the pursuit of any active contact with the victim through any means of communication, including modern communication tools and ICTs" constitutes unwanted contact under this provision. This ensures that online stalking and harassment are recognized as serious violations under the Convention. In nutshell, the Istanbul Convention, through its broad definition of violence against women and GREVIO's interpretative recommendations, provides a robust framework for addressing both traditional and digital forms of abuse.

ii. Budapest Convention

The Budapest Convention, formally referred as the "Council of Europe Convention on Cybercrime" considered as the first and most significant international treaty with legally binding provisions regarding cybercrime and electronic evidence. In November 2001, the Committee of Ministers of the Council of Europe endorsed the convention and its explanatory report. It was opened for signatures in Budapest and became effective on July 1, 2004. By June 2021, 66 countries had ratified the convention[25]. The convention primarily seeks to harmonize the domestic criminal substantive law elements related to offenses and associated provisions in the realm of cybercrime[26]. It aims to grant necessary powers to officials under domestic criminal procedure law for the investigation and prosecution of these offenses, as well as other crimes facilitated by computer systems or involving electronic evidence. Additionally, it strives to create a swift and effective framework for international cooperation[27]. The Cybercrime Convention Committee (T-CY)[28]

[25] Supra Note 10
[26] Ibid
[27] COE, 'Protecting Women and Girls from violence in the Digital Age' available at https://rm.coe.int/the-relevance-of-the-ic-and-the-budapest-convention-on-cybercrime-in-a/1680a5eba3 (last visited 9 December 2024)
[28] *Ibid*

acts as a representative of the convention's signatory governments and guarantees that the Budapest Convention is implemented effectively. According to Article 46 of the Convention, the Committee's consultation seeks to encourage the effective use and implementation of the Convention, promote the exchange of information, and consider possible future amendments[29].

The Budapest Convention covers various computer-related offenses and its additional protocols, the First and Second Additional Protocols, which aim to enhance cooperation and disclosure of electronic evidence in criminal investigations, with a focus on computer systems. The Convention requires parties to enhance their domestic criminal procedural laws and strengthen criminal justice capacities to secure electronic evidence, support international cooperation, and facilitate the investigation and prosecution of cybercrime and offenses involving electronic evidence.

The First Additional Protocol to the Convention on Cybercrime targets racist and xenophobic crimes that happen online. It was approved by the Committee of Ministers of the Council of Europe in November 2002 and came into effect on March 1, 2006. By June 2021, 33 countries had signed this protocol. The convention recognizes that while computer systems help with communication and free speech, they can also be used to spread racist and hateful content. Therefore, it requires participating countries to make such activities illegal.

The Second Additional Protocol to the Budapest Convention was adopted in September 2017, to address issues of enforcement of law related to online crimes and to improve cooperation on cybercrime and digital evidence. Electronic evidence is essential

[29] Cybercrime, '*Cybercrime Convention Committee*' (2014) available at <https://www.coe.int/en/web/cybercrime/tcy> (last visited 9 December 2024)

for any kind of criminal investigation, not just cybercrimes. Although geographical borders restrict the authority of criminal justice authorities, offenders, victims, and electronic evidence may be scattered over several jurisdictions, and it is frequently unclear which laws apply in each case and how and from whom to get such evidence. This has an adverse impact on the rule of law and governments' duties to safeguard citizen's safety online.

The purpose of the above additional protocols is to improve cooperation on cybercrime and the collection of digital evidence. They provide more resources to help authorities to work together more effectively through mutual assistance and other forms of collaboration[30]. These protocols also allow direct cooperation between law enforcement agencies, service providers, and other organizations that have important information needed to identify cybercriminals. Additionally, they ensure faster action in emergency situations, especially when there is an immediate threat to someone's life or safety[31].

It is important to note that India has chosen not to join the Budapest Convention on Cybercrime and the Istanbul Convention on Preventing and Combating Violence Against Women due to concerns about national sovereignty and the euro-centric nature of these agreements[32]. Further, India believed that its existing laws are sufficient to address gender-based violence. The Budapest

[30] "Council of Europe, '*Enhanced Co-Operation and Disclosure of Electronic Evidence: 22 Countries Open the Way by Signing the Second Additional Protocol to the Cybercrime Convention*' (13 May 2022) available at <https://www.coe.int/en/web/cybercrime/second-additional-protocol/-/asset_publisher/isHU0Xq21lhu/content/opening-coecyber2ap> (last visited 9 December 2024)

[31] Ibid

[32] Testbook, *Budapest Convention: Overview, Current Issues & India's Stand*' (2023) available at <https://testbook.com/ias-preparation/budapest-convention-sansad-tv-prespective> (last visited 9 December 2024)

Convention requires countries to share data with foreign law enforcement agencies, which India fears could affect its control over domestic law enforcement and data security[33]. Therefore, researchers submit that India should reconsider its stance and become a part of these conventions, especially given the evolving nature of cybercrimes and the increasing need for global cooperation. India's legal framework may struggle to keep pace with emerging threats such as deepfake technology, cyberstalking, identity theft, and AI-driven fraud. By joining the Budapest Convention, India could strengthen its legal capacity, access advanced forensic tools, and collaborate with international agencies to combat cyber threats more effectively. Similarly, becoming part of the Istanbul Convention would enhance India's commitment to combating violence against women, especially in the digital space.

III. Cybercrimes Through Social Media Platforms

A social media platform is an online service or website that allows users to create, share, and engage with content, while also facilitating connections with other users[34]. It is submitted that the technology has been used as a double edge sword, providing benefits to express themselves through social media platforms like Facebook and Instagram, while at the same time it is also used by cybercriminals as a medium for the commission of cybercrimes against women. This dual nature of technology poses a huge challenge for security and the law enforcement agencies.

There are various instances where women are tormented by these social media sites. For instance, a 19-year-old accused, S.

[33] Ibid

[34] Investopedia, '*SocialMedia: Definition, Importance, Top Websites and Apps*' (2024) available at <https://www.investopedia.com/terms/s/social-media.asp#:~:text=Social%20media%20is%20digital%20technology,shares%2C%20comments%2C%20and%20discussion> (last visited 9 December 2024)

Jishnu Kirthan Reddy, set up a fake Instagram account (false ID) under a girl's name and used it to blackmail and trap numerous ladies into sending him their personal photos and videos[35]. The victim's mother filed a complaint; the police registered a case under the POCSO Act. During investigation led by Inspector Palle Padma and supervised by DCP (Cybercrimes) Shilpavalli, it was discovered that Jishnu attempted to deceive the victims by creating a false sense of intimacy during conversations. He manipulated them into sharing their images and videos, later threatening to put their seductive photos on social media if they refused to provide him more photos. Finally, the accused was arrested by the police officials. In another case, which was reported in the *Hindustan Times* on August 2022, a 20-year-old girl was cyberstalked and abused on Instagram. She complained to the administrator of the Instagram Page, stating that on July 29, 2022, the anonymous page adminintrator shared a video of her with two friends. She further claimed that the accused used derogatory words/language and demanded personal information, which left her mentally distressed.[36] Further, in a case reported by *Times of India* on November 2023, a 32-year-old man allegedly created a fake Instagram account of 24-year-old woman working in IT company. He also posted obscene images and videos of the woman on Instagram platrform. On February 7, 2023, the woman filed a complaint to cybercrime police, claiming that her phone number

[35] DC Correspondent, '*Hyderabad: Man Held for Posing as Girl on Insta, to Trap Girls*' Deccan chronicle, (3 January 2024) available at <https://www.deccanchronicle.com/nation/crime/030124/hyderabad-man-held-for-posing-as-girl-on-insta-to-trap-girls.html> (last visited 9 December 2024)

[36]HT Correspondent, '*Instagram Page Admin Booked for Cyber Stalking, Bullying Woman*' Hindustan Times (10 August 2022) available at <https://www.hindustantimes.com/india-news/instagram-page-admin-booked-for-cyber-stalking-bullying-woman-101660115891264.html> (last visited 9 December 2024)

was shared in the fake Instagram profile along with her morphed photos that had been uploaded by an unknown user[37].

In India, 'live-in relationships' are becoming more common as a simple alternative to marriage, as the institution of marriage brings with it numerous duties and responsibilities which the youth of today shirk from accepting. In the case of *D. Velusamy V. D. Patchaiammal*[38], the Supreme Court gave a detailed interpretation of the concept of a 'live-in relationship' as recognised under the Protection of Women from Domestic Violence Act of 2005 (PWDV Act). Nowadays, men are using technology in taking obscene pictures of their live-in partner and posting them on social media.

In a case reported by the Deccan Herald[39], a couple from Vellore, Tamil Nadu had been in a relationship since class 10th and had planned to marry. When the female partner saw that her private photos were posted on Telegram, Instagram, and other social media sites, she reported the matter to the police and case was registered under section 420 (cheating and dishonestly inducing delivery of property) of the Indian Penal Code (now Section 318 of Bhartiya Nyaya Sanhita of 2023) and under the relevant provision of Information Technology Act. The police directed the social networking sites to remove the alleged photographs and proceeded with investigation to conduct an inquiry to find out the name of the

[37] A Subburaj, '*Tamil Nadu Man Arrested for Uploading Obscene Photos of His Relative Women on Instagram*' The Times of India, (9 November 2023) available at <https://timesofindia.indiatimes.com/city/coimbatore/tamil-nadu-man-arrested-for-uploading-obscene-photos-of-his-relative-women-on-instagram/articleshow/105093288.cms> (last visited 9 December 2024)

[38] D. Velusamy V. D. Patchaiammal (2010) 10 SCC 469

[39] PTI, '*Man Held for Uploading Private Pictures of Live-in Partner on Social Media Platforms*' Deccan Herald (11 October 2023) available at <https://www.deccanherald.com/india/tamil-nadu/man-held-for-uploading-private-pictures-of-live-in-partner-on-social-media-platforms-2721550> (last visited 9 December 2024)

account holder. After investigation, it was discovered that the account holder was none other than her boyfriend. The defendant confessed to the crime and showed the shared altered images of his friends and family on social media. It has been observed that social media platforms knowingly or unknowingly have created a fertile ground for the commission of cybercrimes against women. The most common cybercrimes committed against women in digital space have been discussed below: -

i. Cyber Stalking

The phenomenon of stalking emerged in the USA in the 80s[40]. The initial concern was media monitoring and harassment of film stars due to their popularity, who also became victims of their own fan obsession. Marilyn Pilon defines "*stalking as a deliberate, malicious, and repeated following of a person and bothering thereof*[41]." Cyberstalking is developed as a new form of cybercrime due to internet accessibility. The Indian Penal Code of 1860 (now refereed as the Bhartiya Nyaya Sanhita of 2023) includes a section on cyber stalking[42], that was added after the 2013 Delhi gang rape case (Nirbhaya Case)[43]. This section covers both traditional stalking and newer forms of online harassment. It states that a man who repeatedly contacts or monitors a woman's use of the internet, email, or other electronic communication is guilty of stalking. Additionally, section 67A of the Information Technology Act of

[40] Research Gate, *Cyber Stalking: Technological Form of Sexual Harassment*' (2019) available at <https://www.researchgate.net/publication/339140114_Cyber_Stalking_Technological_Form_of_Sexual_Harassment> (last visited 17 December 2024)

[41] Canada, '*A Review of the Socio-Legal Literature - a Review of Section 264 (Criminal Harassment) of the Criminal Code of Canada*' (*Justice.gc.ca*2024) available at <https://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/wd96_7-dt96_7/p2.html> (last visited 17 December 2024)

[42] Section 78, The Bhartiya Nyaya Sanhita of 2023

[43] Mukesh & Anr v. State for NCT of Delhi & Ors (2017) 6 SCC 1

2000 states that any person using social media to broadcast obscene information about a victim is guilty of stalking. In the *Priyadarshini Mattoo case*[44], the victim, an aspiring lawyer and studying at the prestigious Delhi University, became friendly to the accused, Santosh Kumar Singh, who was her senior at the same institution. From the moment he met her, Santosh Singh became infatuated with her beauty and persistently made indecent advances. Despite her family filing a First Information Report (FIR) against him, he continued to stalk her relentlessly. Tragically, her body was later discovered, strangled at her uncle's residence. An autopsy report revealed that she had been raped before being murdered, and Singh was the prime suspect. However, due to his influential family background in Delhi, where the crime occurred, he was granted parole in 2012, which remains in effect[45].

There are many instances today which show cyberstalking against women is widely prevalent on social media platforms. According to a report written in India Today[46], a 30-year-old man from Delhi, Rizwan Ansari, was arrested by the Delhi Police for cyberstalking and threatening a woman on Facebook. He was accused of using abusive language against her and also threatened to kill her if she refused to respond to his advances. The case came to light when Amit Kumar (husband of the female victim) filed a

[44] Santosh Kumar v. State through CBI (2010) 9 SCC 747

[45] Monday, '*Glorification of Stalking in Bollywood*' available at <https://www.mondaq.com/india/broadcasting-film-tv-radio/800382/glorification-of-stalking-in-bollywood> (last visited 17 December 2024)

[46] Haider T, '*Delhi Police Nabs Cyber Stalker for Harassing, Issuing Death Threats to Woman*' India Today (26 July 2022) available at <https://www.indiatoday.in/cities/delhi/story/delhi-police-nabs-cyber-stalker-harassing-issuing-death-threats-woman-1980062-2022-07-26> (last visited 17 December 2024)

complaint on May 11, 2022, on the National Cybercrime Reporting Portal (NCRP). He reported that Ansari had been harassing his wife, pressuring her to talk to him, and threatening her life if she ignored him. Along with cyberstalking, Ansari was also accused of making harassing phone calls and using offensive language. During the investigation, he admitted that while browsing Facebook, he came across the victim's profile and sent her a friend request in 2018. After she accepted, they started chatting. One day, the victim stopped communicating with him when he asked for her address and secretly took photos of her. In response, Ansari threatened to share her photos and their conversations with her family and friends on Facebook. In another case reported by the Hindustan Times in 2022[47], the Hyderabad Police's Cyber Crime Unit registered a criminal case against the administrator of an Instagram page for allegedly cyberstalking and harassing a 20-year-old woman on the platform. According to the victim's complaint, the page's administrator posted a video of her with two friends on July 29, 2022, and repeated the act two days later. The woman stated that the accused used abusive language and demanded personal information, leading to severe distress and emotional trauma.

ii. Non-Consensual Porn

Non-consensual pornography is a heinous crime that involves sharing sexually explicit photos or videos without the consent of the individual depicted[48]. It can often be referred as

[47] HT Correspondent, '*Instagram Page Admin Booked for Cyber Stalking, Bullying Woman*' Hindustan Times (10 August 2022) available at <https://www.hindustantimes.com/india-news/instagram-page-admin-booked-for-cyber-stalking-bullying-woman-101660115891264.html> (last visited 17 December 2024)

[48] 'Cyber Violence against Women and Girls' (*European Institute for Gender Equality)* 8 November 2017 available at <https://eige.europa.eu/publications-

"revenge porn," or "non-consensual pornography" and it involves the distribution of intimate or sexual images or videos—whether real or fabricated—without the person's permission, constituting a serious form of image-based sexual abuse. As per the Merriam-Webster dictionary, 'revenge porn' is "sexually explicit images of a person posted online without that person's consent, especially as a form of revenge or harassment[49]." Mary Anne Franks, a Law Professor at the University of Miami, claims that the term "revenge porn" is misleading and that "non-consensual pornography" is more accurate[50]. Revenge porn videos and live web can have a huge market in India and abroad[51]. This form of abuse has seen a disturbing rise, particularly exacerbated by the increased use of social media during the pandemic. During that period, technology rapidly advanced, the threat of original images being hacked and misused had also increased[52]. Since then, hackers have been using advance tools like Wi-Fi Pineapples or Remote Access Trojans (RATs) to access private photos without consent. Once the pictures are shared online, they can spread worldwide, including in countries like India. This easy access allows criminals to misuse these images for harmful purposes, such as creating revenge porn or non-consensual pornography. Moreover, the images which are

resources/publications/cyber-violence-against-women-and-girls?language_content_entity=en> (last visited 17 December 2024)

[49]'Merriam-Webster Dictionary' available at <https://www.merriam-webster.com/dictionary/revenge%20porn> (last visited 17 December 2024)

[50] India Law Office, 'Revenge Porn or Non-Consensual Pornography' available at <https://www.indialawoffices.com/legal-articles/revenge-porn-or-non-consensual-pornography> (last visited 17 December 2024)

[51] Law Punch, '*Revenge Porn Is One Type of Cyber Crime - LawPanch*' (10 October 2020) available at <https://lawpanch.com/revenge-porn-is-one-type-of-cyber-crime/> (last visited 17 December 2024)

[52] Pandya A and Pragya Lodha, '*Social Connectedness, Excessive Screen Time during COVID-19 and Mental Health: A Review of Current Evidence*' 3 Frontiers in Human Dynamics (2021)

already on social media platforms can be easily edited, shared, or used to harm victims, often causing lasting damage. In this regard, Prashant Mali, a Bombay High Court Lawyer and Cyber Expert states that "clips are frequently used by blackmailer to extort money and seek sexual favours from victims and their families[53].

The case of *State of Tamil Nadu v. Dr. Prakash*[54] was the first prosecution initiated under the IT Act. This case dealt with a serious scandal that pertained to the production, circulation, and selling of pornographic material, in convenience with a medical doctor who was identifies as the mastermind behind the scandal. Dr. Prakash was accused of creating and distributing indecent photos and videos showing sexual acts which was shared with 23 nations. This illegal operation had various consequences, particularly against young girls. The scandal came to light when Ganesh, presenting himself as a victim of the doctor (Dr. Prakash), lodged a complaint with the municipal police. As a result, two different cases were filed, first was under the Information Technology (IT) Act, and the other directly against Dr. Prakash. During the court proceedings in SC, Justice R. Radha convicted four people involved in the cyber pornography racket. Dr. Prakash, being one of the main accused, was penalized Rs. 1.27 lakh, and his associates—Saravanan, Vijayan, and Asir Gunasingh, were each penalized with Rs. 2,500. That case brought into focus the seriousness of offenses under Section 67 of the IT Act. The relevant section imposes a maximum sentence of five-year imprisonment on first conviction and for a repeated offense the punishment may go up to 10-year imprisonment along with a fine of Rs. 2 lakhs.

[53] Ibid
[54] State of Tamil Nadu v. Dr. Prakash AIR 2002 SC 3533

In the case of the *State of Maharashtra v. Vijay Manohar Tiwari*[55], the issue was related to sending vulgar text messages on mobile devices. The woman in this case filed a police complaint after the accused sent offensive text messages to her on phone. The court observed that Section 66A of the Information Technology Act of 2000 makes the sending of vulgar messages via mobile device illegal. This case is notable because it was one of the first in India where a person was found guilty for transmitting offensive messages under Section 66A of the IT Act.

In the landmark judgement of *West Bengal v. Animesh Boxi*[56], the accused was in an intimate relationship with the victim and obtained objectionable pictures of her when they were in a relationship. The accused asked for those pictures after promising to marry in the future, subsequently the victim of the accused had a breakup. The accused then uploaded pictures and videos of the victim on a pornographic site, bearing her and her father names. As a result, the accused was convicted under Sections 354, 354A, 354C, and 509 of the Indian Penal Code, 1860, in conjunction with Sections 66E, 66C, 67, and 67A of the Information Technology Act, 2000. Further, the session court of Tamluk, West Bengal, has an alleged imprisonment of five years and on the accused with a fine of Rs 9000 for uploading the objectionable and private pictures of the victim without her consent. In the same case, the session court directed the state government to treat the victims of 'revenge porn' as rape survivors and to provide the victim with appropriate compensation.

In the case of *Subhranshu Rout V. State of Odisha*[57], the informant and the petitioner were romantically involved and were

[55] State of Maharashtra v. Vijay Manohar Tiwari Crl. No. 6 of 1994
[56] West Bengal v. Animesh Boxi C.R.M. No. 11806 of 2017
[57] Bhumika Indulia, '*Orissa HC | Read How High Court Emphasised the Need of "Right to Be Forgotten" in Cases of Objectionable Photos and Videos of*

both classmates and villagers. One day, when the informant was alone at home, the petitioner took advantage of the situation, went to her house, and raped her. He recorded the crime on his phone and used it to blackmail her, threatening to kill her and share the photos and videos online if she told anyone, including her parents. The petitioner continued to exploit her by forcing her into having a sexual relationship with him. When the informant finally told her parents about the abuse, the petitioner created a fake social media account in her name and uploaded the explicit videos and photos to further harm and traumatize her. Even though the informant lodged an FIR, the police were unable to take proper action, exposing flaws in the system. When the case reached court, the Hon'ble Orissa High Court refused to grant the petitioner bail, stressing the importance of the 'right to be forgotten,' which refers to permanently deleting such photos and videos from the internet, and emphasized that the petitioner violated the victim's right to privacy[58].

Thereafter, as per the report of *The News Minute* in 2016[59], Rupesh Banda, 27-year-old, met Ranjana (name changed), while they were studying in an engineering college in Andhra Pradesh. They fell in love with each other, but their relationship ended after graduation. In 2016, Rupesh began blackmailing Ranjana, now a

Victims on SocialMedia | SCC Times (7 December 2020) available at <https://www.scconline.com/blog/post/2020/12/07/orissa-hc-read-how-high-court-emphasised-the-need-of-right-to-be-forgotten-in-cases-of-objectionable-photos-and-videos-of-victims-on-social-media/> (last visited 17 December 2024)

[58] LEXPEEPS editor, '*Subhranshu Rout @ Gugul v State of Odisha - Lexpeeps*' available at <https://lexpeeps.in/subhranshu-rout-gugul-v-state-of-odisha/> (last visited 17 December 2024)

[59] Staff T, '*Hyderabad Man Arrested in Revenge Porn Case, Where Does India Stand on Legislation?*' The News Minute (4 July 2016) available at: <https://www.thenewsminute.com/news/hyderabad-man-arrested-revenge-porn-case-where-does-india-stand-legislation-45902> (last visited 17 December 2024)

married woman, to restart their romance again. But she denied and due to rejection, Rupesh posted her intimate videos online and even sent CDs of the videos to her in-laws. In this same case, Sudha Ramalingam, a senior lawyer at the Madras High Court, pointed out that "there is no dearth of laws in India to deal with such cases and the problem is that people take a lot of time to report such cases and when they do, they are often discouraged by the authorities to take it forward[60]." She also highlights the delays in the judicial process which prevents making a law more deterrent. In her words "*By the time the trial happens, everyone has forgotten what happened!*"

iii. Social media impersonation

Digital identity theft includes impersonating people on social media. In this type of crime, a cybercriminal or fraudster uses personally identifiable information (name, picture, location, and background data) that has been stolen from a specific person to create a profile on a social media platform[61]. Section 318 and 319 of Bhartiya Nyaya Sanhita of 2023 (BNS), deal with the law relating to 'cheating' and 'cheating by personation' respectively. As per the section 319 of BNS states that "*A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting one person for or another, or representing that he or any other person is a person other than he or such other person really is*". Secondly, section 318(3) of BNS deals with cheating by stating that "*Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to*

[60]Ibid

[61] Bitdefender, 'What Is Social Media Impersonation?' (*Cyberpedia*2024) available at <https://www.bitdefender.com/en-us/cyberpedia/what-is-social-media-impersonation> (last visited 17 December 2024)

protect, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both". The word "Fraud" is clearly defined under the Indian Contract Act, 1872[62]. Section 7 of Indian Contract Act defines to mean and include any of the following acts committed by a party to a contract or with his connivance or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract".

In 2011, a law student from Delhi University was accused of stalking and threatening a woman online. He allegedly created fake profiles of her on social media to damage her reputation. The woman reported to the Delhi Police that she had been harassed by him for over a year. She claimed that he had made obscene phone calls and sent threatening emails. The two met while she was working in Delhi, and when she refused his marriage proposal, he reportedly assaulted her and threatened to kill her. Even though the victim had filed a complaint against the accused and the accused had given a written apology not to bother her again. Shortly, after her departure to Goa from Delhi, he created fake profiles of her on social networking sites, uploaded her photos, and falsely claimed that she was his wife. He also impersonated her online and contacted her friends through these profiles, which affected her reputation, thereby leading to cancellation of her betrothal. Finally, a case was filed under Section 66-A of the Information Technology Act in New Delhi[63].

Furthermore, section 66A of the IT Act was held to be unconstitutional in the Shreya Singhal Case as this section

[62] The Indian Contract Act, 1872 (Act No. 9 of 1872)

[63]Chauhan N, '*DU Law Student Charged with Cyber Stalking*' The Times of India (19 June 2011) available at <https://timesofindia.indiatimes.com/city/delhi/du-law-student-charged-with-cyber-stalking/articleshow/8917937.cms> (last visited 17 December 2024)

contravenes Articles 19 and 21 of the Indian Constitution. Yet, despite this order, law enforcement authorities continued to register cases under this section. The *Peoples Union for Civil Liberties (PUCL)* filed a writ petition in the Supreme Court[64], pointing out that people were still being prosecuted under Section 66A even after its deletion. In this writ petition, Supreme Court (SC) held that such proceedings clearly went against its order in the Shreya Singhal case[65] and took measures to stop further misuse. The SC directed police and law enforcement authorities to suspend all ongoing investigations under this section. Also, the SC advised Directors General of Police for various states as well as the Administrators/Lieutenant Governors of Union Territories not to register new cases under section 66A of IT Act. Also, the Chief Justices of all High Courts were told to direct lower courts, which include Sessions Courts and Magistrate Courts, to drop cases filed under the section and set the accused persons free. Further, Registrar Generals of High Courts were instructed to ensure that District Courts and Magistrates no longer take cognizance of cases under the repealed Section 66A[66]. Thus, there is no provision at present in the Information Technology Act, 2000, to punish for the sending of offensive messages over communication services.

Further, in *State of Delhi v. Rakesh Kumar*[67], the accused created a false Facebook profile for a woman and wrote

[64] Shreya Singhal v. UOI (2015) 5 SCC 1

[65] Sharma P, 'No Person Should Be Prosecuted under Section 66A IT Act: Supreme Court Issues Directions to Enforce' Livelaw (12 October 2022) available at <https://www.livelaw.in/top-stories/no-person-should-be-prosecuted-under-section-66a-it-act-supreme-court-issues-directions-to-enforce-shreya-singhal-judgment-211452#:~:text=The%20Supreme%20Court%20on%20Wednesday,in%20the%20Shreya%20Singhal%20Case.> (last visited 17 December 2024)

[66] People Union for Civil Liberties v. Union of India Writ Petition No. 199 of 2013

[67] State of Delhi v. Rakesh Kumar 2017 SC Del 11927

disparaging remarks about her. The accused was found guilty of violating Section 66A of the IT Act, which makes using a communication service to convey offensive messages illegal. However, the Supreme Court in 2017 declared Section 66A of the IT Act to be unconstitutional and invalidated it. This case is relevant because it illustrates the difficulties in striking a balance between free expression and the requirement to safeguard those who are the targets of online harassment.

iv. Cybercrimes against women through dating applications

Dating applications are software programs created to establish associations amongst persons who are attracted by sentiments, hookups, friendships and partnerships[68]. Dating application can be defined as 'apps for dating or online dating'. According to Cambridge Dictionary, "dating application" means "*a way of starting a romantic relationship on the internet, by giving information about yourself or replying to someone else's information*[69]". Dating applications, such as, Tinder, Bumble offer a female person to establish romantic relationship by connecting potential partner of her choice. At the same time, this application can be also used as tool for committing cybercrimes such as sextortion[70]. The cyber attackers gain the trust of the victims by being sympathetic. After establishing a relationship and sharing intimate material, these criminals start taking advantage of female victims, forcing them to make payments or give personal favours.

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[68] Divya Gautam & Hemant Kumar, "Dating Apps: Impact to Crime" 7(10) Journal of Emerging Technologies and Innovative Research (JETIR) (2020)

[69] Cambridge Dictionary, available at: https://dictionary.cambridge.org/dictionary/english/online-dating (last visited on March 03, 2025)

[70] Shangwei Wu & Daniel Trottier, "*Dating apps: a literature review*" 46(2) ANNALS OF THE INTERNATIONAL COMMUNICATION ASSOCIATION (2022)

If the victims deny to do the same, the cybercriminals start blackmailing them by threating to upload their intimate pictures or chats. Such exploitation makes these female victims susceptible to being emotionally traumatized, losing money, and suffering damage to their reputation[71]. The ease with which fake profiles can be created and the anonymity provided on dating sites facilitate cybercriminals to conduct such scams with impunity, thereby making online dating a huge threat for users.

A case which is reported by the Times of India on February 11, 2023[72], highlights the risk of online dating scams. As per the report, one Obi Alex and one Odua Christopher Chukuridi (Sunny), created fake accounts on dating sites to deceive a woman. Alex introduced himself as a German national pilot and started talking and chatting with her. She was romantically involved with him and Alex manipulated her into transferring money on multiple occasions. Firstly, he demanded money of Rs. 40,000 to purchase saffron and after few days, he again asked for Rs. 39,700, claiming that he had been stopped by the customs officials at the airport as he carrying an enormous amount of cash and valuable goods. On the both occasions the woman transferred the funds. Later, he again demanded more money from her, but she denied that time, then he threatened her to distort her images and post them to social media if she denies to pay him. A woman filed a complaint on January 19th 2023 under sections 419, 420 of the IPC, and 66D of the IT

[71] Richard Abayomi Aborsiade, Akoji Ocheja and Babatuned Adekunle Okuneya, '*Emotional and Financial Costs of Online Dating Scam: A Phenomenological Narrative of the Experiences of Victims of Nigerian Romance Fraudsters*' 3 *Journal of Economic Criminology* March (2024)

[72] TNN, '*Two Foreigners Create Fake Profiles on Dating App, Cheat Women; Held*' The Times of India (11 February 2023) available at <https://timesofindia.indiatimes.com/city/gurgaon/two-foreigners-create-fake-profiles-on-dating-app-cheat-women-held/articleshow/97813292.cms> (last visited 17 December 2024).

Act. This case reflects the gravity of using dating applications by women. This case highlights the creation of romantic and trustworthy relationship exploiting women. Such cases were more common during Covid-19 pandemic as people were living in isolation. The stress of leading a boring, physical-free life was the primary cause of mental health problems that emerged throughout lockdown and quarantine period[73]. In this regard, the Times of India reported, on November 15, 2020[74], that there had been a change in the way people used these internet dating services. According to the same report, most people lied on their dating accounts because there was no possibility of going on dates during the pandemic.

Volkan Topalli, a professor of criminal justice and criminology in Andrew Young School of Policy Studies at Georgia State University, refers the use of dating applications to deceive someone else into thinking they are their partner as "romance fraud."[75]. This type of scam or fraud occur when fraudsters pretending to establish an online romantic relationship with their victims with the sole intention of cheating and exploitation[76]. Romance fraud is a growing issue that utilized social media and dating apps, to inflict financial and emotional harm on its victims.

[73] Pfefferbaum B and North CS, '*Mental Health and the Covid-19 Pandemic*' 383 New England Journal of Medicine (2020)

[74]Times of India, '*Online Dating: How the World of Online Dating Transformed during the Pandemic*' (15 November 2020) available at <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/online-dating-how-the-world-of-online-dating-transformed-during-the-pandemic/articleshow/79189120.cms> (last visited 17 December 2024)

[75] Reetz NT, '*Researchers Identify How Scammers Target Victims on Dating Apps*' (10 February 2023) available at <https://phys.org/news/2023-02-scammers-victims-dating-apps.html> (last visited 17 December 2024

[76] Patrizia Anesa, '*Lovextortion: Persuasion Strategies in Romance Cybercrime*' 35 Discourse Context & Media (2020) available at <https://www.sciencedirect.com/science/article/abs/pii/S2211695820300313?via%3Dihub> (last visited 17 December 2024)

In 2022, approximately 70,000 individuals reported being victim of romantic scams, resulting in a staggering loss of $1.3 billion[77].

IV. Emerging Threats & Challenges Related To Cybercrimes Through Social Media Platforms

The Internet is no longer only about web searches; it is evolving into a more diverse and interactive space. In the last decade, social media networking sites, such as Facebook, Twitter, snap chat, YouTube, and Instagram, have had a rapid growth in the number of users. Among these social media networking sites, Facebook is considered as more popular website among adults aged 50-64, with 68% of them using it[78]. On the other side, Twitter is more popular among youngster, with 37% of users aged 18-29 and 25% aged 30-49[79]. These platforms are used for communication, sharing knowledge, sharing thoughts, photos, videos forming networks and many other features that attract more and more people worldwide.

Although social media provides many advantages, it also poses several threats, resulting in both positive and negative effects on users. One major concern is identity theft, in which attackers impersonate someone else and misuse their identity[80]. Cybercriminals frequently attack social media platforms that

[77] Federal Trade Commission '*Romance Scammers' Favorite Lies Exposed*' (8 February 2023) available at <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2023/02/romance-scammers-favorite-lies-exposed> (last visited 17 December 2024)

[78] Subhi R. M. Zeebareea, Siddeeq Y. Ameenb, Mohammed A. M. Sadeeq, "*Social Media Networks Security Threats, Risks and Recommendation: A Case Study in the Kurdistan Region*" 13(7) International Journal of Innovation, Creativity and Change (2020)

[79] Ibid

[80] Purohit K, '*Cybersecurity for Social Networking Sites Issues, Challenges, and Solutions*' available at <https://www.ijhssi.org/papers/vol11(10)/O1110118120.pdf> (last visited 17 December 2024)

request access to users' personal information. While some apps appear to be harmless, they can stealthily install malware on a user's computer or phone without consent[81]. Once users grant these permissions, attackers can access and misuse their personal information without their knowledge. As a result, any content posted or uploaded on social networking sites can remain and be available with site operators even after a user has deleted an account. For instance, in accordance with Instagram's privacy policy, content available in the "recently deleted" category automatically gets deleted within 30 days[82]. Still, it can take 90 days or more for Instagram to delete posts completely, and even afterwards, backups of removed content could linger in data archives, making recovery of deleted items possible. In addition, if a user has an account with "public" account, their posts and photos are accessible to everyone, making them more susceptible to abuse. Offenders can use widely available data for ill purposes, including for illicit revenge porn or other online harassment.

Despite the rapid expansion of the IT sector, India lacks a number of critical components to keep up with the threats that emerge and the resulting legal solution. One of the major challenges is lack of computer literacy among law enforcement agencies. This lack of knowledge hinders their ability to identify internet users and respond to emerging hazards. Many of the investigator officials are not familiar with the fundamentals of IP addressing, which is crucial for identifying Internet users and tracing digital footprints[83].

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[81] Ibid

[82] Help Centre' (*Instagram.com*2019) available at <https://help.instagram.com/711062676142607/?helpref=uf_share> (last visited 17 December 2024

[83] Singh R and Gurpreet Kaur D, '*Emerging Trends in Cyber Crime in India*' 1 International Journal of Legal Education and Research (IJLER) (2024) available

This lack of technical skills makes it difficult for them to carry out effective investigations and collect digital evidence effectively.

Additionally, India's criminal legislations continue to be based on traditional concepts that fail to keep pace with the intricacies of computer crimes. Law enforcement officers need to have a greater knowledge of digital forensic and social media techniques in order to cope with the changing cyber scenario. While investigating cyber-based crimes, investigators should be thoroughly familiar with the process of obtaining search warrants on electronic data, keeping in mind, the huge variety and storage media of such evidence. Without these necessary skills, it becomes harder to identify cybercriminals and deliver justice in a world where technology is advancing day by day. In order to fight cybercrime effectively, India needs to give top priority to digital education for law enforcement officers, modernize its legal system to counter contemporary cyber threats, and enhance international cooperation to counter cross-border cybercrimes. It is only by filling these gaps that the nation can improve its capacity to regulate cyberspace and safeguard its citizens from cyber threats.

V. Conclusion and Suggestions

The importance of cybercrimes and female harassment has increased in the digital era. Women are disproportionately affected by online harassment, which can be detrimental to their chances for career advancement, physical safety, and emotional well-being. The legal framework for preventing cybercrimes and harassment of women is still evolving and confronting many issues, not the least of which are the rapidly changing nature of technology and the challenges associated with enforcing laws worldwide.

at <https://snpublication.com/journal//ijler_2.pdf> (last visited 17 December 2024)

Additionally, the victims' hesitation arises from their concern about being disregarded in society.

There are international legal frameworks and best practices that provide guidance on how to address and prevent online harassment of women. Among these are the Istanbul Convention, the UN Convention on Cybercrime, and the Council of Europe Convention on Cybercrime, all of which require governments to take measures to prevent and mitigate violence against women, including online violence. Furthermore, strategies such as awareness-raising campaigns, capacity-building and training programmes, and best practices for internet service providers and social media companies can help stop and deal with online harassment of women. Rules that can govern every aspect cannot be created because the cyber realm has no physical boundaries. However, a balance needs to be maintained and rules need to be created in order to keep cybercrimes against women and the rest of the world under control. Governments, law enforcement, and security agencies around the world have started to work for the benefit of these victims. Women are becoming more and more the targets of cybercrime, which needs to be addressed immediately. Women are disproportionately the victims of these crimes, which have detrimental effects on their reputations in the workplace, personal safety, and mental health. In order to solve this problem, it is essential that rules and regulations be put in place, cybersecurity be strengthened, women be given the authority to report cybercrime, awareness be raised, offenders must be held accountable, and a culture of respect for women must be promoted.

In conclusion, it is critical to keep advancing and fortifying the legislative framework for combating and preventing harassment of women online. To guarantee that the internet is a secure and welcoming environment for everyone, governments, civil society organizations, and the corporate sector must collaborate.

Climate Justice in the Global South: Legal Frameworks and Challenges

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

Abstract

Climate change, a defining challenge of the 21st century, amplifies deep-seated inequities in global socio-economic and environmental systems, disproportionately impacting developing nations in the Global South. Climate justice, rooted in fairness and inclusivity, calls for equitable treatment and active participation of all communities in climate mitigation and adaptation. While international frameworks like the UNFCCC and the Paris Agreement have established foundational principles, systemic inequalities in resource distribution, governance, and institutional capacities persist, hindering progress for vulnerable nations. This article critically examines the legal, financial, and institutional dimensions of climate justice in the Global South, addressing key challenges and opportunities. It evaluates the effectiveness of international legal frameworks in combating global climate inequities and highlights the role of regional alliances, such as ASEAN and the African Union, in fostering South-South collaboration and resilience. The judiciary's role is underscored through landmark rulings in India, Pakistan, and South Africa, showcasing courts as crucial actors in enforcing climate laws and protecting environmental rights. Indigenous communities, often at the frontline of climate vulnerability, are advocated for through calls for stronger legal protections, recognition of traditional knowledge, and safeguarding land rights. The article critiques global climate finance mechanisms like the Green Climate Fund, identifying accessibility, allocation, and transparency issues. Recommendations include simplifying processes, incentivizing private-sector investment, leveraging innovative financing mechanisms, and integrating traditional knowledge into national strategies. Ultimately, achieving climate justice requires strengthened legal

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

frameworks, enhanced access to justice, and robust regional and global cooperation. By addressing systemic inequities and prioritizing inclusive, community-driven solutions, this article envisions a sustainable and equitable future for the Global South, balancing socio-economic development with environmental sustainability.

Keywords: Climate Justice; Global South; Climate Finance; Sustainable Development; Indigenous Communities; Regional Cooperation

I. Introduction

Climate justice is a transformative concept that links climate change and human rights, emphasizing equity and fairness in addressing the adverse impacts of climate change. It acknowledges that those least responsible for greenhouse gas emissions are often the most vulnerable to its effects. The term transcends the scientific and technical dimensions of climate change, focusing on the socio-political and ethical implications of climate action. Climate justice places people at the center of climate policies, ensuring that human rights and equity are safeguarded in both mitigation and adaptation measures.[1] The principle of climate justice is underpinned by the notion of distributive justice, which seeks an equitable sharing of the burdens and benefits of climate action. It also draws on procedural justice, which emphasizes inclusive decision-making processes that account for the voices of marginalized communities.[2] The United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement incorporate these principles, emphasizing the concept of "common but differentiated responsibilities and respective capabilities" (CBDR-RC).[3] This framework recognizes the historical responsibility of

[1] Mary Robinson Foundation, *Principles of Climate Justice* (Mary Robinson Foundation, 2019), available at: https://www.mrfcj.org

[2] Schlosberg, David, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press, 2007).

[3] UNFCCC, *Paris Agreement* (2015) Art 2.

developed nations and the need for enhanced support to developing countries in addressing climate change.

The Global South, encompassing nations in Asia, Africa, and Latin America, faces unique vulnerabilities due to its socio-economic conditions, geographical exposure, and limited adaptive capacity.[4] While industrialized nations account for the majority of historical emissions, the repercussions of climate change—rising sea levels, extreme weather events, and biodiversity loss—disproportionately affect the Global South.[5] Addressing these inequities lies at the heart of climate justice. The Global South bears the brunt of climate change due to systemic inequalities and historical imbalances in economic and political power. Countries in this region often grapple with high levels of poverty, reliance on climate-sensitive sectors like agriculture, and limited institutional capacity to respond to climate challenges.[6] Consequently, the adverse impacts of climate change exacerbate existing social and economic disparities, hindering progress towards sustainable development. For example, small island developing states such as the Maldives face existential threats from rising sea levels, while countries in Sub-Saharan Africa suffer from prolonged droughts and food insecurity.[7] In India, erratic monsoons and increasing temperatures have jeopardized agricultural productivity, threatening the livelihoods of millions.[8] These challenges highlight the urgent need for climate justice frameworks tailored to the unique circumstances of the Global South.

[4] Intergovernmental Panel on Climate Change (IPCC), *Special Report: Global Warming of 1.5°C* (IPCC, 2018).
[5] World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty* (World Bank, 2016).
[6] UNEP, *Adaptation Gap Report 2020* (UNEP, 2020).
[7] Alliance of Small Island States (AOSIS), *SIDS and Climate Change* (AOSIS, 2020).
[8] Ministry of Environment, Forest and Climate Change (India), *State Action Plans on Climate Change* (MoEFCC, 2019).

Climate justice is also crucial for achieving the Sustainable Development Goals (SDGs), particularly Goal 13 (Climate Action), Goal 1 (No Poverty), and Goal 10 (Reduced Inequalities).[9] Legal frameworks play a pivotal role in integrating climate justice into national policies and international agreements. By addressing the underlying causes of vulnerability and ensuring equitable access to resources and opportunities, climate justice promotes resilience and sustainable development. The Global South's significance in the climate justice discourse is further underscored by its role in global emissions trajectories. Developing nations are projected to contribute a significant share of future emissions due to rapid industrialization and urbanization.[10] Therefore, balancing economic growth with environmental sustainability is a central challenge for these countries. Climate justice frameworks must account for this dual imperative, recognizing the right to development while promoting low-carbon pathways. This article seeks to explore the legal frameworks and challenges associated with achieving climate justice in the Global South, with a special focus on developing countries like India. By addressing the complex interplay between climate change and socio-economic inequalities, this study aims to contribute to the growing body of scholarship on climate justice. It underscores the need for equitable and inclusive solutions that prioritize the needs of vulnerable communities while advancing global climate goals.

II. Climate Vulnerabilities in the Global South

The socioeconomic impacts of climate change in the Global South are profound and multifaceted, affecting livelihoods, health, and infrastructure. Climate change exacerbates poverty and inequality, with vulnerable populations bearing the greatest burdens.

[9] United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development* (UN, 2015).
[10] International Energy Agency (IEA), *World Energy Outlook 2022* (IEA, 2022).

Agriculture, a critical sector for many developing countries, is particularly susceptible to climate variability.[11] Erratic rainfall, prolonged droughts, and extreme weather events disrupt crop yields, jeopardizing food security and rural livelihoods.[12] Health impacts are another critical dimension of climate change. Rising temperatures and changing precipitation patterns contribute to the spread of vector-borne diseases such as malaria and dengue fever, disproportionately affecting low-income communities with limited access to healthcare.[13] Moreover, extreme heat events pose significant risks to public health, particularly for outdoor workers and the elderly.[14] The economic costs of climate change are substantial, with developing countries often lacking the resources to recover from climate-related disasters. For instance, cyclones and floods result in extensive damage to infrastructure, housing, and public utilities, undermining development gains.[15] The lack of adequate insurance mechanisms further exacerbates the financial vulnerability of affected populations.

Developing nations face disproportionate burdens in addressing climate change due to historical inequities and structural challenges. The principle of "common but differentiated responsibilities and respective capabilities" acknowledges these disparities, emphasizing the need for developed countries to take the lead in mitigation efforts and provide financial and technological support to developing nations. Despite their limited contributions to global greenhouse gas emissions, developing countries experience the most severe impacts of climate change.[16] For example, small island developing states face existential threats

[11] FAO, *The State of Food and Agriculture 2021* (FAO, 2021).
[12] IPCC, *Sixth Assessment Report: Climate Change 2022* (IPCC, 2022).
[13] WHO, *Climate Change and Health* (WHO, 2021).
[14] UNEP, *Emissions Gap Report 2021: The Heat Is On* (UNEP, 2021).
[15] World Bank, *Building Resilience: Integrating Climate and Disaster Risk into Development* (World Bank, 2013).
[16] Oxfam, *Carbon Inequality in 2030* (Oxfam, 2021).

from rising sea levels, while arid regions in Africa endure chronic water shortages.[17] These vulnerabilities are compounded by limited access to climate finance and technology, constraining the ability of developing nations to implement effective mitigation and adaptation measures.[18] The Global South's reliance on climate-sensitive sectors, such as agriculture and fisheries, further exacerbates its vulnerability. In regions like South Asia, where millions depend on monsoon rains for farming, climate change-induced disruptions have devastating socio-economic consequences.[19] Similarly, coastal communities in Latin America face declining fish stocks due to warming oceans and changing marine ecosystems.[20]

South Asia is one of the most climate-vulnerable regions globally, experiencing rising temperatures, erratic monsoons, and glacial melting. India, in particular, faces severe challenges due to its large agrarian population and high levels of poverty.[21] For example, the 2019 heat wave in India claimed over 100 lives and disrupted power supplies, highlighting the region's vulnerability to extreme heat events.[22] Similarly, Bangladesh contends with frequent flooding and cyclones, displacing millions and straining the country's resources.[23] Africa's vulnerability to climate change is exacerbated by its dependence on rain-fed agriculture and limited adaptive capacity. Sub-Saharan Africa faces prolonged droughts, leading to food insecurity and water scarcity.[24] For instance, the Horn of Africa experienced its worst drought in decades between 2020 and 2023, affecting millions across Somalia, Ethiopia, and

[17] Alliance of Small Island States (AOSIS), *SIDS and Climate Change* (AOSIS, 2020).
[18] Climate Policy Initiative, *Global Landscape of Climate Finance 2022* (CPI, 2022).
[19] Ministry of Environment, Forest and Climate Change (India), *State Action Plans on Climate Change* (MoEFCC, 2019).
[20] UNEP, *The Ocean's Role in Climate Change* (UNEP, 2022).
[21] IPCC, *Sixth Assessment Report: Climate Change 2022* (IPCC, 2022).
[22] Ministry of Earth Sciences (India), *Annual Climate Report 2019* (MoES, 2019).
[23] UNDP, *Climate Change and Resilience in Bangladesh* (UNDP, 2020).
[24] FAO, *The State of Food and Agriculture 2021* (FAO, 2021).

Kenya.[25] The region also contends with desertification, which reduces arable land and threatens biodiversity.[26] In Latin America, climate change impacts manifest through deforestation, changing precipitation patterns, and extreme weather events. The Amazon rainforest, a critical carbon sink, faces unprecedented deforestation rates due to climate-induced wildfires and human activities. Coastal regions in countries like Peru and Chile experience rising sea levels and ocean acidification, disrupting marine ecosystems and livelihoods. Furthermore, hurricanes and tropical storms pose significant risks to Caribbean nations, causing extensive damage to infrastructure and economies.

III. Understanding Climate Justice

Climate justice is a transformative concept that bridges the realms of environmental law, human rights, and social equity. Rooted in the understanding that the climate crisis disproportionately impacts marginalized communities and developing nations, climate justice shifts the discourse from environmental consequences to questions of fairness and equity. The United Nations Framework Convention on Climate Change (UNFCCC) and its subsequent agreements emphasize the need for a fair approach to combating climate change. This fairness demands acknowledgment of historical responsibilities, differing capacities, and vulnerabilities. The conceptual framework of climate justice rests on three primary pillars: distributional justice, procedural justice, and recognition justice. Distributional justice pertains to the equitable allocation of benefits and burdens arising from climate policies. Procedural justice focuses on the inclusion of all stakeholders, particularly vulnerable populations, in climate decision-making. Recognition justice highlights the importance of acknowledging the unique

[25] UN Office for the Coordination of Humanitarian Affairs, *Horn of Africa Drought Response 2023* (UNOCHA, 2023).
[26] UNEP, *Global Land Outlook 2022* (UNEP 2022).

identities, cultures, and contributions of marginalized groups in addressing climate challenges. These pillars collectively demand a more inclusive approach, ensuring that the climate response does not perpetuate existing inequalities. The concept emerged as a critique of traditional environmentalism, which often neglected the socio-economic dimensions of environmental degradation. Scholars have articulated that climate justice must place human rights at its core, asserting that the climate crisis is not merely an environmental issue but a moral and ethical challenge requiring solidarity among nations. Scholars argue that "climate change threatens the realization of basic human rights, including the right to life, food, water, and shelter."[27]

Climate justice is inextricably linked to human rights, as the adverse effects of climate change undermine the enjoyment of fundamental rights. The United Nations Human Rights Council (UNHRC) has repeatedly emphasized that climate change poses an existential threat to the enjoyment of basic rights, including the right to health, water, food, and housing.[28] These rights are particularly jeopardized in vulnerable communities, such as small island developing states (SIDS), which face rising sea levels, and arid regions, which endure desertification and water scarcity. The Paris Agreement (2015) marked a pivotal moment in recognizing the nexus between human rights and climate change. Article 7 of the Agreement underscores the need to consider human rights, gender equality, and the rights of indigenous peoples in adaptation actions.[29] This acknowledgment stems from the realization that climate change exacerbates existing inequalities, disproportionately affecting those who have contributed the least to global greenhouse

[27] Mary Robinson, *Climate Justice: Hope, Resilience, and the Fight for a Sustainable Future* (Bloomsbury, 2018).
[28] UNHRC, 'Human Rights and Climate Change' (2015) Resolution 29/15.
[29] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS Registration No. 54113, art 7.

gas emissions. One of the most cited cases in this context is the decision of the Hague District Court in the Urgenda Foundation v State of the Netherlands, where the court held that the Dutch government had a duty to take more ambitious measures to reduce greenhouse gas emissions to protect its citizens' rights to life and family life under Articles 2 and 8 of the European Convention on Human Rights (ECHR).[30] The court's reasoning set a precedent for interpreting state obligations in the context of climate change through a human rights lens. The plight of indigenous communities further illustrates the human rights dimension of climate justice. Indigenous peoples, who often inhabit ecologically fragile regions, bear the brunt of climate change despite their minimal contribution to greenhouse gas emissions. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes the unique relationship between indigenous peoples and their environment, urging states to safeguard their rights in the face of environmental degradation.[31] However, the implementation of such safeguards remains uneven, highlighting the need for stronger global commitments. Another key human rights issue relates to climate-induced displacement. The Internal Displacement Monitoring Centre (IDMC) reports that millions of people are displaced annually due to climate-related disasters.[32] The legal status of such "climate refugees" remains ambiguous under international law, as they are not recognized under the 1951 Refugee Convention.[33] This lacuna has spurred calls for a comprehensive legal framework to address the rights and needs of climate-displaced persons.

[30] *Urgenda Foundation v State of the Netherlands* (2015) ECLI:NL:RBDHA:2015:7196.
[31] United Nations Declaration on the Rights of Indigenous Peoples (13 September 2007) UNGA Res 61/295.
[32] Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2023* (IDMC, 2023).
[33] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

The principles of equity and common but differentiated responsibilities (CBDR**)** form the bedrock of climate justice in international law. Codified in Principle 7 of the Rio Declaration on Environment and Development (1992)**,** CBDR acknowledges that while all states share the responsibility of addressing environmental challenges, their obligations must reflect historical contributions to environmental degradation and their respective capacities.[34] The UNFCCC further elaborates on this principle, stating that developed countries should take the lead in combating climate change due to their historical emissions and greater financial and technological resources.[35] This differentiation recognizes the disparities between developed and developing nations in terms of economic development, technological advancement, and adaptive capacity. However, the implementation of CBDR has been fraught with challenges. Developed countries, while acknowledging their historical responsibility, have often resisted binding commitments or sufficient financial contributions to assist developing nations. For instance, the Kyoto Protocol (1997)**,** which operationalized CBDR, faced criticism for its exclusion of binding obligations on major developing economies like China and India. This exclusion was a contentious issue in the lead-up to the Paris Agreement, where the principle of CBDR was reaffirmed but adapted to reflect evolving global realities.[36] The Green Climate Fund (GCF), established under the UNFCCC, is a practical manifestation of CBDR. It aims to provide financial assistance to developing countries for mitigation and adaptation measures. However, the fund has faced significant hurdles, including insufficient contributions from developed countries and

[34] Rio Declaration on Environment and Development (adopted 14 June 1992) UN Doc A/CONF.151/26, principle 7.
[35] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107, art 3(1).
[36] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162.

delays in disbursement. The failure of developed nations to fulfill their commitment to mobilize $100 billion annually by 2020, as agreed in the Copenhagen Accord, underscores the challenges in operationalizing CBDR.[37]

Equity in climate justice also entails addressing intra-national disparities. Within countries, vulnerable groups such as low-income households, women, and indigenous peoples often lack the resources to adapt to climate change. National policies must therefore adopt an intersectional approach, considering the specific vulnerabilities of these groups. For example, India's National Action Plan on Climate Change (NAPCC) incorporates equity by prioritizing the needs of marginalized communities in its adaptation strategies.[38] The principle of equity also extends to intergenerational justice, emphasizing the rights of future generations to a stable climate. The concept gained prominence in the landmark Advisory Opinion of the International Court of Justice (ICJ) on the Legality of the Threat or Use of Nuclear Weapons, where the court recognized the duty of states to ensure environmental protection for future generations.[39] This principle has since been invoked in climate litigation, such as the Juliana v United States case, where youth plaintiffs argued that the U.S. government's inaction on climate change violated their constitutional rights to a stable climate system.[40] The principle of CBDR remains critical in navigating the complex geopolitics of climate negotiations. Developing countries argue that the principle must remain central to any global climate regime, as historical emitters bear the primary responsibility for the climate crisis. However, developed nations contend that emerging economies like

[37] Copenhagen Accord (adopted 18 December 2009) FCCC/CP/2009/L.7.
[38] Government of India, *National Action Plan on Climate Change* (2008).
[39] Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226, para 29.
[40] *Juliana v United States* (2019) 947 F3d 1159 (9th Cir).

China and India must also take greater responsibility, given their growing emissions. Balancing these perspectives requires a nuanced approach that combines historical accountability with forward-looking commitments.

IV. Legal Frameworks Addressing Climate Justice

Climate justice, as a framework, emphasizes equitable outcomes and fair processes for individuals and communities disproportionately affected by climate change. International legal instruments have played a pivotal role in institutionalizing the principles underpinning climate justice. The United Nations Framework Convention on Climate Change (UNFCCC), adopted at the Earth Summit in Rio de Janeiro in 1992, is a cornerstone of international climate governance. The Convention established a framework for intergovernmental efforts to tackle climate change by emphasizing the principle of "common but differentiated responsibilities and respective capabilities". This principle reflects the recognition that developed nations bear historical responsibility for greenhouse gas emissions and should take the lead in addressing climate change. The UNFCCC further acknowledges the specific vulnerabilities of least-developed countries (LDCs) and small island developing states (SIDS).[41] The Paris Agreement (2015), adopted under the UNFCCC, marks a significant advancement in integrating climate justice into international law. Its preamble explicitly acknowledges human rights, including the rights of indigenous peoples, local communities, and other marginalized groups. Article 2 of the agreement establishes the goal of limiting global warming to well below 2°C above pre-industrial levels, while pursuing efforts to limit it to 1.5°C. This lower threshold is critical for ensuring the survival of vulnerable communities in the Global South. Article 9 further addresses

[41] United Nations Framework Convention on Climate Change, May 9, 1992, 1771 UNTS 107.

climate finance, mandating developed countries to mobilize resources to assist developing countries in mitigation and adaptation efforts. The inclusion of the "loss and damage" mechanism under Article 8 reflects the acknowledgment of irreversible harm suffered by vulnerable nations due to climate change.[42] The Kyoto Protocol (1997), another key instrument under the UNFCCC, introduced legally binding emission reduction targets for developed countries. Although its limited scope and non-inclusion of major emitters like the United States hindered its effectiveness, the protocol laid the groundwork for future climate justice initiatives by emphasizing differentiated obligations.[43] These instruments underscore the need for global cooperation while addressing the disparities in responsibility and capacity among nations. They establish legal obligations for resource transfer, capacity building, and technological assistance, integral to achieving climate justice.

Countries in the Global South face unique challenges in addressing climate justice due to limited resources, socioeconomic vulnerabilities, and heavy reliance on climate-sensitive sectors like agriculture. Regional legal responses have sought to address these disparities. Africa has been a leader in regional climate initiatives, as demonstrated by the African Union's (AU) African Climate Change Strategy (2014–2023). This strategy integrates climate justice principles, focusing on adaptation, capacity building, and financing. The African Charter on Human and Peoples' Rights has also been used as a legal tool to address environmental degradation, with landmark cases such as *SERAC v. Nigeria* affirming the right to a healthy environment as a human right.[44] In

[42] Paris Agreement, Dec. 12, 2015, 3156 UNTS 27.
[43] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 2303 UNTS 162.
[44] Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights v. Nigeria, Comm. No. 155/96 (2001).

Latin America, the Escazu Agreement (2018) represents a milestone in climate justice. This legally binding treaty, adopted under the auspices of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), ensures access to information, public participation, and justice in environmental matters. By prioritizing vulnerable groups, including indigenous peoples, the Escazú Agreement exemplifies the integration of environmental and social justice in regional governance.[45] In South Asia, the South Asian Association for Regional Cooperation (SAARC) has adopted climate-related policies, though their enforceability remains limited. Countries like India and Bangladesh have been proactive in implementing national legal frameworks to address climate justice, with a focus on disaster risk reduction and community-based adaptation. However, the lack of a robust regional legal mechanism impedes comprehensive collaboration. [46] These regional responses illustrate diverse approaches to climate justice, with varying degrees of success. They highlight the necessity of legal instruments tailored to regional contexts and challenges, particularly in addressing the needs of marginalized communities.

National legal systems have also evolved to address climate justice, reflecting the interplay between international obligations and domestic priorities. India has been at the forefront of integrating climate justice into its legal and policy frameworks. The National Action Plan on Climate Change (NAPCC), launched in 2008, emphasizes sustainable development and equity. It comprises eight missions, including the National Solar Mission and the National Mission for Sustainable Agriculture, focusing on mitigation and

[45] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), Mar. 4, 2018.

[46] Muhammad Nawaz Khan, "SAARC and Climate Change: Policies and Actions," *South Asian Studies* 33, no. 1 (2018): 165–183.

adaptation. The Indian judiciary has played a significant role in advancing climate justice through public interest litigation (PIL). In cases like *MC Mehta v. Union of India*, the Supreme Court recognized the right to a healthy environment as an extension of the right to life under Article 21 of the Indian Constitution.[47] Similarly, the case of *T.N. Godavarman Thirumulpad v. Union of India* highlighted the judiciary's proactive role in forest conservation and addressing climate change concerns.[48]

Bangladesh, one of the most climate-vulnerable nations, has developed robust legal frameworks to address climate justice. The Climate Change Strategy and Action Plan (BCCSAP) outlines measures to enhance resilience and reduce vulnerabilities. The judiciary has also contributed by interpreting constitutional provisions to protect the environment, as seen in *Bangladesh Environmental Lawyers Association (BELA) v. Government of Bangladesh*.[49] In South Africa, the constitutional right to an environment that is not harmful to health or well-being has been a cornerstone of climate justice. The case of *Earthlife Africa Johannesburg v. Minister of Environmental Affairs* set a precedent by requiring climate change considerations in environmental impact assessments.[50] This judgment underscores the role of the judiciary in ensuring compliance with constitutional and international obligations. The Philippines has similarly embraced climate justice, with the Climate Change Act (2009) and the creation of the Climate Change Commission to coordinate adaptation and mitigation efforts. The *Oposa v. Factoran* case, which recognized the principle of intergenerational equity,

[47] *MC Mehta v. Union of India*, (1987) 1 SCC 395.
[48] *T.N. Godavarman Thirumulpad v. Union of India*, (1997) 2 SCC 267.
[49] *Bangladesh Environmental Lawyers Association (BELA) v. Government of Bangladesh*, Writ Petition No. 4098 of 2009.
[50] *Earthlife Africa Johannesburg v. Minister of Environmental Affairs*, (2017) ZAGPPHC 58.

highlights the judiciary's role in promoting climate justice.[51] Despite these advancements, significant challenges remain. Many nations lack adequate financial and technical resources to implement climate justice measures effectively. Political will and institutional capacity are often insufficient to enforce legal obligations. Moreover, the absence of clear legal definitions and frameworks for addressing loss and damage complicates national responses.

V. Challenges in Achieving Climate Justice in the Global South

The concept of climate justice transcends environmental concerns by addressing the social, economic, and political inequalities that exacerbate the impact of climate change, especially in the Global South. While the principles of climate justice are well-articulated in international and national frameworks, their realization remains a daunting challenge due to several structural and systemic issues. Institutional and governance weaknesses are significant impediments to achieving climate justice in the Global South. Many countries in this region suffer from inadequate regulatory frameworks and enforcement mechanisms, rendering them unable to implement effective climate mitigation and adaptation strategies. One of the primary issues is the fragmentation of institutional responsibilities**,** where multiple government bodies are tasked with overlapping roles, leading to inefficiencies. For example, in India, while the National Action Plan on Climate Change (NAPCC) provides a roadmap for addressing climate issues, its implementation has been hindered by a lack of coordination between central and state governments.[52] The failure to establish a centralized body for overseeing climate action leads to delays and inconsistencies in policy execution. Similarly, in sub-Saharan Africa, weak governance structures have contributed to the limited

[51] *Oposa v. Factoran*, 224 SCRA 792 (1993).
[52] National Action Plan on Climate Change (NAPCC), Government of India, 2008.

success of adaptation projects. Studies have noted that a lack of transparency and accountability in public institutions often results in the misallocation of climate funds. [53] Corruption further compounds the problem, as resources meant for vulnerable communities are frequently diverted for personal or political gain.

Governance issues also extend to the judiciary. While courts in countries like India and South Africa have played a proactive role in advancing climate justice, the judicial systems in many other nations lack the capacity or independence to enforce environmental laws effectively. For instance, in Nigeria, despite the constitutional recognition of environmental rights, the enforcement of these rights remains weak due to systemic inefficiencies and political interference.[54] Another critical challenge is the influence of vested interests, particularly from industries and political lobbies that prioritize economic growth over environmental sustainability. In countries reliant on fossil fuel exports, such as Nigeria and Venezuela, political leaders have often resisted the implementation of stringent environmental regulations to protect revenue streams.[55]

The Global South faces significant financial and technological barriers in addressing climate justice. While developed countries are historically responsible for the bulk of greenhouse gas emissions, developing nations bear the brunt of climate impacts without the resources to mitigate or adapt effectively. Climate finance, a crucial component of international efforts to achieve climate justice, remains insufficient and unevenly distributed. Developed countries pledged $100 billion annually by 2020 under the Copenhagen Accord and later reaffirmed this commitment in

[53] African Development Bank, *Annual Report 2022*, 2022, 67.
[54] A Atsegbua, "Environmental Rights in Nigeria," (2002) 20 *Journal of Environmental Law* 103.
[55] P Collier and A Venables, *Plundered Nations? Successes and Failures in Natural Resource Extraction* (Oxford University Press 2011) 45–48.

the Paris Agreement.[56] However, this target has not been met, and the funds that have been disbursed are often in the form of loans rather than grants, exacerbating the debt burden of recipient countries. Furthermore, the allocation of climate finance is skewed in favor of mitigation projects, such as renewable energy initiatives, while adaptation measures receive relatively little attention. Adaptation, which includes measures like building climate-resilient infrastructure and disaster risk reduction, is vital for vulnerable communities in the Global South.[57] A report by the United Nations Environment Programme (UNEP) highlights that adaptation costs in developing countries could rise to $140–300 billion annually by 2030, far exceeding current levels of funding.[58]

Technological constraints also pose significant challenges. Access to advanced technologies for renewable energy, climate modeling, and early warning systems is limited in many developing nations. High costs and intellectual property rights (IPRs) associated with clean technologies often hinder their transfer to the Global South. For instance, while solar energy has immense potential in African countries, the lack of affordable solar technology and local manufacturing capabilities has restricted its adoption.[59] The Global South also faces challenges in building technical capacity. Many countries lack skilled personnel to design and implement climate projects, further limiting their ability to utilize available resources effectively. The capacity-building provisions under the Paris Agreement have been inadequate in addressing this gap, as they are

[56] Copenhagen Accord, UNFCCC, Dec. 18, 2009.
[57] J Timmons Roberts and B Parks, *A Climate of Injustice: Global Inequality, North-South Politics, and Climate Policy* (MIT Press 2007) 102–109.
[58] United Nations Environment Programme, *Adaptation Gap Report 2021*, UNEP, 2021, 25–28.
[59] A Sagar and B van der Zwaan, "Technological Innovation in the Energy Sector: R&D, Deployment, and Learning-by-Doing," (2006) 34 *Energy Policy* 2601.

often undermined by bureaucratic inefficiencies and lack of local engagement.[60]

Inequalities in the distribution and utilization of climate finance have further widened the gap between the Global North and South. Developed countries often dictate the terms of climate finance, prioritizing projects that align with their strategic interests rather than the needs of recipient countries. This "donor-driven" approach undermines the principles of climate justice by sidelining vulnerable communities in the decision-making process.[61] The Green Climate Fund (GCF), established under the UNFCCC, was envisioned as a mechanism to address these inequalities by ensuring equitable access to finance for developing countries. However, its implementation has faced criticism for being overly bureaucratic and inaccessible to smaller, less-developed nations. As of 2023, less than 30% of GCF-approved projects focus on adaptation, despite its critical importance for climate-vulnerable regions like South Asia and sub-Saharan Africa.[62] The disproportionate focus on mitigation projects also exacerbates existing inequalities. Large-scale renewable energy projects, while essential for reducing emissions, often result in land dispossession and displacement of indigenous communities. For example, in Kenya, the Lake Turkana Wind Power Project faced backlash from local communities for failing to secure their free, prior, and informed consent, as mandated by international human rights standards.[63]

Adaptation measures, on the other hand, are often underfunded and poorly implemented. In Bangladesh, while the government has

[60] Paris Agreement, Art. 11, Dec. 12, 2015, 3156 UNTS 27.
[61] N K Dubash, "The Politics of Climate Change in Developing Countries," (2012) 37 *Annual Review of Environment and Resources* 295.
[62] Green Climate Fund, *Annual Performance Report 2023*, 2023, 18–21.
[63] R Bosshard, "Kenya's Lake Turkana Wind Power Project: An Analysis of the Risks and Benefits for Local Communities," (2017) 12 *Journal of Sustainable Energy Studies* 43.

made significant strides in developing cyclone shelters and early warning systems, the benefits have not reached all vulnerable populations due to infrastructural and logistical limitations. [64] Similarly, in India, the construction of embankments to address coastal flooding has often displaced fishing communities without adequate compensation or rehabilitation. [65] The challenges of inequality are further compounded by loss and damage, a contentious issue in international climate negotiations. Loss and damage refer to the irreversible harm caused by climate change, such as the loss of lives, livelihoods, and cultural heritage. Developing countries have long demanded a dedicated financial mechanism to address loss and damage, but progress has been slow due to resistance from developed nations.[66] The establishment of the Santiago Network for Loss and Damage under the Paris Agreement was a step in the right direction, but its operationalization remains limited due to insufficient funding and political disagreements.[67]

VI. Role of Judiciary in Advancing Climate Justice

Climate litigation in the Global South has become an essential tool for holding governments and private actors accountable for environmental degradation and climate change impacts. Landmark cases demonstrate how courts have leveraged constitutional provisions, environmental laws, and international principles to advance climate justice. One of the most notable cases is the Leghari v Federation of Pakistan (2015), where the Lahore High Court recognized climate change as a serious threat to fundamental rights, including the right to life and dignity under Articles 9 and

[64] S Huq, "Climate Adaptation in Bangladesh: Successes and Challenges," (2019) 22 *Climate Policy* 23–27.
[65] Indian Ministry of Environment, Forest, and Climate Change, *State Action Plans on Climate Change: An Evaluation*, 2021, 39–42.
[66] R Verheyen, *Loss and Damage: Climate Reality in the 21st Century* (Springer 2012) 12–15.
[67] Santiago Network for Loss and Damage, UNFCCC, 2020.

14 of the Pakistani Constitution.[68] The petitioner, a farmer affected by climate-induced water scarcity, argued that the government's failure to implement its National Climate Change Policy violated his constitutional rights. The court directed the government to establish a Climate Change Commission to oversee policy implementation, marking a significant step in judicial activism for climate justice in Pakistan. In South Africa, the Earthlife Africa Johannesburg v Minister of Environmental Affairs (2017) case highlighted the judiciary's role in scrutinizing environmental impact assessments (EIAs). The High Court of South Africa set aside the approval for a coal-fired power plant, citing inadequate consideration of its climate change impacts. [69] This case underscored the need for decision-makers to integrate climate concerns into developmental projects, aligning with the country's commitments under the Paris Agreement. Another influential case is Urgenda Foundation v State of the Netherlands (2015), which, although originating in Europe, has inspired litigation in the Global South. Drawing on this precedent, the Colombian Supreme Court ruled in Future Generations v Ministry of the Environment (2018) that the government must take immediate action to combat deforestation in the Amazon, emphasizing the rights of future generations and the importance of protecting the "lungs of the Earth." [70] This case highlights the judiciary's ability to invoke intergenerational equity as a principle for advancing climate justice. In India, the Supreme Court's decision in the MC Mehta v Union of India series of cases has consistently affirmed the need to balance development and environmental protection. While not exclusively a climate litigation case, these rulings have established

[68] Leghari v Federation of Pakistan [2015] W.P. No. 25501/2015 (Lahore High Court).
[69] Earthlife Africa Johannesburg v Minister of Environmental Affairs [2017] ZAGPPHC 58.
[70] Future Generations v Ministry of the Environment and Others (2018) Decision No. STC4360-2018 (Supreme Court of Colombia).

environmental protection as integral to the constitutional right to life under Article 21.[71]

Courts in the Global South play a critical role in ensuring that governments comply with national climate laws and international commitments. They often act as watchdogs, compelling public authorities to fulfill their legal obligations. In Brazil, the judiciary has been instrumental in addressing deforestation and climate change. In 2020, four political parties filed a lawsuit with the Brazilian Supreme Federal Court (STF) arguing that the federal government failed to properly allocate resources to the Amazon Fund, a critical instrument for combating deforestation.[72] This ongoing case underscores the judiciary's role in enforcing environmental governance and holding the executive accountable for policy lapses. In Philippines, the Oposa v Factoran (1993) case remains a landmark in environmental jurisprudence. The Supreme Court recognized the doctrine of intergenerational responsibility, ruling that the government must protect natural resources for present and future generations.[73] Although predating modern climate litigation, this case laid the groundwork for using constitutional principles to enforce environmental and climate laws. The Indian judiciary has similarly acted as an enforcer of climate policies through its Public Interest Litigation (PIL) mechanism. In Vellore Citizens Welfare Forum v Union of India (1996), the Supreme Court recognized the principle of sustainable development and directed industries to adopt cleaner technologies.[74] Additionally, the National Green Tribunal (NGT), established in 2010, has become a key forum for resolving environmental disputes, including those related to climate change. In 2021, the NGT ordered a coal-fired power plant in Tamil Nadu

[71] MC Mehta v Union of India (1987) 1 SCC 395.
[72] PSB v Brazil (Supreme Federal Court of Brazil, 2020).
[73] Oposa v Factoran (1993) G.R. No. 101083 (Philippines Supreme Court).
[74] Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647.

to halt operations due to non-compliance with environmental norms, reaffirming its commitment to enforcing climate laws.[75] Courts have also ensured compliance with international obligations. In Kenya, the High Court ruled in Save Lamu v National Environmental Management Authority (2019) that the construction of a coal plant violated the country's commitments under the Paris Agreement.[76] The court emphasized that climate change considerations must be integrated into EIAs, signaling the judiciary's readiness to enforce global climate standards at the national level.

One of the judiciary's most challenging tasks is balancing the competing imperatives of economic development and environmental protection. This dilemma is particularly pronounced in the Global South, where poverty alleviation and economic growth are critical priorities, yet environmental degradation disproportionately affects vulnerable populations. The principle of sustainable development has guided judicial efforts to strike this balance. In India, the Supreme Court's decision in Narmada Bachao Andolan v Union of India (2000) exemplifies this approach. While the court allowed the construction of the Sardar Sarovar Dam, it mandated strict adherence to rehabilitation measures for displaced communities and compliance with environmental safeguards.[77] This decision underscored the importance of integrating social and environmental considerations into development projects. In South Africa, the judiciary has emphasized the need to align development with environmental justice. In the Fuel Retailers Association of Southern Africa v Director-General Environmental Management (2007), the Constitutional Court ruled that environmental sustainability must

[75] National Green Tribunal, *Meenakshi Coal Plant Case* (2021).
[76] Save Lamu v National Environmental Management Authority [2019] KEHC.
[77] Narmada Bachao Andolan v Union of India (2000) 10 SCC 664.

be a central consideration in development planning, reinforcing the importance of balancing ecological and economic objectives.[78] Similarly, the Nigerian judiciary has highlighted the intersection of development and environmental protection in cases involving oil exploration. In Gbemre v Shell Petroleum Development Company (2005), the Federal High Court held that gas flaring violated the constitutional rights to life and dignity, compelling the government and corporations to adopt environmentally sustainable practices.[79] Despite these efforts, challenges persist. Courts often face criticism for either prioritizing development over environmental protection or vice versa. For instance, in the Vedanta Resources v Lungowe case, while the UK Supreme Court allowed Zambian villagers to sue a mining company in England for environmental harm, critics argued that stronger domestic judicial systems in Zambia could have addressed the issue more effectively.[80]

VII. Climate Justice and Indigenous Communities

Indigenous communities are among the most vulnerable groups to the adverse impacts of climate change, despite being the least responsible for global greenhouse gas emissions. These communities often face systemic marginalization and disproportionate exposure to climate change effects, including rising sea levels, extreme weather events, and biodiversity loss. International and domestic legal frameworks have sought to address these disparities, recognizing the unique vulnerabilities and contributions of indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) serves as a cornerstone for legal protection, affirming the rights of indigenous peoples to self-determination, land, resources, and

[78] Fuel Retailers Association of Southern Africa v Director-General Environmental Management [2007] ZACC 13.
[79] Gbemre v Shell Petroleum Development Company (2005) Suit No. FHC/B/CS/53/05.
[80] Vedanta Resources Plc v Lungowe [2019] UKSC 20.

participation in decision-making processes.[81] Articles 25–29 of UNDRIP emphasize the right to maintain spiritual and material relationships with traditionally owned lands and call for redress in cases of land dispossession. Although non-binding, UNDRIP has influenced national legislations and judicial interpretations in various jurisdictions. At the regional level, the Inter-American Court of Human Rights (IACtHR) has delivered landmark rulings to safeguard indigenous rights. In Saramaka People v Suriname (2007), the court recognized the collective land rights of the Saramaka community and ruled that large-scale development projects on indigenous lands must receive free, prior, and informed consent (FPIC).[82] Similarly, in Kichwa Indigenous People of Sarayaku v Ecuador (2012), the IACtHR emphasized the right of indigenous communities to participate in decisions affecting their territories.[83]

Nationally, countries such as Canada, New Zealand, and India have taken steps to strengthen legal protections for indigenous peoples. In Canada, the Truth and Reconciliation Commission's Calls to Action (2015) highlighted the need for legal reforms to respect indigenous land and treaty rights, particularly in the context of resource extraction and climate adaptation efforts.[84] In New Zealand, the Te Urewera Act 2014 granted legal personhood to the Te Urewera forest, recognizing its intrinsic value and the deep spiritual connection of the Tūhoe people to the land.[85] India's Forest Rights Act (2006) empowers indigenous forest-dwelling communities to claim legal rights over ancestral lands, although

[81] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), GA Res 61/295, UN Doc A/RES/61/295 (2007).
[82] Saramaka People v Suriname (2007) IACtHR, Series C No 172.
[83] Kichwa Indigenous People of Sarayaku v Ecuador (2012) IACtHR, Series C No 245.
[84] Truth and Reconciliation Commission of Canada, *Calls to Action* (2015
[85] Te Urewera Act 2014 (New Zealand).

implementation remains inconsistent. [86] Despite these advancements, significant gaps persist. Weak enforcement, lack of political will, and conflicting legal regimes often undermine indigenous rights. In many cases, governments prioritize economic development over environmental and social justice, leaving indigenous communities vulnerable to displacement and exploitation.

Indigenous communities possess a wealth of traditional knowledge, practices, and innovations that are critical for climate adaptation. Rooted in centuries of close interaction with the natural environment, this knowledge offers valuable insights into sustainable resource management, biodiversity conservation, and disaster resilience. The Intergovernmental Panel on Climate Change (IPCC) recognizes traditional knowledge as a vital resource for enhancing climate resilience. The Sixth Assessment Report (2021) highlights the importance of integrating indigenous and local knowledge with scientific approaches to develop effective climate adaptation strategies.[87] Examples from the Global South illustrate how indigenous practices contribute to ecosystem restoration and climate resilience. For instance, indigenous farmers in Burkina Faso and Niger have revived traditional agroforestry techniques to combat desertification and improve soil fertility. These practices align with nature-based solutions, reducing vulnerability to droughts and enhancing food security.[88] Likewise, the indigenous communities in Palawan have employed traditional knowledge to protect and restore mangrove ecosystems, which serve as natural buffers against storm surges and coastal erosion.[89] In India, the indigenous communities of Rajasthan have revitalized

[86] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (India).
[87] IPCC, *Sixth Assessment Report* (2021).
[88] UNCCD, *The Great Green Wall Initiative* (2020).
[89] UNEP, *Mangroves for the Future: Building Resilience in Coastal Communities* (2018).

traditional water harvesting systems, such as johads (percolation tanks), to mitigate water scarcity in arid regions.[90] International legal frameworks increasingly acknowledge the value of traditional knowledge. Article 8(j) of the Convention on Biological Diversity (CBD) calls for the preservation and equitable sharing of traditional knowledge, innovations, and practices of indigenous and local communities.[91] Additionally, the Paris Agreement (2015) underscores the importance of indigenous knowledge systems in climate adaptation and mitigation. Despite these recognitions, the incorporation of traditional knowledge into formal policymaking often remains tokenistic. Indigenous communities are rarely given decision-making authority in climate governance, and intellectual property protections for traditional knowledge remain inadequate.

Land rights are at the heart of climate justice for indigenous communities. As stewards of approximately 80% of the world's biodiversity, indigenous peoples rely on their ancestral lands for cultural identity, livelihoods, and spiritual practices. However, climate change and unsustainable development projects increasingly threaten these lands, leading to forced displacement and loss of cultural heritage. The displacement of indigenous communities is exacerbated by climate-induced phenomena such as rising sea levels, desertification, and extreme weather events. For instance, the Carteret Islanders of Papua New Guinea became the world's first climate refugees, as rising sea levels rendered their islands uninhabitable.[92] Similarly, indigenous pastoralists in the Horn of Africa face displacement due to prolonged droughts and resource conflicts.[93] Large-scale development projects, including dams, mining, and logging, further compound the displacement

[90] Ministry of Water Resources, India, *Traditional Water Harvesting Systems in India* (2019).
[91] Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) art 8(j).
[92] UNHCR, *Carteret Islanders: The World's First Climate Refugees* (2020).
[93] FAO, *Pastoralism in Africa: Resilience and Climate Change* (2018).

crisis. In Narmada Bachao Andolan v Union of India (2000), the Indian Supreme Court acknowledged the rights of indigenous communities displaced by the Sardar Sarovar Dam but ultimately allowed the project to proceed, citing national development interests. [94] While the ruling mandated resettlement and rehabilitation measures, implementation fell short, leaving many displaced communities in precarious conditions.

Securing land rights is essential for achieving climate justice. The Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169) emphasizes the right of indigenous peoples to ownership and control over their lands and resources. [95] Additionally, the Escazu Agreement (2018) in Latin America and the Caribbean includes provisions for protecting indigenous land rights and ensuring access to environmental justice. [96] Judicial interventions have played a vital role in safeguarding indigenous land rights. In Mayagna (Sumo) Awas Tingni Community v Nicaragua (2001), the IACtHR held that the government violated the community's land rights by granting a logging concession without consultation or consent. [97] Similarly, in Ngati Apa v Attorney-General (2003), the New Zealand Court of Appeal recognized the customary title of the Māori people over coastal lands, affirming their right to manage and protect these areas. [98] Despite these legal advancements, implementation remains a significant challenge. Corruption, bureaucratic inefficiency, and competing economic interests often undermine the enforcement of land rights. Moreover, many legal systems fail to recognize collective land

[94] Narmada Bachao Andolan v Union of India (2000) 10 SCC 664.
[95] Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No 169), adopted 27 June 1989.
[96] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted 4 March 2018.
[97] Mayagna (Sumo) Awas Tingni Community v Nicaragua (2001) IACtHR, Series C No 79.
[98] Ngati Apa v Attorney-General [2003] NZCA 117.

ownership, a cornerstone of indigenous cultural and social structures.

VIII. Global Climate Finance and Its Accessibility

Climate finance is an essential component of the global response to climate change, particularly for developing nations that face acute vulnerabilities but lack adequate resources for mitigation and adaptation. The financial mechanism established under the United Nations Framework Convention on Climate Change (UNFCCC) emphasizes support for developing countries to address climate challenges equitably. However, accessibility to climate finance remains riddled with obstacles such as complex application processes, inequitable distribution, and a lack of transparency and accountability. The establishment of the Green Climate Fund (GCF) in 2010 under the auspices of the UNFCCC was a landmark development in global climate finance. The GCF was designed as a financial mechanism to support developing countries in mitigating greenhouse gas emissions and adapting to the adverse effects of climate change.[99] With an initial goal of mobilizing USD 100 billion annually by 2020 from public and private sources, the GCF represents the global commitment to achieving climate justice. One of the unique features of the GCF is its direct access modality, which allows developing countries to access funds without intermediaries. Accredited national implementing entities (NIEs) from developing nations can submit project proposals directly to the GCF Board, ensuring greater ownership and alignment with national priorities.[100] For instance, the Enhanced Direct Access Pilot Programme has facilitated localized decision-making and capacity-building, empowering communities to implement climate-resilient initiatives. The GCF has supported numerous projects in

[99] Green Climate Fund, *About GCF* (2023) https://www.greenclimate.fund/who-we-are/about-gcf

[100] UNFCCC, *Report of the Green Climate Fund to the Conference of the Parties* (2011) UN Doc FCCC/CP/2011/6.

sectors such as renewable energy, agriculture, water management, and disaster risk reduction. For example, in Rwanda, the GCF supported the implementation of a project to strengthen the resilience of agricultural systems in drought-prone regions, directly benefiting smallholder farmers.[101] Similarly, in Fiji, the GCF financed the relocation of climate-vulnerable communities, integrating disaster risk management with sustainable development.[102] Despite its achievements, the GCF has faced criticism for its bureaucratic inefficiencies and inability to disburse funds swiftly. Delayed approvals and disbursements have impeded timely implementation of critical projects, particularly in countries with urgent adaptation needs.[103]

While the creation of mechanisms like the GCF has marked progress, developing nations continue to face significant barriers in accessing climate finance. These challenges include: complex application processes[104] , disproportionate distribution of funds[105], dependence on external intermediaries[106], lack of predictable and long-term financing [107] and private sector reluctance. [108] Transparency and accountability are critical for ensuring that climate finance is used effectively and equitably. The absence of robust mechanisms to track and report climate finance flows has led to concerns about mismanagement, duplication, and misuse of funds. To address these challenges, several initiatives have been undertaken. The Climate Finance Transparency Initiative (CFTI)

[101] Green Climate Fund, *Strengthening Climate Resilience in Rwanda* (2020).
[102] Green Climate Fund, *Community Resilience Building in Fiji* (2019).
[103] J Timmons Roberts and Romain Weikmans, 'The Green Climate Fund: A Catalyst for Ambition?' (2020) 10 Climate Policy 1.
[104] Liane Schalatek, 'Accessing Climate Finance: Challenges for Developing Countries' (2022) Heinrich Böll Stiftung, available at: https://www.boell.de
[105] ODI, *Climate Finance and the Vulnerability of Small Island Developing States* (2021).
[106] Nakhooda and others, *Improving Climate Finance Effectiveness* (ODI, 2020).
[107] OECD, *Climate Finance Provided and Mobilised by Developed Countries in 2016–2020* (2022).
[108] UNEP, *Blended Finance for Climate Action* (2021).

seeks to enhance accountability by tracking finance flows and providing open access to data on climate funding.[109]. Likewise, the Independent Redress Mechanism (IRM) of the GCF allows communities adversely affected by funded projects to seek remedies and hold implementers accountable.[110]

To improve the accessibility, equity, and effectiveness of global climate finance, the following measures are recommended:

- **Simplifying Access Procedures**: Climate finance mechanisms should streamline application processes and provide technical assistance to developing nations, particularly LDCs and SIDS. Capacity-building initiatives can enhance the ability of national implementing entities to develop and implement high-quality projects.
- **Ensuring Equitable Allocation***:* Donor countries and multilateral institutions must prioritize funding for the most vulnerable nations and communities. The adoption of needs-based allocation frameworks can address existing disparities and ensure that resources reach those who need them most.
- **Enhancing Predictability and Scale**: Achieving the climate finance goals of the Paris Agreement requires greater political will and innovative financing mechanisms. Leveraging private sector investments through guarantees, insurance, and risk-sharing instruments can mobilize additional resources for climate action.
- **Strengthening Transparency and Accountability**: Developing standardized reporting methodologies, independent verification mechanisms, and anti-corruption measures can enhance the credibility and effectiveness of

[109] Climate Finance Transparency Initiative, *About CFTI* (2023).
[110] Green Climate Fund, *Independent Redress Mechanism* (2023).

climate finance. Recipient countries should also establish robust monitoring systems to track the impact of funded projects.

- **Aligning Finance with National Priorities**: Climate finance initiatives must be designed in consultation with local stakeholders to ensure alignment with national development goals and community needs. Participatory governance models can enhance ownership and sustainability of climate projects.

IX. Achieving Climate Justice through Regional Cooperation

Climate justice emphasizes the need for equitable solutions to the global challenge of climate change, recognizing the disproportionate impacts on vulnerable and marginalized populations. Achieving climate justice requires not only individual national efforts but also collective regional cooperation. Regional alliances are uniquely positioned to tackle climate change due to their shared geographical vulnerabilities, cultural ties, and economic interdependencies. Alliances like ASEAN, the African Union, and the Latin American and Caribbean States have developed frameworks to address climate challenges collectively, often tailoring solutions to regional contexts. ASEAN, comprising 10 Southeast Asian nations, is particularly vulnerable to climate impacts such as rising sea levels, typhoons, and heatwaves. Recognizing these shared threats, ASEAN has adopted frameworks like the ASEAN Agreement on Transboundary Haze Pollution and the ASEAN Climate Change Initiative (ACCI) to address environmental and climate challenges collaboratively.[111] The haze pollution caused by deforestation and agricultural burning in Indonesia affects neighboring ASEAN countries. The regional agreement mandates collective action to monitor and prevent haze

[111] ASEAN Secretariat, *ASEAN Agreement on Transboundary Haze Pollution* (2002

pollution, thereby fostering accountability and shared responsibility.[112] The ACCI provides a platform for member states to exchange best practices, implement regional climate projects, and strengthen climate resilience through capacity building and technology transfer.[113] While ASEAN's initiatives demonstrate the potential for regional cooperation, challenges such as differing national priorities, weak enforcement mechanisms, and funding constraints hinder their full implementation.[114]

The African Union (AU) has taken significant steps to address climate change through the African Climate Policy Centre (ACPC) and the African Renewable Energy Initiative (AREI)**.** The AU emphasizes climate justice by advocating for increased climate finance, technology transfer, and capacity building for African nations.[115] African Renewable Energy Initiative, launched in 2015, aims to harness Africa's renewable energy potential to provide clean energy access while reducing emissions. It also prioritizes local community participation and job creation, thereby addressing socio-economic inequalities.[116] The AU has been a strong advocate for climate justice at international forums, emphasizing the historical responsibility of developed nations and the need for fair financing mechanisms under the principle of Common but Differentiated Responsibilities (CBDR).[117] Latin America and the Caribbean, highly prone to hurricanes, droughts, and deforestation, have adopted regional frameworks like the Escazu Agreement to promote environmental rights and justice. This landmark treaty

[112] Jutta Brunnée, "The ASEAN Way and Environmental Cooperation: Moving beyond Regional Traditions," (2008) 108 *American Journal of International Law* 101, 103.
[113] ASEAN Secretariat, *ASEAN Climate Change Initiative* (2010).
[114] Loretta Malintoppi, "Regional Environmental Agreements in ASEAN: Implementation Challenges," in Tushnet (ed.), *Comparative Environmental Law* (OUP 2015) 242.
[115] African Union, *African Climate Policy Centre (ACPC): Strategy Report* (2020).
[116] African Union, *African Renewable Energy Initiative (AREI)* (2015).
[117] UNFCCC, *Paris Agreement* (2015), Article 4(3).

guarantees public participation in environmental decision-making and access to justice in environmental matters, particularly for marginalized communities. [118] Despite these efforts, regional alliances face challenges such as political instability, lack of funding, and divergent national interests. Strengthening institutional mechanisms and ensuring greater commitment from member states are essential for the success of regional initiatives.

Mitigation and adaptation are central to achieving climate justice, and regional cooperation enables countries to address these priorities collectively. Collaborative efforts often involve shared infrastructure, joint research, and resource pooling to overcome common challenges. Regional alliances have supported large-scale renewable energy projects to reduce greenhouse gas emissions while promoting energy access. For instance, The Desert to Power Initiative in Africa aims to harness the vast solar potential of the Sahel region to provide clean energy to millions of people.[119] In ASEAN, the Lao PDR-Thailand-Malaysia-Singapore Power Integration Project (LTMS-PIP) promotes cross-border energy trade to enhance energy security and reduce reliance on fossil fuels. [120] These projects demonstrate the benefits of regional collaboration in achieving mitigation goals, although challenges such as funding, political will, and infrastructure gaps persist.

Adaptation strategies are critical for regions disproportionately affected by climate change. Regional cooperation in disaster preparedness and resilience-building is particularly evident in the Caribbean and Southeast Asia. The Caribbean Community Climate Change Centre (CCCCC) provides technical support and financial

[118] Escazu Agreement, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* (2018).
[119] African Development Bank, *Desert to Power Initiative: Programme Brief* (2021).
[120] ASEAN Secretariat, *Lao PDR-Thailand-Malaysia-Singapore Power Integration Project (LTMS-PIP)* (2020).

resources to member states for climate-resilient infrastructure and early warning systems.[121] In ASEAN, the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) facilitates regional responses to natural disasters, enhancing resilience through shared resources and expertise.[122] Access to accurate climate data is essential for effective mitigation and adaptation planning. Regional initiatives like the Africa Climate Resilient Investment Facility (AFRI-RES) and the Asia-Pacific Climate Change Adaptation Information Platform (AP-PLAT) provide member states with climate projections, risk assessments, and policy guidance.[123]

South-South cooperation refers to the exchange of resources, technology, and knowledge among developing countries to achieve common development goals. In the context of climate justice, South-South cooperation fosters solidarity, strengthens capacities, and promotes equitable development. Developing nations often face technological and financial constraints in addressing climate change. South-South partnerships facilitate technology transfer and capacity-building initiatives, enabling countries to adopt climate-friendly technologies and practices. For example, India's International Solar Alliance (ISA), launched in collaboration with African and Asian countries, promotes solar energy deployment through knowledge sharing and joint ventures.[124] China's Belt and Road Initiative (BRI) includes green development projects, such as renewable energy investments in Africa and Southeast Asia.[125]

[121] Caribbean Community Climate Change Centre (CCCCC), *Annual Report* (2022).
[122] ASEAN Secretariat, *ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre): Overview* (2021).
[123] United Nations Economic Commission for Africa, *Africa Climate Resilient Investment Facility* (2019).
[124] India Ministry of New and Renewable Energy, *International Solar Alliance Framework Agreement* (2015).
[125] Belt and Road Initiative Green Coalition, *Annual Report on Green Development* (2022).

While international climate finance mechanisms often favor developed countries, South-South cooperation provides alternative financing options for climate projects in the Global South. For instance, Brazil's Amazon Fund supports deforestation prevention projects in other Latin American countries, emphasizing regional solidarity. [126] Developing nations have used South-South cooperation to amplify their voices in global climate negotiations. The Like-Minded Developing Countries (LMDC) group, comprising countries from Asia, Africa, and Latin America, has played a crucial role in advocating for climate justice at UNFCCC conferences.[127] Despite its potential, South-South cooperation faces challenges such as limited financial resources, geopolitical tensions, and lack of institutional frameworks. Strengthening partnerships and addressing these barriers is essential for maximizing the impact of South-South initiatives.

X. Conclusion

Climate justice is both a moral and practical necessity, particularly for the Global South, which disproportionately bears the impacts of climate change despite contributing minimally to global greenhouse gas emissions. These nations face significant socio-economic and environmental challenges, including extreme weather events, rising sea levels, resource insecurity, and widening inequalities. Addressing these challenges requires a multifaceted approach that emphasizes equity, inclusivity, and sustainability. The article highlights that the Global South faces systemic barriers in achieving climate justice, ranging from weak institutional frameworks to financial constraints and governance deficits. These challenges are compounded by inequities in global climate finance, where complex bureaucratic processes and lack of transparency

[126] Brazilian Ministry of Environment, *Amazon Fund Annual Report* (2020).
[127] Like-Minded Developing Countries (LMDC), *Submission to the UNFCCC on Climate Finance Transparency* (2021).

undermine the effectiveness of mechanisms such as the Green Climate Fund. Developing countries also grapple with insufficient technological capacities, making it difficult for them to mitigate and adapt to the adverse effects of climate change. Vulnerable populations, including indigenous communities, are at an even greater disadvantage due to their socio-economic vulnerabilities and limited legal protection for their land and resources. Yet, indigenous knowledge systems offer innovative solutions for climate adaptation, underscoring the need to integrate traditional practices into climate policies. Courts in the Global South have emerged as pivotal actors in advancing climate justice, with landmark rulings in countries like India, Pakistan, and South Africa. Judicial interventions have enforced climate laws, protected environmental rights, and struck a balance between developmental priorities and environmental sustainability. However, achieving climate justice also requires equitable access to global climate finance. This remains a critical issue, as the current allocation of funds often excludes the least-developed nations, leaving them ill-equipped to address the escalating climate crisis. Regional cooperation and South-South partnerships, exemplified by alliances such as ASEAN and the African Union, provide promising models for collaborative climate action. These alliances demonstrate the potential for sharing resources, knowledge, and technology, fostering resilience through collective efforts.

To address the pressing challenges of climate justice, transformative strategies are essential. Strengthening domestic legal and institutional frameworks is a fundamental starting point. Governments must incorporate climate justice principles into national constitutions and legislative systems, as seen in countries like South Africa and Kenya. Enhancing the capacity of environmental regulatory agencies to enforce climate laws and monitor compliance is equally critical. Public participation in

environmental policymaking must be encouraged, ensuring that the voices of marginalized communities are heard and their needs addressed. Equally important is enhancing access to justice for vulnerable groups. Establishing specialized environmental courts, such as India's National Green Tribunal, can expedite climate-related cases, while expanding legal aid services can empower affected communities to seek redress for environmental harm. Judicial training programs should also be implemented to equip judges and lawyers with the expertise to handle complex climate issues.

Reforming global climate finance is another priority. Simplifying the application processes for international climate funds would improve accessibility for least-developed countries, while increased transparency and independent oversight mechanisms would ensure the equitable allocation of funds. Encouraging private sector investment in green infrastructure through incentives such as tax breaks and risk guarantees could also bolster climate finance. Leveraging traditional knowledge systems, particularly those of indigenous communities, offers another pathway to climate justice. Governments and international organizations should recognize and protect the intellectual property rights of these communities, incorporate their practices into national adaptation strategies, and enact legal reforms to safeguard their land rights and prevent displacement. Regional and South-South cooperation can play a transformative role in addressing shared climate vulnerabilities. Establishing regional adaptation funds to tackle common challenges, such as droughts and rising sea levels, can strengthen collective resilience. Facilitating the transfer of technology and knowledge through South-South initiatives can help nations in the Global South adopt sustainable practices. Coordinated disaster response mechanisms at the regional level can also enhance preparedness for extreme weather events. Public

awareness and education are equally critical for fostering climate justice. Governments should incorporate climate education into national curricula to equip future generations with the knowledge and skills to address climate challenges. Public awareness campaigns can inform citizens of their rights and responsibilities, while partnerships with civil society organizations can mobilize grassroots movements advocating for climate action.

Future research and policy innovation must address the dynamic and evolving nature of climate justice. Exploring the role of judicial activism in shaping climate policies, particularly in the Global South, can provide valuable insights for legal reforms. Understanding the economic implications of climate change, including the long-term costs of inaction and the benefits of green investments, is critical for designing effective strategies. Gender-specific vulnerabilities also warrant closer examination, as climate change disproportionately affects women, particularly in rural and indigenous communities. Developing innovative financing mechanisms, such as green bonds and climate insurance schemes, can complement traditional climate finance. Advancements in technology, including artificial intelligence and blockchain, should be explored for their potential to enhance climate adaptation and resource management. Strengthening global climate governance is another critical area, requiring efforts to harmonize international frameworks and ensure accountability for non-compliance with climate commitments. Achieving climate justice is an ethical imperative and a practical necessity for a sustainable future. The Global South faces disproportionate challenges due to socio-economic vulnerabilities, institutional weaknesses, and inequities in global climate finance. However, it also holds significant opportunities for transformative change, from leveraging traditional knowledge to fostering regional cooperation and strengthening legal frameworks. Collaborative efforts at local,

national, and international levels are essential to ensure that climate action is equitable, inclusive, and sustainable. By adopting a holistic approach to climate justice, the global community can create a more just and resilient world, ensuring that current and future generations inherit a livable planet.

The Role of Environmental Law in a Tech-Driven Sustainable Future

Mohd. Yasin Wani *
Ajaz Afzal Lone **

Abstract

The synergistic integration of environmental law, sustainability principles, and technological innovation serves as a transformative framework to address escalating global environmental crises such as climate change, biodiversity loss, and pollution. The convergence of legal mandates, sustainability imperatives, and emerging technologies can enhance ecological governance, promote intergenerational equity, and drive systemic resilience in the face of planetary boundaries. The international frameworks, including the Stockholm Declaration (1972), the Rio Declaration (1992), the Paris Agreement (2015), and the United Nations 2030 Agenda for Sustainable Development, are evaluated in this study. The study assesses the evolving role of environmental law as it shifts from reactive regulation to proactive, adaptive legal systems. It highlights the influence of global institutions such as the United Nations Environment Programme (UNEP), International Renewable Energy Agency (IRENA), World Bank, and the World Economic Forum (WEF) in shaping sustainability-focused legal mechanisms. Through interdisciplinary analysis and case studies from the EU's Circular Economy Action Plan to Brazil's blockchain-enabled deforestation tracking, the paper demonstrates how technologies like AI, IoT, blockchain, and satellite surveillance are revolutionising compliance monitoring, enabling real-time data collection, predictive analytics, and stakeholder engagement. These innovations serve both as tools for enforcement and as catalysts for participatory, transparent environmental governance. Despite these advancements, it identifies persistent challenges, including regulatory lag, ethical concerns over data privacy and algorithmic bias, as well as unequal access to technological resources. In response, it calls for inclusive governance models, harmonised international standards, and investments in digital literacy and green infrastructure. Ultimately, the study proposes a tripartite model grounded in legal rigour, technological agility, and

* Assistant Professor, School of Law, University of Kashmir, Hazratbal Srinagar
** Assistant Professor, University Institute of Legal Studies, Chandigarh University, Punjab, 140413

ethical sustainability that offers a viable roadmap for mitigating ecological degradation while advancing equitable and just development globally. The findings urge stakeholders to embrace interdisciplinary collaboration, ensuring that environmental law evolves as a living instrument capable of navigating an era defined by rapid technological change and planetary boundaries.

Keywords: Environmental Law, Sustainability, Technology Integration, Climate Change Mitigation, Regulatory Frameworks, Ecological Resilience

I. Introduction

The 21st century has ushered in an era of unparalleled environmental crises, marked by accelerating climate change, catastrophic biodiversity decline, and pervasive pollution. These interconnected challenges, fuelled by unchecked industrialisation, rapid urbanisation, and exploitative resource consumption, threaten the stability of ecosystems and human societies alike. As global temperatures rise, ice caps melt, and species vanish at alarming rates, the urgency for transformative solutions has never been more acute. Environmental law, long regarded as the cornerstone of ecological governance, now faces a critical test: Can it evolve beyond its traditional reactive mechanisms to address the scale and complexity of modern environmental threats?[1] This paper contends that the integration of sustainability principles and technological innovations into legal frameworks offers a path forward, creating a synergistic paradigm capable of reconciling ecological preservation with societal progress. Historically, environmental law has functioned as a remedial tool, responding to harm through regulations on emissions, waste management, and habitat protection. While these measures have yielded localised successes—such as reduced air pollution in cities or the recovery of endangered species they often lag behind the accelerating pace

[1] Sands, P., & Peel, J. (2018). *Principles of International Environmental Law*. Cambridge University Press.

of ecological degradation.[2] The static nature of many legal systems, coupled with fragmented international governance, undermines their capacity to address transnational issues like ocean acidification or deforestation. Moreover, traditional regulatory approaches frequently prioritise economic interests over long-term ecological health, perpetuating a cycle of unsustainable development. To break this cycle, environmental law must transition from a rules-based framework to one that embeds sustainability as a foundational principle. Sustainability, with its emphasis on intergenerational equity, circular economies, and systemic resilience, provides a holistic lens to redefine legal priorities. For instance, laws mandating corporate carbon neutrality or incentivising regenerative agriculture align legal obligations with planetary boundaries, ensuring economic activities operate within ecological limits.

Technology emerges as a catalytic force in this transformation. Innovations such as artificial intelligence (AI), blockchain, and the Internet of Things (IoT) are reshaping how environmental laws are implemented, monitored, and enforced. AI-driven predictive models, for example, enable governments to anticipate climate impacts—from rising sea levels to crop failures—and craft adaptive policies. Blockchain technology enhances supply chain transparency, allowing consumers and regulators to trace products like palm oil or minerals to their source, thereby combating illegal deforestation and mining. IoT sensors deployed in forests, oceans, and urban centres provide real-time data on pollution levels, wildlife movements, and resource consumption, empowering authorities to enforce regulations with precision. These tools not only improve compliance but also democratise environmental governance by engaging citizens through accessible data platforms.

[2] Birnie, P., Boyle, A., & Redgwell, C. (2009). *International Law and the Environment*. Oxford University Press.

Case studies illustrate this synergy in action. In Singapore, the Smart Nation Initiative integrates IoT networks and AI analytics to optimise energy use, reduce waste, and monitor air quality, aligning urban development with sustainability goals. The European Union's Digital Product Passport initiative employs blockchain to track the lifecycle of electronics, ensuring compliance with circular economy principles. Internationally, the Global Forest Watch platform utilises satellite imagery and machine learning to detect deforestation in near real-time, bolstering enforcement of agreements like the Paris Accord. Such examples demonstrate technology's dual role as both an enabler of sustainability and a bridge between legal frameworks and on-the-ground realities.

However, this integration is not without challenges. Ethical dilemmas surrounding data privacy, algorithmic bias, and the digital divide risk exacerbating inequalities if unaddressed. Regulatory systems often struggle to keep pace with technological advancements, creating gaps that corporations may exploit. Additionally, the high costs of cutting-edge technologies can marginalise developing nations, perpetuating global inequities in environmental protection. To mitigate these risks, legal frameworks must prioritise inclusivity, ensuring that technological benefits are equitably distributed. This requires international cooperation to standardise data governance protocols, subsidise green technologies for low-income regions, and embed ethical safeguards into AI systems. The convergence of environmental law, sustainability, and technology represents humanity's most viable pathway to planetary resilience. By reimagining legal systems as dynamic, adaptive structures informed by ecological limits and empowered by innovation, societies can transcend the reactive paradigms of the past. Policymakers must champion interdisciplinary collaboration, forging partnerships between

governments, technologists, and communities to co-create solutions. Investments in digital literacy and green infrastructure will ensure that technological progress serves as a tool for equity, not exclusion. As the climate clock ticks, this tripartite approach offers not just a framework for survival but a blueprint for a thriving, regenerative future.

II. The Evolution of Environmental Law: Environmental law has its roots in the early 20th century, with the establishment of regulations aimed at curbing pollution and conserving natural resources.[3] The Stockholm Declaration of 1972 marked a turning point, recognising the environment as a global concern and laying the foundation for international environmental law.[4] Subsequent agreements, such as the Rio Declaration (1992) and the Paris Agreement (2015), have further solidified the legal framework for environmental protection.[5] These instruments emphasise the principles of sustainable development, intergenerational equity, and the precautionary principle, which guide the formulation and implementation of environmental laws.[6] Despite these advancements, the effectiveness of environmental law is often hindered by enforcement challenges, jurisdictional limitations, and the lack of harmonisation between national and international regulations.[7]

III. Sustainability: A Guiding Principle for Environmental Law: Sustainability, anchored in the integration of environmental, social, and economic imperatives, provides a holistic blueprint for balancing present needs with the rights of future generations.[8]

[3] Rodgers, W. H. (1994). *Environmental Law*. West Publishing.
[4] Stockholm Declaration, 1972. United Nations Conference on the Human Environment.
[5] United Nations. (1992). Rio Declaration on Environment and Development.
[6] United Nations. (2015). Paris Agreement.
[7] Weiss, E. B. (1989). *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*. Transnational Publishers.
[8] Brundtland Report. (1987). *Our Common Future*. World Commission on Environment and Development.

Environmental law acts as the primary vehicle for institutionalising these principles, translating abstract ideals into enforceable policies. Legal frameworks such as the United Nations Sustainable Development Goals (SDGs), particularly Goals 12 (Responsible Consumption) and 13 (Climate Action), exemplify this nexus, embedding sustainability into global governance agendas.[9] These instruments recognise that environmental protection cannot exist in isolation; it must align with equitable development and economic viability. However, codifying sustainability into law is only the first step. Effective implementation demands systemic shifts in societal priorities and economic structures.[10] For instance, the European Union's Circular Economy Action Plan redefines waste management laws to prioritise resource efficiency, mandating product lifecycle accountability for corporations. Similarly, carbon pricing mechanisms, such as emissions trading systems, operationalise the "polluter pays" principle, aligning market behaviour with ecological limits. These examples illustrate how law can incentivise sustainable practices while penalising harmful ones. Yet, challenges persist. Legal systems often prioritise short-term economic gains over long-term ecological health, perpetuating unsustainable practices like fossil fuel subsidies or deforestation-linked trade agreements.[11] Moreover, enforcement gaps, particularly in developing nations, undermine progress, as weak governance and corruption hinder compliance. Bridging these gaps requires reorienting legal paradigms toward intergenerational equity and resilience. This includes recognising

[9] United Nations. (2015). Transforming our world: the 2030 Agenda for Sustainable Development.
[10] Ibid.
[11] Sachs, J. D. (2015). *The Age of Sustainable Development*. Columbia University Press.

non-human entities, such as rivers or ecosystems, as legal persons, as seen in New Zealand's Whanganui River Settlement.[12]

Critically, sustainability-driven legal reforms must address socio-economic disparities. Climate litigation, such as the *Urgenda* case in the Netherlands, demonstrates how courts can compel governments to uphold sustainability commitments, ensuring vulnerable communities are not disproportionately burdened by environmental harm.[13] Equitable access to green technologies and inclusive policymaking are equally vital to prevent marginalised groups from being excluded from the benefits of sustainability transitions.

Ultimately, sustainability must evolve from a legal aspiration to a lived reality. This necessitates adaptive governance models that embrace scientific innovation, participatory decision-making, and cross-sector collaboration. By anchoring environmental law in the ethics of sustainability, societies can forge a path toward regenerative economies that honour planetary boundaries and human dignity alike.

IV. The Role of Technology in Environmental Sustainability: Technological innovations have the potential to revolutionise environmental sustainability by offering solutions to some of the most pressing ecological challenges.[14] Renewable energy technologies, such as solar and wind power, have significantly reduced greenhouse gas emissions, while advancements in waste management and recycling have minimised environmental pollution.[15] Artificial intelligence (AI) and big data analytics are increasingly being utilised for environmental monitoring, enabling

[12] Daly, H. E. (1996). *Beyond Growth: The Economics of Sustainable Development*. Beacon Press.
[13] Renn, O. (2020). *The Role of Technology in Environmental Sustainability*. Springer.
[14] International Renewable Energy Agency (IRENA). (2020). *Renewable Energy and Climate Change*.
[15] WEF. (2021). *Harnessing Artificial Intelligence for the Earth*. World Economic Forum.

real-time tracking of deforestation, air quality, and wildlife populations.[16] Moreover, blockchain technology is being explored for enhancing transparency and accountability in environmental governance.[17] Despite these promising developments, the adoption of technology is not without challenges. Issues such as high costs, technological disparities, and ethical concerns must be addressed to ensure equitable and sustainable outcomes.[18]

V. The Synergy Between Environmental Law and Technology: The integration of technology into environmental law offers a transformative opportunity to enhance regulatory effectiveness and enforcement.[19] For example, satellite imagery and remote sensing technologies are being used to monitor compliance with environmental regulations, such as deforestation bans and marine pollution controls.[20] Similarly, digital platforms are facilitating public participation in environmental decision-making, thereby promoting transparency and accountability.[21] However, the rapid pace of technological innovation often outstrips the capacity of legal frameworks to adapt, creating regulatory gaps and uncertainties.[22] To address this, there is a need for dynamic and flexible legal mechanisms that can accommodate emerging technologies while safeguarding environmental integrity.[23]

VI. Case Studies: Bridging Law, Sustainability, and Technology: Several case studies illustrate the successful

[16] Tapscott, D., & Tapscott, A. (2016). *Blockchain Revolution: How the Technology Behind Bitcoin is Changing Money, Business, and the World*. Penguin.
[17] Floridi, L. (2018). *The Ethics of Artificial Intelligence*. Oxford University Press.
[18] Gupta, A. (2018). *Environmental Law and Technology*. Routledge.
[19] UNEP. (2019). *Satellite Technologies for Environmental Monitoring*. United Nations Environment Programme.
[20] Ostrom, E. (2010). *Polycentric Systems for Coping with Collective Action and Global Environmental Change*. Global Environmental Change.
[21] Abbott, K. W., & Snidal, D. (2009). *Strengthening International Regulation Through Transnational New Governance*. Vanderbilt Journal of Transnational Law.
[22] Gunningham, N., & Sinclair, D. (2017). *Smart Regulation: Designing Environmental Policy*. Oxford University Press.
[23] European Commission. (2020). *Circular Economy Action Plan*.

integration of environmental law, sustainability, and technology. In the European Union, the Circular Economy Action Plan leverages technological innovations to promote resource efficiency and waste reduction, aligning with the principles of sustainability.[24] In India, the National Green Tribunal has utilised GIS mapping and drone technology to enforce environmental regulations and resolve disputes.[24] Similarly, in Brazil, blockchain technology is being employed to combat illegal deforestation by tracking the supply chain of timber products.[25] These examples underscore the potential of technology to enhance the implementation and enforcement of environmental laws, while advancing sustainability goals.

VII. Challenges and Limitations: Despite the promising synergies between environmental law, sustainability, and technology, several challenges persist. Legal frameworks often lag behind technological advancements, leading to regulatory gaps and uncertainties. Additionally, the high costs associated with technology adoption can exacerbate inequalities, particularly in developing countries. Ethical concerns, such as data privacy and the potential misuse of AI, further complicate the integration of technology into environmental governance. Moreover, the lack of interdisciplinary collaboration between legal experts, technologists, and policymakers hinders the development of holistic solutions. Addressing these challenges requires a concerted effort to foster innovation, promote equity, and strengthen institutional capacities. To harness the full potential of environmental law, sustainability, and technology, policymakers and practitioners must adopt a multifaceted approach. First, legal frameworks should be designed to be adaptive and forward-looking, capable of accommodating

[24] National Green Tribunal, India. (2010). *National Green Tribunal Act*.
[25] Amazon Environmental Research Institute (IPAM). (2021). *Blockchain for Sustainable Supply Chains*.

emerging technologies. Second, investments in research and development are essential to drive technological innovations that align with sustainability principles. Third, capacity-building initiatives should be undertaken to enhance the technical and legal expertise of stakeholders. Finally, international cooperation and knowledge-sharing are critical to addressing transboundary environmental challenges and ensuring equitable access to technological solutions.

VII. A Tripartite Framework for Planetary Resilience: Ecological Integrity, Equity, and Governance

Building upon the interdisciplinary case studies and insights presented in the previous sections, this part of the paper articulates a comprehensive tripartite framework for addressing the dual crises of ecological degradation and social inequality. The proposed framework synthesises ecological science, legal adaptation, and inclusive governance into a unified strategy aimed at reinforcing planetary resilience. Drawing on scientific concepts such as the planetary boundaries framework and rooted in the principles of sustainability and adaptive governance, this section seeks to operationalise environmental law in a way that responds dynamically to the escalating complexity of global environmental and socio-economic challenges.

This tripartite approach rests on the foundational premise that environmental protection, social justice, and economic development are deeply interdependent. A sustainable and equitable future cannot be achieved through fragmented policies or isolated interventions. Instead, it requires a systemic realignment of environmental law to accommodate new technological realities, ecological science, and participatory policymaking. The need for such a holistic perspective is reinforced by mounting evidence of the global environmental crisis, rising sea levels, deforestation, species extinction, and pollution, whose impacts are

disproportionately borne by the world's most vulnerable populations. The following sub-sections unpack each dimension of the tripartite model, beginning with the imperative to maintain ecological integrity within the safe operating limits of Earth's systems.

I. The Imperative of Ecological Integrity

The integrity of Earth's ecosystems is the bedrock of sustainable life on the planet. Yet, the natural world is facing unprecedented pressure due to anthropogenic activity. Climate change, habitat destruction, freshwater depletion, and chemical contamination are not isolated incidents; they are interconnected threats that jeopardise ecological balance and human survival alike. In this context, ecological integrity refers to the maintenance of vital ecosystem functions and the resilience of biophysical systems across scales.

A key concept informing this understanding is the "planetary boundaries" framework developed by Johan Rockstrom and colleagues. This model identifies nine critical Earth-system processes that define the biophysical thresholds within which humanity can safely operate. These include climate change, biosphere integrity (biodiversity loss), land-system change, freshwater use, biogeochemical flows (notably the nitrogen and phosphorus cycles), ocean acidification, atmospheric aerosol loading, stratospheric ozone depletion, and the introduction of novel entities such as microplastics and endocrine-disrupting chemicals. As of recent assessments, several of these boundaries—most notably climate change, biodiversity loss, and biogeochemical flows—have already been transgressed, signalling a heightened risk of irreversible environmental tipping points. Addressing ecological degradation, therefore, requires urgent and transformative action embedded in law and policy.

B. The Role of Environmental Law

Environmental law provides the formal structure for regulating human-environment interactions. It sets standards for emissions, defines conservation priorities, and establishes enforcement mechanisms. However, the traditional model of environmental law—typically reactive, fragmented, and jurisdiction-bound—is no longer adequate to deal with the scale and complexity of modern environmental challenges. A transformation in legal thinking is required—one that recognises the dynamic, systemic nature of ecological risks and the need for anticipatory, rather than solely punitive, regulation.

To meet this challenge, environmental law must adopt a more adaptive and integrated approach. This includes embedding scientific thresholds such as planetary boundaries into legislation, incentivising preventive action, and enabling cross-sector coordination. Laws must be capable of evolving alongside rapid technological innovation and shifting environmental baselines. This also involves codifying environmental rights as fundamental human rights, thereby strengthening the moral and legal foundation for ecological justice and sustainability.

II. Advancing Equitable Development

The second pillar of the tripartite framework focuses on the equitable distribution of environmental and economic benefits. Sustainable development is inherently normative: it must ensure that growth does not come at the expense of the marginalised or future generations. Equitable development addresses structural disparities that often determine who benefits from environmental policies and who bears their costs.

Environmental degradation tends to disproportionately impact low-income and marginalised communities. These groups often reside in environmentally hazardous areas—close to industrial zones,

waste dumps, or flood-prone regions—and have limited access to healthcare, legal recourse, or political representation. For example, indigenous communities facing displacement due to extractive industries or urban poor populations suffering from chronic air pollution exemplify the uneven exposure to environmental harms. Addressing these inequalities requires legal systems that prioritise distributive justice and provide avenues for redress.

Inclusive governance is crucial to this goal. Environmental decisions should not be made solely by governments or corporate actors. Instead, decision-making must actively involve local communities, civil society organisations, indigenous peoples, and other relevant stakeholders. Legal mandates for free, prior, and informed consent (FPIC), along with mechanisms for public consultation and access to environmental information, are essential tools in achieving participatory governance. At the same time, green economic growth—through investments in renewable energy, sustainable agriculture, and green jobs—can align environmental and developmental goals, creating co-benefits that enhance societal well-being while reducing ecological stress.

III. A Tripartite Approach in Practice

The tripartite model comprising integrated environmental management, adaptive environmental law, and collaborative governance provides a robust framework for operationalising sustainability and justice.

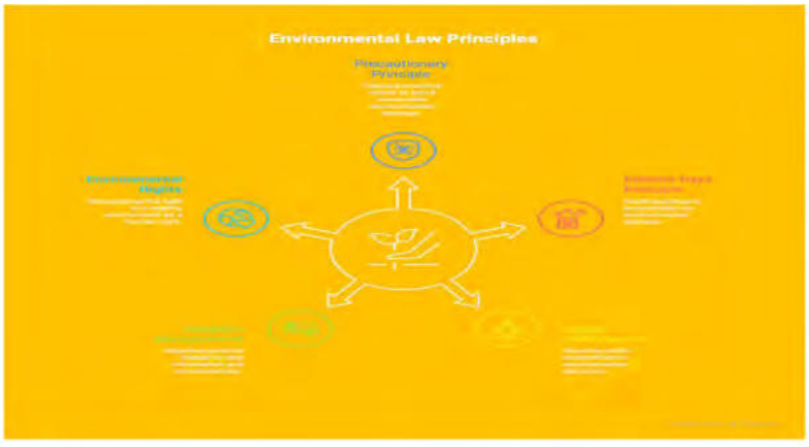
A. Integrated Environmental Management

Integrated environmental management recognises that environmental, economic, and social systems are interlinked. Policies must therefore be designed to reflect this complexity. Ecosystem-based management approaches, for instance, advocate managing natural resources according to ecological boundaries rather than political jurisdictions. Integrated Water Resources

Management (IWRM) and Integrated Coastal Zone Management (ICZM) exemplify coordinated strategies for managing shared natural resources sustainably. Additionally, life cycle assessment (LCA) methods help evaluate the environmental impacts of products or services across their entire lifespan, encouraging sustainable production and consumption practices.

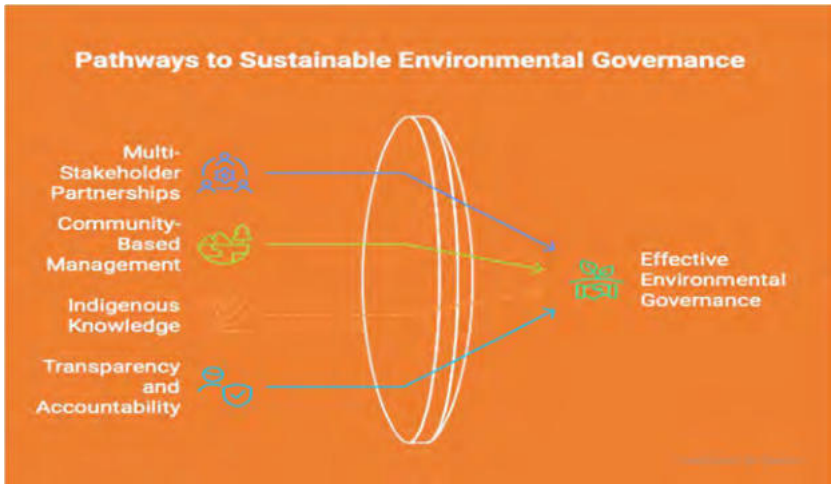
B. Adaptive Environmental Law

Adaptive environmental law entails a legal system that is capable of learning and evolving. It emphasises flexibility, precaution, and continuous monitoring. Central tenets include the precautionary principle acting to prevent harm even in the absence of full scientific certainty; the polluter pays principle assigning accountability to those responsible for environmental damage; and the principle of public participation ensuring transparency and democratic engagement. Legal mechanisms must also incorporate adaptive management, whereby policies are regularly revised based on performance metrics and new information. Recognising the right to a healthy environment in national constitutions or legal codes further anchors environmental protection within broader human rights obligations.



C. Collaborative Governance

Collaborative governance promotes cooperation across sectors and scales. It calls for multi-stakeholder partnerships involving government agencies, private enterprises, NGOs, research institutions, and local communities. Community-based natural resource management empowers local populations to steward their environments sustainably, drawing on both scientific and traditional ecological knowledge. Indigenous knowledge systems, long marginalised in formal policy processes, must be integrated and respected as vital to resilience and sustainability. Finally, transparency and accountability in policy-making are essential to building public trust and ensuring effective implementation.



Conclusion

The convergence of environmental law, sustainability, and technology represents a powerful tool for addressing global environmental challenges. By leveraging technological innovations within a robust legal framework, it is possible to achieve sustainable development and ecological balance. However,

realising this potential requires overcoming significant challenges, including regulatory gaps, technological disparities, and ethical concerns. This paper underscores the need for interdisciplinary collaboration, adaptive governance, and equitable access to technology as key enablers of a sustainable future. As the world grapples with escalating environmental crises, the integration of law, sustainability, and technology offers a beacon of hope for a resilient and thriving planet. This tripartite approach, emphasising ecological integrity, social equity, and adaptive governance, must guide future legal reforms and policy design.

From Colonial Roots to Modern Reforms: A Comparative Study of Confession Laws Under the Indian Evidence Act,1872 and Bhartiya Sakshya Adhiniyam, 2023

Vijeta Kumari*
Alka Bharati**

Abstract

The paper presents how the law handles confessions in India that advises accused about their right to silence & right to representation. The article highlights how well BSA amendments achieve investigating efficiently while respecting fundamental rights with an analysis of British Indian law v. Modern Indian law. The examination details how these legislative modifications impact population groups including young offenders who are juvenile & low-income individuals undergoing police detention & arrest. The research attempts to explain how Indian courts have worked to boost protections against assaulted prisoners & compelled confession procedures & how these measures are affected by the BSA. The research validates why judicial standards, procedural safeguards together through human rights-oriented confession policies, must be clear to maintain constitutional principles & uphold international human rights standards in legal proceedings.

Keywords: Confession, Legal reform, Human Rights & Investigation

I. Introduction

The paper conducts an analytical review of legal standards concerning confession & admission emphasizing the changes in voluntariness tests and custodial protection measures and police operational standards. The evaluation investigates through judicial decisions along with statutory analysis if these recent changes represent complete philosophical divorce from colonial laws or they represent only semantic modifications. Lawmakers have investigated confession because they question both their validity

*Research Scholar, Department of Laws, Bhagat Phool Singh Mahila Vishwavidyalaya
** Assistant Professor, Department of Laws, Bhagat Phool Singh Mahila Vishwavidyalaya

and their trustworthiness due to accusations of coercive methods used by officers in custody. This paper examines the historical development of confession laws in India including the shift from the Indian Evidence Act (IEA) of 1872 to the Bharatiya Sakshya Adhiniyam of 2023.[1]

When developing the IEA the designers focused on colonial requirements without paying attention to individual rights protection. Sections 25 and 26 along with the other exclusionary rules establish stark restrictions to prevent colonial police forces from abusing their powers through the IEA. These implementation rules commonly disturbed the requirements for successful investigation work. The Bharatiya Sakshya Adhiniyam (BSA) constitutes part of three major legislative changes that preserve IEA concepts within modernized and streamlined terminology.[2]

When compared to US Miranda rights and British Police and Criminal Evidence Act, 1984, legal systems in both nations place strong importance on individual rights together with procedural fairness during interrogation with legal representation. BSA presents contemporary approaches to evidence legislation but it maintains the confession system framework introduced by colonial rule. Actual changes to the legal system must combine new legislations with transformative advancements among law enforcement officers and improved judicial oversight and better legal representation for the public.[3]

As a colonial governance creation, the IEA set the rules for which evidence could be admitted in Indian courtrooms. Confessions face

[1] Malik, N. (2023). ADMISSIBILITY OF CONFESSION UNDER INDIAN EVIDENCE ACT, 1872. *ShodhKosh: Journal of Visual and Performing Arts*, *4*(2). https://doi.org/10.29121/shodhkosh.v4.i2.2023.2342

[2] *Ibid*

[3] Frenda, S. J., Berkowitz, S. R., Loftus, E. F., & Fenn, K. M. (2016). Sleep deprivation and false confessions. *Proceedings of the National Academy of Sciences*, *113*(8), 2047–2050. https://doi.org/10.1073/pnas.1521518113

specific exceptions during criminal proceedings although the Indian Evidence Act allows their admission in court. Under Section 24 of the IEA statements recorded through promise or threat or inducement are mostly prohibited for courtroom use. Confessions acknowledged under these influences are acceptable for trial admission provided the original impression associated with the confession gets eliminated fully. Section 29 of the IEA excludes the inadmissibility of confessions based on two specific conditions while Section 24 establishes inadmissibility.

Under the BSA, Section 22 expounds and extends confession provisions while consolidating them into one section. Section 22 of the BSA uses coercion as an influence that affects confession relevance but goes beyond threats or promises and inducements. Under the BSA it becomes clear when confessions become relevant after the inducement effect and the threat impression disappear completely. The BSA expands the conditions under which confessions stay relevant after defendants make them while under a promise of secrecy or after being deceived through questions they are not legally bound to answer. Under the BSA both electronic and digital records obtained during criminal investigations now receive complete guidance for admissibility although the IEA did not provide such sufficient clarification. The BSA operates to overcome difficulties in managing digital evidence and modern technological advancements. The statute defines electronic records for court acceptance while expanding the general definition of evidence to encompass all digital records. The BSA organizes legal procedures while protecting suspects against wrongful interrogations and delivers efficient and equitable court proceedings. The reform signifies a move toward fundamental rights law that links evidence guidelines with the constitutional rights established in India. Through its aims the BSA works to enhance the understanding and simplicity of evidence rules in

order to achieve better accessibility and enhanced transparency. The BSA constitutes a fundamental advancement of modern Indian evidence procedures which strengthens the foundation established by IEA to address law enforcement requirements of the digital era[4].

II Historical Background of Confession Law

In 1871 Sir James Fitz James Stephen penned the draft that later became Act I of 1872 to create The Indian Evidence Act, 1872 but since then human society has developed in every aspect and all its elements require new approaches for existence. The methods of criminal activity together with crime investigation techniques have undergone substantial modifications.

The development of confession laws follows interpretations from judicial court cases to determine legal precedents. Judicial interpretation analysis through time allows evaluation of judicial-made procedures that shape confession laws both in their application phase and their understanding process. Tangible evidence known as 'Sakshya' is vital to court proceedings since both legal dispute perspectives need to be demonstrated through authoritive evidence. Plenty of diverse categories of evidence exist including oral and documentary evidence and direct and indirect evidence and primary and secondary evidence together with physical and digital documentation. The Bharatiya Sakshya Adhiniyam, 2023 (BSA) contains four segments and twelve chapters together with one hundred seventy sections. Through general evidence rules the Adhiniyam unites evidence principles to protect the capability of fair trial procedures.

While BSA adopts contemporary legal terminology throughout the document the law has eliminated outdated language that no longer

[4] Kassin, S. M. (2008b). The Psychology of Confessions. *Annual Review of Law and Social Science*, *4*(1), 193–217. https://doi.org/10.1146/annurev.lawsocsci.4.110707.172410

proves useful. This legislation creates a foundation for a technological transformation of the legal system. This modern law extends evidence admission guidelines in specific situations while also attempting to enhance understanding and clarity of certain sections. The legislation seeks to enhance the structure and reduce complexity in evidence procedures through alignment with current developments for achieving just outcomes.

Bharatiya Sakshya Adhiniyam (BSA) is the law of the place (Lex Fori) i.e. it is to be applied as per the place where the dispute (i.e. question in the court) arises.The Adhiniyam has widened the scope of the general applicability of the BSA via Section 1(2), as compared to the old Indian Evidence Act, 1872. BSA now applies to all the judicial proceedings in or before any court including the court martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator. Earlier, The Indian Evidence Act, 1872 excluded the applicability to the Court-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy (Discipline) Act, 1934 or the Air Force Act. Bharatiya Sakshya Adhiniyam (BSA) has significantly expanded the scope of the terms 'evidence' and 'documents'.

Section 2(d) of the Bharatiya Sakshya Adhiniyam defined "document" through its inclusion of "any other means" as a mode of expression and description or recording. Electronic and digital records fall under the scope of the document definition through its fundamental definition. Electronic server logs together with documents on laptops constitute documents that serve as evidence for legal proceedings. The Bharatiya Sakshya Adhiniyam (Section 2(e)) sets in the definition of evidence those terms that previously appeared in Section 3 of The Indian Evidence Act (1872). The revised definition of "evidence" now accepts electronic oral statements like those made through video conferencing as well as electronic records & digital documents. The word confession will

come under the definition of evidence if it is proved according to the legal provisions of Bharatiya Nyay Sanhita, 2023 (BNS).

III Concept of Confession

The word confession is sub-specie because the term admission is specie and the word statement is genus. The word confession is not expressly defined in BNS and IEA. Because it is very subjective term what can be an offence in any particular case it depends on the category of offences. Confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence The admission of grave incriminating facts are not confession the statement which contains self -exculpatory matter may not amount to the confession. When confession contains both exculpatory and inculpatory part. There is evidence that any part of exculpatory part is false, the court must admit only inculpatory part and while rejecting the exculpatory element as inherently incredible.[5]

Voluntariness is a basic legal requirement that each confession is shown to be free from coercion. Legal standards courts reject admission of coerced statements obtained pamamagitan intimidating or extreme violence or undue compelling pressure. The principle exists to protect accused people by ways that preserve the fairness of trials. The legal structure for confessions contains two critical rights for accused persons as a routine process which are the right to legal representation and the right to not give statements. These rights are there to inform the individuals about the consequences of making statements and to protect their rights against self-incrimination.

It is up to the Courts to assess the appellant and the appellant's confession before determining the admissibility or avoidability of

[5] Yadav, P. (2020). Traversing the Muddy Waters—Legality, Tenability, and Reliability of Co-defendant's Confession under the Indian Evidence Act. *Statute Law Review*, *42*(3), 335–343. https://doi.org/10.1093/slr/hmaa002

evidence. Courts consider two matters to see if the confession complies with the legal rules and whether the statement was given voluntarily by the suspect. This evaluation system prevents the events that lead to the wrongful conviction of innocent people. Each jurisdiction has its own rules that govern the rules around the acceptance of confessions. The scope of the Indian Evidence Act of 1872 delineates all the creases of confessions by way of permissibility conditions and exclusion grounds in Indian legal matters. The Courts did not immediately try to address the implication of confession laws, nothing direct through law, but rather relied on judgments that laid down basic guidelines for them. Confessions must be evaluated according to court-identified principles that govern both the reliability of the confession and the conditions under which such admissions may ultimately be deemed valid.[6]

The laws take through necessary voluntary confession residence procedures that will protect individual rights as to account from legal process integrity and where the prevention of false conviction. Considering that evidence for criminality must provide convincing proof of either side and the fact that legally obtained confessions carry significant weight in either establishing innocence or guilt, criminal evidence plays an indispensable role. Confession laws are one such thing, and if executed correctly, they act as a good performance-increasing factor in the criminal justice system. Preventing coercion is another function of confession laws: they guard against interrogational techniques that elicit false admissions. To provide adequate protection against "defence -less" groups like minors and the mentally ill.

[6] *Ibid*

IV. Comparative Analysis of Confession Under IEA And BSA

Sections 24 to 30 of the Indian Evidence Act provided specific attention to confessions as they provide the criteria for admission of evidence of confessions. Through sections 24 to 30 of the Indian Evidence Act, the British legal system manifested this same balance between protection against torture or exploitation of people in Article 11 and importance of voluntariness of confession in evidence in Article 12. Due to its impact on the British legal system, English common law developed two basic standards that needed to be followed: protection of individuals' rights and forced confessions. Longstanding tolerance of abuse constructed under Indian law this standard into law as a principle of this standard that authorities would lay down to refuse acceptance of confessions obtained through coercion or physical pressure.[7]

As a result, this reform paved the way for protocols for police interactions. Under the Indian Evidence Act all police confessions should have been obtained by legal processes. One particular legal provision served to undercut interrogation tortures that had previously been systemically utilized across many colonial dominions. Simultaneously, the British legal system influenced the training protocols as well as the investigation approaches and questioning techniques of the police. There are certain provisions regarding confessions enshrined in the Indian Evidence Act, 1872 and are laid down mainly between sections 24 to 30.[8] The section set determines the admissible conditions of evidence based on the confessions of the accused before the court and highlights ways of

[7] Kassin, S. M., Drizin, S. A., Grisso, T., Redlich, A. D., Gudjonsson, G. H., & Leo, R. A. (2010). Police-induced confessions, risk factors, and recommendations: Looking ahead. *Law and Human Behavior*, *34*(1), 49–52. https://doi.org/10.1007/s10979-010-9217-5

[8] Kassin, S. M. (2012). Why confessions trump innocence. *American Psychologist*, *67*(6), 431–445. https://doi.org/10.1037/a0028212

dealing with evidence based on confessions. Later Sections perform a detailed analysis as follows:

Section 24: Confession Caused by Inducement, Threat, or Promise

This section 24 provides that a confession which is made by an accused is not admissible if it is caused by any inducement, threat, or promise made by a person in authority. The purpose behind this provision is to ensure that confessions are made voluntarily & without coercion.

Section 25: Confession to Police Officer

Section 25 provides that confession made to a police officer shall not be proved against a accused person. This provision aims to protect individuals from the potential coercive practices of law enforcement & ensures that confessions are obtained in a fair manner.[9]

Section 26: Confession Made During Custody of Police

Under this section police confessions require immediate magistrate presence to obtain admission value. The provision functions as a protection mechanism to secure the rights of accused people during police interrogations.[10]

Section 27: How Much of Information Received from Accused May Be Proved

Under Section 27 the admission of information from an accused person leads to discovering factual elements. It is possible to admit the confession to court but only with respect to its findings of previously unknown facts.[11]

[9] The Indian Evidence Act, 1872 (Act 1 of 1872)
[10] *Ibid*
[11] *Ibid*

Section 28: Confession Made After Removal of Doubts

The legislation permits accepting confessions from accused persons who have no more doubts about their involvement. As Per this provision the courts must validate evidence from confessions only when the defendant or accused fully understands the consequences of admission of guilt.[12]

Section 29: Confession Not to Be Taken as Evidence

For a confession to qualify as lawfully acceptable evidence it must abide by the legal procedures set by law according to Section 29. The prescribed manner helps both record and enforce confessions to follow legal standards.[13]

Section 30: Consideration of Confession Affecting Co-Accused

This section permits that a confession made by one accused to be used against another co-accused. However, the confession must be corroborated by other evidence to be admissible, to ensure that the rights of the co-accused are protected accordingly.

In 2023, the Bhartiya Sakshya Adhiniyam underwent a change from its original version as the Indian Evidence Act of 1872. The legislative reformation followed the purpose of modernizing traditional evidence Act while adapting to modern trends & societal values within Indian court procedures. Evidence Act in Indian courts rest on on the rules established by the Act to determine the receiving evidence from spoken declarations with written documents combined through electronic records. BSA enhanced previous legal restrictions & limitations on confession admission enforced under IEA.[14]

[12] *Ibid*
[13] *Ibid*
[14] The Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023)

Section 22. Confession caused by inducement, threat, coercion or promise when irrelevant in criminal proceeding.[15]

The confession which is taken by inducement, threat, coercion or promise will be irrelevant in criminal proceeding. The word coercion is newly added word in this section. Confession does not require any corroboration if it relates with accused person himself

Section 23. Confession to the police officer.[16]

(1) No confession made to a police officer shall be proved as against a person accused of any offence.

(2) No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him:

Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.

Section 24. Consideration of proved confession affecting person making it and others jointly under trial for same offence.[17]

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation I.-"Offence", as used in this section, includes the abetment of, or attempt to commit, the offence.

Explanation II.-A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply

[15] I*bid*
[16] I*bid*
[17] I*bid*

with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section.

V Interpretation Of Confession Laws By Courts

3.1 Nandini Satpathy v. P.L. Dani,[18]

Nandini Satpathy, who was the former Odisha Chief Minister, was accused of committing an abuse of power and a corruption offense. This critical care left behind a clue about the case, the police investigation of Satpathy, during interrogation, got a confession from her. The court established several important rights that an accused person must be advised of regarding their legal rights, including their right to remain silent and their right to counsel. The court ruling bolstered the content of Sections 24 and 25 with a focus on the protections of an individual at the time of police questioning.

3.2 State of U.P. v. Rajesh Gautam,[19]

The accused Rajesh Gautam confessed to murder when officers interrogated him. Attorneys representing the defence sought to exclude the confession since it was given to police personnel. The legal matter in this case examined whether police officer confessions should be accepted for court proceedings. According to Section 25 the Supreme Court made clear that police officer confessions remain inadmissible unless there exists evidence beyond the confession to support it. People must have protection from coercive interrogation techniques according to the court since this decision builds on previous Indian Evidence Act foundations.

[18] AIR 1978 SC 1123
[19] AIR 2003 SC 933

3.3 **Keshav Lal v. State of Rajasthan,**[20]

After his arrest Keshav Lal provided investigators with the information that resulted in finding crucial evidence. The court wanted to know whether the confession met legal standards for being considered valid evidence. The court analyzed Section 27 during this proceeding since it enables information permitting discovery of evidence to be admissible. The Supreme Court held that admissions to court must contain precise details about evidence in order to be accepted as valid information. The court established precise boundaries of Section 27 by laying down that discovery of evidence must have a direct link to confession statements.

3.3 Maharashtra v. Damu,[21]

The court suggested that Damu confessed to being a part of serious crimes which implicated co-defendant parties. This confession was made inadmissible because the confession was applied to other co-accused defendants. This court has considered Section 30 with regard to the role it plays in admitting an accused confession against his co-accused. The Supreme Court held that to ensure the standards of fair trial the evidence of confession needs an independent proof which would accredit the legitimate trial procedures. This ruling has been made so that the rights of individuals co-accused in crimes are protected, and false convictions do not take place, based on non-evidentiary confession**s.**

4.4 Shivappa v. State of Karnataka,[22]

Confessions under Section 29 states that the confession must be recorded in the prescribed manner. Court rules mandate that a confession must be made on camera before a magistrate in order to

[20] AIR 2002 SC 1022
[21] AIR 2000 SC 981
[22] AIR 2010 SC 899

break its authenticity. The court stated that law enforcement agencies must comply with legal procedures when conducting confession acquisition activities.

VI Contemporary Issues And Challenges In The Application Of Confession Laws

Confession laws in India are fundamentally built on well-established legal principles. However, the issue arises in the present time when they are implemented across the length and breadth of the country. A set of unfavourable factors – a cause of action, which emerged from coercion actions and false confession, as well as basic human rights violations, is a source of substantial obstacles. This article not only describes the challenges facing confession laws in India but also talks about the necessary guarantees that ensure the rights of detainees during the questioning process are preserved. On the one hand, the mere fact that the use of torture and coercion has been witnessed among the law enforcers as they implement the law on confessions all over India means it is a tough call to get it accepted by the public, as the police interrogation techniques are cruel and corrupt. The police behavior that is still manifested is a clear example of the voluntary confessions that the law insists on, not being followed due to the fact that the officers use the means of force and psychological torture, which makes the evidence unreliable and thus inadmissible in court. Assuming that the police obtained a confession from the accused, it may result in wrongful convictions when they force him/her to confess to the crime even if he/she is completely innocent in their plan to escape abusive interrogatory treatment situation.

According to the law enforcement chiefs, the obsession with wrongful confessions is very common and shows varieties of behaviours such as coercion, deprivation of legal assistance, and along with these, psychological pressure is also included. Masses of people generally confess to crime out of fear or confusion and

hoping that cooperating with the authorities would result in lighter punishment. The Indian criminal justice system created a threat to the quality of the evidence of confessions and conviction when under pressure, they accepted the evidence from the accused who was wrongly convicted. These cases may raise doubt about the truth of those confessions and also be the cause of a higher rate of errors in the justice system. Marginalized groups are often deprived of their right to access legal representation while police are conducting their interrogation. Changes in the Legal Aid mechanism and the fact that people in remand could not afford the legal fees were major causes of this situation. Vulnerable people were even made to undergo the implementation of application of the truth drug, in the past, which is a heinous crime in itself, to crack the criminals' mask and uncover the truth from them. Violations of the rights of the refugees become even more evident, as the police decide to interview the asylum seekers over their application forms for refugee status without a lawyer being present.

Ordinary people have a legal obligation so that they are aware of their rights and what their declarations mean. The law defenders have to do away with the existing inequalities in the criminal justice system because of the refusal to grant legal aid access makes the situation even worse. Police officers are under-prepared in terms of knowing the right ethics in interrogation that are legal and the process of confession. The non-existence of training has led to the use of outdated and coercive ways in questioning. The absence of law enforcement training will tend to lead to the employment of procedures that not only violate citizens' rights but also corrupt evidence that is obtained from the scene of the crime.

Some courts, nevertheless, abstain from the act of excluding dubious confessions, thereby promoting an environment that is friendly and quiet to the use of forced confessions. The judiciary mind about the efficiency of the courts at the expense of persons' rights, and this is the reason for the loss of the public confidence in

justice. The fact that filled confession evidence represents the violation of the constitutional rights of the accused to a fair trial is supported by the reality that it is a lie of the court's factual base. The justice system does not work when people are convicted through confessions that they do not trust and this is the way that they are deprived of their rights to due process. In addition, the use of coercive interrogation methods represents a severe violation of the internationally recognized protocols human rights among them, the ban on torture, and inhuman treatment. The Convention Against Torture, and other international human rights instruments ought to provide protection against any such abuses since persons must be safe from such harsh actions. Legal aid services play a critical role because they protect individual rights along with keeping innocent people from making wrongful confessions. A coerced confession leads people to be considered guilty instead of maintaining the legal requirement that proof of guilt must be established. The principle underpins the foundation of the rule of law where justice needs to be protected

VII Conclusion

Thus, after examination of legal provisions of BNS and IEA, it is observed that no new changes have been introduced in regard of confession law except in section 22, the new word has been added. Deliberate & voluntary confession of guilt, if it is proved then, it will be most effectual proof in law. An involuntary confession which is not taken with free will of maker of it or if statement taken as a result of harassment & continuous interrogations after several hours, then the person if treated as an accused, the statement will be treated as involuntary statement. There is no rule of prudence neither rule of law that evidence which is in nature of extra judicial confession can not be relied upon unless corroborated by other evidence. If that extra -judicial confession is reliable & trustworthy. It can be relied and conviction can be given on the basis of that confession.

Judicial Activism in India: A Constitutional Imperative or Institutional Overreach

Kaisar Iqbal Mir*
Ashfaq Hamid Dar**

Abstract

The Indian Supreme Court's journey from a constitutional sentinel to a proactive architect of policy has provoked both acclaim and unease in equal measure. While the Constitution prescribes distinct spheres for the Executive, Legislature, and Judiciary, the Supreme Court has, at critical junctures, extended its reach beyond traditional adjudication to address legislative inaction, administrative lapses, and systemic violations of fundamental rights. These interventions have expanded access to justice and advanced socio-economic rights, yet they have also raised concerns over the erosion of the separation of powers. This paper offers a critical examination of the evolution, scope, and normative foundations of judicial activism in the Indian context. It interrogates whether such judicial interventions are constitutionally justified imperatives or instances of democratic transgression. By engaging with constitutional provisions, landmark jurisprudence, and comparative perspectives, the study seeks to delineate the legitimate boundaries of an activist judiciary while assessing its long-term implications for democratic governance and institutional equilibrium.

Keywords: Judicial Activism, Judicial Restraint, Supreme Court, Constitutional Interpretation, Separation of Powers

I. Introduction

Judicial activism has emerged as one of the most debated themes in Indian constitutional law, oscillating between being lauded as a bulwark of rights and criticised as a breach of institutional boundaries. It denotes a judicial posture in which courts,

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*Research Scholar, Faculty of Law, Jamia Milia Islamia, New Delhi.
** Teaching Assistant, Department of Law, School of Legal Studies, Central University of Kashmir, Ganderbal J&K.

particularly the higher judiciary, do not confine themselves to a literal interpretation of law but instead adopt a purposive approach to achieve justice in its broader sense.[1] In the Indian context, this phenomenon has played a transformative role in safeguarding fundamental rights, promoting social justice, and filling legislative or administrative vacuums. Yet, it has also provoked questions about the constitutional limits of judicial power and the extent to which courts can legitimately influence governance.

The significance of judicial activism in India is intrinsically linked to the country's democratic architecture, which rests on the doctrine of separation of powers among the Legislature, Executive, and Judiciary.[2] While the Constitution envisages each organ as autonomous within its designated sphere, it also empowers the judiciary to act as the final interpreter and guardian of the Constitution.[3] This dual role—both as an adjudicator of disputes and as a sentinel of constitutional morality—creates a space where judicial interventions can be seen as either constitutionally mandated safeguards or as instances of institutional overreach. The balance between these two perceptions is critical for sustaining public confidence in judicial institutions and maintaining the equilibrium of the constitutional scheme.

For the purposes of this study, judicial activism refers to the proactive interpretation and application of constitutional and statutory provisions by the judiciary to address contemporary socio-political and economic issues, often extending beyond traditional adjudication.[4] Institutional overreach denotes judicial actions that encroach upon the legitimate policy-making functions of the Legislature or administrative prerogatives of the Executive,

[1]UpendraBaxi, *The Supreme Court and Politics* (Eastern Book Company, 1980) 108.
[2]M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis, 2018) 150.
[3]Constitution of India, Arts.32, 226.
[4] S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, Oxford University Press, 2002) 5

thereby potentially disturbing the separation of powers.[5] The term constitutional imperative, in contrast, captures situations where judicial intervention is necessary to preserve constitutional values, enforce rights, or rectify failures of governance.

This paper pursues three interrelated objectives: firstly, to trace the historical evolution of judicial activism in India and identify its constitutional foundations; secondly, to critically examine its contribution to advancing democratic governance and protecting rights; and thirdly, to evaluate whether certain strands of judicial activism amount to institutional overreach, thereby undermining constitutional balance. The central research question guiding this inquiry is: To what extent is judicial activism in India a constitutional necessity, and where does it risk transforming into institutional overreach?

The study adopts a primarily doctrinal methodology, relying on constitutional provisions, parliamentary debates, and case law to analyse the scope and limits of judicial activism. Where appropriate, a comparative perspective is employed by referencing judicial trends in other constitutional democracies such as the United States and South Africa, to contextualise the Indian experience within a broader framework. This combined approach enables a nuanced assessment that is both context-specific and globally informed.

II. Constitutional Framework and Role of Judiciary

The doctrine of separation of powers, though not expressly articulated in the Indian Constitution, is implicitly embedded within its structural framework.[6] Drawing from the political philosophy of Montesquieu, the doctrine envisages a functional demarcation among the Legislature, Executive, and Judiciary to

[5]Aharon Barak, *The Judge in a Democracy* (Princeton University Press, 2006) 130.
[6]K.C. Wheare, *Modern Constitutions* (2nd edn, Oxford University Press, 1966) 69.

prevent the concentration of power and safeguard individual liberty.[7] In the Indian context, the doctrine has been adapted to suit the needs of a parliamentary democracy, where a rigid separation is neither possible nor desirable, yet functional autonomy of each organ is preserved.[8]

The constitutional scheme reflects this nuanced approach. While Articles 53 and 154 vest the executive power in the President and Governors respectively, legislative authority is distributed between Parliament and State Legislatures under Articles 245, 246 and 248. Judicial power is primarily vested in the Supreme Court and High Courts under Articles 32 and 226 respectively. The judiciary's constitutional mandate as the guardian of fundamental rights is fortified through specific provisions empowering it to enforce constitutional norms. Article 32 confers the Supreme Court with the authority to issue writs for the enforcement of fundamental rights,[9] while Article 226 extends a similar jurisdiction to the High Courts, albeit with a wider scope covering both fundamental and legal rights.[10] Article 142 further empowers the Supreme Court to pass such decrees or orders as may be necessary "for doing complete justice" in any cause or matter pending before it.[11]

Traditionally, the judiciary's function was confined to adjudication—interpreting laws enacted by the legislature and resolving disputes within the boundaries set by statutory and constitutional provisions.[12] However, the development of public interest litigation in the post-Emergency period marked a decisive

[7]Montesquieu, *The Spirit of Laws* (Anne M. Cohler et al eds, Cambridge University Press, 1989) 155.
[8]M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis, 2018) 150.
[9]The Constitution of India, Art. 32.
[10]The Constitution of India, Art. 226.
[11]The Constitution of India, Art. 142.
[12]H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, 2013) 2225.

shift towards an expanded judicial role in public law.[13] Courts began to entertain petitions on behalf of disadvantaged groups, frame guidelines in areas where legislation was absent, and even monitor the implementation of their directions. This transformation blurred the conventional lines of separation, creating an activist jurisprudence aimed at achieving substantive justice.

The theoretical justification for this evolution is anchored in three interrelated principles. First, the doctrine of checks and balances ensures that no organ becomes omnipotent, with the judiciary acting as a restraint on executive and legislative excesses.[14] Second, constitutional morality—a term popularised in Indian jurisprudence—requires that constitutional actors operate within the ethical framework and transformative spirit of the Constitution, even if such an approach demands a departure from strict legal formalism.[15] Third, judicial review, constitutionally enshrined in Articles 13, 32, and 226, operates as the bedrock of the rule of law, empowering courts to strike down legislative or executive actions inconsistent with constitutional mandates.[16]

Thus, in the Indian setting, separation of powers is not an absolute division but a dynamic balance—one in which the judiciary's role has expanded beyond traditional adjudication to proactive constitutional guardianship, raising questions about where the line between legitimate intervention and institutional overreach ought to be drawn.

III. Historical Evolution of Judicial Activism in India

The trajectory of judicial activism in India reflects a gradual but decisive transformation in the philosophy of adjudication. The

[13]Supra note 6 at 24.
[14]UpendraBaxi, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980) 108.
[15]*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
[16]Constitution of India, Arts.13, 32, 226.

post-independence judiciary initially adopted a restrained, positivist approach, adhering closely to the text of the law and maintaining deference to legislative policy choices.[17] This phase was characterised by a narrow reading of fundamental rights and an emphasis on parliamentary supremacy in socio-economic matters. The early decisions in *A.K. Gopalan v. State of Madras*[18] and *State of Madras v. Champakam Dorairajan*[19] illustrate this formalist orientation, where the Supreme Court refrained from reading substantive content into constitutional guarantees beyond their explicit wording.

A turning point came with *Kesavananda Bharati v. State of Kerala*,[20] where the Supreme Court, while upholding Parliament's power to amend the Constitution, introduced the Basic Structure doctrine as an implied limitation on that power. This judgment marked the judiciary's self-conscious role as a constitutional guardian, empowered to invalidate even constitutional amendments if they violated core principles such as the rule of law, separation of powers, or judicial review. The Basic Structure doctrine became a normative foundation for subsequent activist interventions.

The post-Emergency era witnessed an even more pronounced expansion of judicial role, driven partly by the perceived abdication of constitutional responsibility by the political branches during the Emergency (1975–1977). The *Maneka Gandhi v. Union of India*[21] decision revolutionized Article 21 by reading into "procedure established by law" the requirement of fairness, reasonableness, and non-arbitrariness. This interpretive shift facilitated the judicial protection of a wide range of rights—

[17]H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, 2013) 2225.
[18]*A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.
[19]*State of Madras v. ChampakamDorairajan*, AIR 1951 SC 226.
[20]*KesavanandaBharati v. State of Kerala*, (1973) 4 SCC 225.
[21]*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

environmental, educational, and socio-economic—through expansive constitutional interpretation.

A parallel development was the rise of Public Interest Litigation (PIL), spearheaded by the court in S.P. Gupta v. Union of India[22] and subsequent cases. PIL enabled the relaxation of locus standi rules, allowing any public-spirited individual to approach the court on behalf of disadvantaged groups.[23] Through PIL, the judiciary assumed an active role in policy oversight and governance—formulating guidelines in areas like sexual harassment (Vishaka v. State of Rajasthan[24]), environmental protection (M.C. Mehta v. Union of India[25]), and police reforms (Prakash Singh v. Union of India[26]).

From the 1990s onwards, judicial activism diversified into areas such as electoral reforms, transparency, and the right to information, often filling legislative or administrative vacuums. However, this assertiveness also attracted criticism for blurring the lines of separation of powers, with some decisions seen as judicial policymaking rather than constitutional adjudication.[27] In recent years, high-profile judgments like *Justice K.S. Puttaswamy v. Union of India*[28] (recognizing the right to privacy as a fundamental right) and *Navtej Singh Johar v. Union of India*[29] (decriminalizing consensual same-sex relations) reflect the court's continued willingness to address socially and politically sensitive issues, reinforcing its activist legacy.

[22] *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.
[23] Supra note 6 at 196.
[24] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
[25] *M.C. Mehta v. Union of India*, (1987) 1 SCC 395
[26] *Prakash Singh v. Union of India*, (2006) 8 SCC 1.
[27] UpendraBaxi, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980) 113.
[28] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[29] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

Thus, the evolution of judicial activism in India has been shaped by constitutional crises, political contingencies, and the judiciary's own evolving conception of its role—from a textual interpreter to a proactive guardian of rights and constitutional values. While this evolution has enriched Indian constitutionalism, it has also necessitated renewed debate over the boundaries of legitimate judicial intervention.

IV. Landmark Judgments Shaping Judicial Activism

Judicial activism in India has been crystallized through a series of landmark decisions where the Supreme Court asserted its interpretive authority to expand constitutional protections, enforce governance standards, and address legislative lacunae. These decisions illustrate both the potential and the limits of judicial power in a constitutional democracy.

1. *Kesavananda Bharati v. State of Kerala*[30]: Often regarded as the constitutional watershed, *Kesavananda Bharati* affirmed Parliament's wide amending power under Article 368 but introduced the Basic Structure doctrine—an implied limitation preventing amendments that alter the essential features of the Constitution.[31] This doctrine has since been invoked to protect core principles such as the rule of law, separation of powers, and judicial review, thereby enabling the judiciary to act as the ultimate guardian of constitutional identity.
2. *Maneka Gandhi v. Union of India*[32]: This decision marked a transformative reading of Article 21, moving from a literal "procedure established by law" to a substantive requirement that such procedure must be "just, fair, and

[30] Supra note 22.
[31] H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing, 2013) 2227.
[32] Supra note 23.

reasonable."[33] The judgment laid the foundation for the expansion of rights under Article 21 to include environmental protection, education, health, and privacy, thereby demonstrating judicial creativity in rights interpretation.

3. *Vishaka v. State of Rajasthan*[34]: Faced with the absence of legislation on workplace sexual harassment, the Court, relying on international conventions such as CEDAW, framed binding guidelines to protect women at work.[35] This case exemplifies judicial law-making in the interstices of legislative silence, sparking debates on the legitimacy and necessity of such interventions.
4. *M.C. Mehta v. Union of India*[36]: A series of environmental cases filed by M.C. Mehta led the Court to evolve principles such as the polluter pays, precautionary principle, and absolute liability. These decisions expanded Article 21 to include the right to a clean and healthy environment and demonstrated the judiciary's proactive role in environmental governance.[37]
5. *Prakash Singh v. Union of India*[38]: Acknowledging systemic deficiencies in policing, the Court issued comprehensive directives for police reforms, including the establishment of State Security Commissions and fixed tenures for key officers. While the judgment sought to depoliticise law enforcement, its partial implementation reflects the limitations of judicial mandates in policy reform.

[33]M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis, 2018) 1236.
[34] Supra note 26.
[35] CEDAW, adopted 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).
[36] Supra note 27.
[37] Supra note 6 at 118.
[38]Supra note 28.

6. *Justice K.S. Puttaswamy v. Union of India*[39]: In this landmark privacy decision, a nine-judge bench recognised the right to privacy as intrinsic to the right to life and personal liberty under Article 21.[40] The judgment underscored the judiciary's willingness to address technologically driven rights challenges, with implications for data protection, surveillance, and autonomy.
7. *Navtej Singh Johar v. Union of India*[41]: Striking down Section 377 of the Indian Penal Code insofar as it criminalized consensual same-sex relations, the Court reinforced constitutional morality over social morality.[42] The decision reflects an evolving judicial sensitivity towards dignity, equality, and personal choice as integral components of constitutional rights.

Collectively, these cases demonstrate how the Supreme Court has progressively expanded its interpretive domain, bridging legislative gaps and articulating new rights. However, they also highlight the tensions inherent in such activism—between fulfilling constitutional imperatives and respecting the functional boundaries of the separation of powers.

V. Judicial Activism: A Constitutional Imperative

The Indian Constitution's design envisages the judiciary as the sentinel on the qui vive—an institution charged with preserving the supremacy of the Constitution and ensuring the protection of fundamental rights. While the text does not expressly employ the phrase "judicial activism," the framework of judicial review under Articles 13, 32, 136, 141, and 226 creates a constitutional mandate

[39]Supra note 30.
[40]Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019) 276.
[41]Supra note 31.
[42]UpendraBaxi, "Constitutional Morality: An Indian Perspective" (2018) 5(2) *Indian Law Review* 83.

for active judicial engagement in cases of rights violations, institutional breakdown, or legislative inaction.[43]

The imperative arises partly from the doctrine of separation of powers, which in the Indian context is neither rigid nor absolute.[44] Unlike the United States, where the separation is strictly demarcated, the Indian Constitution incorporates an integrated scheme with deliberate overlaps—allowing the judiciary, in appropriate cases, to step into spheres conventionally occupied by the legislature or the executive.[45] This flexibility is rooted in the belief that the ultimate sovereignty lies with the Constitution, and all branches are bound to uphold its mandates.

Judicial activism has been particularly justified by the expansive interpretation of Article 21, which has transformed from a narrow guarantee against arbitrary deprivation of life and liberty to a repository of socio-economic entitlements—ranging from the right to a clean environment to the right to privacy.[46] In doing so, the judiciary has acted on the understanding that constitutional rights are living guarantees, requiring interpretation in light of changing societal needs. Moreover, the constitutional scheme places enforceable fundamental rights alongside non-justiciable Directive Principles of State Policy (DPSPs).[47] This juxtaposition creates a duty for the judiciary to harmonize the two, ensuring that DPSPs inform the interpretation of rights while preserving their enforceability.[48] Landmark rulings such as Minerva Mills Ltd. v. Union of India emphasize that a balance between Parts III and IV is essential to realize the Constitution's transformative vision.[49]

[43] *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.
[44] *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.
[45] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966) 146.
[46] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.
[47] Constitution of India, Part III and Part IV.
[48] *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310.
[49] *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

The activism imperative also emerges from the principle of constitutional morality—a normative standard requiring that governance adhere to the foundational principles of liberty, equality, and fraternity, even where popular sentiment may run counter.[50] The judiciary, as the final interpreter of the Constitution, is uniquely placed to enforce such morality against majoritarian impulses, as seen in cases addressing gender justice, minority rights, and personal autonomy.[51]

Finally, judicial activism serves as a corrective mechanism in situations of legislative vacuum or executive inertia. In such cases, courts have issued guidelines—whether for police reforms, workplace safety, or environmental regulation—operating as a constitutional bridge until Parliament or State legislatures enact appropriate laws.[52] While critics caution against judicial overreach, the Constitution's own architecture envisages an active judicial role to prevent the erosion of fundamental rights and to ensure constitutional governance.

Thus, judicial activism in India is not merely a matter of institutional preference but a structural necessity—one anchored in the Constitution's text, its underlying principles, and its transformative aspirations.

VI. Judicial Overreach: Critiques and Constitutional Limits

While judicial activism in India has often been celebrated as a guardian of constitutional rights, it has also attracted criticism when perceived to cross into the domain of policy-making or executive governance. The term "judicial overreach" is invoked when courts are alleged to have ventured beyond the adjudicative

[50]B.R. Ambedkar, Constituent Assembly Debates, Vol. VII, 38.
[51]Supra note 31.
[52]Supra note 26.

mandate, effectively substituting their judgment for that of democratically accountable institutions.[53]

The primary concern lies in the erosion of the separation of powers, which, although flexible in the Indian framework, remains a foundational principle of constitutionalism.[54] When courts assume the functions of law-making or administrative supervision without explicit constitutional or statutory basis, they risk unsettling the delicate institutional equilibrium.[55] Such actions, critics argue, not only undermine the legitimacy of other branches but may also diminish judicial credibility by politicizing the bench.[56]

Instances of perceived overreach often arise in Public Interest Litigation (PIL), where the absence of procedural constraints has enabled courts to issue wide-ranging directions, sometimes extending into budgetary allocations, educational curricula, or environmental policy implementation.[57] While these interventions are frequently motivated by a desire to fill governance gaps, they may also blur the distinction between judicial remedies and legislative policy choices.[58] The Supreme Court itself has, in certain judgments, cautioned against transforming PIL into a platform for governance by judiciary.[59]

Another critique is that judicial legislation—where the court frames rules or guidelines in the absence of law—may become entrenched, effectively bypassing parliamentary scrutiny.[60] Even though such guidelines are intended as interim measures, the

[53]P.P. Rao, "Judicial Activism and Judicial Overreach" (2010) 8 SCC (J) 17.
[54]Supra note 22.
[55]Aharon Barak, *The Judge in a Democracy* (Princeton University Press, 2006) 201.
[56]Arun K. Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Hart Publishing, 2017) 189.
[57]*BandhuaMuktiMorcha v. Union of India*, (1984) 3 SCC 161.
[58]Rajeev Dhavan, "PIL in India: The Continuing Debate" (2008) 10 SCC (J) 27.
[59]*State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402.
[60]Supra 26.

legislative inertia they sometimes engender can result in the judiciary functioning as a de facto lawmaker for prolonged periods.[61] This risk contravening the principle that law-making authority in a democracy flows from the people, through their elected representatives.[62]

Constitutionally, the limits of judicial power are implied within the very text that empowers the judiciary. Articles 32 and 226 confer broad remedial authority, but these are to be exercised "for the enforcement of rights" and not for the creation of entirely new governance frameworks.[63] Similarly, Article 142 empowers the Supreme Court to do "complete justice," yet this provision has been judicially interpreted as supplementary—not as an independent charter to override substantive constitutional provisions.[64]

The doctrine of self-restraint has been advocated by the judiciary itself as a means of preserving institutional legitimacy.[65]Courts have, in several instances, declined to entertain matters deemed to be within the political or policy domain, reinforcing the notion that judicial activism must be bounded by constitutional text, principles, and the imperatives of democratic accountability.[66]

In this light, judicial overreach can be seen not merely as an institutional trespass but as a potential threat to the transformative vision of the Constitution. When activism exceeds its constitutional mandate, it risks weakening the very democratic institutions it seeks to protect. Therefore, a nuanced balance between judicial vigilance and institutional restraint is essential to preserve

[61]P.B. Mehta, "The Rise of Judicial Sovereignty" (2007) 18 Journal of Democracy 70, 77.
[62]*Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.
[63]The Constitution of India, Articles 32 and 226.
[64]*Supreme Court Bar Association v. Union of India*, (1998) 4 SCC 409.
[65]*S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279.
[66]*Divisional Manager, Aravali Golf Club v. Chander Hass*, (2008) 1 SCC 683.

constitutional supremacy while respecting the autonomy of co-equal branches.

Judicial activism is not unique to India; constitutional courts across jurisdictions have grappled with similar tensions between vigilance and restraint. In the United States, the Warren Court's rights-expansive decisions in *Brown v. Board of Education* and *Miranda v. Arizona* reflected a proactive judicial philosophy, yet subsequent criticism of "legislating from the bench" underscored the enduring debate over judicial legitimacy.[67]

In South Africa, the Constitutional Court has embraced a purposive interpretation of the Bill of Rights, often mandating affirmative state action to realise socio-economic rights, while still recognising the need to defer to the executive in policy-heavy matters.[68] Similarly, the United Kingdom, though lacking a codified constitution, has witnessed a gradual expansion of judicial review post-Human Rights Act 1998, prompting discussions on the democratic limits of judicial power.[69]These comparative experiences reveal that while judicial activism can advance constitutional ideals, unchecked expansion risks triggering institutional pushback and eroding judicial authority.[70]

VII. Balancing Act: Towards Principled Judicial Intervention

For judicial activism to operate as a constitutional safeguard rather than an instrument of institutional overreach, it must be anchored in clear normative tests. Three guiding principles merit particular emphasis.

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[67]*Brown v. Board of Education*, 347 US 483 (1954); *Miranda v. Arizona*, 384 US 436 (1966).
[68]*Government of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46 (CC).
[69]Aileen Kavanagh, *Constitutional Review under the UK Human Rights Act* (Cambridge University Press, 2009) 112.
[70]Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press, 2008) 89.

First, necessity demands that judicial intervention occur only where a constitutional right is at risk or where the failure of other branches would result in manifest injustice.[71] This threshold ensures that courts are not drawn into policy domains by preference, but by constitutional compulsion.

Second, proportionality requires that the scope of judicial orders be commensurate with the gravity of the rights violation, avoiding remedies that restructure governance beyond what the constitutional breach demands.[72] The proportionality test, already well entrenched in fundamental rights adjudication, offers a doctrinal basis for measured activism.

Third, democratic accountability urges the judiciary to maintain institutional dialogue with the legislature and executive, thereby reinforcing, rather than undermining, the system of checks and balances.[73] This approach does not diminish judicial independence but situates it within a framework of inter-branch comity and mutual respect.

Reforms to support principled intervention may include internal self-restraint—adopted through judicially crafted guidelines for public interest litigation (PIL) admission[74]—and more rigorous case-selection criteria, ensuring that PILs serve genuine public causes rather than partisan or publicity-driven agendas. Strengthening constitutional literacy among lawmakers and administrators can also reduce the need for frequent judicial correction. Ultimately, principled judicial activism thrives when courts act neither as passive bystanders nor as alternative legislatures, but as constitutional guardians guided by necessity, proportionality, and respect for democratic processes.

[71] *S.P. Gupta v. Union of India*, AIR 1982 SC 149.
[72] *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.
[73] *State of Tamil Nadu v. State of Kerala*, (2014) 12 SCC 696.
[74] *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402.

VIII. Conclusion

This study has demonstrated that judicial activism in India operates along a delicate spectrum—at one end, as a constitutional imperative that preserves fundamental rights and upholds the rule of law; at the other, as a potential intrusion into domains constitutionally entrusted to the legislature and executive. The evidence examined shows that activism has often served as a corrective mechanism in moments of institutional inaction, ensuring that constitutional guarantees are not reduced to mere formalities. At such times, judicial intervention has acted as the catalyst for social reform and the realization of long-neglected policy commitments. Yet, the very virtues that make activism effective can become liabilities when courts adopt a prescriptive role in matters that demand political deliberation or administrative expertise. When intervention moves from enforcing constitutional boundaries to redefining them, the judiciary risks undermining both the legitimacy of its own authority and the balance of powers it is sworn to protect. The findings suggest that the long-term health of India's constitutional democracy depends not on whether the judiciary is activist or restrained in the abstract, but on whether its interventions are principled, proportionate, and grounded in demonstrable necessity. Sustained legitimacy will require the cultivation of judicial self-awareness, the articulation of clear thresholds for intervention, and a willingness to engage in constructive institutional dialogue rather than unilateral direction. For the future, a jurisprudence of principled activism—fortified by doctrinal clarity and empirical awareness—offers the most viable path forward. Such an approach would allow the judiciary to continue its role as a guardian of rights and constitutional morality, while respecting the institutional space of the other branches. This balance, though difficult to maintain, is essential for preserving not

only the separation of powers, but also the public trust that underpins the authority of the courts themselves.

Rights on the Clock: Reimagining Governance through a Service Guarantees Act – Turning Administrative Promises into Enforceable Citizen Rights

Rubina Iqbal*

Abstract

The Public Service Guarantees Act (PSGA) represents a transformative step toward ensuring time-bound delivery of essential public services, moving governance from bureaucratic discretion to enforceable citizen rights. This article will examine the historical evolution of the PSGA concept, tracing its roots from international precedents such as the United Kingdom's *Citizen's Charter (1991)* and subsequent global frameworks like the OECD Guidelines on Public Service Standards and UN Sustainable Development Goal 16. In the Indian context, the article explores constitutional underpinnings in Articles 14, 21, and 38, highlighting the judiciary's progressive interpretation of the right to good governance in various landmark cases. It will further analyse state-level legislations including Madhya Pradesh, Karnataka (SAKALA), Bihar (RTPS), Jammu and Kashmir and Haryana drawing insights on administrative innovations, technological interventions, and the imposition of penalties for service delays. Additionally, the Article will advocate for a Central PSGA to harmonise service standards, reduce inter-state disparity, and establish a robust grievance redressal mechanism. Statistical evidence demonstrates the socio-economic cost of service delivery failures and the potential of a central law to improve administrative efficiency and citizen trust. Finally, the article offers a comprehensive way forward, emphasising legislative reforms, AI-driven monitoring systems, block chain-based transparency mechanisms, and judicial oversight to ensure

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* Formerly, Assistant Professor (Contractual), School of Law, University of Kashmir.

compliance. By situating India's public service reforms within a global context, the study underscores the need for a citizen-centric administrative framework that upholds accountability, transparency, and constitutional morality.

Keywords: *Public Service, First Appeal, Second Appeal, Citizen-Centric Governance, Designated Officer, Constitutional Accountability, Time-Bound Service Delivery, Penalty, International Public Service Standards*

I. Introduction:

The Public Service Guarantees Act (PSGA) represents a transformative step toward ensuring time-bound delivery of essential public services, moving governance from bureaucratic discretion to enforceable citizen rights. The Public Service Guarantees Act (PSGA) signifies a paradigm shift in governance, redefining the relationship between the State and citizens by making timely delivery of public services a legal right rather than a discretionary function. Rooted in the principles of accountability, transparency, and efficiency, the PSGA aims to address systemic delays, bureaucratic hurdles, and corruption that undermine access to essential services.[1]

II. Historical Background & International Evolution:

The concept of guaranteeing timely and efficient delivery of public services lies at the heart of democratic governance. A modern administrative system is expected to ensure transparency, accountability, and promptness in delivering essential services such as issuance of certificates, licenses, pensions, and welfare benefits.[2] However, in India, citizens have long struggled with bureaucratic delays, corruption, and lack of redressal mechanisms. This has prompted debates around enacting a comprehensive Public Service Guarantees Act (PSGA), ideally backed by central legislation, to provide enforceable rights to citizens.[3]

[1] Arvind Kumar, Public Administration Reforms in India (Oxford University Press, New Delhi, 2020) 45–49.
[2] Centre for Policy Research, Administrative Efficiency in India (2022).
[3] OECD, Improving Public Sector Efficiency: Challenges and Opportunities (OECD Publishing, Paris, 2018) 15–22.

II. (I) Early Administrative Reforms in India:

The demand for efficient and accountable governance is not new. The Santhanam Committee on Prevention of Corruption (1964) highlighted that excessive delays in administrative processes bred corruption and eroded public trust. Subsequent recommendations by the First and Second Administrative Reforms Commissions (ARC) emphasised citizen-centric service delivery as a key component of governance reform.[4] The Second ARC's 13th Report (2009), titled Citizen-Centric Administration – The Heart of Governance strongly advocated a legal framework to provide time-bound delivery of services. It proposed that every government department should specify service standards and hold officials accountable for defaults, even suggesting compensation to citizens for administrative lapses.[5] Despite these recommendations, progress remained fragmented, with states experimenting with different legislative models in the absence of a uniform central law.[6]

II. (ii) First Legislative Initiatives – State-Level Models: The first legislative breakthrough came in Madhya Pradesh, which enacted the Madhya Pradesh Lok Sevaon Ke Pradan Ki Guarantee Adhiniyam, 2010 (Public Services Guarantee Act, 2010). This Act made it mandatory for designated officers to deliver notified public services within a stipulated time frame, failing which penalties could be imposed on erring officials.[7]

Following Madhya Pradesh, several other states introduced similar laws:

- Bihar: Right to Public Services Act, 2011 – credited with processing over 50 million applications by 2023;[8]
- Karnataka: Sakala Services Act, 2011 – fully digitalised service delivery tracking;[9]

[4] Second Administrative Reforms Commission, Citizen-Centric Administration – The Heart of Governance (13th Report, Government of India, 2009) 11–14.
[5] Ibid.
[6] PRS Legislative Research, Citizens' Charter and Grievance Redressal Bill, 2011, PRS Briefs, New Delhi (2011).
[7] Panel Discussion on Power to the People: Strengthening Public Service Guarantee Laws in India. Available at: https://ccs.in/panel-discussion-power-people-strengthening-public-service-guarantee-laws-india. Last visited on 2.6.24.
[8] Government of Bihar, RTPS Dashboard Report 2023.
[9] Government of Karnataka, SAKALA Annual Report 2023.

- Punjab: Right to Service Act, 2011;
- Jammu & Kashmir: Public Services Guarantee Act, 2011.

Despite these positive steps, there remains no national legislation harmonising service standards across states, leading to significant variations in coverage, timelines, penalties, and grievance redress mechanisms.[10]

II. (iii) Global Evolution of Public Service Guarantee Concepts: The idea of guaranteeing public services through enforceable standards has strong international roots.[11]

II. (iii) (a) United Kingdom – Citizen's Charter (1991):[12] The UK pioneered this concept through its Citizens' Charter launched by Prime Minister John Major in 1991. It aimed to make public services more responsive by setting clear service standards, performance indicators, and grievance redressal mechanisms. The charter system evolved into the Service First Programme (1998) and later the Public Service Agreements (PSAs) framework.[13]

II. (iii) (b) Canada – Service Standards Initiative: Canada's Service Standards Initiative (1995) mandated federal agencies to define measurable service levels, publish performance reports, and engage citizens in evaluating service quality. A Treasury Board Secretariat report (2010) indicated that departments meeting publicly declared standards saw a 30–40% rise in citizen satisfaction.

II. (iii) (c) Singapore – PS21 Initiative: Singapore's Public Service for the 21st Century (PS21) initiative integrates digital tools, real-time tracking, and innovation-driven reforms to ensure seamless citizen service.

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[10] Dr Rubina Iqbal, "Improving Public Sector Performance By Public Service Guarantee Act: A Boon For Common Man With Special Reference to The Union Territory of Jammu And Kashmir", Chapter in a Book: "Education 2021" A.P.H Publishing Corporation, New Delhi, ISBN 978-93-89875-47-8 At pp 134-135.

[11] Sindhu Thulaseedharan, RIGHT TO PUBLIC SERVICES IN INDIA-A NEW LEGAL SCENARIO, Journal of the Indian Law Institute, January-March 2013, Vol. 55, No. 1, pp. 59-72.

[12] UK National Audit Office, Citizens' Charter Evaluation Report (London, 1998).

[13] John Major, The Citizens' Charter: Raising the Standard (UK Cabinet Office 1991).

Performance audits are conducted at multiple levels, and service delivery failures are rare due to strong accountability mechanisms.[14]

II. (iv) OECD Guidelines: The Organisation for Economic Co-operation and Development (OECD) has also issued extensive guidelines for improving public service delivery. Its 2018 report on "Improving Public Sector Efficiency" recommends:[15]

- Clear service commitments backed by law;
- Transparent performance benchmarks;
- Direct compensation for service failure.

III. Relevance for India:[16]

India's fragmented approach—where some states have PSGAs and others rely only on administrative circulars creates inequality in citizen entitlements. The international experience demonstrates that legal enforceability, transparent performance measurement, and central oversight are key to ensuring accountability. Without a central law, India risks having uneven service quality and limited citizen empowerment.[17]

IV. Constitutional Basis & Judicial Precedents:[18]

IV. (i) Constitutional Underpinnings: The Public Service Guarantees Act (PSGA) concept draws legitimacy from multiple constitutional provisions, particularly those promoting good governance, accountability, and citizens' rights.[19]

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[14] Available at: https://sso.agc.gov.sg/Act/PSGA2018#:~:text=Public%20Sector%20(Governance)%20Act%20 2018%20%2D%20Singapore%20Statutes%20Online. Last Visited on 10.06.24.
[15] Available at: https://egyankosh.ac.in/bitstream/123456789/67146/1/Unit-15.pdf. Last visited on 10.07.24.
[16] Citizen's Charter: Importance, Objective, Features, Problems faced in implementation, Guidelines, Available at: https://www.civilsdaily.com/citizens charterimportanceobjectivefeaturesproblems-faced-in-implementa tion-guidelines/pdf. Last Visited on 01.07.24.
[17] Nick Robinson, "Right to Public Service Acts in India: The Experience from Bihar and Madhya Pradesh, AI Policy Briefs", November 2012, Available at: http://www.accountabilityindia.in/. Last visited on 10.06.24.
[18] Basu DD, Introduction to the Constitution of India (LexisNexis 2021) at pp 389-390.
[19] Jain MP, Indian Constitutional Law (LexisNexis 2022), at pp 234-235.

IV. (ii) Fundamental Rights

- *Article 14 – Ensures equality before law and protection against arbitrary state action. Denial or unreasonable delay in public services can constitute a violation of this right;*
- *Article 19(1)(g) – Protects the right to carry on trade or profession. Timely clearances, licenses, and approvals are essential for exercising this right;*
- *Article 21 – Expands the meaning of life and personal liberty to include the right to live with dignity. Judicial pronouncements have interpreted it to include the right to corruption-free and timely governance.*[20]

IV. (iii) Directive Principles of State Policy (DPSPs):

- Article 38 – Mandates the State to secure a social order promoting justice and welfare;
- Article 39 & 41 – Emphasize the duty of the State to provide public assistance and welfare services;
- Article 43 – Enjoins the State to ensure conditions of decent work and livelihood, indirectly requiring efficient administrative services.

IV. (iv) Fundamental Duties:[21] Article 51A – Stresses civic responsibility and integrity in public administration. While framed for citizens, it implies reciprocal accountability by the State.

V. Judicial Recognition of the Right to Efficient Governance:[22]

The judiciary has, over the years, reinforced the principle that citizens have a right to good governance, transparent processes, and prompt service delivery.

- ***Vineet Narain v. Union of India:***[23] The Supreme Court held that the State has a constitutional obligation to uphold the rule of law

[20] Ibid.
[21] Craig PP, Administrative Law (Sweet & Maxwell 2021) at pp 45-46.
[22] S.P. Sathe, Administrative Law (LexisNexis, 2022) at pp 232.
[23] (1998) 1 SCC 226.

and ensure fairness in public administration. It emphasised mechanisms to curb arbitrariness and inefficiency.

- **Olga Tellis v. Bombay Municipal Corporation:**[24] Although primarily concerning the right to livelihood, the Court underscored that administrative decisions impacting basic rights must be reasonable, timely, and non-arbitrary.
- **Common Cause v. Union of India**:[25] The Court stated that "good governance is the essence of democracy and includes transparency, accountability, and responsibility in public services."
- **A.P. Pollution Control Board v. Prof. M.V. Nayudu:**[26] The Court observed that administrative delay in performing statutory duties can amount to denial of rights under Article 21.

VI. Legislative Efforts towards a Central Framework:[27]

The Citizen's Right to Grievance Redress Bill, 2011, introduced in Parliament, was India's first attempt to provide a national legal framework.

- Proposed time-bound delivery of services by central and state departments;
- Envisaged a Central Commission for Grievance Redressal with quasi-judicial powers;
- Bill lapsed with the dissolution of the 15th Lok Sabha.

VII. Summary of Public Services Guarantee Act applicable in various states:

These Acts was enacted to ensure that citizens have a legally enforceable right to timely public services. It aims to strengthen accountability in government functioning, reduce bureaucratic delays, and improve service delivery. Under these Acts, the State Government notifies specific public services, the designated officers responsible for their delivery, and the time limits within which they must be provided. Citizens must apply for the

[24] (1985) 3 SCC 545.
[25] AIR 2018 SC (CIV) 1683.
[26] AIR (1999) SC 812.
[27] PRIA, Governance Report on Public Service Delivery (2023).

desired service in the prescribed format, and the designated officer is required to deliver it within the stipulated timeframe. In case of delay, denial, or failure to provide the service, the applicant can file an appeal before the Appellate Authority. If dissatisfied with the decision of the Appellate Authority, a second appeal (revision) can be made to the Revisional Authority, which has the power to modify, confirm, or set aside the earlier order.[28]

These Acts's prescribes penalties of up to ₹5,000 against designated officers or other officials responsible for delays or failure in service delivery. Part of the penalty may be awarded as compensation to the aggrieved citizen. Penalty amounts are recoverable as arrears of land revenue Furthermore, these Acts provides protection to officials for actions taken in good faith and empowers the State Government to make rules for its implementation.[29]

Overall, these Acts establishes a robust framework to ensure timely delivery of essential services, promotes administrative efficiency, and enhances citizen trust in governance through an accountability-driven mechanism.[30]

VIII. Challenges with Existing State-Level PSGAs:

Despite progressive laws in states like Madhya Pradesh, J&K, Bihar, and Karnataka, several gaps remain:[31]

1. Inconsistent Coverage – Number of services varies from state to state.

2. Weak Penalty Enforcement – In many cases, fines on defaulting officials are rarely imposed.

[28] Ashok Kumar Sircar, The Right-to-Public-Services Laws, Economic and Political Weekly, Vol. 47, No. 18 (MAY 5, 2012), at pp. 23-26.
[29] Urvashi Pareek & Nagendra ambedkar Sole, Comparative Study of various States' Public Service Guarantee Acts in India, 2019, available at: https://www.researchgate.net/publication/344831000. Last Visited on 15.07.24.
[30] Shailesh Gandhi, A Difficult Law to Implement: The Right to Public Services Act, 2015 Economic and Political Weekly, Vol.50, No. 43, 24.10.2015, pp. 23-25. Available at: Stable URL: https://www.jstor.org/stable/44002 767. Last visited on 19.07.24.
[31] Sahoo, N., & Kapoor, A, India's Shifting Governance Structure: From Charter of Promises to Services Guarantee. New Delhi: Observer Research Foundation (2012). Lasted visited on 23.07.24.

3. Lack of Uniform Grievance Redressal – No nationwide appellate authority.

4. Digital Divide – Tracking mechanisms and transparency portals vary widely.

VIX. Constitutional Viability of a Central Law: A national law can be anchored in:[32]

- Concurrent List Entry 20 – "Economic and social planning."
- Concurrent List Entry 45 – "Inquiries, statistics for the purposes of any of the matters specified in List II or List III."
- Residuary Powers under Article 248 – Parliament can legislate for matters not exclusively in the State List.

Such a law would not override state Acts but provide minimum service delivery benchmarks while allowing states to expand coverage.[33]

X. Statistical Overview of PSGA Implementation in India:[34]

India currently has over 22 state-level Public Service Guarantee Acts (PSGAs). Data compiled from state reports and government dashboards indicates the scale of citizen interface and administrative compliance.

X. (i) Applications Processed: Madhya Pradesh (Lok Sewa Guarantee Act, 2010) – Over 9 crore applications processed since inception, with a compliance rate above 90%.[35] Bihar (Right to Public Services Act, 2011). More than 6 crore applications disposed, with significant improvements in land records and revenue services.[36] Karnataka (SAKALA Services Act, 2011) – As of 2023, over 5 crore applications processed, with a penalty collection of ₹40+ crore from defaulting officials.[37]

[32] Jain MP, Indian Constitutional Law (LexisNexis 2022) 742–745.
[33] Craig PP, Administrative Law (Sweet & Maxwell 2021) 215–220.
[34] The Legitimate, Public service guarantees Act weapon common man. Available at: https://thelegitimatenews .com/public-service-guarantee-act-weapon-common-man/. Last Visited on 30.06.24.
[35] Government of Madhya Pradesh, Lok Sewa Guarantee Act Dashboard 2023.
[36] Government of Bihar, RTPS Annual Performance Report 2022–23.
[37] Government of Karnataka, SAKALA Services Data 2023.

X. (ii) Service Coverage: Average of 100–200 services notified under state Acts. Madhya Pradesh leads with 350+ services, followed by Karnataka and Bihar.

X. (iii) Penalty and Accountability: Penalties imposed in only 5–8% of delayed cases, reflecting enforcement gaps. Few states, like Karnataka, publicly disclose penalty statistics.

X. (iv) Citizen Satisfaction and Awareness: National surveys suggest less than 40% of citizens are fully aware of their rights under PSGA laws. Implementation improves significantly when coupled with e-governance tools like mobile apps and SMS updates.

X. (v) International Comparisons:[38]

United Kingdom:

- ✓ *Citizens' Charter (1991) established precise service standards, complaint redress mechanisms, and compensation rights;*
- ✓ *Annual performance audits are mandatory.*

Canada:

- ✓ *Service Standards Initiative (1995) ensured measurable outcomes and citizen feedback in service design;*
- ✓ *Federal departments required to publish annual compliance reports.*

Singapore:

- ✓ *Public Service for the 21st Century (PS21) program focuses on digitisation, real-time grievance resolution, and continual innovation;*
- ✓ *Civil servants trained in service quality and process efficiency.*

Australia:

- ✓ *Service Charter Program encourages agencies to co-design charters with citizens, ensuring participatory governance.*

[38] "CITIZENS' RIGHT TO PUBLIC SERVICE" (PDF). Department of Administrative Reforms & Public Grievances, Ministry of Personnel, Pensions & Public Grievances, Government of India. Archived from the original (PDF) on 1 July 2020.

X. (vi) Lessons for India:[39]

- Legal Backing + Periodic Audits – Borrowed from UK model;
- Feedback-Driven Reform – As in Canada, citizen input must shape policy upgrades;
- Digital Integration – Singapore demonstrates efficiency through AI-enabled portals and real-time dashboards.
- Participatory Governance – Australia's collaborative model fosters trust.

X. (vii) Emerging Trends:

- ✓ OECD and UNDP advocate "Right to Public Services" as a fundamental governance principle, linking it with SDG 16 – Peace, Justice, and Strong Institutions;[40]
- ✓ Countries are moving towards outcome-based service guarantees, with measurable indicators like time efficiency, cost efficiency, and grievance redress success rate.[41]

XI. Rationale for a Central Public Service Guarantees Law:[42]

While state-level Public Service Guarantee Acts (PSGAs) have yielded significant improvements, the absence of a unified national framework creates disparities in service quality, coverage, and grievance mechanisms across India. A central law would:

XI. (i) Ensure Uniform Minimum Standards: Establish nationwide benchmarks for time-bound delivery of core public services.

XI. (ii) Provide Constitutional Backing: Reinforce citizen-centric governance under Articles 14, 19, and 21.

XI. (iii) Facilitate Grievance Escalation: Create an appellate authority at the national level.

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[39] Planning Commission of India, Towards Transparent Governance: Recommendations for Service Delivery Reform (New Delhi 2013).
[40] OECD, Government at a Glance (Paris, 2021) 52–56.
[41] OECD, Public Governance Review: Digital Government Strategies (OECD 2021).
[42] Comptroller & Auditor General of India, *Report on Implementation of Right to Public Service.

XI. (iv) Integrate with Digital India: Link all state and central services under a single, AI-enabled service portal.

XII. Key Features of a Proposed Central Law:

XII. (i) Statutory Service Standards:

- Each Ministry/Department to notify essential services with clear timelines;
- Service delivery to be linked to performance metrics of officials.

XII. (ii) Robust Grievance Redress Mechanism:

- Multi-tiered grievance redress system:
  - First Level: Designated Public Service Officer;
  - Second Level: State Appellate Authority;
  - Final Level: Central Commission for Public Service Accountability.

XII. (iii) Penalties and Compensation:

- Financial penalties for defaulting officials, credited to the applicant;
- Escalating penalty structure for repeated defaults.

XII. (iv) Digital Governance Integration:

- AI-powered dashboards for real-time tracking of applications;
- Mobile-based grievance filing and updates.

XIII. Policy Recommendations:[43]

- **Awareness Campaign:** Publicise rights through community outreach, legal aid camps, and citizen charters;
- **Periodic Performance Audits:** Annual performance review by the Comptroller and Auditor General (CAG);
- **Capacity Building:** Mandatory training for officials in service delivery and e-governance platforms;

[43] Planning Commission of India, Towards Transparent Governance: Recommendations for Service Delivery Reform (New Delhi, 2013).

- **Data-Driven Governance:** Use analytics to predict service demand and optimise resource allocation.

XIV. International Best Practices for Implementation:

- ***UK Model:*** *Mandates independent evaluation of service charters and public disclosure of compliance.*[44]
- **Singapore Model:** *Emphasises citizen feedback loops and AI-assisted grievance redressal.*
- **Canadian Approach:** *Co-creation of service standards with civil society organisations.*

India can adopt a hybrid framework incorporating these elements to ensure both legal enforcement and adaptive governance.

XV. Way Forward: Towards a Citizen-Centric Administrative Culture:[45]

The PSGA framework must evolve from a compliance-driven model to a performance-driven governance ethos. Key pillars include:

- Transparency through proactive disclosure.
- Accountability through financial penalties and performance-linked incentives.
- Efficiency through automation, AI, and service analytics.
- Inclusivity by bridging the digital divide in rural and marginalised communities.

XV. (i) Linking PSGA to Sustainable Development Goals (SDGs):[46]

- SDG 16 (Peace, Justice and Strong Institutions): Efficient public services enhance trust in governance and democratic legitimacy.
- SDG 9 (Industry, Innovation and Infrastructure): Time-bound approvals foster investment and entrepreneurship.

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[44] John Major, The Citizen's Charter: Raising the Standard (UK Cabinet Office, 1991).
[45] Jayal, Niraja Gopal (2001) edited "Democracy in India", Delhi: Oxford University Press, Nidhi Sen (2011), Citizens' Charters: Putting People First, Infochange News & features, September.
[46] UNDP, Effective Governance for Sustainable Development Goals (New York 2020) 88–92.

- SDG 1 & 10 (No Poverty & Reduced Inequalities): Faster service delivery in welfare schemes ensures inclusion of vulnerable groups.[47]

XVI. Conclusion:

The Public Service Guarantees framework represents a paradigm shift in governance, from a privilege-based administrative approach to a rights-based service delivery model. The existing state-level Acts have demonstrated that time-bound delivery of services improves citizen trust, reduces corruption, and fosters transparency. Yet, challenges persist awareness levels remain low, grievance redress mechanisms are uneven, and accountability measures often lack teeth.

The way forward lies in enacting a comprehensive Central Public Service Guarantees Act, backed by constitutional mandates under Articles 14, 19, and 21. Such a law must:

- Prescribe uniform standards,
- Ensure citizen participation,
- Integrate technology for real-time monitoring, and
- Enforce strong accountability mechanisms.

Globally, service delivery frameworks—from the UK's Citizens' Charter to Singapore's PS21 model—show that a blend of legal mandates, performance audits, and citizen engagement can transform public administration. India must adopt a similar hybrid model, aligning with international best practices and the UN Sustainable Development Goals, particularly SDG 16 (Peace, Justice and Strong Institutions).

[47] Ibid.

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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.

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The editors would like to thank all the referees who have reviewed the papers published in this volume of the Journal. The papers included in this volume have been recommended by the referees through blind review process.

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